

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.

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## 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

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## 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).

○