

SECURING EXPEDITED SCREENING ACT

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JULY 22, 2015.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. MCCAUL, from the Homeland Security,
submitted the following

R E P O R T

[To accompany H.R. 2127]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 2127) to direct the Administrator of the Transportation Security Administration to limit access to expedited airport security screening at an airport security checkpoint to participants of the PreCheck program and other known low-risk passengers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Securing Expedited Screening Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Aviation and Transportation Security Act (Public Law 107–71) authorized the Transportation Security Administration to “establish requirements to implement trusted passenger programs and use available technologies to expedite the security screening of passengers who participate in such programs, thereby allowing security screening personnel to focus on those passengers who should be subject to more extensive screening.”

(2) In October 2011, the Transportation Security Administration began piloting the PreCheck program in which a limited number of passengers who were participants in the frequent flyer programs of domestic air carriers were directed to special screening lanes for expedited security screening.

(3) In December 2013, the Transportation Security Administration opened the PreCheck program to eligible passengers who submit biographic and biometric information for a security risk assessment.

(4) Today, expedited security screening is provided to passengers who, in general, are members of populations identified by the Administrator of the Transportation Security Administration as presenting a low risk to aviation security, including members of populations known and vetted by the Administrator or through another Department of Homeland Security trusted traveler program, and to passengers who are selected by expedited screening on a case-by-case basis through the Transportation Security Administration’s Managed Inclusion process and other procedures.

(5) According to the Transportation Security Administration, the Managed Inclusion process “combines the use of multiple layers of security to indirectly conduct a real-time assessment of passengers” through the use of Passenger Screening Canine teams, Behavior Detection Officers, Explosives Trace Detection (ETD) machines, and other activities.

(6) In December 2014, the Comptroller General of the United States concluded in a report entitled “Rapid Growth in Expedited Passenger Screening Highlights Need to Plan Effective Security Assessments” that “it will be important for TSA to evaluate the security effectiveness of the Managed Inclusion process as a whole, to ensure that it is functioning as intended and that passengers are being screened at a level commensurate with their risk”.

(7) On March 16, 2015, the Inspector General of the Department of Homeland Security released a report entitled “Allegation of Granting Expedited Screening through TSA PreCheck Improperly”, in which the Inspector General determined that the Transportation Security Administration granted expedited security screening at a PreCheck security lane to a passenger who had served time in prison for felonies committed as a member of a domestic terrorist group and who was not a participant in the PreCheck program.

SEC. 3. LIMITATION; PRECHECK OPERATIONS MAINTAINED; ALTERNATE METHODS.

(a) **IN GENERAL.**—Except as provided in subsection (d), not later than 180 days after the date of the enactment of this Act, the Administrator of the Transportation Security Administration shall direct that access to expedited airport security screening at an airport security checkpoint be limited to only the following:

(1) A passenger who voluntarily submits biographic and biometric information for a security risk assessment and whose application for the PreCheck program has been approved, or a passenger who is a participant in another trusted or registered traveler program of the Department of Homeland Security.

(2) A passenger traveling pursuant to section 44903 of title 49, United States Code (as established under the Risk-Based Security for Members of the Armed Forces Act (Public Law 112–86)), section 44927 of such title (as established under the Helping Heroes Fly Act (Public Law 113–27)), or section 44928 of such title (as established under the Honor Flight Act (Public Law 113–221)).

(3) A passenger who did not voluntarily submit biographic and biometric information for a security risk assessment but is a member of a population designated by the Administrator of the Transportation Security Administration as known and low-risk and who may be issued a unique, known traveler number by the Administrator determining that such passenger is a member of a category of travelers designated by the Administrator as known and low-risk.

(b) **PRECHECK OPERATIONS MAINTAINED.**—In carrying out subsection (a), the Administrator of the Transportation Security Administration shall ensure that expe-

dated airport security screening remains available to passengers at or above the level that exists on the day before the date of the enactment of this Act.

(c) **MINORS AND SENIORS.**—The Administrator of the Transportation Security Administration may provide access to expedited airport security screening at an airport security checkpoint to a passenger who is—

(1) 75 years old or older; or

(2) 12 years old or under and who is traveling with a parent or guardian who is a participant in the PreCheck program.

(d) **FREQUENT FLIERS.**—If the Administrator of the Transportation Security Administration determines that such is appropriate, the date specified in subsection (a) may be extended by up to one year to implement such subsection with respect to the population of passengers who did not voluntarily submit biographic and biometric information for security risk assessments but who nevertheless receive expedited airport security screening because such passengers are designated as frequent fliers by air carriers. If the Administrator uses the authority provided by this subsection, the Administrator shall notify the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Commerce, Science, and Transportation of the Senate of such phased-in implementation.

(e) **ALTERNATE METHODS.**—The Administrator of the Transportation Security Administration may provide access to expedited airport security screening to additional passengers pursuant to an alternate method upon the submission to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of an independent assessment of the security effectiveness of such alternate method that is conducted by an independent entity that determines that such alternate method is designed to—

(1) reliably and effectively identify passengers who likely pose a low risk to the United States aviation system;

(2) mitigate the likelihood that a passenger who may pose a security threat to the United States aviation system is selected for expedited security screening; and

(3) address known and evolving security risks to the United States aviation system.

(f) **INFORMATION SHARING.**—The Administrator of the Transportation Security Administration shall provide to the entity conducting the independent assessment under subsection (c) effectiveness testing results that are consistent with established evaluation design practices, as identified by the Comptroller General of the United States.

SEC. 4. REPORTING.

Not later than three months after the date of the enactment of this Act and annually thereafter, the Administrator of the Transportation Security Administration shall report to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the percentage of all passengers who are provided expedited security screening, and of such passengers so provided, the percentage who are participants in the PreCheck program (who have voluntarily submitted biographic and biometric information for security risk assessments), the percentage who are participants in another trusted traveler program of the Department of Homeland Security, the percentage who are participants in the PreCheck program due to the Administrator's issuance of known traveler numbers, and for the remaining percentage of passengers granted access to expedited security screening in PreCheck security lanes, information on the percentages attributable to each alternative method utilized by the Transportation Security Administration to direct passengers to expedited airport security screening at PreCheck security lanes.

SEC. 5. RULE OF CONSTRUCTION.

Nothing in this Act may be construed to—

(1) authorize or direct the Administrator of the Transportation Administration to reduce or limit the availability of expedited security screening at an airport; or

(2) limit the authority of the Administrator to use technologies and systems, including passenger screening canines and explosives trace detection, as a part of security screening operations.

PURPOSE AND SUMMARY

The purpose of H.R. 2127 is to direct the Administrator of the Transportation Security Administration to limit access to expedited

airport security screening at an airport security checkpoint to participants of the PreCheck program and other known low-risk passengers, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Subcommittee on Transportation Security held a hearing on March 25, 2015 to examine the TSA PreCheck program, including the use of alternate methods for incorporating passengers into PreCheck. Additionally, reports highlighting security vulnerabilities with these methods have been issued by both the Government Accountability Office Report, “Rapid Growth in Expedited Passenger Screening Highlights Need to Plan Effective Security Assessments” (GAO-15-150) and the DHS OIG report “Security Enhancements Needed to the Pre✓™ Initiative” (DHS IG-15-29).

Managed Inclusion (MI) is intended to conduct a “real-time” threat assessment to identify passengers who are eligible for TSA PreCheck on a flight-by-flight basis through the use of already-present layers of security at the airports such as passenger screening canine teams, explosives trace detection technology, and behavior detection officers. However, travelers who experience expedited screening through MI are not subject to a criminal history background check, have not paid for TSA PreCheck unlike other passengers, are often unaware of the reason they are receiving expedited screening, and are generally not encouraged to enroll in TSA PreCheck during the experience. MI may help reduce wait times and increase utilization of TSA PreCheck lanes, but it has not been tested or proven to improve the experience of travelers or reduce risks to aviation. On the contrary, passengers who go through the TSA PreCheck enrollment process and pay \$85 for expedited screening are not seeing the benefits that were promised to them, this is because passengers who did not enroll and are unfamiliar with TSA PreCheck are being ushered into those expedited screening lanes.

In October 2013, TSA began applying PreCheck risk assessment rules in Secure Flight (watch-list matching) to identify and increase the percentage of passengers screened through the PreCheck screening process. TSA’s Risk Assessment program uses its Secure Flight system to identify travelers on a flight-by-flight basis who may be eligible for expedited screening by using previously collected information that is already provided to TSA by the airlines. Passengers who are a match to a watch-list will continue to receive the appropriate screening. For all other passengers, the analysis of this data will determine whether passengers will receive expedited or standard screening. Just like with MI, travelers who experience expedited screening through Risk Assessment are not subject to a criminal history background check. However, in contrast to MI participants, passengers who are eligible for PreCheck through Risk Assessment are not required to undergo screening by passenger screening canine teams or explosives trace detection technology.

This legislation requires TSA to restrict its use of these alternate methods of diverting passengers into PreCheck, unless the agency can demonstrate that such methods have been tested and proven to be effective security tools. In turn, this will close concerning se-

curity vulnerabilities with the program and prioritize enrollment in the PreCheck program.

HEARINGS

113th Congress

On March 14, 2013, the Subcommittee on Transportation Security held a hearing entitled “TSA’s Efforts to Advance Risk-Based Security.” The Subcommittee received testimony from Hon. John S. Pistole, Administrator, Transportation Security Administration, Department of Homeland Security.

The Subcommittee on Transportation Security held a second hearing on April 11, 2013, entitled “TSA’s Efforts to Advance Risk-Based Security: Stakeholder Perspectives.” The Subcommittee received testimony from Mr. Ken Dunlap, Global Director, Security & Travel Facilitation, International Air Transport Association; Ms. Sharon L. Pinkerton, Senior Vice President, Legislative and Regulatory Policy, Airlines for America; Mr. Geoff Freeman, Chief Operating Officer and Executive Vice President, U.S. Travel Association; Mr. Michael C. Mullen, Executive Director, Express Association of America; Mr. Christopher U. Browne, Airport Manager, Washington Dulles International Airport, *testifying on behalf of the American Association of Airport Executives*; and Mr. David A. Borer, General Counsel, American Federation of Government Employees. This hearing was the second in a two-part.

114th Congress

On March 25, 2015, the Subcommittee on Transportation Security held a hearing entitled “Risk-Based Security: Assessing the Path Forward for TSA Pre✓™.” The Subcommittee received testimony from Hon. John Roth, Inspector General, U.S. Department of Homeland Security; Mr. Kenneth Fletcher, Chief Risk Officer, Transportation Security Administration, U.S. Department of Homeland Security; and Ms. Jennifer Grover, Director, Homeland Security and Justice, U.S. Government Accountability Office.

COMMITTEE CONSIDERATION

The Committee met on June 23, 2015, to consider H.R. 2127, and ordered the measure to be reported to the House with a favorable recommendation, amended, by voice vote. The Committee took the following actions:

The following amendments were offered:

An amendment in the Nature of a Substitute offered by MR. THOMPSON of Mississippi (#1); was AGREED TO, as amended, by voice vote.

An amendment to the Amendment in the Nature of a Substitute offered by MR. KATKO (#1); was AGREED TO by voice vote.

Page 4, line 13, insert “or registered” after “trusted”.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded vote were requested during consideration of H.R. 2127.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2127, the Securing Expedited Screening Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 17, 2015.

Hon. MICHAEL MCCAUL,
*Chairman, Committee on Homeland Security,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2127, the Securing Expedited Screening Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll, who can be reached at 226-2860.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 2127—Securing Expedited Screening Act

H.R. 2127 would require the Transportation Security Administration (TSA), which is responsible for screening passengers at airport security checkpoints, to limit access to expedited screening processes to certain individuals. Under the bill, only passengers who are members of a TSA trusted traveler program, the military, or a group considered to be low risk would be eligible for expedited screening.

Based on information from TSA, CBO estimates that implementing H.R. 2127 would have no significant impact on the federal budget. By limiting access to expedited screening, the bill might cause more passengers to enroll in a trusted traveler program, through which TSA pre-screens individuals using biographic and biometric information in exchange for fees charged to offset the agency's cost of providing such services. Because the agency can keep and spend such fees (subject to provisions in annual appropriation acts), CBO estimates that any net change in TSA's spend-

ing for credentialing activities under H.R. 2127 would not exceed \$500,000 in any year. We further estimate that implementing H.R. 2127 would not significantly affect TSA's overall costs to provide screening at airport checkpoints. Enacting H.R. 2127 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2127 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 2127 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

This bill requires that the Administrator of the Transportation Security Administration report annually to the appropriate Congressional committees on the percentage of all passengers provided expedited security screening, including a break-down of which passengers are enrolled in the TSA PreCheck program, are members of another trusted traveler program, or other passengers who have been granted screening due to being identified as a trusted population by the Administrator.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 2127 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI of the rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 2127 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 2127 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that bill may be cited as the “Securing Expedited Screening Act”.

Section 2. Findings

This section sets forth the authorization for and history of expedited aviation security screening. Additionally, it sets forth information about current Transportation Security Administration practices regarding expedited screening and recent Government Accountability Office and Department of Homeland Security Inspector General reports that have been critical of certain TSA practices.

Section 3. Limitation; PreCheck operations maintained; alternate methods

This section requires TSA, not later than 180 days after enactment, to direct that access to expedited screening be limited to the following groups:

1. Passengers who participate in the PreCheck application process or another Department of Homeland Security trusted traveler program;
2. Passengers who are allowed to participate in expedited screening pursuant to the ‘Risk Based Security for Members of the Armed Forces Act,’ the ‘Helping Heroes Fly Act’, and the ‘Honor Flight Act’;
3. Passengers determined by the Administrator of the Transportation Security Administration to be members of a population that is known and low risk.

In carrying out this provision, the section requires TSA to ensure that expedited screening remain available to passengers at or above the level that existed the day before this enactment.

The Administrator may provide access to expedited screening to passengers who are 75 years of age or older; or 12 years of age and younger if their parent or guardian is a participant in the PreCheck program. Additionally, the Administrator may extend the period of time to require frequent fliers to enroll in the program by providing biometric and biographic information by up to one year, if the Administrator notifies the appropriate Congressional committees.

In the event that TSA wants to provide expedited screening to other passengers, through an alternate method, TSA may do so, upon submitting to Congress an independent assessment that is consistent with GAO evaluation design practices and that determines that the method is designed to:

1. Reliably and effectively identify passengers who likely pose a low risk to the aviation system;
2. Mitigate the likelihood that a passenger who may pose a security threat received expedited screening; and
3. Address known and evolving security threat to the aviation system.

The Committee has been consistently concerned with TSA's management of the PreCheck program, and remains particularly troubled by reports of serious security vulnerabilities created by the Administration's use of Managed Inclusion and Risk Assessment as means of providing PreCheck screening to individuals who have not been vetted and successfully enrolled in the program. The Committee does not have confidence in TSA's ability to deploy these alternate methods in a manner which effectively screens passengers. Despite repeated expressions of concern to TSA and multiple watchdog reports, the Administration has continued to be unresponsive in addressing security gaps and highly inefficient in its efforts to expand the PreCheck program. It should be noted that the intent of this legislation is not to prohibit alternate methods of diverting passengers into PreCheck, outright, but to require TSA to reasonably prove that such methods are secure and effective.

Section 4. Reporting

This section directs TSA, not later than three months after enactment and annually thereafter, to provide Congress with information about the composition of the population that receives expedited screening.

Section 5. Rule of construction

This section states that nothing in this Act may be construed as authorizing TSA to reduce or limit the availability of expedited screening, or limit the authority to use technologies and systems such as canines and explosive trace detection as a part of screening operations. The Committee sees expedited screening for low-risk populations as an important tool in promoting risk-based, intelligence-driven security at airports. Additionally, the Committee recognizes that screening technologies provide critical means of detection and should be heavily employed at checkpoints, especially when screening passengers utilizing a PreCheck lane, who have not been vetted and enrolled in the program.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

As reported, H.R. 2127 makes no changes to existing law.