

## **TTD Supported Provision in Coast Guard Reauthorization**

As explained in more detail below, the legislation expedites the processing of security credentials, allows port workers to continue working as they await credentials, improves the medical review process for mariners, ensures mariners seamless movement at all U.S. port facilities, and ends the unfair tax burden placed on workers whose companies operate in multiple states. In addition, the bill, for the first time, meaningfully deals with the ongoing problems of marine piracy by more precisely defining what constitutes an attack while protecting workers from liability in the event of a pirate attack.

### **Transportation Worker Identification Credential (TWIC)**

The TWIC program was created after 9/11 to secure our nation's ports and subjects workers operating in a port facility or maritime vessel to a series of background checks. Since the 2009 roll-out of the program, problems have arisen and Section 818 of the Coast Guard bill addresses a number of these concerns.

#### Escorting

Current law specifically allows workers who temporarily do not have a TWIC to enter a port or vessel if they are escorted by a person with a TWIC. Unfortunately, port terminal operators have often been unwilling to allow escorting for workers who have applied but have yet to receive their TWIC. To help address this problem, the final version of the legislation provides workers escorted access to port facilities with only a few minor changes to the original House provision. Specifically, the provision directs the Coast Guard to coordinate with port owners and operators to allow an individual waiting on either a pending TWIC application or a card reissuance to receive escorted access by another TWIC holder, including other workers, for work purposes. The one minor change incurred during negotiations was to add language simply reaffirming that the provision does not force owner/operators to provide escorting. We believed this issue was already implicit in the original House language, so clarifying it was an acceptable compromise.

#### Processing Time

Section 818 also directs TSA to expeditiously process and respond to all TWIC applications, appeals and waivers in timely manner. Specifically, this section compels TSA to review an initial application for a TWIC and, "as appropriate," mail the applicant an Initial Determination of Threat Assessment within 30 days. The provision also directs the agency to review appeal and waiver requests and, "to the greatest extent practicable," respond with a decision or request for more information within 30 days. And finally, TSA is "to the greatest extent practicable" directed to respond within 30 days with a determination for any worker asked for more information.

## Receipt of TWIC Cards

Despite some early opposition from the Senate, the final bill instructs DHS to develop a process for allowing TWIC applicants to receive their cards either in the mail or at any enrollment center across the country. This is very helpful for all workers required to obtain a TWIC, especially the maritime workforce, which is highly mobile. However, unlike the original House bill, it requires the GAO to first study the plan. The intention was to allow the GAO to examine the issue and if their report deems such a process feasible, DHS is directed to develop a plan within one year of the report's issuance. Unfortunately, upon signing the bill into law, the President declared the provision impermissible. The White House stated that the GAO, as a "congressional officer," does not have the authority to "bind the Secretary in the performance of an executive function." This obstacle was not foreseen during negotiation and will result in DHS considering the GAO report as merely advisory and nonbinding. It is thus incumbent upon us to work with the Administration to ensure workers receive TWIC cards either by mail or at a nearby enrollment center as the GAO's investigation unfolds.

## Duplicative Background Checks

One major setback in the authorization is the stripping of House-passed language prohibiting state and local governments from imposing additional and duplicative background checks already assessed as part of the TWIC program. Some states and ports, most notably Florida, have imposed separate, duplicative security background checks without the due process regimen afforded by the program – a clear violation of the spirit of 2002 authorization of TWIC. TTD has long fought to end this unfair and redundant standard.

Unfortunately, during negotiations, Republican Senators continually objected to this provision outright, claiming it violated states' rights. Since the Senate was operating under a unanimous consent agreement, the Republican Senators exercised de facto veto authority and were able to severely limit the provision. In the end, a GAO study will review state and local transportation security background checks, determine if they are duplicative, and recommend ways to either "reduce or eliminate" them. Although we will examine the utility of the GAO report, TTD remains steadfast that TWIC operate as a uniform national standard and will pursue other legislative vehicles to eliminate duplicative checks.

## **Piracy**

Since the 2009 attacks on two U.S.-flag vessels, TTD has made it a priority to meaningfully address the continuing threats mariners face from pirate attacks – a policy adopted at our February 2010 Executive Committee Meeting. While ultimately combating piracy will require government supported force protection, in the interim, we have worked to provide liability protection for crewmembers defending themselves, their shipmates or their vessel from acts of piracy. In the House-passed version of the bill strong liability protections were included. However, a subsequent Virginia district court decision, United States v. Mohamed Ali Said, complicated these efforts by narrowing the definition of piracy to outright robbery and vessel seizure, excluding attempted acts of piracy.

Fortunately, the final legislation affirmatively addressed both the recent court ruling and worker liability. First, it clarifies and expands the definition of piracy by criminalizing all efforts to seize a vessel flying the U.S. flag. Second, it grants workers liability from monetary damages sought for any injury or death caused by the use of force in response to a pirate attack. These protections are only afforded to mariners or seaman whose conduct is in accordance with the rules of force to be prescribed by DHS. The agency is directed to consult with representatives of maritime labor to develop, within 180 days from the enactment date, the rules related to the use of force.

Finally, this section directs DHS to work with the International Maritime Organization (IMO) to establish agreements that promote coordinated action among port and flag states to deter, protect against, and quickly respond to piracy.

### **Merchant Mariner Medical Advisory Committee**

The Coast Guard Authorization establishes a Merchant Mariner Medical Advisory Committee to better inform the Coast Guard on all matters related to the medical review of mariners. Beginning in 2008, the Coast Guard centralized the entire agency's credentialing services, which were previously spread across the country, within the National Maritime Center (NMC). The center has since been unable to expeditiously process credentials because of the slow medical review of mariners, resulting in considerable delay in the distribution of mariner documents. The Medical Advisory Committee will relieve the backlog and other problems facing the NMC by appointing 14 members – 10 physicians and 4 mariners – with significant experience to advise the agency on mariner fitness and health.

### **Seaman's Shoreside Access**

Section 811 eliminates the ongoing problem at certain ports where mariners are forced to pay fees to merely go to and from their vessels. By requiring all port facilities to create a system for the free movement of both workers and labor union representatives in their security plans, workers will be able to transit ports without bearing unfair and onerous costs.

### **Enforcing the Jones Act**

In response to the frequent violations of the Jones Act, especially in the operation of offshore oil industry vessels, the bill reaffirms the Coast Guard's authority to enforce the Jones Act. It also requires the agency to submit a report within one year of enactment detailing enforcement strategies and actions it has taken to uphold the Jones Act statutes.

### **Limiting the Jurisdiction of States to Tax Workers**

The bill clarifies a previously enacted statute relating to the unfair taxation of workers who operate in the waterways of multiple states. In 2000, Congress passed legislation prohibiting states from taxing waterway workers who performs duties in states in which they are not a

resident. Despite the clear intent of this statute, the state of Oregon – with the assistance of a state court decision – has continued to tax non-resident workers who operate within the state. By clearly extending the tax prohibition to workers “operating in two more states,” this section finally eliminates this unfair and onerous tax policy.

### **Maritime Workforce Development Act**

The House version of the bill included a maritime workforce development provision. This would have authorized MARAD to develop a loan program for mariners required to meet continuing education and training requirements and create a grant program to support the efforts of maritime training institutions. Despite securing bi-partisan support from an ideologically diverse group of Senators in the form of a sign-on letter, Senator DeMint objected to the provision for no credible reason. After numerous attempts to modify the language, Senator DeMint still refused to allow the provision, exercising his veto authority under the unanimous consent agreement. Although Senator DeMint’s objections are not going away, we will continue to push this issue in future legislative vehicles.