

112TH CONGRESS
1ST SESSION

H. R. 1690

To amend titles 49 and 46, United States Code, and the Homeland Security Act of 2002 to provide for certain improvements in surface transportation security, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2011

Mr. ROGERS of Alabama (for himself, Mr. McCAUL, Mr. WALSH of Illinois, and Mr. BROOKS) introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

To amend titles 49 and 46, United States Code, and the Homeland Security Act of 2002 to provide for certain improvements in surface transportation 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 “Modernizing of Docu-
5 mentation and Elimination of Redundant Identification
6 and Security Credentials Act” or the “MODERN Security
7 Credentials Act”.

1 **SEC. 2. CONSOLIDATION AND HARMONIZATION OF SECU-**
2 **RITY THREAT ASSESSMENT PROCESS FOR**
3 **TRANSPORTATION WORKERS.**

4 (a) REQUIREMENT FOR RULEMAKING.—By not later
5 than one year after the date of the enactment of this Act,
6 the Secretary of Homeland Security shall, by rulemaking,
7 consolidate and harmonize the Department of Homeland
8 Security’s security threat assessment process for transpor-
9 tation workers, to reduce redundant background checks
10 performed by the Department to the extent possible under
11 law and in accordance with the relative security
12 vulnerabilities of the transportation sectors and any other
13 security considerations the Secretary determines are rel-
14 evant.

15 (b) CONSULTATION.—In developing the rulemaking
16 under subsection (a), the Secretary shall, within 120 days
17 of enactment of this Act, consult with and seek input from
18 representatives from air carriers, airport operators, labor
19 organizations, port authorities, port operators, and other
20 relevant stakeholders.

21 (c) LIMITATION.—

22 (1) EXISTING PROCESSES AND FUNCTIONS.—
23 Any rule issued under subsection (a) shall not apply
24 to a process or function carried out by a non-Fed-
25 eral airport operator as of the date of enactment of
26 this Act.

1 (2) **AUTHORITY TO RESTRICT ACCESS.**—Noth-
2 ing in any rule issued under subsection (a) shall af-
3 fect the authority of an airport operator to restrict
4 an individual’s access to secure areas within an air-
5 port or other aviation facility.

6 (d) **ANALYSIS.**—The rulemaking under subsection (a)
7 shall include an analysis of—

8 (1) how security threat assessment processes
9 for transportation workers will be consolidated and
10 harmonized;

11 (2) any reductions in costs or fees that will be
12 realized; and

13 (3) any other efficiencies, including a reduction
14 or streamlining of pertinent regulations, that will be
15 realized.

16 **SEC. 3. TRANSPORTATION SECURITY ADMINISTRATION EM-**
17 **PLOYMENT DISQUALIFICATION.**

18 Section 44936 of title 49, United States Code, is
19 amended—

20 (1) in subsection (a)(1)(A), by striking “Under
21 Secretary of Transportation for Security” and in-
22 serting “Secretary of Homeland Security (in this
23 section referred to as the ‘Secretary’)”;

1 (2) by striking “Under Secretary” each place it
2 appears (other than in subsection (a)(1)(A)) and in-
3 serting “Secretary”;

4 (3) in subsection (a)(2), by inserting before the
5 period the following: “and the results of that inves-
6 tigation are provided to the Secretary”;

7 (4) in subsection (b)—

8 (A) in paragraph (1)—

9 (i) in subparagraph (A), by striking
10 “or”; and

11 (ii) by striking subparagraph (B) and
12 inserting the following new subparagraphs:

13 “(B) the Secretary determines that the indi-
14 vidual is disqualified under section 70105(c)(1) of
15 title 46 from being issued a biometric or other trans-
16 portation security card; or

17 “(C) the Secretary determines that the indi-
18 vidual poses a threat to transportation or national
19 security.”; and

20 (B) by adding at the end the following new
21 paragraphs:

22 “(4) An individual disqualified by the Federal Gov-
23 ernment from being issued a biometric or other transpor-
24 tation security card under paragraph (1)(B) may seek a

1 waiver pursuant to paragraphs (2) and (3) of section
2 70105(c) of title 46.

3 “(5) Nothing in this subsection shall affect the au-
4 thority of an air carrier, foreign air carrier, airport oper-
5 ator, or government, to disqualify any individual from em-
6 ployment based on a review or adjudication of a criminal
7 history record check.

8 “(6) An airport operator shall not be required to
9 issue an airport credential providing unescorted access to
10 a Secure Identification Display Area to any individual
11 based solely on the waiver process established under this
12 section.

13 “(7) No cause of action, suit, or other proceeding
14 shall arise—

15 “(A) from any denial of a request of a waiver
16 under this section; or

17 “(B) from any disqualification for employment,
18 if the cause of action, suit, or proceeding is based
19 solely on the fact that the applicant for employment
20 was granted a waiver under this subsection.”;

21 (5) in subsection (d), by adding at the end the
22 following: “The fees authorized under this section—

23 “(1) shall not exceed the aggregate costs in-
24 curred by the Department of Homeland Security as-
25 sociated with performing background record checks;

1 “(2) must be reasonably related to the costs of
2 incurred from—

3 “(A) conducting or obtaining a criminal
4 history record check or reviewing available law
5 enforcement databases and commercial data-
6 bases and records of other governmental and
7 international agencies;

8 “(B) reviewing and adjudicating requests
9 for waiver and appeals of agency decisions with
10 respect to performing the background record
11 check and denying requests for waiver and ap-
12 peals; and

13 “(C) any other costs related to performing
14 the background record check; and

15 “(3) may be used, subject to appropriations,
16 only to pay the costs incurred in providing services
17 in connection with the activity or item for which the
18 fee is charged, and may remain available until ex-
19 pended.”; and

20 (6) by adding at the end the following new sub-
21 section:

22 “(f) USE OF INFORMATION.—Any information con-
23 stituting grounds for disqualifying an individual from
24 being issued a biometric or other transportation security
25 card under subsection (b)(1) by the Federal Government

1 shall be maintained by the Secretary and may be shared
2 to the extent allowable under section 552a of title 5.”.

3 **SEC. 4. DISQUALIFICATION FROM BEING ISSUED A BIOMET-**
4 **RIC TRANSPORTATION SECURITY CARD.**

5 (a) PERMANENTLY DISQUALIFYING OFFENSES.—
6 Section 70105(c)(1)(A) of title 46, United States Code,
7 is amended—

8 (1) by redesignating clauses (v), (vi), (vii),
9 (viii), (ix), (x), (xi), and (xii) as clauses (vii), (viii),
10 (ix), (x), (xi), (xii), (xiv), and (xv), respectively;

11 (2) by inserting after clause (iv) the following
12 new clauses:

13 “(v) Aircraft piracy punishable under
14 section 46502(a) of title 49.

15 “(vi) Aircraft piracy outside the spe-
16 cial aircraft jurisdiction of the United
17 States punishable under section 46502(b)
18 of title 49.”;

19 (3) by inserting after clause (xii), as so redesi-
20 gnated, the following new clause:

21 “(xiii) Improper transportation of a
22 hazardous material punishable under sec-
23 tion 46312 of title 49.”;

24 (4) in clause (xiv), as so redesignated, by strik-
25 ing “(iv)” and inserting “(vi)”;

1 (5) in clause (xv), as so redesignated, by strik-
2 ing “clauses (v) through (x)” and inserting “clauses
3 (vii) through (xiii)”.

4 (b) INTERIM DISQUALIFYING OFFENSES.—Section
5 70105(c)(1)(B) of title 46, United States Code, is amend-
6 ed by adding at the end the following new clauses:

7 “(xvi) Interference with air navigation
8 punishable under section 46308 of title 49.

9 “(xvii) Forgery of certificates, false
10 marking of aircraft, and other aircraft reg-
11 istration violations punishable under sec-
12 tion 46306 of title 49.

13 “(xviii) Interference with flight crew
14 members or flight attendants punishable
15 under section 46504 of title 49.

16 “(xix) Commission of certain crimes
17 aboard aircraft in flight punishable under
18 section 46506 of title 49.

19 “(xx) Carrying a weapon or explosive
20 aboard aircraft punishable under section
21 46505 of title 49.

22 “(xxi) Destruction of an aircraft or
23 aircraft facility punishable under section
24 32 of title 18.

1 “(xxii) Unlawful entry into an aircraft
2 or airport area that serves air carriers or
3 foreign air carriers contrary to established
4 security requirements punishable under
5 section 46314 of title 49.

6 “(xxiii) Lighting violations involving
7 transportation of controlled substances
8 punishable under section 46315 of title 49.

9 “(xxiv) Violence at international air-
10 ports punishable under section 37 of title
11 18.

12 “(xxv) Conveying false information
13 and threats punishable under section
14 46507 of title 49.”.

15 **SEC. 5. SURFACE TRANSPORTATION SECURITY.**

16 (a) IN GENERAL.—The Homeland Security Act of
17 2002 (6 U.S.C. 101 et seq.) is amended by adding at the
18 end the following:

19 **“TITLE XXI—SURFACE**
20 **TRANSPORTATION SECURITY**

21 **“SEC. 2101. TRANSPORTATION OF SECURITY-SENSITIVE MA-**
22 **TERIALS.**

23 “(a) SECURITY-SENSITIVE MATERIALS.—Not later
24 than one year after the date of enactment of this section,
25 the Secretary shall issue final regulations, after notice and

1 comment, defining security-sensitive materials for the pur-
2 poses of this title.

3 “(b) MOTOR VEHICLE OPERATORS.—The Secretary
4 shall prohibit an individual from operating a motor vehicle
5 in commerce while transporting a security-sensitive mate-
6 rial unless the individual holds a valid transportation secu-
7 rity card issued by the Secretary under section 70105 of
8 title 46, United States Code.

9 “(c) SHIPPERS.—The Secretary shall prohibit a per-
10 son from—

11 “(1) offering a security-sensitive material for
12 transportation by motor vehicle in commerce; or

13 “(2) causing a security-sensitive material to be
14 transported by motor vehicle in commerce,

15 unless the motor vehicle operator transporting the secu-
16 rity-sensitive material holds a valid transportation security
17 card issued by the Secretary under section 70105 of title
18 46, United States Code.

19 “(d) MEMORANDUM OF UNDERSTANDING.—The Sec-
20 retary may enter into a memorandum of understanding
21 with the Secretary of Transportation to ensure compliance
22 with this section.

23 “(e) LIMITATION ON APPLICATION.—This section
24 and the regulations and prohibitions under this section
25 shall not apply to the United States Postal Service and

1 any other department, agency, or instrumentality of the
2 Federal Government.

3 **“SEC. 2102. ENROLLMENT LOCATIONS.**

4 “(a) ENROLLMENT LOCATIONS.—The Secretary
5 shall—

6 “(1) work with appropriate entities to ensure
7 that enrollment locations for individuals applying for
8 a transportation security card under section 70105
9 of title 46, United States Code, have flexible oper-
10 ating hours; and

11 “(2) permit an individual applying for such
12 transportation security card to utilize an enrollment
13 location outside of the individual’s State of residence
14 to the greatest extent practicable.

15 “(b) NUMBER OF LOCATIONS.—The Secretary shall
16 develop and implement a plan—

17 “(1) to offer individuals applying for a trans-
18 portation security card under section 70105 of title
19 46, United States Code, the maximum number of
20 enrollment locations practicable across diverse geo-
21 graphic regions; and

22 “(2) to conduct outreach to appropriate stake-
23 holders, including owners and operators of motor ve-
24 hicles involved in the transportation of security-sen-
25 sitive materials, and labor organizations representing

1 employees of such owners or operators to keep the
2 stakeholders informed of the timeframe and loca-
3 tions for the opening of additional enrollment loca-
4 tions.

5 **“SEC. 2103. COMMERCIAL MOTOR VEHICLE OPERATORS**
6 **REGISTERED TO OPERATE IN MEXICO OR**
7 **CANADA.**

8 “The Secretary shall prohibit a commercial motor ve-
9 hicle operator licensed to operate in Mexico or Canada
10 from operating a commercial motor vehicle transporting
11 a security-sensitive material in commerce in the United
12 States until the operator has been subjected to, and not
13 disqualified as a result of, a security background records
14 check by a Federal agency that the Secretary determines
15 is similar to the security background records check re-
16 quired for commercial motor vehicle operators in the
17 United States transporting security-sensitive materials in
18 commerce.

19 **“SEC. 2104. REDUNDANT BACKGROUND CHECKS.**

20 “(a) IN GENERAL.—The Secretary shall prohibit a
21 State or political subdivision thereof from requiring a sep-
22 arate security background check of an individual seeking
23 to transport security-sensitive material.

24 “(b) WAIVERS.—The Secretary may waive the appli-
25 cation of subsection (a) with respect to a State or political

1 subdivision thereof if the State or political subdivision
2 demonstrates a compelling reason that a separate security
3 background check is necessary to ensure the secure trans-
4 portation of security-sensitive material in the State or po-
5 litical subdivision.

6 “(c) LIMITATION ON STATUTORY CONSTRUCTION.—
7 Nothing in this section shall limit the authority of a State
8 to ensure that an individual has the requisite knowledge
9 and skills to safely transport hazardous materials in com-
10 merce.

11 **“SEC. 2105. TRANSITION.**

12 “(a) TREATMENT OF INDIVIDUALS RECEIVING PRIOR
13 HAZARDOUS MATERIALS ENDORSEMENTS.—An indi-
14 vidual who has obtained a hazardous materials endorse-
15 ment in accordance with section 1572 of title 49, Code
16 of Federal Regulations, before the date of enactment of
17 this title, is deemed to have met the background check
18 requirements of a transportation security card under sec-
19 tion 70105 of title 46, United States Code, subject to
20 reissuance or expiration dates of the hazardous materials
21 endorsement.

22 “(b) REDUCTION IN FEES.—The Secretary shall re-
23 duce, to the greatest extent practicable, any fees associ-
24 ated with obtaining a transportation security card under

1 section 70105 of title 46, United States Code, for any indi-
2 vidual referred to in subsection (a).

3 **“SEC. 2106. SAVINGS CLAUSE.**

4 “Nothing in this title shall be construed as affecting
5 the authority of the Secretary of Transportation to regu-
6 late hazardous materials under chapter 51 of title 49,
7 United States Code.

8 **“SEC. 2107. DEFINITIONS.**

9 “In this title, the following definitions apply:

10 “(1) **COMMERCE.**—The term ‘commerce’ means
11 trade or transportation in the jurisdiction of the
12 United States—

13 “(A) between a place in a State and a
14 place outside of the State; or

15 “(B) that affects trade or transportation
16 between a place in a State and a place outside
17 of the State.

18 “(2) **HAZARDOUS MATERIAL.**—The term ‘haz-
19 arduous material’ has the meaning given that term in
20 section 5102 of title 49, United States Code.

21 “(3) **PERSON.**—The term ‘person’, in addition
22 to its meaning under section 1 of title 1, United
23 States Code, includes a State, local, or tribal govern-
24 ment offering security-sensitive material for trans-

1 portation in commerce or transporting security-sen-
 2 sitive material to further a commercial enterprise.

3 “(4) SECURITY-SENSITIVE MATERIAL.—The
 4 term ‘security-sensitive material’ has the meaning
 5 given that term in section 1501 of the Implementing
 6 Recommendations of the 9/11 Commission Act of
 7 2007 (6 U.S.C. 1151).

8 “(5) TRANSPORTS; TRANSPORTATION.—The
 9 term ‘transports’ or ‘transportation’ means the
 10 movement of property and loading, unloading, or
 11 storage incidental to such movement.”.

12 (b) CLERICAL AMENDMENT.—The table of contents
 13 contained in section 1(b) of the Homeland Security Act
 14 of 2002 (116 Stat. 2135) is amended by adding at the
 15 end the following:

“TITLE XXI—SURFACE TRANSPORTATION SECURITY

“Sec. 2101. Transportation of security-sensitive materials.

“Sec. 2102. Enrollment locations.

“Sec. 2103. Commercial motor vehicle operators registered to operate in Mexico
 or Canada.

“Sec. 2104. Redundant background checks.

“Sec. 2105. Transition.

“Sec. 2106. Savings clause.

“Sec. 2107. Definitions.”.

16 (c) SECURITY CARDS FOR CERTAIN MOTOR VEHICLE
 17 OPERATORS.—Section 70105(b)(2) of title 46, United
 18 States Code, is amended by striking “and” after the semi-
 19 colon at the end of subparagraph (F), by striking the pe-
 20 riod at the end of subparagraph (G) and inserting “; and”,
 21 and by adding at the end the following new subparagraph:

1 “(H) an individual who operates a motor
2 vehicle in commerce while transporting security-
3 sensitive material (as that term is defined in
4 section 1501 of the Implementing Rec-
5 ommendations of the 9/11 Commission Act of
6 2007 (6 U.S.C. 1151).”.

7 (d) CIVIL PENALTIES.—Section 114(v) of title 49,
8 United States Code, is amended—

9 (1) in paragraph (1)(A), by inserting “under
10 title XXI of the Homeland Security Act of 2002 or”
11 after “Secretary of Homeland Security”; and

12 (2) by striking “applicable provision of this
13 title” each place it appears and inserting “applicable
14 provision”.

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

16 Section 5103a of title 49, United States Code, and
17 the item relating to that section in the analysis for chapter
18 51 of such title, are repealed.

19 **SEC. 7. DEADLINES AND EFFECTIVE DATES.**

20 (a) ISSUANCE OF TRANSPORTATION SECURITY
21 CARDS.—Not later than one year after the date of the en-
22 actment of this Act, the Secretary of Homeland Security
23 (as that term is defined in section 70101 of title 46,
24 United States Code) shall begin issuance of transportation
25 security cards under section 70105(b)(2)(H) of title 46,

1 United States Code, as amended by this Act, to individuals
2 who seek to operate a motor vehicle in commerce while
3 transporting security-sensitive materials.

4 (b) EFFECTIVE DATE OF PROHIBITIONS.—The pro-
5 hibitions under in section 2101 of the Homeland Security
6 Act of 2002 (as added by section 5) shall take effect on
7 the date that is 2 years after the date of enactment of
8 this Act.

9 (c) EFFECTIVE DATE OF SECTION 6 AMEND-
10 MENTS.—The amendments made by section 6 of this Act
11 shall take effect on the date that is 2 years after the date
12 of enactment of this Act.

13 **SEC. 8. TASK FORCE ON DISQUALIFYING CRIMES.**

14 (a) ESTABLISHMENT.—The Secretary of Homeland
15 Security shall establish a task force, with an official des-
16 ignated by the Secretary to be the Chair of the task force,
17 to review the lists of crimes that disqualify individuals
18 from transportation-related employment under current
19 regulations of the Transportation Security Administration
20 and assess whether such lists of crimes are accurate indi-
21 cators of a terrorism security risk.

22 (b) MEMBERSHIP.—The task force shall be composed
23 of representatives of appropriate industries, including
24 labor unions representing employees of such industries,

1 Federal agencies, and other appropriate entities, as deter-
2 mined by the Secretary.

3 (c) REPORT.—Not later than one year after the date
4 of enactment of this Act, the task force shall submit to
5 the Secretary and the Committee on Homeland Security
6 of the House of Representatives a report containing the
7 results of the review, including recommendations for a
8 common list of disqualifying crimes and the rationale for
9 the inclusion of each crime on the list.

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