

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5915

To amend the Homeland Security Act of 2002 to require motor vehicle operators transporting security sensitive material in commerce to obtain a transportation security card from the Secretary of Homeland Security, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2008

Mr. DANIEL E. LUNGREN of California introduced the following bill; which was referred to the Committee on Homeland Security

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## A BILL

To amend the Homeland Security Act of 2002 to require motor vehicle operators transporting security sensitive material in commerce to obtain a transportation security card from the Secretary of Homeland Security, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Screening Applied  
5 Fairly and Equitably to Truckers Act of 2008” or the  
6 “SAFE Truckers Act of 2008”.

1                   **TITLE I—SURFACE**  
2           **TRANSPORTATION SECURITY**

3 **SEC. 101. SURFACE TRANSPORTATION SECURITY.**

4           (a) IN GENERAL.—The Homeland Security Act of  
5 2002 (6 U.S.C. 101 et seq.) is amended by adding at the  
6 end the following:

7                   **“TITLE XXI—SURFACE**  
8           **TRANSPORTATION SECURITY**

9 **“SEC. 2101. DESIGNATION OF SECURITY SENSITIVE MATE-**  
10                   **RIAL.**

11           “(a) DESIGNATION.—The Secretary shall designate a  
12 material, or a group or class of material, in a particular  
13 amount and form as security sensitive when the Secretary  
14 determines that transporting the material by motor vehicle  
15 in commerce poses a significant risk to national security  
16 due to the potential use of the material in an act of ter-  
17 rorism.

18           “(b) CONSULTATION.—In carrying out subsection  
19 (a), the Secretary shall consult with—

20                   “(1) the Secretary of Health and Human Serv-  
21 ices on the inclusion of chemical or biological mate-  
22 rials or agents; and

23                   “(2) the Secretary of Transportation, as appro-  
24 priate.



1 for a transportation security card under section  
2 70105 of title 46, United States Code, have flexible  
3 operating hours; and

4 “(2) permit an individual applying for a trans-  
5 portation security card to utilize a fingerprinting lo-  
6 cation outside of the individual’s State of residence  
7 to the greatest extent practicable.

8 **“SEC. 2104. AUTHORITY TO ENSURE COMPLIANCE.**

9 “(a) IN GENERAL.—The Secretary is authorized to  
10 ensure compliance with this title.

11 “(b) MEMORANDUM OF UNDERSTANDING.—The Sec-  
12 retary may enter into a memorandum of understanding  
13 with the Secretary of Transportation to ensure compliance  
14 with sections 2102 and 2107(b).

15 **“SEC. 2105. CIVIL PENALTIES.**

16 “(a) PENALTY.—

17 “(1) IN GENERAL.—A person that violates this  
18 title or a regulation or order issued under this title  
19 is liable to the United States Government for a civil  
20 penalty of at least \$250 but not more than \$75,000  
21 for each violation.

22 “(2) INCREASED PENALTIES.—If the Secretary  
23 finds that a violation under paragraph (1) results in  
24 a transportation security incident, the Secretary may

1 increase the amount of the civil penalty for such vio-  
2 lation to not more than \$100,000.

3 “(3) SEPARATE VIOLATIONS.—A separate viola-  
4 tion occurs for each day the violation continues.

5 “(b) HEARING REQUIREMENT.—The Secretary may  
6 find that a person has violated this title or a regulation  
7 or order issued under this title only after notice and an  
8 opportunity for a hearing. The Secretary shall impose a  
9 penalty under this section by giving the person written no-  
10 tice of the amount of the penalty.

11 “(c) PENALTY CONSIDERATIONS.—In determining  
12 the amount of a civil penalty under this section, the Sec-  
13 retary shall consider—

14 “(1) the nature, circumstances, extent, and  
15 gravity of the violation;

16 “(2) with respect to the violator, the degree of  
17 culpability, any history of prior violations, the ability  
18 to pay, and any effect on the ability to continue to  
19 do business; and

20 “(3) other matters that justice requires.

21 “(d) CIVIL ACTIONS TO COLLECT.—The Attorney  
22 General may bring a civil action in an appropriate district  
23 court of the United States to collect a civil penalty under  
24 this section and any accrued interest on the civil penalty  
25 as calculated in accordance with section 1005 of the Oil

1 Pollution Act of 1990 (33 U.S.C. 2705). In the civil ac-  
2 tion, the amount and appropriateness of the civil penalty  
3 shall not be subject to review.

4 “(e) COMPROMISE.—The Secretary may compromise  
5 the amount of a civil penalty imposed under this section  
6 before referral to the Attorney General.

7 “(f) SETOFF.—The Government may deduct the  
8 amount of a civil penalty imposed or compromised under  
9 this section from amounts it owes the person liable for  
10 the penalty.

11 “(g) DEPOSITING AMOUNTS COLLECTED.—Amounts  
12 collected under this section shall be deposited in the Treas-  
13 ury as miscellaneous receipts.

14 **“SEC. 2106. CRIMINAL PENALTIES.**

15 “A person that willfully violates this title or a regula-  
16 tion or order issued under this title shall be fined under  
17 title 18, United States Code, imprisoned for not more than  
18 5 years, or both; except that the maximum amount of im-  
19 prisonment shall be 10 years in any case in which the vio-  
20 lation results in a transportation security incident.

21 **“SEC. 2107. ENFORCEMENT.**

22 “(a) IN GENERAL.—At the request of the Secretary,  
23 the Attorney General may bring a civil action in an appro-  
24 priate district court of the United States to enforce this  
25 title or a regulation or order issued under this title. The

1 court may award appropriate relief, including a temporary  
2 or permanent injunction, punitive damages, and assess-  
3 ment of civil penalties considering the same penalty  
4 amounts and factors as prescribed for the Secretary in an  
5 administrative case under section 2105.

6 “(b) IMMINENT SECURITY HAZARDS.—

7 “(1) IN GENERAL.—If the Secretary has reason  
8 to believe that an imminent security hazard exists,  
9 the Secretary may bring a civil action in an appro-  
10 priate district court of the United States—

11 “(A) to suspend or restrict the transpor-  
12 tation of the security sensitive material respon-  
13 sible for the hazard; or

14 “(B) to eliminate or mitigate the hazard.

15 “(2) ACTIONS BY THE ATTORNEY GENERAL.—

16 On request of the Secretary, the Attorney General  
17 shall bring an action under paragraph (1).

18 **“SEC. 2108. COMMERCIAL MOTOR VEHICLE OPERATORS**  
19 **REGISTERED TO OPERATE IN MEXICO OR**  
20 **CANADA.**

21 “A commercial motor vehicle operator registered to  
22 operate in Mexico or Canada shall not operate a commer-  
23 cial motor vehicle transporting a security sensitive mate-  
24 rial in commerce in the United States until the operator  
25 has undergone a background records check similar to the

1 background records check required for commercial motor  
2 vehicle operators licensed in the United States to trans-  
3 port security sensitive materials in commerce.

4 **“SEC. 2109. TRANSITION.**

5       “(a) TREATMENT OF INDIVIDUALS RECEIVING PRIOR  
6 HAZARDOUS MATERIALS ENDORSEMENTS.—An indi-  
7 vidual who has obtained a hazardous materials endorse-  
8 ment in accordance with section 1572 of title 49, Code  
9 of Federal Regulations, before the date of enactment of  
10 this title, shall be treated as having met the background  
11 check requirements of the transportation security card  
12 under section 70105 of title 46, United States Code, sub-  
13 ject to reissuance or expiration dates as determined by the  
14 Secretary.

15       “(b) REDUCTION IN FEES.—The Secretary shall re-  
16 duce, to the great extent practicable, any fees associated  
17 with obtaining a transportation security card under sec-  
18 tion 70105 of title 46, United States Code, for any indi-  
19 vidual referred to in subsection (a).

20 **“SEC. 2110. SAVINGS CLAUSE.**

21       “Nothing in the title shall be construed as affecting  
22 the authority of the Secretary of Transportation to regu-  
23 late hazardous materials under chapter 51 of title 49,  
24 United States Code.

1 **“SEC. 2111. DEFINITIONS.**

2 “In this title, the following definitions apply:

3 “(1) **COMMERCE.**—The term ‘commerce’ means  
4 trade or transportation in the jurisdiction of the  
5 United States—

6 “(A) between a place in a State and a  
7 place outside of the State; or

8 “(B) that affects trade or transportation  
9 between a place in a State and a place outside  
10 of the State.

11 “(2) **HAZARDOUS MATERIAL.**—The term ‘haz-  
12 arduous material’ means a substance or material the  
13 Secretary of Transportation designates under section  
14 5103(a) of title 49, United States Code.

15 “(3) **IMMINENT SECURITY HAZARD.**—The term  
16 ‘imminent security hazard’ means the existence of a  
17 condition relating to security sensitive materials  
18 that—

19 “(A) presents a substantial likelihood of a  
20 transportation security incident; and

21 “(B) may occur before the reasonably fore-  
22 seeable completion date of a formal proceeding  
23 begun to lessen the risk of that incident.

24 “(4) **PERSON.**—The term ‘person’, in addition  
25 to its meaning under section 1 of title 1, United  
26 States Code—

1           “(A) includes a government, Indian tribe,  
2           or authority of a government or tribe offering  
3           security sensitive material for transportation in  
4           commerce or transporting security sensitive ma-  
5           terial to further a commercial enterprise; but

6           “(B) does not include—

7                   “(i) the United States Postal Service;

8                   and

9                   “(ii) in sections 2105 and 2106, a de-  
10                  partment, agency, or instrumentality of the  
11                  Government.

12           “(5) SECURITY SENSITIVE MATERIAL.—The  
13           term ‘security sensitive material’ means a substance  
14           or material in quantity and form the Secretary des-  
15           ignates under section 2101.

16           “(6) TRANSPORTS; TRANSPORTATION.—The  
17           term ‘transports’ or ‘transportation’ means the  
18           movement of property and loading, unloading, or  
19           storage incidental to the movement.

20           “(7) TRANSPORTATION SECURITY INCIDENT.—  
21           The term ‘transportation security incident’ has the  
22           meaning given that term by section 70101 of title  
23           46, United States Code.”.

1 **SEC. 102. CONFORMING AMENDMENT.**

2 The table of contents contained in section 1(b) of the  
3 Homeland Security Act of 2002 (116 Stat. 2135) is  
4 amended by adding at the end the following:

“TITLE XXI—SURFACE TRANSPORTATION SECURITY

“Sec. 2101. Designation of security sensitive material.

“Sec. 2102. Transportation of security sensitive materials.

“Sec. 2103. Enrollment locations.

“Sec. 2104. Authority to ensure compliance.

“Sec. 2105. Civil penalties.

“Sec. 2106. Criminal penalties.

“Sec. 2107. Enforcement.

“Sec. 2108. Commercial motor vehicle operators registered to operate in Mexico  
or Canada.

“Sec. 2109. Transition.

“Sec. 2110. Savings clause.

“Sec. 2111. Definitions.”.

5 **SEC. 103. LIMITATION ON ISSUANCE OF HAZMAT LICENSES.**

6 Section 5103a of title 49, United States Code, is  
7 amended—

8 (1) by striking subsection (a) and inserting the  
9 following:

10 “(a) **LIMITATION.**—The Secretary of Homeland Se-  
11 curity shall periodically conduct a name-based background  
12 check of all individuals who possess a license to operate  
13 a motor vehicle transporting in commerce a hazardous ma-  
14 terial for which the Secretary of Transportation requires  
15 placarding. Such a name-based check shall be conducted  
16 against the integrated and consolidated terrorism watch  
17 list maintained by the Federal Government and relevant  
18 databases.”;

1           (2) by striking subsections (b) and (d) and re-  
2           designating subsections (e), (e), (f), (g), and (h) as  
3           subsections (b), (c), (d), (e), and (f), respectively;

4           (3) in subsection (e) (as redesignated by para-  
5           graph (3) of this section)—

6           (A) by striking paragraph (1) and redesign-  
7           ating paragraphs (2) through (5) as para-  
8           graphs (1) through (4), respectively;

9           (B) in paragraph (2) (as redesignated by  
10          subparagraph (A) of this paragraph) by strik-  
11          ing “Director” and inserting “Assistant Sec-  
12          retary of Homeland Security (Transportation  
13          Security Administration)”;

14          (C) in paragraph (3) (as redesignated by  
15          subparagraph (A) of this paragraph) by strik-  
16          ing “Director” and inserting “Assistant Sec-  
17          retary”; and

18          (D) in paragraph (4) (as redesignated by  
19          subparagraph (A) of this paragraph)—

20                 (i) in subparagraph (A) —

21                         (I) by striking “Director” and in-  
22                         serting “Assistant Secretary”;

23                         (II) by striking “paragraph (4)”  
24                         and inserting “paragraph (3)”;

1 (III) by striking “Director’s” and  
2 inserting “Assistant Secretary’s”; and  
3 (ii) in subparagraph (B)(ii) by strik-  
4 ing “Director” and inserting “Assistant  
5 Secretary”; and

6 (4) in subsection (f)(2) (as redesignated by  
7 paragraph (3) of this section) by striking “Director  
8 of the Transportation Security Administration” and  
9 inserting “Assistant Secretary of Homeland Security  
10 (Transportation Security Administration)”.

11 **SEC. 104. DEADLINES AND EFFECTIVE DATES.**

12 (a) DESIGNATION OF SECURITY SENSITIVE MATE-  
13 RIALS.—Not later than 6 months after the date of enact-  
14 ment of this Act, the Secretary of Homeland Security shall  
15 promulgate regulations establishing the list of security  
16 sensitive materials under section 2101 of the Homeland  
17 Security Act of 2002 (as added by this Act).

18 (b) ISSUANCE OF TRANSPORTATION SECURITY  
19 CARDS.—Not later than 18 months after enactment of  
20 this Act, the Secretary shall begin issuance of transpor-  
21 tation security cards under section 70105 of title 46,  
22 United States Code, to individuals who seek to operate a  
23 motor vehicle in commerce while transporting security sen-  
24 sitive materials.

1 (c) EFFECTIVE DATE OF PROHIBITIONS.—The pro-  
2 hibitions contained in sections 2102 and 2108 of the  
3 Homeland Security Act of 2002 (as added by this Act)  
4 shall take effect on the date that is 3 years after the date  
5 of enactment of this Act.

6 (d) EFFECTIVE DATE OF SECTION 103 AMEND-  
7 MENTS.—The amendments made by section 103 of this  
8 Act shall take effect on the date that is 3 years after the  
9 date of enactment of this Act.

## 10 **TITLE II—MISCELLANEOUS** 11 **PROVISIONS**

### 12 **SEC. 201. TASK FORCE ON HIGHWAY SECURITY.**

13 (a) ESTABLISHMENT.—The Secretary of Homeland  
14 Security shall establish a task force to assess security risks  
15 to motor vehicles transporting security sensitive material,  
16 including the vulnerabilities of such motor vehicles to hi-  
17 jacking, en route sabotage, theft, and insider threats.

18 (b) MEMBERSHIP.—The task force shall be composed  
19 of representatives of the Department of Homeland Secu-  
20 rity, the Department of Transportation, appropriate in-  
21 dustries, including employee organizations, and other ap-  
22 propriate entities.

23 (c) REPORT.—Not later than 180 days after the date  
24 of enactment of this Act, the task force shall transmit to  
25 the Secretary and Congress a report containing the results

1 of the assessment, including proposed solutions for any  
2 vulnerabilities identified.

3 **SEC. 202. TASK FORCE ON DISQUALIFYING CRIMES.**

4 (a) **ESTABLISHMENT.**—The Secretary of Homeland  
5 Security shall establish a task force to review the lists of  
6 crimes that disqualify individuals from certain transpor-  
7 tation-related employment under current regulations of  
8 the Transportation Security Administration and assess  
9 whether such lists of crimes are accurate indicators of a  
10 terrorism security risk.

11 (b) **MEMBERSHIP.**—The task force shall be composed  
12 of representatives of appropriate industries, including rep-  
13 resentatives of employee organizations, Federal agencies,  
14 and other appropriate entities.

15 (c) **REPORT.**—Not later than 180 days after the date  
16 of enactment of this Act, the task force shall transmit to  
17 the Secretary and Congress a report containing the results  
18 of the review, including recommendations for a common  
19 list of disqualifying crimes and the rationale for the inclu-  
20 sion of each crime on the list.

○