

112TH CONGRESS
2D SESSION

H. R. 6449

To establish an air travelers' bill of rights, to implement those rights, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2012

Mr. POE of Texas (for himself, Mr. BARTLETT, Mr. BURTON of Indiana, Mr. WALSH of Illinois, Mr. ROSS of Florida, Mr. POSEY, Mr. DUNCAN of South Carolina, and Mr. PEARCE) introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

To establish an air travelers' bill of rights, to implement
those rights, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Air Travelers’ Bill of Rights Act of 2012”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Establishment of air travelers’ bill of rights.

Sec. 4. Mandatory approval of applications under screening partnership pro-
gram.

- Sec. 5. Expansion of PreCheck program.
- Sec. 6. Availability of canine teams for screening.
- Sec. 7. Prohibition on use of random computer-generated screening.
- Sec. 8. Limitations on screening using pat-downs.
- Sec. 9. Prevention of humiliating searches.
- Sec. 10. Liability of manufacturers of advanced imaging technology.
- Sec. 11. Implementation of additional elements of air travelers' bill of rights.
- Sec. 12. Passenger Privacy Protection Award.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **ADVANCED IMAGING TECHNOLOGY.**—The
4 term “advanced imaging technology” has the mean-
5 ing given that term in section 44901(1) of title 49,
6 United States Code.

7 (2) **AIR TRANSPORTATION.**—The term “air
8 transportation” means air transportation and intra-
9 state air transportation (as those terms are defined
10 in section 40102 of title 49, United States Code).

11 (3) **APPROPRIATE CONGRESSIONAL COMMIT-**
12 **TEES.**—The term “appropriate congressional com-
13 mittees” means—

14 (A) the Committee on Homeland Security
15 and Governmental Affairs and the Committee
16 on Commerce, Science, and Transportation of
17 the Senate; and

18 (B) the Committee on Homeland Security
19 and the Committee on Transportation and In-
20 frastructure of the House of Representatives.

1 (4) ASSISTANT SECRETARY.—The term “Assist-
2 ant Secretary” means the Assistant Secretary of
3 Homeland Security (Transportation Security Admin-
4 istration).

5 (5) COMMERCIAL SERVICE AIRPORT; PRIMARY
6 AIRPORT.—The terms “commercial service airport”
7 and “primary airport” have the meanings given
8 those terms in section 47102 of title 49, United
9 States Code.

10 (6) SCREEN; SCREENING.—The terms “screen”
11 and “screening” refer to the process of screening a
12 passenger traveling in air transportation at a com-
13 mercial service airport for weapons, explosives, and
14 incendiaries before the passenger enters the sterile
15 area of an airport.

16 (7) STERILE AREA.—The term “sterile area”
17 has the meaning given that term in section 1540.5
18 of title 49, Code of Federal Regulations (as in effect
19 on June 1, 2012).

20 **SEC. 3. ESTABLISHMENT OF AIR TRAVELERS’ BILL OF**
21 **RIGHTS.**

22 (a) IN GENERAL.—Not later than 90 days after the
23 date of the enactment of this Act, the Assistant Secretary
24 shall—

1 (1) establish a list of the rights of passengers
2 traveling in air transportation that are screened at
3 a primary airport (to be known as the “air travelers’
4 bill of rights”); and

5 (2) distribute the air travelers’ bill of rights as
6 required by subsection (c).

7 (b) ELEMENTS.—The air travelers’ bill of rights shall
8 include, at a minimum, the following:

9 (1) A passenger has the right to be presumed
10 innocent before, during, and after screening.

11 (2) A passenger has the right to choose to de-
12 part from an airport that has the freedom to choose
13 to have screening conducted by employees of a pri-
14 vate security screening company or Federal employ-
15 ees, depending on the needs of the airport.

16 (3) A passenger who has been verified by the
17 Transportation Security Administration as a low-
18 risk or frequent traveler has the right to be screened
19 through a process that is more expeditious and less
20 intrusive than the standard screening process.

21 (4) A passenger has the right to make a video
22 recording of the screening of the passenger using re-
23 cording devices approved by the Transportation Se-
24 curity Administration for that purpose.

1 (5) A passenger has the right to be screened by
2 a canine screening team if the passenger requests
3 screening by such a team before beginning the
4 screening process and such a team is available.

5 (6) A passenger has the right to decline to be
6 screened using a device that uses backscatter x-rays.

7 (7) A passenger has the right to be free from
8 searches and screening procedures not implemented
9 for cause or because the passenger is the subject of
10 suspicion, including searches and screening proce-
11 dures resulting from the random selection of the
12 passenger by a computer.

13 (8) A passenger has the right to be screened by
14 a method other than a pat-down unless—

15 (A) the passenger has failed to be cleared
16 to enter the sterile area of the airport after
17 being screened using a metal detector or ad-
18 vanced imaging technology multiple times; or

19 (B) the individual conducting the screening
20 has a specific reason to suspect that the pas-
21 senger is carrying items that are prohibited in
22 the sterile area of the airport.

23 (9) A passenger who is selected to be screened
24 using a pat-down has the right to request that the
25 pat-down be administered using the back, rather

1 than the palm, of the hand of the individual con-
2 ducting the screening.

3 (10) A passenger who is 12 years of age or
4 younger or 75 years of age or older has the right to
5 be screened by a method other than a pat-down un-
6 less the individual conducting the screening has a
7 high degree of suspicion that the passenger is car-
8 rying items that are prohibited in the sterile area of
9 the airport.

10 (11) A passenger who is 75 years of age or
11 older, is dependent on a wheelchair for mobility, or
12 is dependent on an approved medical device for the
13 treatment of a chronic condition has the right to be
14 screened in a private area out of the view of other
15 passengers.

16 (12) A passenger who is traveling with minor
17 children has the right to accompany those minor
18 children through the screening process.

19 (13) A passenger has the right—

20 (A) to have the privacy of any image of the
21 passenger generated during the screening proc-
22 ess maintained; and

23 (B) to have all copies of any such image
24 (other than a video recording described in para-
25 graph (4) or generated by a surveillance cam-

1 era) deleted immediately after the passenger is
2 cleared to enter the sterile area of the airport.

3 (14) A passenger has the right to have the pas-
4 senger's baggage inspected—

5 (A) by an individual conducting the inspec-
6 tion under the supervision of another individual;
7 or

8 (B) in an area visible to passengers or re-
9 corded by a surveillance camera.

10 (15) A passenger has the right to be screened—

11 (A) by individuals who are subject to liabil-
12 ity for mistreatment or misconduct during
13 screening; and

14 (B) using technologies the manufacturers
15 of which are subject to liability for harm caused
16 by the use of those technologies.

17 (16) A passenger who believes the passenger
18 has been subjected to mistreatment during the
19 screening process has the right to peacefully express
20 the passenger's concerns to a supervisor of the indi-
21 vidual who conducted the screening.

22 (17) A passenger who is removed from or de-
23 tained during the screening process has the right to
24 contact an attorney promptly.

25 (c) DISTRIBUTION.—The Assistant Secretary shall—

1 (1) post the air travelers’ bill of rights on the
2 website of the Transportation Security Administra-
3 tion; and

4 (2) provide the air travelers’ bill of rights to
5 passengers before they are subjected to screening at
6 primary airports by—

7 (A) posting the air travelers’ bill of rights
8 on a sign that is easily visible to passengers; or

9 (B) distributing brochures that contain the
10 air travelers’ bill of rights to passengers.

11 **SEC. 4. MANDATORY APPROVAL OF APPLICATIONS UNDER**
12 **SCREENING PARTNERSHIP PROGRAM.**

13 Section 44920 of title 49, United States Code, is
14 amended—

15 (1) in subsection (a), by striking “Under Sec-
16 retary” the first place it appears and inserting “As-
17 sistant Secretary (Transportation Security Adminis-
18 tration) (in this section referred to as the ‘Assistant
19 Secretary)’”;

20 (2) by striking “Under Secretary” each place it
21 appears and inserting “Assistant Secretary”; and

22 (3) by amending subsection (b) to read as fol-
23 lows:

1 “(b) APPROVAL OF APPLICATIONS.—The Assistant
2 Secretary shall approve all applications submitted under
3 subsection (a).”.

4 **SEC. 5. EXPANSION OF PRECHECK PROGRAM.**

5 The Assistant Secretary shall take such actions as
6 are necessary to expand the expedited screening initiative
7 of the Transportation Security Administration known as
8 “PreCheck”—

9 (1) not later than one year after the date of the
10 enactment of this Act, to all commercial service air-
11 ports with more than 250,000 passenger boardings
12 annually;

13 (2) not later than 2 years after such date of en-
14 actment, to all commercial service airports with
15 more than 100,000 passenger boardings annually;
16 and

17 (3) not later than 3 years after such date of en-
18 actment, to any other commercial service airport the
19 operator of which requests to have PreCheck ex-
20 panded to the airport.

21 **SEC. 6. AVAILABILITY OF CANINE TEAMS FOR SCREENING.**

22 (a) INCREASE IN NUMBER OF CANINE TEAMS.—Not
23 later than 90 days after the date of the enactment of this
24 Act, the Assistant Secretary shall increase the number of
25 canine teams from the National Explosives Detection Ca-

1 nine Team Program of the Transportation Security Ad-
2 ministration placed at each commercial service airport in
3 the United States with more than 2,500,000 passenger
4 boardings each year to a number that is sufficient to en-
5 sure that at least one canine team can be tasked exclu-
6 sively with screening passengers during the operating
7 hours of the airport.

8 (b) PROHIBITION ON DIVERSION OF EXISTING
9 TEAMS.—The Assistant Secretary may not divert canine
10 teams already placed at an airport from duties other than
11 screening passengers to fulfill the requirement of sub-
12 section (a).

13 (c) DEPLOYMENT OF TEAMS.—

14 (1) IN GENERAL.—The Assistant Secretary, in
15 consultation with the operator of an airport at which
16 a canine team is required to be placed under sub-
17 section (a), shall determine appropriate procedures
18 for deploying canine teams for screening passengers
19 at that airport.

20 (2) REQUIREMENTS.—At least one canine team
21 shall be available to screen passengers during the
22 operating hours of an airport, but a canine team is
23 not required to be present at each passenger screen-
24 ing location.

1 (d) TREATMENT OF PRIVATE SECURITY SCREENING
2 COMPANIES.—If screening at an airport described in sub-
3 section (a) is conducted by a private security screening
4 company pursuant to section 44920 of title 49, United
5 States Code, the Assistant Secretary shall provide the pri-
6 vate security screening company with a canine team if the
7 company does not employ canine teams.

8 (e) REPORT REQUIRED.—Not later than one year
9 after the date of the enactment of this Act, the Assistant
10 Secretary shall submit to the appropriate congressional
11 committees a report on the implementation of this section
12 that includes—

13 (1) the number of canine teams deployed pursu-
14 ant to subsection (a);

15 (2) the barriers, if any, to the full implementa-
16 tion of this section;

17 (3) an assessment of the impact of the imple-
18 mentation of this section on—

19 (A) the privacy of passengers during the
20 screening process; and

21 (B) the efficiency of the screening process;
22 and

23 (4) an assessment of the effectiveness of canine
24 teams deployed pursuant to subsection (a) in identi-
25 fying suspicious items.

1 **SEC. 7. PROHIBITION ON USE OF RANDOM COMPUTER-GEN-**
2 **ERATED SCREENING.**

3 (a) IN GENERAL.—On and after the date of the en-
4 actment of this Act, passengers traveling in air transpor-
5 tation that are screened at a commercial service airport
6 may not be screened using a device that uses advanced
7 imaging technology if that device is programmed to ran-
8 domly indicate that some passengers have failed to be
9 cleared to enter the sterile area of the airport or uses a
10 computer-based program for randomly selecting pas-
11 sengers to be screened.

12 (b) CERTIFICATION.—Not later than 30 days after
13 the date of the enactment of this Act, the Assistant Sec-
14 retary shall certify to Congress that no devices described
15 in subsection (a) are in use at any commercial service air-
16 port.

17 **SEC. 8. LIMITATIONS ON SCREENING USING PAT-DOWNS.**

18 Not later than 30 days after the date of the enact-
19 ment of this Act, the Assistant Secretary shall prescribe
20 regulations relating to the screening of passengers using
21 pat-downs that prohibit the screening at a commercial
22 service airport of—

23 (1) a passenger who is 12 years of age or
24 younger or 75 years of age or older using a pat-
25 down unless the individual conducting the screening
26 has a high degree of suspicion that the passenger is

1 carrying items that are prohibited in the sterile area
2 of the airport;

3 (2) any other passenger using a pat-down un-
4 less—

5 (A) the passenger requests to be screened
6 using a pat-down;

7 (B) the passenger has failed to be cleared
8 to enter the sterile area of the airport after
9 being screened using a metal detector or ad-
10 vanced imaging technology multiple times; or

11 (C) the individual conducting the screening
12 has a specific reason to suspect that the pas-
13 senger is carrying items that are prohibited in
14 the sterile area of the airport; and

15 (3) any passenger using a pat-down conducted
16 using the palm of the hand of the individual con-
17 ducting the screening if the passenger requests that
18 the pat-down be conducted using the back of the
19 hand.

20 **SEC. 9. PREVENTION OF HUMILIATING SEARCHES.**

21 (a) IN GENERAL.—Not later than 30 days after the
22 date of the enactment of this Act, the Assistant Secretary
23 shall prescribe regulations to ensure that a passenger trav-
24 eling in air transportation who is screened at a commercial
25 service airport and uses a prosthetic limb, a breast pump,

1 adult diapers, a wheelchair, an insulin pump, or any other
2 medical device that requires special accommodations dur-
3 ing the screening process is screened in a private area out
4 of the view of other passengers if the passenger requests
5 to be screened in a private area.

6 (b) TERMINATION OF SCREENERS FOR CONDUCTING
7 HUMILIATING SEARCHES.—Not later than 30 days after
8 the date of the enactment of this Act, the Assistant Sec-
9 retary shall prescribe regulations to ensure that any indi-
10 vidual employed by the Transportation Security Adminis-
11 tration or a private security screening company to conduct
12 screening at a commercial service airport is terminated if
13 the individual—

14 (1) commits a gross violation of the privacy of
15 a passenger in a manner that is not supported by
16 the policies of the Transportation Security Adminis-
17 tration; or

18 (2) violates subsection (a) or the policies of the
19 Transportation Security Administration with respect
20 to the screening of a passenger with a medical or
21 other condition that requires special accommodations
22 during the screening process, such as a passenger
23 who is dependent on a wheelchair or another medical
24 device.

1 **SEC. 10. LIABILITY OF MANUFACTURERS OF ADVANCED IM-**
2 **AGING TECHNOLOGY.**

3 Section 865 of the Support Anti-Terrorism by Fos-
4 tering Effective Technologies Act of 2002 (6 U.S.C. 444)
5 is amended—

6 (1) in paragraph (1)—

7 (A) by striking “For purposes of this sub-
8 title, the” and inserting the following:

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), the”; and

11 (B) by adding at the end the following:

12 “(B) EXCEPTION.—The term ‘qualified
13 anti-terrorism technology’ does not include—

14 “(i) advanced imaging technology; or

15 “(ii) any technology developed or ac-
16 quired on or after the date of the enact-
17 ment of the Air Travelers’ Bill of Rights
18 Act of 2012 for use in the screening of
19 passengers at airports.”; and

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

21 “(7) ADVANCED IMAGING TECHNOLOGY.—The
22 term ‘advanced imaging technology’—

23 “(A) means a device used in the screening
24 of passengers at airports that creates a visual
25 image of an individual showing the surface of

1 the skin and revealing other objects on the
2 body; and

3 “(B) includes devices using backscatter x-
4 rays or millimeter waves and devices referred to
5 as ‘whole-body imaging technology’ or ‘body
6 scanning machines’.”.

7 **SEC. 11. IMPLEMENTATION OF ADDITIONAL ELEMENTS OF**
8 **AIR TRAVELERS’ BILL OF RIGHTS.**

9 Not later than 30 days after the date of the enact-
10 ment of this Act, the Secretary of Homeland Security shall
11 take all appropriate actions within the authority of the
12 Secretary to implement any elements of the air travelers’
13 bill of rights required by section 3 that are not included
14 in the policies and practices of the Transportation Secu-
15 rity Administration on the day before such date of enact-
16 ment.

17 **SEC. 12. PASSENGER PRIVACY PROTECTION AWARD.**

18 (a) IN GENERAL.—The Assistant Secretary shall pro-
19 vide an award (to be known as the “Passenger Privacy
20 Protection Award”) for improving the privacy of pas-
21 sengers at airports each year to—

22 (1) not fewer than two and not more than four
23 primary airports; and

1 (2) not more than one individual who is a cit-
2 izen or legal permanent resident of the United
3 States.

4 (b) CRITERIA FOR AIRPORT AWARDS.—The Assist-
5 ant Secretary shall provide a Passenger Privacy Protec-
6 tion Award to a primary airport based on the following
7 criteria:

8 (1) Most innovative improvements to the pri-
9 vacy of passengers.

10 (2) Best facilities, or most improved facilities,
11 for the promotion of the privacy of passengers.

12 (3) Most courteous employees.

13 (4) Commitment to advancing passenger pri-
14 vacy.

15 (5) Advancement and promotion of passengers'
16 rights.

17 (c) CRITERIA FOR INDIVIDUAL AWARDS.—The As-
18 sistant Secretary shall provide a Passenger Privacy Pro-
19 tection Award to an individual based on the following cri-
20 teria:

21 (1) Most innovative idea to improve the privacy
22 of passengers.

23 (2) The feasibility of implementing the idea
24 without the acquisition of a product by the Trans-
25 portation Security Administration.

1 (3) Advancement and promotion of passengers'
2 rights.

3 (d) APPLICATIONS.—Except as provided in sub-
4 section (e)(1)(B), an airport or individual seeking a Pas-
5 senger Privacy Protection Award shall submit an applica-
6 tion at such time, in such manner, and containing such
7 information as the Assistant Secretary may require.

8 (e) AWARD WEBSITE.—The Assistant Secretary
9 shall—

10 (1) establish a website that—

11 (A) contains information relating to the
12 Passenger Privacy Protection Award, includ-
13 ing—

14 (i) the airports and individuals that
15 received the Award; and

16 (ii) the ideas and actions for which
17 those airports and individuals received the
18 Award; and

19 (B) provides a mechanism for the submis-
20 sion of applications under subsection (d); and

21 (2) include a link to the website required by
22 paragraph (1) on the website of the Transportation
23 Security Administration.

24 (f) FUNDING.—

1 (1) IN GENERAL.—Section 44945 of title 49,
2 United States Code is amended to read as follows:

3 **“§ 44945. Disposition of unclaimed money**

4 “Notwithstanding section 3302 of title 31, unclaimed
5 money recovered at any airport security checkpoint shall
6 be disposed of as follows:

7 “(1) Not more than 10 percent of the un-
8 claimed money shall be retained by the Transpor-
9 tation Security Administration during fiscal year
10 2013 and each fiscal year thereafter to provide Pas-
11 senger Privacy Protection Awards under section 12
12 of the Air Travelers’ Bill of Rights Act of 2012.

13 “(2) The remainder of the unclaimed money
14 shall be deposited in the general fund of the Treas-
15 ury and used for deficit reduction.”.

16 (2) DISTRIBUTION OF AWARD.—Of the amount
17 made available to the Assistant Secretary under sec-
18 tion 44945 of title 49, United States Code (as
19 amended by paragraph (1)) for a fiscal year—

20 (A) not more than \$30,000 may be used to
21 provide Passenger Privacy Protection Awards to
22 airports, not more than \$15,000 of which may
23 be provided to one airport; and

1 (B) not more than \$5,000 may be used to
2 provide a Passenger Privacy Protection Award
3 to an individual.

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