

107TH CONGRESS
1ST SESSION

S. 1750

To make technical corrections to the HAZMAT provisions of the USA
PATRIOT Act.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 30, 2001

Mr. HOLLINGS (for himself, Mr. MCCAIN, Mr. BREAU, and Mr. SMITH of Oregon) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To make technical corrections to the HAZMAT provisions
of the USA PATRIOT Act.

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 “Hazmat Endorsement
5 Requirements Act”.

6 **SEC. 2. LIMITATION ON ISSUANCE OF HAZMAT LICENSES.**

7 (a) IN GENERAL.—Chapter 313 of title 49, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

1 **“§ 31318. Issuance, renewal, upgrade, transfer, and**
2 **periodic check of hazmat licenses**

3 “(a) IN GENERAL.—A State may not issue, renew,
4 upgrade, or transfer a hazardous materials endorsement
5 for a commercial driver’s license to any individual author-
6 izing that individual to operate a commercial motor vehicle
7 transporting a hazardous material in commerce unless the
8 Secretary of Transportation has determined that the indi-
9 vidual does not pose a security risk warranting denial of
10 the endorsement or license. Each State shall implement
11 a program under which a background records check is
12 requested—

13 “(1) whenever a commercial driver’s license
14 with a hazardous materials endorsement is to be
15 issued, renewed, upgraded, or transferred; and

16 “(2) periodically (as prescribed by the Secretary
17 by regulations) for all other individuals holding a
18 commercial driver’s license with a hazardous mate-
19 rials endorsement.

20 “(b) DETERMINATION OF SECURITY RISK.—

21 “(1) IN GENERAL.—An individual may not be
22 denied a hazardous materials endorsement for a
23 commercial driver’s license under subsection (a) un-
24 less the Secretary determines that individual—

25 “(A) in the 10-year period ending on the
26 date of the background investigation, was con-

victed (or found not guilty by reason of insanity) of an offense described in section 44936(b)(1)(B) of this title (disregarding the matter in clause (xiv)(IX) after ‘1 year,’);

“(B) is described in section 175b(b)(2) of title 18, United States Code; or

“(C) may be denied admission to the United States or removed from the United States under subclause (IV), (VI), or (VII) of section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)).

“(2) MITIGATING CIRCUMSTANCES.—In making a determination under paragraph (1), the Secretary shall give consideration to the circumstances of any disqualifying act or offense, restitution made by the individual, Federal and State mitigation remedies, and other factors from which it may be concluded that the individual does not pose a security risk warranting denial of the license or endorsement.

“(3) APPEALS PROCESS.—The Secretary shall establish an appeals process under this section for individuals found to be ineligible for a hazardous materials endorsement for a commercial driver’s license that includes notice and an opportunity for a hearing.

1 “(c) BACKGROUND RECORDS CHECK.—

2 “(1) IN GENERAL.—Upon the request of a
3 State regarding issuance of a hazardous materials
4 endorsement for a commercial driver’s license to an
5 individual, the Attorney General shall—

6 “(A) conduct a background records check
7 regarding the individual;

8 “(B) take appropriate criminal enforce-
9 ment action required by information developed
10 or obtained in the course of the background
11 check; and

12 “(C) upon completing the background
13 records check, notify the Secretary of Transpor-
14 tation of the completion and results of the
15 background records check.

16 “(2) SCOPE.—A background records check re-
17 garding an individual under this subsection shall
18 consist of the following:

19 “(A) A check of the relevant criminal his-
20 tory data bases.

21 “(B) In the case of an alien, a check of the
22 relevant data bases to determine the status of
23 the alien under the immigration laws of the
24 United States.

1 “(C) As appropriate, a check of the rel-
2 evant international data bases through Interpol-
3 U.S. National Central Bureau or other appro-
4 priate means.

5 “(D) Review of any other national secu-
6 rity-related information or data base identified
7 by the Attorney General for purposes of such a
8 background records check.

9 “(3) SECRETARY TO NOTIFY STATE.—After
10 making the determination required by subsection
11 (b)(1), the Secretary of Transportation shall
12 promptly notify the State of the determination.

13 “(d) REPORTING REQUIREMENT.—Each State shall
14 submit to the Secretary of Transportation, at such time
15 and in such manner as the Secretary may prescribe, such
16 information as the Secretary may require, concerning each
17 individual to whom the State issues a hazardous materials
18 endorsement for a commercial driver’s license.

19 “(e) RESTRICTIONS ON USE AND MAINTENANCE OF
20 INFORMATION.—

21 “(1) FOIA NOT TO APPLY.—Information ob-
22 tained by the Attorney General or the Secretary of
23 Transportation under this section may not be made
24 available to the public under section 552 of title 5,
25 United States Code.

1 “(2) CONFIDENTIALITY.—Any information
 2 other than criminal acts or offenses constituting
 3 grounds for disqualification under subsection (b)(1)
 4 shall be maintained confidentially by the Secretary
 5 and may be used only for making determinations
 6 under this section.

7 “(f) RENEWAL WAIVER FOR BACKGROUND CHECK
 8 DELAYS.—The Secretary shall provide a waiver for State
 9 compliance with the requirements of subsection (a) for re-
 10 newals to the extent necessary to avoid the interruption
 11 of service by a license holder while a background check
 12 is being completed.

13 “(g) DEFINITIONS.—In this section:

14 “(1) HAZARDOUS MATERIALS.—The term ‘haz-
 15 ardous material’ means—

16 “(A) a substance or material designated by
 17 the Secretary under section 5103(a) of this title
 18 for which the Secretary requires placarding of
 19 a commercial motor vehicle transporting it in
 20 commerce; and

21 “(B) a substance or material, including a
 22 substance or material on the Centers for Dis-
 23 ease Control’s list of select agents, designated
 24 as a hazardous material by the Secretary under
 25 procedures to be established by the Secretary.

1 “(2) ALIEN.—The term ‘alien’ has the meaning
2 given the term in section 101(a)(3) of the Immigra-
3 tion and Nationality Act (8 U.S.C. 1101(a)(3)).”.

4 (b) ENFORCEMENT.—Section 31311(a) of title 49,
5 United States Code, is amended by adding at the end the
6 following:

7 “(21) The State shall comply with the require-
8 ments of section 31318.”.

9 (c) CONFORMING AMENDMENTS.—

10 (1) Section 31305(a)(5)(C) of title 49, United
11 States Code, is amended by striking “section 5103a”
12 and inserting “section 31318”.

13 (2) The chapter analysis for chapter 313 is
14 amended by adding at the end the following:

“31318. Limitation on issuance of hazmat licenses.”.

15 (3) Chapter 51 of title 49, United States Code,
16 is amended—

17 (A) by striking section 5103a; and

18 (B) by striking the item in the chapter
19 analysis relating to section 5103a.

20 (4) Section 1012(c) of the USA PATRIOT Act
21 of 2001 is amended by striking “section 5103a” and
22 inserting “section 31318”.

23 (d) EFFECTIVE DATE.—

24 (1) IN GENERAL.—The amendments made by
25 this section shall take effect on October 26, 2001.

1 (2) LIMIT ON RETROACTIVITY.—Notwith-
2 standing paragraph (1), no enforcement action shall
3 be taken against a State under section 31311 (a)
4 (21) of title 49, United States Code, for any act
5 committed, or failure to act that occurred, in viola-
6 tion of that section before the effective date of the
7 interim final rule prescribed by the Secretary of
8 Transportation under section 31318 of title 49,
9 United States Code.

10 (3) INTERIM FINAL RULE AUTHORITY.—The
11 Secretary of Transportation shall issue an interim
12 final rule as a temporary regulation under section
13 31318 of title 49, United States Code, as soon as
14 practicable after the date of enactment of this Act
15 without regard to the provisions of chapter 5 of title
16 5, United States Code. The Secretary shall initiate
17 a rulemaking in accordance with such provisions as
18 soon as practicable after the date of enactment of
19 this Act. The final rule issued pursuant to that rule-
20 making shall supersede the interim final rule pro-
21 mulgated under this paragraph.

1 **SEC. 3. PROHIBITION ON OPERATING WITHOUT PROPER**
 2 **HAZMAT ENDORSEMENT OR LICENSE.**

3 (a) IN GENERAL.—Chapter 313 of title 49, United
 4 States Code, is further amended by adding at the end the
 5 following:

6 **“§ 31319. Prohibition on unauthorized transportation**
 7 **of hazardous materials**

8 “(a) IN GENERAL.—Notwithstanding any provision
 9 of law, treaty, or international agreement to the contrary,
 10 after the effective date of the interim final rule promul-
 11 gated by the Secretary of Transportation under section
 12 2(d)(3) of the Hazmat Endorsement Requirements Act,
 13 no individual may operate a commercial motor vehicle
 14 transporting a hazardous material in commerce in the
 15 United States without a hazardous materials endorsement
 16 or a license authorizing that individual to operate a com-
 17 mercial motor vehicle transporting a hazardous material
 18 in commerce—

19 “(1) issued by a State in accordance with the
 20 requirements of section 31318 of this title; or

21 “(2) issued by the government of Canada or
 22 Mexico, or a political subdivision thereof, after a
 23 background check that is the same as, of substan-
 24 tially similar to, the background check required by
 25 section 31318.

1 “(b) PENALTY.—The Secretary shall by regulation
2 prescribe the penalty for violation of subsection (a).”.

3 (b) CONFORMING AMENDMENT.—The chapter anal-
4 ysis for chapter 313 is amended by adding at the end the
5 following:

“31319. Prohibition on unauthorized transportation of hazardous materials.”.

6 **SEC. 4. PENALTY FOR FRAUDULENT ISSUANCE OR RE-**
7 **NEWAL OF COMMERCIAL DRIVER'S LICENSE.**

8 (a) IN GENERAL.—Chapter 313 of title 49, United
9 States Code, is further amended by adding at the end the
10 following:

11 **“§ 31320. Penalty for fraudulent issuance, renewal,**
12 **upgrade, or transfer of commercial driv-**
13 **er's license.**

14 “Any person who knowingly issues, obtains, or know-
15 ingly facilitates the issuance, renewal, upgrade, transfer,
16 or obtaining of, a commercial driver's license or an en-
17 dorsement for a commercial driver's license knowing the
18 license or endorsement to have been wrongfully issued or
19 obtained, or issued, renewed, upgraded, transferred, or ob-
20 tained through the submission of false information or the
21 intentional withholding of required information is guilty
22 of a Class E felony punishable by a fine, imprisonment,
23 or both as provided in title 18, United States Code.”.

1 (b) CONFORMING AMENDMENT.—The chapter anal-
 2 ysis for chapter 313 is amended by adding at the end the
 3 following:

“31320. Penalty for fraudulent issuance of renewal of commercial driver’s li-
 cense.”.

4 **SEC. 5. MOTOR CARRIER SECURITY REPORT.**

5 (a) IN GENERAL.—

6 (1) IN GENERAL.—The Secretary of Transpor-
 7 tation shall assess the security risks associated with
 8 motor carrier transportation and develop prioritized
 9 recommendations for—

10 (A) improving the security of hazardous
 11 materials shipments by motor carriers, includ-
 12 ing shipper responsibilities;

13 (B) using biometrics or other identification
 14 systems to improve the security of motor carrier
 15 transportation;

16 (C) technological advancements in the area
 17 of information access and transfer for the pur-
 18 pose of identifying the location of hazmat ship-
 19 ments and facilitating the availability of safety
 20 and security information; and

21 (D) reducing other significant security re-
 22 lated risks to public safety and interstate com-
 23 merce, taking into account the impact that any

1 proposed security measure might have on the
2 provision of motor carrier transportation.

3 (2) EXISTING PRIVATE AND PUBLIC SECTOR
4 EFFORTS.—The assessment shall include a review of
5 any actions already taken to address identified secu-
6 rity issues by both public and private entities.

7 (b) CONSULTATION; USE OF EXISTING RE-
8 SOURCES.—In carrying out the assessment required by
9 subsection (a), the Secretary shall—

10 (1) consult with operators, drivers, safety advo-
11 cates, and public safety officials (including officials
12 responsible for responding to emergencies); and

13 (2) utilize, to the maximum extent feasible, the
14 resources and assistance of the Transportation Re-
15 search Board of the National Academy of Sciences.

16 (c) REPORT.—

17 (1) CONTENTS.—Within 180 days after the
18 date of enactment of this Act, the Secretary shall
19 transmit to the Senate Committee on Commerce,
20 Science, and Transportation and the House of Rep-
21 resentatives Committee on Transportation and In-
22 frastructure a report, without compromising national
23 security, containing—

24 (A) the assessment and prioritized rec-
25 ommendations required by subsection (a);

1 (B) any proposals the Secretary deems ap-
2 propriate for providing Federal financial, tech-
3 nological, or research and development to assist
4 carriers and shippers in reducing the likelihood,
5 severity, and consequences of deliberate acts of
6 crime or terrorism toward motor carrier em-
7 ployees, shipments, or property; and

8 (C) data on the number of shipments and
9 type of hazardous materials for which
10 placarding is required for transport by motor
11 carriers in the United States, including the
12 transport of hazardous materials shipments by
13 Canadian or Mexican motor carriers with au-
14 thority to enter into the United States.

15 (2) **FORMAT.**—The Secretary may submit the
16 report in both classified and redacted formats if the
17 Secretary determines that such action is appropriate
18 or necessary.

19 **SEC. 6. STUDY.**

20 The Secretary of Transportation shall conduct re-
21 search and operational testing to determine the feasibility,
22 costs, and benefits of requiring motor carriers trans-
23 porting certain high-risk hazardous materials, as deter-
24 mined by the Secretary, to install ignition or engine lock-
25 ing devices, silent alarms, satellite technology, or other

1 mechanisms to increase the security associated with the
2 transportation of such shipments by motor carriers. The
3 Secretary may conduct a pilot program to assess such de-
4 vices.

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