

108TH CONGRESS
2D SESSION

H. R. 3798

To amend the Homeland Security Act of 2002 to improve aviation security.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 2004

Mr. MARKEY introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Homeland Security Act of 2002 to improve aviation security.

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 “Secure Existing Avia-
5 tion Loopholes Act”.

1 **SEC. 2. INSPECTION OF CARGO CARRIED ABOARD PAS-**
2 **SENGER AIRCRAFT.**

3 Subtitle A of title IV of the Homeland Security Act
4 of 2002 (6 U.S.C. 201 et seq.) is amended by adding at
5 the end the following:

6 **“SEC. 404. AIR CARGO ON PASSENGER AIRCRAFT.**

7 “(a) IN GENERAL.—Not later than 180 days after
8 the date of enactment of this section, the Secretary shall
9 establish a system to screen or inspect to ensure the secu-
10 rity of all cargo that is to be transported in passenger
11 aircraft operated by an air carrier or foreign air carrier
12 in air transportation or intrastate air transportation (as
13 defined in section 40102 of title 49, United States Code).
14 The system shall use equipment, technology, and per-
15 sonnel to screen and inspect cargo that meet the same
16 standards as those established to screen passenger bag-
17 gage.

18 “(b) IMPLEMENTATION PLAN.—The Secretary
19 shall—

20 “(1) develop an implementation plan to carry
21 out subsection (a); and

22 “(2) establish and impose fees (to be known as
23 ‘cargo security fees’) for shippers of cargo to pay
24 costs associated with carrying out subsection (a).

25 “(c) RESEARCH AND DEVELOPMENT OF NEW TECH-
26 NOLOGIES.—The Secretary shall monitor and evaluate the

1 research and development of effective cargo screening
2 technologies.

3 “(d) SCHEDULE OF FEES.—In imposing fees under
4 this section, the Secretary shall ensure that the fees are
5 reasonably related to the Transportation Security Admin-
6 istration’s costs of providing services rendered.

7 “(e) IMPOSITION OF FEE.—

8 “(1) IN GENERAL.—Notwithstanding section
9 9701 of title 31, United States Code, and the proce-
10 dural requirements of section 553 of title 5, United
11 States Code, the Secretary shall impose the cargo
12 security fee through the publication of notice of the
13 fee in the Federal Register and begin collection of
14 the fee within 60 days of the date of enactment of
15 this section, or as soon as possible thereafter.

16 “(2) SUBSEQUENT MODIFICATION OF FEE.—
17 After imposing a cargo security fee in accordance
18 with this section, the Secretary may modify, from
19 time to time through publication of notice in the
20 Federal Register, the imposition or collection of such
21 fee, or both.

22 “(3) LIMITATION ON COLLECTION.—No cargo
23 security fee may be collected under this section ex-
24 cept to the extent that the expenditure of the fee to
25 pay the costs of activities and services for which the

1 fee is imposed is provided for in advance in an ap-
2 propriations Act.

3 “(f) ADMINISTRATION OF FEES.—

4 “(1) FEES PAYABLE TO SECRETARY.—All fees
5 imposed and amounts collected under this section
6 are payable to the Secretary.

7 “(2) FEES COLLECTED BY AIR CARRIER.—A fee
8 imposed under this section shall be collected by the
9 air carrier or foreign air carrier that provides trans-
10 portation described in subsection (a).

11 “(3) DUE DATE FOR REMITTANCE.—A fee col-
12 lected under this section shall be remitted on the
13 last day of each calendar month by the carrier col-
14 lecting the fee. The amount to be remitted shall be
15 for the calendar month preceding the calendar
16 month in which the remittance is made.

17 “(4) INFORMATION.—The Secretary may re-
18 quire the provision of such information as the Sec-
19 retary decides is necessary to verify that fees have
20 been collected and remitted at the proper times and
21 in the proper amounts.

22 “(5) FEE NOT SUBJECT TO TAX.—For purposes
23 of section 4261 of the Internal Revenue Code of
24 1986 (26 U.S.C. 4261), a fee imposed under this

1 section shall not be considered to be part of the
2 amount paid for taxable transportation.

3 “(6) COST OF COLLECTING FEE.—No portion
4 of the fee collected under this section may be re-
5 tained by the air carrier or foreign air carrier for the
6 costs of collecting, handling, or remitting the fee ex-
7 cept for interest accruing to the carrier after collec-
8 tion and before remittance.

9 “(g) RECEIPTS CREDITED AS OFFSETTING COLLEC-
10 TIONS.—Notwithstanding section 3302 of title 31, United
11 States Code, any fee collected under this section—

12 “(1) shall be credited as offsetting collections to
13 the account that finances the activities and services
14 for which the fee is imposed;

15 “(2) shall be available for expenditure only to
16 pay the costs of activities and services for which the
17 fee is imposed; and

18 “(3) shall remain available until expended.

19 “(h) REFUNDS.—The Secretary may refund any fee
20 paid by mistake or any amount paid in excess of that re-
21 quired.”.

22 **SEC. 3. FEDERAL AIR MARSHALS.**

23 (a) FLIGHTS OF FOREIGN AIR CARRIERS AND CHAR-
24 TER AND ALL-CARGO AIR TRANSPORTATION.—Section
25 44917(a)(1) of title 49, United States Code, is amended

1 by inserting before the semicolon at the end the following:
 2 “, on any passenger flight of an air carrier in charter air
 3 transportation for which the Under Secretary determines
 4 that such deployment is in the interest of aviation security,
 5 on every passenger flight of foreign air carriers in air
 6 transportation, and on flights of all-cargo air transpor-
 7 tation”.

8 (b) LIMITATION ON LANDING AND TAKEOFF RIGHTS
 9 OF FOREIGN AIR CARRIERS.—

10 (1) IN GENERAL.—No flight of a foreign air
 11 carrier may land in or take off from any airport in
 12 the United States unless such flight has on board a
 13 Federal air marshal or an equivalent officer of the
 14 government of the foreign country under the laws of
 15 which the foreign air carrier is organized if the Sec-
 16 retary of Homeland Security requests the presence
 17 of such marshal or officer on such flight.

18 (2) ENFORCEMENT.—The Secretary of Home-
 19 land Security shall take such action as may be nec-
 20 essary to ensure compliance with this section and ac-
 21 tions taken under this section.

22 (3) DEFINITIONS.—In this subsection, the
 23 terms “foreign air carrier”, “airport”, and “United
 24 States” have the meaning such terms have in section
 25 40102 of title 49, United States Code.

1 **SEC. 4. IMPROVED AVIATION SECURITY.**

2 Subtitle A of title IV of the Homeland Security Act
3 of 2002 (2 U.S.C. 601 et seq.) is further amended by add-
4 ing at the end the following:

5 **“SEC. 405. IMPROVED AVIATION SECURITY.**

6 **“(a) IMPROVED COMMUNICATION SYSTEMS.—**

7 **“(1) IN GENERAL.—**Not later than one year
8 after the date of enactment of this section, the Sec-
9 retary shall require all flight crews of air carriers (as
10 such term is defined in section 40102 of title 49,
11 United States Code) to have improved communica-
12 tion systems for providing flight attendants with a
13 discreet, secure, hands-free, wireless method of com-
14 municating with pilots that meet such standards as
15 the Secretary may establish by regulation. The com-
16 munication system for any flight must be accessible
17 by any Federal air marshal on the flight and appro-
18 priate Government security officials and airline per-
19 sonnel.

20 **“(2) REGULATIONS.—**The Secretary shall issue
21 regulations to carry out this subsection not later
22 than the 90th day following the date of enactment
23 of this section.

24 **“(3) REVISION.—**The Secretary may revise the
25 standards established under this subsection, and the
26 regulations issued to carry out this subsection, to re-

1 flect improvements in technology and changes in ter-
2 rorist tactics.

3 “(b) BILATERAL AND MULTILATERAL AGREEMENTS
4 TO STRENGTHEN SECURITY.—

5 “(1) IN GENERAL.—The Secretary shall develop
6 a plan to improve coordination between the Depart-
7 ment and agencies and departments of foreign gov-
8 ernments that are such governments’ counterparts
9 to the Department in the area of aviation security.
10 The plan shall include, at a minimum, development
11 of air marshal programs for foreign governments
12 and the provision of and technical assistance in the
13 formulation of strategies to limit access to sensitive
14 areas of airports to authorized individuals.

15 “(2) REPORTS.—The Secretary shall transmit
16 to Congress annually for the first 5 years following
17 the date of enactment of this section a report on the
18 implementation of the plan developed pursuant to
19 this subsection.

20 “(c) COMPREHENSIVE PREFLIGHT SCREENING.—

21 “(1) IN GENERAL.—Not later than 180 days
22 after the date of enactment of this section, the Sec-
23 retary shall issue regulations to improve preflight
24 screening of passenger aircraft for dangerous objects
25 and training of screeners of passenger aircraft and

1 to reduce the time between preflight screening and
2 the departure time for a flight.

3 “(2) SPECIFIC REQUIREMENTS.—The regula-
4 tions shall require individuals who perform the pre-
5 flight security sweeps through the passenger cabin
6 and lavatories of passenger aircraft and who are not
7 members of the flight or cabin crew to be physically
8 screened for metallic objects, have their personal
9 bags inspected for prohibited items such as chemical,
10 biological, radiological, or nuclear materials, be sub-
11 ject to criminal history background checks, social se-
12 curity checks, and checks against all terrorist watch
13 lists maintained by the Government.

14 “(3) STUDY.—

15 “(A) IN GENERAL.—The Secretary shall
16 conduct a study on the potential security
17 vulnerabilities created by the use of nonflight
18 crew members to conduct preflight inspections,
19 to assess the current training provided to indi-
20 viduals who perform these inspections, and to
21 identify areas for improvement in such inspec-
22 tions and training and make recommendations
23 regarding improving such inspections and train-
24 ing.

1 “(B) REPORT.—Not later than 180 days
2 after the date of enactment of this section, the
3 Secretary shall transmit to Congress a report
4 on the results of the study.

5 “(d) FLIGHT ATTENDANT TRAINING.—

6 “(1) TRAINING REQUIREMENTS.—The Sec-
7 retary, in consultation with the Administrator of the
8 Federal Aviation Administration, shall issue a rule
9 to—

10 “(A) require both classroom and effective
11 hands-on situational training for flight attend-
12 ants of air carriers in the following elements of
13 self defense:

14 “(i) recognizing suspicious activities
15 and determining the seriousness of an oc-
16 currence;

17 “(ii) deterring a passenger who might
18 present a problem;

19 “(iii) crew communication and coordi-
20 nation;

21 “(iv) the proper commands to give to
22 passengers and attackers;

23 “(v) methods to subdue and restrain
24 an attacker;

1 “(vi) use of available items aboard the
2 aircraft for self-defense;

3 “(vii) appropriate and effective re-
4 sponses to defend oneself, including the
5 use of force against an attacker;

6 “(viii) use of protective devices as-
7 signed to crew members (to the extent
8 such devices are approved by the Adminis-
9 trator or Secretary);

10 “(ix) the psychology of terrorists to
11 cope with their behavior and passenger re-
12 sponses to that behavior; and

13 “(x) how to respond to aircraft ma-
14 neuvers that may be authorized to defend
15 against an act of criminal violence or air
16 piracy;

17 “(B) require training of such flight attend-
18 ants in the proper conduct of a cabin search,
19 including the duty time required to conduct the
20 search;

21 “(C) establish the required number of
22 hours of training of such flight attendants and
23 the qualifications for the training instructors;

1 “(D) establish the intervals, number of
2 hours, and elements of recurrent training of
3 such flight attendants; and

4 “(E) ensure that air carriers provide the
5 initial training required by this paragraph with-
6 in 12 months of the date of enactment of this
7 section.

8 “(2) RESPONSIBILITY OF SECRETARY.—

9 “(A) CONSULTATION.—In developing the
10 rule under paragraph (1), the Secretary shall
11 consult with appropriate personnel in the Emer-
12 gency Preparedness and Response Directorate
13 of the Department of Homeland Security and
14 with law enforcement personnel and security ex-
15 perts who have expertise in self-defense train-
16 ing, terrorism experts, and representatives of
17 air carriers, the provider of self-defense training
18 for Federal air marshals, flight attendants,
19 labor organizations representing flight attend-
20 ants, and educational institutions offering law
21 enforcement training programs.

22 “(B) DESIGNATION OF OFFICIAL.—The
23 Secretary shall designate an official in the De-
24 partment to be responsible for overseeing the

1 implementation of the training program under
2 this subsection.

3 “(C) NECESSARY RESOURCES AND KNOWL-
4 EDGE.—The Secretary shall ensure that em-
5 ployees of the Department responsible for moni-
6 toring the training program under this sub-
7 section have the necessary resources and knowl-
8 edge.

9 “(e) SOCIAL SECURITY CHECK DEFINED.—In this
10 section and section 406, the term ‘social security check’
11 means a check on the validity of the social security number
12 of an individual and a verification that the number is as-
13 signed to the individual.”.

14 **SEC. 5. CONTROL OVER ACCESS TO SECURED AREAS OF**
15 **AIRPORTS.**

16 (a) AIRPORT PERIMETER ACCESS SECURITY.—Sub-
17 title A of title IV of the Homeland Security Act of 2002
18 (6 U.S.C. 201 et seq.) is further amended by adding at
19 the end the following:

20 **“SEC. 406. ACCESS SECURITY.**

21 “(a) AIRPORT PERIMETER.—Not later than 180 days
22 after the date of the enactment of this section, the Sec-
23 retary shall issue regulations to improve control over ac-
24 cess to the secured area of each airport in the United

1 States described in section 44903(c) of title 49, United
2 States Code.

3 “(b) BACKGROUND CHECKS FOR ALL AIRPORT
4 WORKERS.—Individuals employed in, or applying for, po-
5 sitions described in section 44936 of title 49, United
6 States Code, and positions as aircraft maintenance and
7 catering personnel, aircraft cargo handlers, and aircraft
8 support facilities personnel whether having escorted or
9 unescorted access to aircraft or secured areas of airports,
10 shall be subject to a social security check and a check
11 against all terrorist watch lists maintained by the Govern-
12 ment in addition to the background checks required under
13 such section.”.

14 (b) SCREENING OF AIRPORT WORKERS USING
15 METAL DETECTORS.—Section 44903(h)(4)(B) of title 49,
16 United States Code, is amended by inserting before the
17 semicolon at the end the following: “, including, at a min-
18 imum requiring such individuals to be physically screened
19 for metallic objects and to have their personal bags in-
20 spected for prohibited items such as chemical, biological,
21 radiological or nuclear materials”.

22 **SEC. 6. AIRCRAFT MANEUVERS.**

23 (a) TRAINING.—Not later than 180 days after the
24 date of enactment of this Act, the Secretary of Homeland

1 Security shall issue regulations to carry out section 44918
2 of title 49, United States Code, by requiring air carriers—

3 (1) to provide pilots with training in flight deck
4 procedures, aircraft maneuvers, and best practice to
5 defend their aircraft;

6 (2) to provide cabin crew members with train-
7 ing in flight deck communication procedures and the
8 appropriate responses to such procedures and ma-
9 neuvers;

10 (3) to provide, in conjunction with and law en-
11 forcement authorities as appropriate, crew members
12 with training in procedures for communicating and
13 coordinating effectively with Federal air marshals
14 and law enforcement officers during attempts to dis-
15 rupt the normal operation of the aircraft; and

16 (4) to provide pilots with training in flight deck
17 procedures, aircraft maneuvers and best practices
18 that enable pilots to respond if the aircraft is struck
19 by a surface-to-air missile in a manner that in-
20 creases the likelihood that the pilots will be capable
21 of safely landing the aircraft.

22 (b) DEVELOPMENT AND COMPONENTS OF PILOT
23 TRAINING.—The training under subsection (a)(4) shall be
24 developed in consultation with organizations that have ex-
25 pertise in the area of pilot training and shall include com-

ponents that simulate the complete failure of the aircraft's hydraulic system and loss of normal flight controls.

(c) MATTERS TO CONSIDER IN PROVIDING TRAINING.—Training under this section shall be provided taking into account both the benefit that such procedures and maneuvers can provide to thwart terrorists who are on board aircraft and the potential safety risks to passengers and crew, as well as structural damage to aircraft, that may be associated with such procedures and maneuvers.

(d) EFFECTIVE DATE OF REGULATIONS.—The regulations under this section shall take effect not later than the 365th day following the date of enactment of this Act.

SEC. 7. SECURING COCKPIT DOORS.

Subtitle A of title IV of the Homeland Security Act of 2002 (6 U.S.C. 201 et seq.) is further amended by adding at the end the following:

“SEC. 407. SECURING COCKPIT DOORS.

“(a) CARGO AIRCRAFT.—Not later than 180 days after the date of enactment of this section, the Secretary shall—

“(1) issue an order—

“(A) requiring any aircraft engaged in cargo air transportation or intrastate air transportation to have, not later than one year after the date of issuance of such order, a door (and

1 surrounding partition) between the cargo and
2 pilot compartments that can be locked and can-
3 not be forced open from the cargo compart-
4 ment;

5 “(B) prohibiting access to the flight deck
6 of aircraft engaged in cargo air transportation
7 or intrastate air transportation, except by au-
8 thorized persons; and

9 “(C) requiring that such flight deck doors
10 remain locked while any such aircraft is in
11 flight except when necessary to permit access
12 and egress by authorized persons; and

13 “(2) take such other action, including modifica-
14 tion of safety and security procedures and flight
15 deck redesign, as may be necessary to ensure the
16 safety and security of the aircraft.

17 “(b) PASSENGER AIRCRAFT.—The Secretary shall
18 issue an order to modify requirements imposed pursuant
19 to section 104 of the Aviation and Transportation Security
20 Act (49 U.S.C. 44903 note; 115 Stat. 605) to ensure that
21 the wall surrounding the flight deck door on any aircraft
22 engaged in passenger air transportation or intrastate air
23 transportation is sufficient to secure the cockpit.

24 “(c) GRANTS.—The Secretary may make grants or
25 other agreements with air carriers (including intrastate air

1 carriers) to assist such carriers in complying with the or-
 2 ders issued under this section.

3 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
 4 are authorized to be appropriated such sums as may be
 5 necessary to carry out this section.”.

6 **SEC. 8. SECURITY REQUIREMENTS FOR GENERAL AVIA-**
 7 **TION.**

8 (a) NO FLY ZONES.—The Secretary of Homeland Se-
 9 curity—

10 (1) shall establish for the duration of any high
 11 threat level announced by the Secretary (including
 12 announcements of code orange or above), and

13 (2) may establish for the duration of any other
 14 threat level that is announced by the Secretary and
 15 that the Secretary determines appropriate,

16 no fly zones around sensitive nuclear facilities, chemical
 17 facilities identified by the Administrator of the Environ-
 18 mental Protection Agency at which a release of the facili-
 19 ty’s hazardous materials could threaten the health of more
 20 than 1,000,000 people, and any other facilities the Sec-
 21 retary may designate.

22 (b) VULNERABILITY ASSESSMENTS.—The Secretary
 23 shall—

24 (1) require the operators of airports that serve
 25 general aviation aircraft and landing facilities for

1 such aircraft to complete vulnerability assessments
2 developed by the Secretary for evaluation of the
3 physical security of such airports and facilities and
4 of procedures, infrastructure, and resources used
5 with respect to such airports and facilities; and

6 (2) develop a plan for addressing vulnerabilities
7 identified by such assessments not later than the
8 365th day following the date of enactment of this
9 Act.

10 (c) SENSITIVE NUCLEAR FACILITY.—In this section,
11 the term “sensitive nuclear facility” means—

12 (1) a commercial nuclear power plant and asso-
13 ciated spent fuel storage facility;

14 (2) a decommissioned nuclear power plant and
15 associated spent fuel storage facility;

16 (3) a category I fuel cycle facility;

17 (4) a gaseous diffusion plant; and

18 (5) a Department of Energy nuclear weapons
19 materials production, processing, storage, or re-
20 search facility.

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