

111TH CONGRESS
1ST SESSION

H. R. 2464

To amend title 49, United States Code, to prohibit advance notice to certain individuals, including security screeners, of covert testing of security screening procedures for the purpose of enhancing transportation security at airports, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 2009

Mrs. LOWEY introduced the following bill; which was referred to the
Committee on Homeland Security

A BILL

To amend title 49, United States Code, to prohibit advance notice to certain individuals, including security screeners, of covert testing of security screening procedures for the purpose of enhancing transportation security at airports, 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 “Catching Operational
5 Vulnerabilities by Ensuring Random Testing Act of 2009”
6 or the “COVERT Act of 2009”.

1 **SEC. 2. PROHIBITION OF ADVANCE NOTICE OF COVERT**
2 **TESTING TO SECURITY SCREENERS.**

3 Section 44935 of title 49, United States Code, is
4 amended—

5 (1) by redesignating the second subsection (i),
6 relating to accessibility of computer-based training
7 facilities, as subsection (k); and

8 (2) by adding at the end the following:

9 “(l) PROHIBITION OF ADVANCE NOTICE TO SECU-
10 RITY SCREENERS OF COVERT TESTING AND EVALUA-
11 TION.—

12 “(1) IN GENERAL.—The Secretary of Homeland
13 Security shall ensure that information concerning a
14 covert test of a transportation security system to be
15 conducted by a covert testing office, the Inspector
16 General of the Department of Homeland Security, or
17 the Government Accountability Office is not pro-
18 vided to any individual prior to the completion of the
19 test.

20 “(2) EXCEPTIONS.—Notwithstanding para-
21 graph (1)—

22 “(A) an individual may provide informa-
23 tion concerning a covert test of a transportation
24 security system to employees, officers, and con-
25 tractors of the Federal Government (including
26 military personnel); employees and officers of

1 State and local governments; and law enforce-
2 ment officials, who are authorized to receive or
3 directed to be provided such information by the
4 Assistant Secretary of Homeland Security
5 (Transportation Security Administration), the
6 Inspector General of the Department of Home-
7 land Security, or the Comptroller General of the
8 United States, as the case may be; and

9 “(B) for the purpose of ensuring the secu-
10 rity of any individual in the vicinity of a site
11 where a covert test of a transportation security
12 system is being conducted, an individual con-
13 ducting the test may disclose his or her status
14 as an individual conducting the test to any ap-
15 propriate individual if a security screener or
16 other individual who is not a covered employee
17 identifies the individual conducting the test as
18 a potential threat.

19 “(3) SPECIAL RULES FOR THE TRANSPOR-
20 TATION SECURITY ADMINISTRATION.—

21 “(A) MONITORING AND SECURITY OF
22 TESTING PERSONNEL.—The head of each covert
23 testing office shall ensure that a person or
24 group of persons conducting a covert test of a
25 transportation security system for the covert

1 testing office is accompanied at the site of the
2 test by a cover team comprised of one or more
3 employees of the covert testing office for the
4 purpose of monitoring the test and confirming
5 the identity of personnel involved in the test
6 under subparagraph (B).

7 “(B) RESPONSIBILITY OF COVER TEAM.—

8 Under this paragraph, a cover team for a covert
9 test of a transportation security system shall—

10 “(i) monitor the test; and

11 “(ii) for the purpose of ensuring the
12 security of any individual in the vicinity of
13 a site where the test is being conducted,
14 confirm, notwithstanding paragraph (1),
15 the identity of any individual conducting
16 the test to any appropriate individual if a
17 security screener or other individual who is
18 not a covered employee identifies the indi-
19 vidual conducting the test as a potential
20 threat.

21 “(C) AVIATION SCREENING.—Notwith-

22 standing subparagraph (A), the Transportation
23 Security Administration is not required to have
24 a cover team present during a test of the
25 screening of persons, carry-on items, or checked

1 baggage at an aviation security checkpoint at or
2 serving an airport if the test—

3 “(i) is approved by the Federal Secu-
4 rity Director for such airport; and

5 “(ii) is carried out under an aviation
6 screening assessment program of the De-
7 partment of Homeland Security.

8 “(D) USE OF OTHER PERSONNEL.—The
9 Transportation Security Administration may
10 use employees, officers, and contractors of the
11 Federal Government (including military per-
12 sonnel) and employees and officers of State and
13 local governments to conduct covert tests.

14 “(4) IMPACT STUDY AND REPORT ON COVERT
15 TESTING PROCEDURES.—

16 “(A) IMPACT STUDY.—The Secretary of
17 Homeland Security shall conduct a study of the
18 impact of the implementation of this subsection
19 on the Department of Homeland Security’s ef-
20 forts to improve transportation security.

21 “(B) REQUIREMENTS.—The study under
22 subparagraph (A) shall include an assessment
23 of—

1 “(i) the impact of the implementation
2 of this subsection on personnel of the De-
3 partment of Homeland Security;

4 “(ii) the impact of such implementa-
5 tion on information sharing within the De-
6 partment;

7 “(iii) best practices for integrating the
8 topic of covert testing into existing training
9 and testing programs for personnel of the
10 Department; and

11 “(iv) the effectiveness of covert testing
12 as a method to improve security.

13 “(C) REPORT.—Not later than 270 days
14 after the date of enactment of this subsection,
15 the Secretary shall submit to the Committee on
16 Homeland Security of the House of Representa-
17 tives and the Committee on Homeland Security
18 and Governmental Affairs of the Senate a re-
19 port that contains—

20 “(i) the results of the study under
21 subparagraph (A);

22 “(ii) recommendations for changes to
23 the training of personnel of the Depart-
24 ment that are necessary to ensure compli-

1 ance with the requirements of this sub-
2 section; and

3 “(iii) recommendations to improve the
4 effectiveness of the implementation of this
5 subsection.

6 “(5) DEFINITIONS.—For purposes of this sub-
7 section, the following definitions apply:

8 “(A) APPROPRIATE INDIVIDUAL.—The
9 term ‘appropriate individual’, as used with re-
10 spect to a covert test of a transportation secu-
11 rity system, means any individual that—

12 “(i) the individual conducting the test
13 determines needs to know his or her status
14 as an individual conducting a test under
15 paragraph (2)(B); or

16 “(ii) the cover team monitoring the
17 test under paragraph (3)(B)(i) determines
18 needs to know the identity of an individual
19 conducting the test.

20 “(B) COVERED EMPLOYEE.—The term
21 ‘covered employee’ means any individual who
22 receives notice of a covert test before the com-
23 pletion of a test under paragraph (2)(A).

24 “(C) COVERT TEST.—

“(i) IN GENERAL.—The term ‘covert test’ means an exercise or activity conducted by a covert testing office, the Inspector General of the Department of Homeland Security, or the Government Accountability Office to intentionally test, compromise, or circumvent transportation security systems to identify vulnerabilities in such systems.

“(ii) LIMITATION.—Notwithstanding clause (i), the term ‘covert test’ does not mean an exercise or activity by an employee or contractor of the Transportation Security Administration to test or assess compliance with regulations under title 49, Code of Federal Regulations.

“(D) COVERT TESTING OFFICE.—The term ‘covert testing office’ means any office of the Transportation Security Administration designated by the Assistant Secretary of Homeland Security (Transportation Security Administration) to conduct covert tests of transportation security systems.

“(E) EMPLOYEE OF A COVERT TESTING OFFICE.—The term ‘employee of a covert test-

1 ing office' means an individual who is an em-
2 ployee of a covert testing office or a contractor
3 or an employee of a contractor of a covert test-
4 ing office.'".

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