

Strengthen Aviation Security Act (Introduced in House)
HR 2649 IH
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H. R. 2649

To strengthen aviation security.

IN THE HOUSE OF REPRESENTATIVES

May 26, 2005

Mr. MARKEY introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committee on the Judiciary, 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 strengthen aviation security.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Strengthen Aviation Security Act'.

SEC. 2. INSPECTION OF CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

Section 44901 of title 49, United States Code, is amended--

(1) by redesignating subsections `(g)' and `(h)' as subsections `(h)' and `(i)', respectively; and

(2) by inserting after subsection (f) the following:

`(g) Air Cargo on passenger aircraft--

`(1) IN GENERAL- Not later than 3 years after the date of enactment of the Strengthen Aviation Security Act, the Secretary of Homeland Security shall establish a system to inspect 100 percent of the cargo transported on passenger aircraft to ensure the security of all passenger aircraft carrying cargo operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation.

`(2) MINIMUM STANDARDS- The system referred to in paragraph (1) shall, at a minimum, require that--

`(A) equipment, technology, and personnel meets the same standards established to inspect passenger baggage;

`(B) 35 percent of cargo carried on passenger aircraft is inspected by the end of fiscal year 2006;

`(C) 65 percent of cargo carried on passenger aircraft is inspected by the end of fiscal year 2007; and

`(D) 100 percent of cargo carried on passenger aircraft is inspected by the end of fiscal year 2008.

`(3) REPORT- Not later than 1 year after the date of enactment of the Strengthen Aviation Security Act, the Secretary shall transmit to Congress a report that describes the system established pursuant to paragraph (1).'

SEC. 3. REPORT ON KNOWN SHIPPING COMPANIES.

Not later than the 180th day following the date of establishment of the database of known shipping companies being established by the Department of Homeland Security, the Secretary of Homeland Security shall transmit to Congress a report on the number of known shipping companies in the database, the number of known shipping companies for whom the Transportation Security Administration has conducted physical inspections of facilities and paperwork of such companies to determine compliance with security regulations that apply to those companies, the number of companies that have applied to the Secretary for known shipping company status and been denied, and the number of known shipping companies that have been removed from the database as a result of findings by the Administration that such companies have failed to comply with appropriate security regulations.

SEC. 4. TRAINING PROGRAMS.

(a) In General- For the purposes of deploying Federal law enforcement officers not part of the Federal Air Marshal Service as alternative security personnel on commercial aircraft--

(1) the Secretary of Homeland Security, not later than the 90th day following the date of enactment of this Act, shall establish--

(A) training standards that all Federal law enforcement officers must meet in order to respond appropriately as law enforcement professionals to incidents aboard aircraft; and

(B) procedures by which law enforcement personnel, authorized to carry a firearm or otherwise prohibited items aboard a passenger commercial aircraft may do so without indicating, to the greatest extent practicable, either deliberately or accidentally such personnel's status to other passengers; and

(2) the head of the Federal Air Marshal Service, in determining on which flights to place one or more Federal air marshals, shall--

(A) have access to information on whether Federal law enforcement officers meeting the training standards established under paragraph (1) are scheduled to travel on commercial flights; and

(B) not substitute Federal law enforcement officers that have not met such training standards established by the Federal Air Marshal Service.

(b) Waiver- The Secretary may waive the requirement of subsection (a)(2)(B) for not to exceed 6 months after the 90th day referred to in subsection (a) if necessary for security purposes.

(c) Report- The Secretary shall transmit to Congress a report on the timeline for providing training required to carry out subsection (a)(2) and any additional resources needed to implement this section.

SEC. 5. FEDERAL AIR MARSHALS.

The Secretary of Homeland Security shall ensure the deployment of Federal air marshal officers on flights of all-cargo air transportation for which the Secretary of Homeland Security determines there to be sufficient risk of terrorist activity.

SEC. 6. FLIGHT COMMUNICATIONS.

(a) In General- Section 4021 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458) is amended by adding at the end the following:

`(d) Flight Communication- To expand the purposes of the study under subsection (a), not later than 180 days after the date of enactment of this subsection, the Assistant Secretary shall conduct a study on the viability of devices to enable discreet, wireless communications between flight attendants, pilots, Federal air marshals, and ground-based personnel during a passenger commercial aircraft flight to improve coordination of planning and activities in the event of an act of terrorism and transmit to Congress a report on the results of the study conducted under this subsection.'

(b) Authorization of Appropriations- There are authorized to be appropriated such sums as may be necessary to carry out section 4021(d) of the Intelligence Reform and Terrorism Prevention Act of 2004.

SEC. 7. COMPREHENSIVE PREFLIGHT SCREENING.

(a) Study-

(1) IN GENERAL- The Secretary shall conduct a study to assess the current training provided to individuals who perform preflight security inspections and to identify areas for improvement in such inspections and training and make recommendations regarding improving such inspections and training.

(2) REPORT- Not later than 180 days after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study.

(b) Regulations-

(1) ISSUANCE- Not later than 90 days after the date of transmission of the reports under subsection (a), the Secretary of Homeland Security shall issue regulations to improve preflight screening of passenger aircraft for dangerous objects and training of screeners of passenger aircraft and to reduce the time between preflight screening and the departure time for a flight.

(2) SPECIFIC REQUIREMENTS- The regulations shall--

(A) require individuals who perform the preflight security sweeps through the passenger cabin and lavatories of passenger aircraft and who are not members of the flight or cabin crew to be physically screened for metallic objects, have their personal bags inspected for prohibited items such as chemical, biological, radiological, or nuclear materials, be subject to criminal history background checks, social security checks, and checks against all terrorist watch lists maintained by the Government; and

(B) incorporate the recommendations contained in the report transmitted under subsection (a).

SEC. 8. FLIGHT ATTENDANT TRAINING.

The Secretary of Homeland Security, in consultation with the Administrator of the Federal Aviation Administration, shall finalize the development of a mandatory basic security training program for flight attendants and shall begin administration of the training program not later than 30 days after the date of enactment of this Act.

SEC. 9. SECURING COCKPIT DOORS.

(a) Cargo Aircraft- Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security 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 surrounding partition) between the cargo and pilot compartments that can be locked and cannot be forced open from the cargo compartment;

(B) prohibiting access to the flight deck of aircraft engaged in cargo air transportation or intrastate air transportation, except by authorized persons; and

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

(2) take such other action, including modification of safety and security procedures and flight deck redesign, as may be necessary to ensure the safety and security of the aircraft.

(b) Passenger Aircraft- The Secretary shall issue an order to modify requirements imposed pursuant to section 104 of the Aviation and Transportation Security Act (49 U.S.C. 44903 note; 115 Stat. 605) to ensure that the wall surrounding the flight deck door on any aircraft engaged in passenger air transportation or intrastate air transportation is sufficient to secure the cockpit.

(c) Grants- The Secretary may make grants or other agreements with air carriers (including intrastate air carriers) to assist such carriers in complying with the orders issued under this section.

(d) Authorization of Appropriations- There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 10. SECURITY REQUIREMENTS FOR GENERAL AVIATION.

(a) No Fly Zones- The Secretary of Homeland Security--

(1) shall establish for the duration of any high threat level announced by the Secretary; and

(2) may establish for the duration of any other threat level that is announced by the Secretary and that the Secretary determines appropriate, no fly zones around sensitive nuclear facilities, chemical facilities identified by the Administrator of the Environmental Protection Agency at which a release of the facility's hazardous materials could threaten the health of more than 1,000,000 people, and any other facilities the Secretary may designate.

(b) Vulnerability Assessments- The Secretary shall--

(1) require the operators of airports that serve general aviation aircraft and landing facilities for such aircraft to complete vulnerability assessments developed by the Secretary for evaluation of the physical security of such airports and facilities and of

procedures, infrastructure, and resources used with respect to such airports and facilities;
and

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

(c) Use of Immobilizing Devices; Records Checks- The Secretary shall require airports that serve operators of general aviation aircraft--

(1) to require that all general aviation aircraft, while parked at such airports, are secured by a visible immobilizing device (such as a prop lock); and

(2) to ensure that any individual with access to a general aviation aircraft at such airport is subject to a social security check, a check of immigration status, a check against all terrorist watch lists maintained by the Government, and a background check comparable to a background check required under section 44936 of title 49, United States Code.

(d) Definition- In this section, the following definitions apply:

(1) HIGH THREAT- The term `high threat' means an announcement by the Department of Homeland Security of a terrorist threat level of code orange or above or an equivalent designation of any successor threat advisory system of the Department.

(2) SENSITIVE NUCLEAR FACILITY- The term `sensitive nuclear facility' means--

(A) a commercial nuclear power plant and associated spent fuel storage facility;

(B) a decommissioned nuclear power plant and associated spent fuel storage facility;

(C) a category I fuel cycle facility;

(D) a gaseous diffusion plant; and

(E) a Department of Energy nuclear weapons materials production, processing, storage, or research facility.

(3) SOCIAL SECURITY CHECK- The term `social security check' means a check on the validity of the social security number of an individual and a verification that the number is assigned to the individual.

SEC. 11. CONTROL OVER ACCESS TO SECURED AREAS OF AIRPORTS.

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

`SEC. 404. ACCESS SECURITY.

`(a) Airport Perimeter- Not later than 180 days after the date of the enactment of this section, the Secretary shall issue regulations--

`(1) to improve control over access to the secure area of each airport in the United States described in section 44903(c) of title 49, United States Code; and

`(2) to prohibit any entity (other than an operator of such an airport) from issuing a security badge to provide escorted or unescorted access to the secure area of such airport, subject to such exceptions as the Secretary may establish, by regulation, for Federal, State, and local governments and for employees of air carriers.

`(b) Background Checks for Airport Workers- An individual employed in, or applying for, a position described in section 44936 of title 49, United States Code, or a position as an aircraft maintenance or catering worker, aircraft cargo handler, aircraft worker with access to an aircraft ramp, aircraft support facilities worker, or employee of an airport vendor whether having escorted or unescorted access to an aircraft or a secure area of an airport, shall be subject to a social security check, a check of immigration status, and a check against all terrorist watch lists maintained by the Government in addition to a background check required by such section.

`(c) Social Security Check Defined- In this section, the term `social security check' means a check on the validity of the social security number of an individual and a verification that the number is assigned to the individual.'

(b) Screening of Airport Workers Using Metal Detectors- Section 44903(h)(4)(B) of title 49, United States Code, is amended by inserting before the semicolon at the end the following: `, including, at a minimum, requiring each of such individuals to be physically screened for metallic objects and to have their personal bags inspected for prohibited items, such as chemical, biological, radiological, and nuclear materials, each time that individual enters a secure area of the airport'.

SEC. 12. WHISTLEBLOWER PROTECTION.

(a) In General- No covered individual involved in aviation security, including employees of the Transportation Security Administration, may be discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against because of any lawful act done by the person--

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the person reasonably believes constitutes a violation of any law, rule or regulation related to aviation security or any other threat to aviation security when the information or assistance is provided to or the investigation is conducted by--

(A) a Federal regulatory or law enforcement agency;

(B) any Member of Congress or any committee of Congress; or

(C) a person with supervisory authority over the covered individual (or such other person who has the authority to investigate, discover, or terminate misconduct);

(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding or action filed or about to be filed relating to a violation of any law, rule or regulation related to the security of passenger airlines or any other threat to the security of passenger airlines; or

(3) to refuse to violate or assist in the violation of any law, rule, or regulation related to the security of passenger airlines.

(b) Enforcement Action-

(1) IN GENERAL- A covered individual who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by--

(A) filing a complaint with the Secretary of Labor; or

(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(2) PROCEDURE-

(A) IN GENERAL- An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

(B) EXCEPTION- Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the person's employer.

(C) BURDENS OF PROOF- An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

(D) STATUTE OF LIMITATIONS- An action under paragraph (1) shall be commenced not later than 90 days after the date on which the violation occurs.

(c) Remedies-

(1) IN GENERAL- A covered individual prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the covered individual whole.

(2) COMPENSATORY DAMAGES- Relief for any action under paragraph (1) shall include--

(A) reinstatement with the same seniority status that the covered individual would have had, but for the discrimination;

(B) the amount of any back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(d) Rights Retained by Covered Individual- Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any covered individual under any Federal or State law, or under any collective bargaining agreement.

(e) Definitions- In this section, the following definitions apply:

(1) COVERED INDIVIDUAL- The term `covered individual' means a Federal employee as defined in section 2105 of title 5, United States Code, any employee of a Federal contractor or subcontractor, or any employee of a business entity.

(2) LAWFUL- The term `lawful' means not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs. If communication of otherwise covered information is specifically prohibited by law and if such information is required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs, it may be communicated to any--

(A) Member of Congress or committee of Congress; or

(B) any other recipient who is authorized to receive such information.

(3) FEDERAL CONTRACTOR- The term `Federal contractor' means a person who has entered into a contract with the United States.

(4) EMPLOYEE- The term `employee' means any officer, partner, employee, or agent.

(5) SUBCONTRACTOR- The term `subcontractor'--

(A) means any person, other than the Federal contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a Federal contract or a subcontract entered into in connection with such Federal contract; and

(B) includes any person who offers to furnish or furnishes general supplies to the Federal contractor or a higher tier subcontractor.

(6) PERSON- The term `person' means a corporation, partnership, State entity, business association of any kind, trust, joint-stock company, or individual.

SEC. 13. AIRPORT SCREENING.

(a) Findings- Congress finds that--

(1) a Federal workforce of passenger and baggage screeners is more responsive to the public than the private sector;

(2) a recent poll indicates that a majority of respondents feel better protected by a Federal workforce of passenger and baggage screeners than by a screener workforce employed by a private company;

(3) section 44920 of title 49, United States Code, explicitly permits the Transportation Security Administration to accept applications from airport operators seeking to `opt out' of a Federal screening workforce;

(4) the Transportation Security Administration has issued a directive prohibiting the Federal airport security screener workforce from the right to collectively bargain;

(5) the Transportation Security Administration has issued guidance that would provide the privatized screener workforce the right to join a union and collectively bargain with their employer; and

(6) a reversion to private company performance of screener functions could reduce safety and erode confidence in the Federal Government's ability to protect citizens from acts of terrorism, and, therefore, not be in the public interest.

(b) Sense of Congress- It is the sense of Congress that--

(1) all airport screening functions should continue to be performed by Federal employees; and

(2) all employees of the Transportation Security Administration, including Federal airport screeners, should be permitted to engage in collective bargaining and be represented in collective bargaining by a representative or organization of their choosing.

SEC. 14. NO-FLY LIST.

(a) Findings- Congress finds that--

(1) aircraft passenger information currently is transmitted from air carriers to the Department of Homeland Security for comparison against a Government maintained watch list after departure of international flights flying to or from the United States;

(2) the diversion to Bangor, Maine, of an Air France flight scheduled to travel from Paris, France, to Boston, Massachusetts, on May 12, 2005, and the diversion to Bangor, Maine of an Alitalia flight scheduled to travel from Milan, Italy, to Boston, Massachusetts, on May 19, 2005, occurred when, in the first instance, a passenger name was mistakenly considered to match a name on the watchlist and, in the second instance, a passenger name matched a name on the watchlist;

(3) in both cases, the flights already had departed the airports when the comparison with the watchlist occurred;

(4) departure of international flights from airports before passenger information has been compared against the watchlist maintained by the Federal Government is a serious security loophole that could enable a known terrorist to board, travel on, and hijack an international flight en route to or departing from the United States;

(5) the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) mandated that the Secretary of Homeland Security, not later than 60 days after the date of enactment of that Act, issue a notice of proposed rulemaking that would allow the Department to compare passenger information for any international flight to or from the United States against the consolidated and integrated terrorist watchlist maintained by the Federal Government before departure of the flight; and

(6) the Department did not issue the notice of proposed rulemaking by February 2005, the deadline specified in that Act.

(b) Sense of Congress- It is the sense of Congress that--

(1) the Secretary of Homeland Security should actively pursue the resolution of all issues that have delayed the implementation of the mandate to check passenger information against the Government maintained watchlist before departures of international flights to or from the United States;

(2) the Secretary should promptly issue the required notice of proposed rulemaking to enable the comparison of passenger information against the Government maintained terrorist watchlist prior to departure of international flights to or from the United States; and

(3) until such time as the Secretary has issued the notice of proposed rulemaking, the Secretary should provide Congress with periodic reports that describe the progress of the Department of Homeland Security in resolving issues that have delayed implementation of this mandate and explain when the Department expects to issue the notice.