

112TH CONGRESS
1ST SESSION

S. 754

To amend title 49, United States Code, to require the Secretary of Transportation to establish and maintain a national clearinghouse for records relating to alcohol and controlled substances testing of commercial motor vehicle operators, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, APRIL 5), 2011

Mr. PRYOR (for himself, Mr. BOOZMAN, Mr. WICKER, Ms. SNOWE, and Mr. VITTER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 49, United States Code, to require the Secretary of Transportation to establish and maintain a national clearinghouse for records relating to alcohol and controlled substances testing of commercial motor vehicle operators, 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 “Safe Roads Act of
5 2011”.

1 **SEC. 2. NATIONAL CLEARINGHOUSE FOR ALCOHOL AND**
2 **CONTROLLED SUBSTANCE TEST RESULTS OF**
3 **COMMERCIAL MOTOR VEHICLE OPERATORS.**

4 (a) IN GENERAL.—Chapter 313 of title 49, United
5 States Code, is amended—

6 (1) in section 31306(a), by inserting “and sec-
7 tion 31306a” after “this section”; and

8 (2) by inserting after section 31306 the fol-
9 lowing:

10 **“§ 31306a. National clearinghouse for alcohol and**
11 **controlled substance test results of com-**
12 **mercial motor vehicle operators**

13 “(a) ESTABLISHMENT.—

14 “(1) IN GENERAL.—Not later than 2 years
15 after the date of the enactment of the Safe Roads
16 Act of 2011, the Secretary of Transportation (re-
17 ferred to in this section as the ‘Secretary’) shall es-
18 tablish a national clearinghouse for records relating
19 to alcohol and controlled substances testing of com-
20 mercial motor vehicle operators.

21 “(2) PURPOSES.—The purposes of the clearing-
22 house shall be—

23 “(A) to improve compliance with the De-
24 partment of Transportation’s alcohol and con-
25 trolled substance testing program applicable to
26 commercial motor vehicle operators;

1 “(B) to facilitate access to information
2 about an individual before employing the indi-
3 vidual as a commercial motor vehicle operator;

4 “(C) to enhance the safety of our United
5 States roadways by reducing accident fatalities
6 involving commercial motor vehicles; and

7 “(D) to reduce the demand for illegal
8 drugs and the number of impaired commercial
9 motor vehicle operators.

10 “(3) CONTENTS.—The clearinghouse shall func-
11 tion as a repository for records relating to the
12 verified positive test results and test refusals of com-
13 mercial motor vehicle operators and violations by
14 such operators of prohibitions set forth in subpart B
15 of part 382 of title 49, Code of Federal Regulations
16 (or any subsequent corresponding regulations).

17 “(4) ELECTRONIC EXCHANGE OF RECORDS.—
18 The Secretary shall ensure that records can be elec-
19 tronically submitted to, and requested from, the
20 clearinghouse by authorized users.

21 “(5) AUTHORIZED OPERATOR.—The Secretary
22 may authorize a qualified and experienced private
23 entity to operate and maintain the clearinghouse and
24 to collect fees on behalf of the Secretary under sub-
25 section (e). Such entity shall establish, operate,

1 maintain and expand the clearinghouse and permit
2 access to deliver information and records from the
3 clearinghouse to individuals and employers only as
4 authorized by the Secretary in accordance with this
5 section.

6 “(b) DESIGN OF CLEARINGHOUSE.—

7 “(1) USE OF FEDERAL MOTOR CARRIER SAFETY
8 ADMINISTRATION RECOMMENDATIONS.—In estab-
9 lishing the clearinghouse, the Secretary shall con-
10 sider—

11 “(A) the findings and recommendations
12 contained in the Federal Motor Carrier Safety
13 Administration’s March 2004 report to Con-
14 gress required under section 226 of the Motor
15 Carrier Safety Improvement Act of 1999 (Pub-
16 lic Law 106–159); and

17 “(B) the findings and recommendations
18 contained in the Government Accountability Of-
19 fice’s May 2008 report to Congress entitled
20 ‘Motor Carrier Safety: Improvements to Drug
21 Testing Programs Could Better Identify Illegal
22 Drug Users and Keep Them off the Road.’

23 “(2) DEVELOPMENT OF SECURE PROCESSES.—

24 In establishing the clearinghouse, the Secretary shall
25 develop a secure process for—

1 “(A) administering and managing the
2 clearinghouse in compliance with all applicable
3 Federal security standards;

4 “(B) registering and authenticating au-
5 thorized users of the clearinghouse;

6 “(C) registering and authenticating indi-
7 viduals required to report to the clearinghouse
8 under subsection (g);

9 “(D) preventing the unauthorized access of
10 information from the clearinghouse;

11 “(E) storing and transmitting data;

12 “(F) individuals required to report to the
13 clearinghouse under subsection (g) to timely
14 and accurately submit electronic data to the
15 clearinghouse;

16 “(G) generating timely and accurate re-
17 ports from the clearinghouse in response to re-
18 quests for information by authorized users; and

19 “(H) updating an individual’s record upon
20 completion of the return-to-duty process de-
21 scribed in title 49, Code of Federal Regulations.

22 “(3) EMPLOYER ALERT OF POSITIVE TEST RE-
23 SULT.—In establishing the clearinghouse, the Sec-
24 retary shall consider developing a secure method for
25 electronically notifying an employer of any additional

1 positive test results or other noncompliance for an
2 individual that are entered into the clearinghouse
3 during the 7-day period immediately following an
4 employer's inquiry about such individual.

5 “(4) ARCHIVE CAPABILITY.—In establishing the
6 clearinghouse, the Secretary shall develop a process
7 for archiving all clearinghouse records, including the
8 depositing of personal records, records relating to
9 each individual in the database, and access requests
10 for personal records, for the purposes of—

11 “(A) auditing and evaluating the timeli-
12 ness, accuracy, and completeness of data in the
13 clearinghouse; and

14 “(B) auditing to monitor compliance and
15 enforce penalties for noncompliance.

16 “(5) FUTURE NEEDS.—

17 “(A) INTEROPERABILITY WITH OTHER
18 DATA SYSTEMS.—In establishing the clearing-
19 house, the Secretary shall consider—

20 “(i) the existing data systems con-
21 taining regulatory and safety data for com-
22 mercial motor vehicle operators;

23 “(ii) the efficacy of using or com-
24 bining clearinghouse data with 1 or more
25 of such systems; and

1 “(iii) the potential interoperability of
2 the clearinghouse with such systems.

3 “(B) SPECIFIC CONSIDERATIONS.—In car-
4 rying out subparagraph (A), the Secretary shall
5 determine—

6 “(i) the clearinghouse’s capability for
7 interoperability with—

8 “(I) the National Driver Register
9 established under section 30302;

10 “(II) the Commercial Driver’s Li-
11 cense Information System established
12 under section 31309; and

13 “(III) other data systems, as ap-
14 propriate; and

15 “(ii) any changes to the administra-
16 tion of the current testing program, such
17 as forms, that are necessary to collect data
18 for the clearinghouse.

19 “(c) STANDARD FORMS.—The Secretary shall de-
20 velop standard forms to be used—

21 “(1) by employers and other authorized users of
22 the clearinghouse to—

23 “(A) request records from the clearing-
24 house; and

1 “(B) obtain the consent of each individual
2 who is the subject of a request from the clear-
3 inghouse; and

4 “(2) to notify individuals that positive alcohol
5 and controlled substances test results, refusals to
6 test, and violations of prohibitions set forth in sub-
7 part B of part 382 of title 49, Code of Federal Reg-
8 ulations (or any subsequent corresponding regula-
9 tions), will be reported to the clearinghouse.

10 “(d) PRIVACY.—Information may not be released
11 from the clearinghouse unless such release complies with
12 all applicable Federal privacy laws and regulations, includ-
13 ing the Health Insurance Portability and Accountability
14 Act of 1996 (Public Law 104–191) and fair information
15 practices under the Privacy Act of 1974 (5 U.S.C. 552a).

16 “(e) FEES.—

17 “(1) AUTHORITY TO COLLECT FEES.—Except
18 as provided under paragraph (3), the Secretary may
19 collect reasonable, customary, and nominal fees from
20 employers and other authorized users of the clear-
21 inghouse for requests for information from the clear-
22 inghouse.

23 “(2) USE OF FEES.—Fees collected under this
24 subsection shall be used for the operation and main-
25 tenance of the clearinghouse.

1 “(3) LIMITATION.—The Secretary may not col-
2 lect a fee from any individual requesting information
3 from the clearinghouse that pertains to the record of
4 the individual.

5 “(f) EMPLOYER REQUIREMENTS.—

6 “(1) DETERMINATION CONCERNING USE OF
7 CLEARINGHOUSE.—The Secretary shall determine
8 which commercial motor carrier employers are au-
9 thorized to use the clearinghouse to meet the alcohol
10 and controlled substances testing requirements
11 under title 49, Code of Federal Regulations.

12 “(2) APPLICABILITY OF EXISTING REQUIRE-
13 MENTS.—Each commercial motor carrier employer
14 and service agent shall comply with the alcohol and
15 controlled substances testing requirements under
16 title 49, Code of Federal Regulations.

17 “(3) EMPLOYMENT PROHIBITIONS.—A commer-
18 cial motor carrier employer shall not hire an indi-
19 vidual to operate a commercial motor vehicle unless
20 the employer has determined that the individual,
21 during the preceding 3-year period—

22 “(A) has been tested for the use of alcohol
23 and controlled substances, as required under
24 title 49, Code of Federal Regulations;

1 “(B)(i) has not tested positive for the use
2 of alcohol or controlled substances in violation
3 of such regulations; or

4 “(ii) has tested positive for the use of alco-
5 hol or controlled substances and has completed
6 the required return-to-duty process described in
7 title 49, Code of Federal Regulations;

8 “(C) has not refused to take the alcohol or
9 controlled substance tests required under title
10 49, Code of Federal Regulations; and

11 “(D) has not violated any other provision
12 of subpart B of part 382 of title 49, Code of
13 Federal Regulations (or any subsequent cor-
14 responding regulations).

15 “(g) REPORTING OF RECORDS.—

16 “(1) IN GENERAL.—Medical review officers, em-
17 ployers, service agents, and other appropriate per-
18 sons, as determined by the Secretary, shall promptly
19 submit to the Secretary records in their possession
20 of any individual who—

21 “(A) has refused to take an alcohol or con-
22 trolled substance test required under title 49,
23 Code of Federal Regulations;

1 “(B) has tested positive for alcohol or a
2 controlled substance in violation of such regula-
3 tions; or

4 “(C) has violated any other provision of
5 subpart B of part 382 of title 49, Code of Fed-
6 eral Regulations (or any subsequent cor-
7 responding regulations).

8 “(2) INCLUSION OF RECORDS IN CLEARING-
9 HOUSE.—The Secretary shall include in the clearing-
10 house all records of positive test results and test re-
11 fusals received pursuant to paragraph (1).

12 “(3) MODIFICATIONS AND DELETIONS.—If the
13 Secretary determines that a record contained in the
14 clearinghouse is not accurate, the Secretary shall
15 modify or delete the record, as appropriate.

16 “(4) NOTIFICATION.—The Secretary shall expe-
17 ditiously notify, unless such notification would be
18 duplicative, an individual when—

19 “(A) a record relating to the individual has
20 been received by the clearinghouse;

21 “(B) any record in the clearinghouse relat-
22 ing to the individual is modified or deleted, and
23 include in such notification the reason for such
24 modification or deletion; or

1 “(C) any record in the clearinghouse relat-
2 ing to the individual is released to an employer
3 and shall include in such notification the reason
4 for such a release.

5 “(5) DATA QUALITY AND SECURITY STANDARDS
6 FOR REPORTING AND RELEASING.—The Secretary
7 may establish additional requirements, as appro-
8 priate, to ensure that—

9 “(A) the submission of records to the
10 clearinghouse is timely and accurate;

11 “(B) the release of data from the clearing-
12 house is timely, accurate, and released to the
13 appropriate individual, employer, or State li-
14 censing official; and

15 “(C) the individuals with records in the
16 clearinghouse have a cause of action for the in-
17 appropriate use of information included in the
18 clearinghouse.

19 “(6) RETENTION OF RECORDS.—The Secretary
20 shall—

21 “(A) retain all the records submitted to
22 the clearinghouse during the 5-year period be-
23 ginning on the date on which such records are
24 submitted;

1 “(B) remove such records from the clear-
2 inghouse at the end of such 5-year period, un-
3 less the individual has not met required return-
4 to-duty and follow-up requirements under title
5 49, Code of Federal Regulations; and

6 “(C) retain records beyond the end of such
7 5-year period in a separate location for
8 archiving and auditing purposes.

9 “(h) ACCESS TO CLEARINGHOUSE BY EMPLOYERS.—

10 “(1) IN GENERAL.—The Secretary shall estab-
11 lish a process to require employers to request and
12 review any records in the clearinghouse pertaining to
13 an individual before employing the individual and
14 each year thereafter as long as the individual is
15 under the employ of the employers.

16 “(2) CONSENT REQUIREMENT.—An employer
17 may not be granted access to any records in the
18 clearinghouse pertaining to an individual until after
19 the employer—

20 “(A) obtains the prior written or electronic
21 consent of the individual for access to such
22 records; and

23 “(B) submits proof of such consent to the
24 Secretary.

1 “(3) ACCESS TO RECORDS.—Upon receiving
2 from an employer a request, in compliance with
3 paragraph (2), for records in the clearinghouse per-
4 taining to an individual, the Secretary shall provide
5 access to the records to the employer as expedi-
6 tiously as practicable.

7 “(4) RETENTION OF RECORD REQUESTS.—The
8 Secretary shall require employers to retain, for a 3-
9 year period—

10 “(A) a record of each request made by the
11 employer for records from the clearinghouse;
12 and

13 “(B) any information received pursuant to
14 such request.

15 “(5) USE OF RECORDS.—

16 “(A) IN GENERAL.—An employer may use
17 a record of an individual received from the
18 clearinghouse only to assess and evaluate the
19 qualifications of the individual to operate a
20 commercial motor vehicle for such employer.

21 “(B) PROTECTION OR PRIVACY OF INDI-
22 VIDUALS.—An employer that receives a record
23 from the clearinghouse pertaining to an indi-
24 vidual shall—

1 “(i) protect the privacy of the indi-
2 vidual and the confidentiality of the record;
3 and

4 “(ii) ensure that information con-
5 tained in the record is not divulged to any
6 person or entity who is not directly in-
7 volved in assessing and evaluating the
8 qualifications of the individual to operate a
9 commercial motor vehicle for the employer
10 receiving the record.

11 “(i) ACCESS TO CLEARINGHOUSE BY INDIVIDUALS.—

12 “(1) IN GENERAL.—The Secretary shall estab-
13 lish a process by which any individual may request
14 and receive information from the clearinghouse—

15 “(A) to determine whether the clearing-
16 house contains a record pertaining to the indi-
17 vidual;

18 “(B) to verify the accuracy of such record;

19 “(C) to update an individual’s record, in-
20 cluding completing the return-to-duty process
21 described in title 49, Code of Federal Regula-
22 tions; and

23 “(D) to determine whether the clearing-
24 house has received requests for information re-
25 garding the individual.

1 “(2) DISPUTE PROCEDURE.—The Secretary
2 shall establish a procedure, including an appeal
3 process, for any individual to dispute and remedy
4 administrative errors contained in a record in the
5 clearinghouse that pertains to such individual.

6 “(j) ACCESS TO CLEARINGHOUSE BY STATE LICENS-
7 ING AUTHORITIES.—

8 “(1) IN GENERAL.—The Secretary shall estab-
9 lish a process by which the chief commercial driver’s
10 licensing official of a State may request and receive
11 records from the clearinghouse that pertain to an in-
12 dividual applying for a commercial driver’s license
13 from such State.

14 “(2) IMPLIED CONSENT.—The chief commercial
15 driver licensing official of a State may be granted
16 access to any records in the clearinghouse pertaining
17 to an individual without obtaining the prior written
18 or electronic consent of the individual and submit-
19 ting proof of such consent. Any individual who holds
20 a commercial driver’s license shall be deemed to have
21 consented to such access. Consent is implied by ob-
22 taining a commercial driver’s license from the State
23 and by driving a commercial motor vehicle.

24 “(3) PROTECTION OF PRIVACY OF INDIVID-
25 UALS.—If the chief commercial driver licensing offi-

1 cial of a State receives a record from the clearing-
2 house pertaining to an individual, the official shall—

3 “(A) protect the privacy of the individual
4 and the confidentiality of record; and

5 “(B) ensure that information contained in
6 the record is not divulged to any person within
7 or outside the State government who is not di-
8 rectly involved in assessing and evaluating the
9 qualifications of the individual to operate a
10 commercial motor vehicle.

11 “(k) PENALTIES.—An employer, employee, medical
12 review officer, or service agent who violates any provision
13 of this section or section 3 of the Safe Roads Act of 2011
14 shall be subject to the civil and criminal penalties de-
15 scribed in section 521(b) of title 49, United States Code,
16 and other applicable civil and criminal penalties, as deter-
17 mined by the Secretary.

18 “(l) COMPATIBILITY OF STATE AND LOCAL LAWS.—

19 “(1) PREEMPTION.—Except as provided under
20 paragraph (2), any law, regulation, order, or other
21 requirement of a State, political subdivision of a
22 State, or Indian tribe related to commercial driver’s
23 license holders subject to alcohol or controlled sub-
24 stance testing under title 49, Code of Federal Regu-
25 lations, which is inconsistent with the requirements

1 under this section or any regulation issued pursuant
2 to the authority of this section is preempted.

3 “(2) APPLICABILITY.—The preemption under
4 paragraph (1) shall apply to—

5 “(A) the reporting of valid positive results
6 from alcohol screening tests and drug tests;

7 “(B) the refusal to provide a specimen for
8 an alcohol screening test or drug test; and

9 “(C) other violations of subpart B of part
10 382 of title 49, Code of Federal Regulations (or
11 any subsequent corresponding regulations).

12 “(3) EXCEPTION.—A law, regulation, order, or
13 other requirement of a State, political subdivision of
14 a State, or Indian tribe shall not be preempted
15 under this subsection to the extent it relates to ac-
16 tions taken with respect to a commercial motor vehi-
17 cle operator’s commercial driver’s license or driving
18 record as a result of such driver’s—

19 “(A) verified positive alcohol or drug test
20 result;

21 “(B) refusal to provide a specimen for the
22 test; or

23 “(C) other violations of subpart B of part
24 382 of title 49, Code of Federal Regulations (or
25 any subsequent corresponding regulations).

1 “(m) DEFINITIONS.—In this section:

2 “(1) AUTHORIZED USERS.—The term ‘author-
3 ized users’ means employers, State licensing authori-
4 ties, and other individuals granted access to the
5 clearinghouse.

6 “(2) CHIEF DRIVER LICENSING OFFICIAL.—The
7 term ‘chief commercial driver’s licensing official’
8 means the official in a State who is authorized to—

9 “(A) maintain a record about commercial
10 driver’s licenses issued by the State; and

11 “(B) take action on commercial driver’s li-
12 censes issued by the State.

13 “(3) CLEARINGHOUSE.—The term ‘clearing-
14 house’ means the clearinghouse established under
15 subsection (a).

16 “(4) COMMERCIAL MOTOR VEHICLE OPER-
17 ATOR.—The term ‘commercial motor vehicle oper-
18 ator’ means an individual who is—

19 “(A) in possession of a valid commercial
20 driver’s license issued in accordance with sec-
21 tion 31308; and

22 “(B) subject to controlled substances and
23 alcohol testing under title 49, Code of Federal
24 Regulations.

1 “(5) EMPLOYER.—The term ‘employer’ means
2 a person or entity employing, or seeking to employ,
3 1 or more employees (including an individual who is
4 self-employed) to be commercial motor vehicle opera-
5 tors.

6 “(6) MEDICAL REVIEW OFFICER.—The term
7 ‘medical review officer’ means a licensed physician
8 who is responsible for—

9 “(A) receiving and reviewing laboratory re-
10 sults generated under the testing program;

11 “(B) evaluating medical explanations for
12 alcohol and controlled substances tests required
13 under title 49, Code of Federal Regulations;
14 and

15 “(C) deciding the outcome of controlled
16 substance tests.

17 “(7) SECRETARY.—The term ‘Secretary’ means
18 the Secretary of Transportation.

19 “(8) SERVICE AGENT.—The term ‘service
20 agent’ means a person or entity, other than an em-
21 ployee of the employer, who provides services to em-
22 ployers or employees under the testing program.

23 “(9) TESTING PROGRAM.—The term ‘testing
24 program’ means the alcohol and controlled sub-

1 stances testing program required under title 49,
2 Code of Federal Regulations.”.

3 (b) CLERICAL AMENDMENT.—The analysis for chap-
4 ter 313 of title 49, United States Code, is amended by
5 inserting after the item relating to section 31306 the fol-
6 lowing:

“31306a. National clearinghouse for positive controlled substance and alcohol
test results of commercial motor vehicle operators.”.

7 **SEC. 3. ENHANCED OVERSIGHT OF COLLECTION SITES.**

8 The Secretary of Transportation shall—

9 (1) require each site at which urine is collected
10 for controlled substances tests under title 49, Code
11 of Federal Regulation, to register with the Depart-
12 ment of Transportation;

13 (2) publish an annual list of registered collec-
14 tion sites in the Federal Register and make such list
15 available to the public;

16 (3) ensure that no collection site is included on
17 the list described in paragraph (2) unless the site
18 submits an annual certification to the Secretary that
19 the site meets each of the applicable requirements
20 under title 49, Code of Federal Regulations; and

21 (4) develop an instrument for the certification
22 under paragraph (3) that requires a positive re-
23 sponse to each applicable requirement, including an

1 explanation of the penalties imposed for making
2 false statements.

3 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

4 (a) IN GENERAL.—From the funds authorized to be
5 appropriated under section 31104(i) of title 49, United
6 States Code, up to \$5,000,000 is authorized to be appro-
7 priated from the Highway Trust Fund (other than the
8 Mass Transit Account) for the Secretary of Transpor-
9 tation to develop, design, and implement the national
10 clearinghouse required by section 31306a(a) of title 49,
11 United States Code, as added by section 2(a)(2).

12 (b) REPORT TO CONGRESS.—The Secretary of
13 Transportation may not use any of the amounts appro-
14 priated pursuant to subsection (a) until after the Sec-
15 retary submits a report to Congress that explains the need
16 for such amounts.

17 (c) NO ADDITIONAL APPROPRIATIONS.—No amount
18 is authorized to be appropriated to the Secretary of Trans-
19 portation in fiscal year 2012 or in any subsequent fiscal
20 year for any cost incurred by the Secretary in carrying
21 out the clearinghouse described in subsection (a) or for
22 any services provided by the private entity authorized to
23 operate and maintain the clearinghouse under paragraph
24 (5) of such section 31306a(a).

○