

113TH CONGRESS
1ST SESSION

S. 697

To reform and improve the oversight of the performance of passenger and baggage security screening at domestic commercial airports by private screening companies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 10, 2013

Mr. BROWN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To reform and improve the oversight of the performance of passenger and baggage security screening at domestic commercial airports by private screening companies, 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 “Contract Screener Reform and Accountability Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—REFORM

- Sec. 101. Prohibition on screening by subsidiaries of foreign-owned corporations.
- Sec. 102. Competition for private screening contracts.
- Sec. 103. Prohibition on certain subcontracting.
- Sec. 104. Flexibility in approving airport operator applications.
- Sec. 105. Enhanced standards for application assessments.
- Sec. 106. Timeline for awarding a contract for screening services.
- Sec. 107. Prohibition on bonuses and other awards.
- Sec. 108. Cost analysis.
- Sec. 109. Customer service.
- Sec. 110. Information on transition plans.

TITLE II—OVERSIGHT

- Sec. 201. Enhanced oversight.
- Sec. 202. Security breaches.
- Sec. 203. Covert testing of contract screener performance.
- Sec. 204. Contracting prohibition for compromising covert security testing.
- Sec. 205. Proper handling of sensitive security information.

TITLE III—WORKFORCE PROTECTIONS

- Sec. 301. Job and benefit protections.
- Sec. 302. Retention and discipline.
- Sec. 303. Protections for reporting deficiencies, waste, or vulnerabilities.

TITLE I—REFORM

SEC. 101. PROHIBITION ON SCREENING BY SUBSIDIARIES OF FOREIGN-OWNED CORPORATIONS.

Subsection (d) of section 44920 of title 49, United States Code, is amended—

(1) by striking “(d)” and all that follows through “The Under Secretary may enter” and inserting the following:

“(d) STANDARDS FOR PRIVATE SCREENING COMPANIES.—The Under Secretary may enter”;

(2) by striking paragraph (2); and

(3) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively, and

1 moving such paragraphs, as so redesignated, two
2 ems to the left.

3 **SEC. 102. COMPETITION FOR PRIVATE SCREENING CON-**
4 **TRACTS.**

5 Section 44920 of title 49, United States Code, is
6 amended by striking subsection (h).

7 **SEC. 103. PROHIBITION ON CERTAIN SUBCONTRACTING.**

8 Section 44920 of title 49, United States Code, as
9 amended by section 102 of this Act, is further amended
10 by adding at the end the following new subsection:

11 “(h) PROHIBITION ON CERTAIN SUBCON-
12 TRACTING.—The Under Secretary is prohibited from en-
13 tering into any contract for screening services under this
14 section that would allow for the screening services to be
15 performed by a subcontractor.”.

16 **SEC. 104. FLEXIBILITY IN APPROVING AIRPORT OPERATOR**
17 **APPLICATIONS.**

18 Paragraph (2) of section 44920(b) of title 49, United
19 States Code, is amended by striking “shall” and inserting
20 “may”.

21 **SEC. 105. ENHANCED STANDARDS FOR APPLICATION AS-**
22 **SESSMENTS.**

23 Paragraph (2) of section 44920(b) of title 49, United
24 States Code, is amended by inserting before the period at
25 the end the following: “and at airports nationwide”.

1 **SEC. 106. TIMELINE FOR AWARDING A CONTRACT FOR**
 2 **SCREENING SERVICES.**

3 Subsection (b) of section 44920 of title 49, United
 4 States Code, is amended by adding at the end the fol-
 5 lowing new paragraph:

6 “(4) TIMELINE FOR AWARDING A CONTRACT
 7 FOR SCREENING SERVICES.—

8 “(A) IN GENERAL.—Not later than 270
 9 days after approving an application under para-
 10 graph (1), the Under Secretary shall award a
 11 contract to a qualified private screening com-
 12 pany in accordance with subsections (c) and
 13 (d).

14 “(B) NOTIFICATION.—If the Under Sec-
 15 retary is unable to make an award in accord-
 16 ance with subparagraph (A), the Under Sec-
 17 retary shall notify the airport operator that
 18 submitted the application at issue of the deter-
 19 mination and the basis for such determination,
 20 and about eligibility for reapplication in accord-
 21 ance with subsection (a).”.

22 **SEC. 107. PROHIBITION ON BONUSES AND OTHER AWARDS.**

23 Section 44920 of title 49, United States Code, as
 24 amended by section 103 of this Act, is further amended
 25 by adding at the end the following new subsection:

1 “(i) PROHIBITION ON BONUSES AND OTHER
2 AWARDS.—The Under Secretary is prohibited from pro-
3 viding funding to any private screening company that pro-
4 vides screening services at an airport in excess of the
5 amount required for the performance of such screening
6 services.”.

7 **SEC. 108. COST ANALYSIS.**

8 Section 44920 of title 49, United States Code, as
9 amended by section 107 of this Act, is further amended
10 by adding at the end the following new subsection:

11 “(j) COST ANALYSIS.—

12 “(1) IN GENERAL.—Not later than 180 days
13 after the date of the enactment of the Contract
14 Screener Reform and Accountability Act, the Comp-
15 troller General of the United States shall provide to
16 the Under Secretary guidance on how to conduct an
17 analysis of the total annual cost incurred by the
18 Federal Government with respect to screening serv-
19 ices provided by private screening companies.

20 “(2) ACTION.—Not later than 180 days after
21 receipt of the guidance described in paragraph (1)
22 and annually thereafter, the Under Secretary shall
23 utilize such guidance to identify costs incurred by
24 the Federal Government as a result of overseeing
25 the performance of private screening companies,

1 compared with costs incurred by the Under Sec-
2 retary at airports that utilize Federal Government
3 personnel for passenger and baggage screening.”.

4 **SEC. 109. CUSTOMER SERVICE.**

5 Section 44920 of title 49, United States Code, as
6 amended by section 108 of this Act, is further amended
7 by adding at the end the following new subsection:

8 “(k) CUSTOMER SERVICE.—

9 “(1) NOTIFICATION TO PUBLIC.—The operator
10 of each airport at which a private screening company
11 provides screening services under this section shall
12 prominently display signs in the immediate vicinity
13 of the passenger screening area notifying the flying
14 public that passenger and baggage screening at the
15 airport is conducted by contract screening personnel
16 and not by Federal Government personnel. Such
17 signs shall also display a contact number and Inter-
18 net website address maintained by such private
19 screening company for a passenger to report com-
20 plaints about the passenger’s screening experience.

21 “(2) TRACKING AND REPORTING OF COM-
22 PLAINTS.—Each private screening company that
23 provides screening services at an airport under this
24 section shall track all passenger complaints made
25 under paragraph (1) and regularly report on those

1 complaints to the Under Secretary through, to the
 2 maximum extent practicable, the contracting officer
 3 of the private screening company. The Under Sec-
 4 retary shall report to the Committee on Homeland
 5 Security of the House of Representatives and the
 6 Committee on Commerce, Science, and Transpor-
 7 tation of the Senate on those complaints upon re-
 8 quest.”.

9 **SEC. 110. INFORMATION ON TRANSITION PLANS.**

10 Subsection (b) of section 44920 of title 49, United
 11 States Code, as amended by section 106, is further amend-
 12 ed by adding at the end the following new paragraph:

13 “(5) **TRANSITION.**—Not later than 90 days
 14 after an airport operator provides notice to the
 15 Under Secretary of the decision of the airport oper-
 16 ator to discontinue the use of screening personnel of
 17 a qualified private screening company at an airport
 18 and use Federal Government personnel for screening
 19 services at the airport, the Under Secretary shall
 20 provide the airport operator with information on how
 21 the Under Secretary intends to carry out the transi-
 22 tion of screening services, including an anticipated
 23 timeline and key benchmarks.”.

TITLE II—OVERSIGHT

2 SEC. 201. ENHANCED OVERSIGHT.

3 Section 44920 of title 49, United States Code, as
4 amended by section 109 of this Act, is further amended
5 by adding at the end the following new subsection:

6 “(1) ENHANCED OVERSIGHT.—Not later than 180
7 days after the date of the enactment of the Contract
8 Screener Reform and Accountability Act, the Under Sec-
9 retary shall develop and implement a system to be carried
10 out, to the maximum extent practicable, by the contracting
11 officer who oversees each respective private screening com-
12 pany providing screening services at an airport under this
13 section, to enhance monitoring of performance of each
14 such private screening company. The system shall, at a
15 minimum, provide year-to-year information about per-
16 formance by each such private screening company, and be
17 in a format to provide for comparison with airports in the
18 same category where screening services are provided by
19 Federal Government personnel with respect to detection
20 rates of threats and threat image tests, recertification pass
21 rates, covert performance assessments, and evaluations
22 used to assess screener performance on various elements
23 that may affect security and a passenger’s overall travel
24 experience.”.

1 **SEC. 202. SECURITY BREACHES.**

2 Section 44920 of title 49, United States Code, as
3 amended by section 201 of this Act, is further amended
4 by adding at the end the following new subsection:

5 “(m) SECURITY BREACHES.—

6 “(1) IN GENERAL.—A private screening com-
7 pany that provides screening services at an airport
8 under this section shall report to the Under Sec-
9 retary each security breach at that airport. Each
10 such report shall include—

11 “(A) a detailed description of the security
12 breach;

13 “(B) information regarding where the
14 breach occurred;

15 “(C) information regarding law enforce-
16 ment notification of and response to the breach;
17 and

18 “(D) any corrective action taken in re-
19 sponse to the breach.

20 “(2) ANNUAL REPORTS.—The Under Secretary
21 shall submit to the Committee on Homeland Secu-
22 rity of the House of Representatives and the Com-
23 mittee on Commerce, Science, and Transportation of
24 the Senate an annual report containing the informa-
25 tion on security breaches required to be submitted to
26 the Under Secretary pursuant to paragraph (1), in-

1 including the definition of ‘security breach’ used by
 2 the Under Secretary for purposes of this subsection.
 3 To the extent practicable, the report shall be sub-
 4 mitted in unclassified form with a classified appen-
 5 dix if necessary.”.

6 **SEC. 203. COVERT TESTING OF CONTRACT SCREENER PER-**
 7 **FORMANCE.**

8 Section 44920 of title 49, United States Code, as
 9 amended by section 202 of this Act, is further amended
 10 by adding at the end the following new subsection:

11 “(n) COVERT TESTING.—

12 “(1) IN GENERAL.—The Comptroller General of
 13 the United States shall conduct annual covert test-
 14 ing of airports where private screening companies
 15 provide screening services under this section. To the
 16 extent practicable, such covert testing shall be con-
 17 ducted at one airport with contract screener per-
 18 sonnel within each airport category that was not the
 19 subject of covert testing by another Federal entity
 20 during the same year.

21 “(2) REPORT REQUIRED.—The Comptroller
 22 General shall submit to the Under Secretary and to
 23 the Committee on Homeland Security of the House
 24 of Representatives and the Committee on Commerce,
 25 Science, and Transportation of the Senate a report

1 that contains the results of covert testing conducted
2 under paragraph (1). To the extent practicable, each
3 such report shall be submitted in unclassified form
4 with a classified appendix if necessary.”.

5 **SEC. 204. CONTRACTING PROHIBITION FOR COMPRO-**
6 **MISING COVERT SECURITY TESTING.**

7 Subsection (d) of section 44920 of title 49, United
8 States Code, as amended by section 101 of this Act, is
9 further amended—

10 (1) in paragraph (1), by striking “and” at the
11 end;

12 (2) in paragraph (2), by striking the period at
13 the end and inserting “; and”; and

14 (3) by adding at the end the following new
15 paragraph:

16 “(3) on or after the date of the enactment of
17 the Contract Screener Reform and Accountability
18 Act, neither the private screening company, nor its
19 parent company, if applicable, has compromised any
20 covert security testing by notifying individuals em-
21 ployed by the private screening company that the
22 covert testing was occurring, or has otherwise been
23 found to have knowingly compromised covert testing
24 conducted pursuant to subsection (n) or any other
25 covert testing conducted by the Inspector General of

1 the Department of Homeland Security, the Comp-
 2 troller General of the United States, or the Under
 3 Secretary.”.

4 **SEC. 205. PROPER HANDLING OF SENSITIVE SECURITY IN-**
 5 **FORMATION.**

6 Section 44920 of title 49, United States Code, as
 7 amended by section 203 of this Act, is further amended
 8 by adding at the end the following new subsection:

9 “(o) PROPER HANDLING OF SENSITIVE SECURITY
 10 INFORMATION.—The Under Secretary shall require each
 11 private screening company that provides screening services
 12 at an airport under this section to provide all individuals
 13 employed by the private screening company with annual
 14 training for the proper handling of all sensitive informa-
 15 tion, including sensitive security information.”.

16 **TITLE III—WORKFORCE**
 17 **PROTECTIONS**

18 **SEC. 301. JOB AND BENEFIT PROTECTIONS.**

19 Subsection (c) of section 44920 of title 49, United
 20 States Code, is amended to read as follows:

21 “(c) QUALIFIED PRIVATE SCREENING COMPANY.—

22 “(1) IN GENERAL.—Beginning on the date of
 23 the enactment of the Contract Screener Reform and
 24 Accountability Act, a private screening company is
 25 qualified to provide screening services at an airport

1 under this section if the private screening company
2 will—

3 “(A) employ only individuals to provide
4 such services who meet all the requirements of
5 this chapter applicable to Federal Government
6 personnel who perform screening services at air-
7 ports under this chapter;

8 “(B) provide the right of first refusal to
9 the Federal Government personnel who per-
10 formed screening services at the airport before
11 the contract to provide screening services at the
12 airport was awarded to the private screening
13 company;

14 “(C) presume that personnel described in
15 subparagraph (B) who are in good standing are
16 qualified under this subsection; and

17 “(D) offer such individuals employment
18 with compensation and other benefits that are
19 equal to or greater than the level of compensa-
20 tion and other benefits that such personnel
21 were provided by the Federal Government at
22 the time the contract to provide screening serv-
23 ices at the airport was awarded to the private
24 screening company.

1 “(2) RULE OF CONSTRUCTION.—Nothing in
 2 this subsection may be construed to require any pri-
 3 vate screening company that is a qualified private
 4 screening company as of the date that is one day be-
 5 fore the date of the enactment of the Contract
 6 Screener Reform and Accountability Act to imple-
 7 ment paragraph (1) with respect to any contract
 8 that was entered into with the Under Secretary be-
 9 fore such date of enactment.”.

10 **SEC. 302. RETENTION AND DISCIPLINE.**

11 Section 44920 of title 49, United States Code, as
 12 amended by section 205 of this Act, is further amended
 13 by adding at the end the following new subsection:

14 “(p) RETENTION AND DISCIPLINE.—

15 “(1) IN GENERAL.—Each private screening
 16 company that provides screening services at an air-
 17 port under this section shall, on a monthly basis,
 18 provide the Under Secretary with information on re-
 19 tention rates of screeners and supervisory personnel
 20 employed by the private screening company at that
 21 airport, and a detailed description of adverse em-
 22 ployment actions taken against any of such screen-
 23 ers or supervisory personnel.

24 “(2) REPORT REQUIRED.—The Under Sec-
 25 retary shall submit to the Committee on Homeland

1 Security of the House of Representatives and the
 2 Committee on Commerce, Science, and Transpor-
 3 tation of the Senate, upon request by either such
 4 Committee, a report containing the information re-
 5 quired to be provided to the Under Secretary under
 6 paragraph (1).”.

7 **SEC. 303. PROTECTIONS FOR REPORTING DEFICIENCIES,**
 8 **WASTE, OR VULNERABILITIES.**

9 (a) IN GENERAL.—Section 44920 of title 49, United
 10 States Code, as amended by section 302 of this Act, is
 11 further amended by adding at the end the following new
 12 subsection:

13 “(q) PROTECTIONS FOR REPORTING DEFI-
 14 CIENCIES.—

15 “(1) IN GENERAL.—Not later than 90 days
 16 after the date of the enactment of the Contract
 17 Screener Reform and Accountability Act, the Under
 18 Secretary shall establish a process by which any per-
 19 son may submit to the Under Secretary a report re-
 20 garding problems, deficiencies, waste, or
 21 vulnerabilities with respect to screening services pro-
 22 vided at an airport where such services are provided
 23 by a private screening company under this section.

24 “(2) CONFIDENTIALITY.—The Under Secretary
 25 shall keep confidential the identity of a person who

1 submits a report under paragraph (1), and any such
2 report shall be treated as protected information.

3 “(3) ACKNOWLEDGMENT OF RECEIPT.—If a re-
4 port submitted under paragraph (1) identifies the
5 person submitting the report, the Under Secretary
6 shall respond promptly to the person to acknowledge
7 receipt of the report.

8 “(4) STEPS TO ADDRESS PROBLEMS.—The
9 Under Secretary shall review and consider the infor-
10 mation provided in any report submitted under para-
11 graph (1) and shall, as necessary, take appropriate
12 steps under this title to address any problem, defi-
13 ciency, waste, or vulnerability identified in such re-
14 port.

15 “(5) RETALIATION PROHIBITED.—

16 “(A) PROHIBITION.—No private screening
17 company may discharge any employee or other-
18 wise discriminate against any employee with re-
19 spect to the employee’s compensation, terms,
20 conditions, or other privileges of employment
21 because the employee (or any person acting
22 pursuant to a request of the employee)—

23 “(i) notified the Under Secretary of
24 any problem, deficiency, waste, or vulner-

1 ability with respect to screening services
2 provided by the private screening company;

3 “(ii) refused to engage in any practice
4 made unlawful by this title, if the employee
5 has notified the private screening company
6 of the alleged illegality;

7 “(iii) testified before or otherwise pro-
8 vided information relevant for Congress or
9 for any Federal or State proceeding re-
10 garding any provision (or proposed provi-
11 sion) of this title;

12 “(iv) commenced, caused to be com-
13 menced, or is about to commence or cause
14 to be commenced a proceeding under this
15 title;

16 “(v) testified or is about to testify in
17 any such proceeding; or

18 “(vi) assisted or participated in or is
19 about to assist or participate in any man-
20 ner in such a proceeding or in any other
21 action to carry out the purposes of this
22 title.

23 “(B) SUSPENSION OF CONTRACT.—If the
24 Under Secretary determines that any private
25 screening company has engaged in retaliation in

1 violation of subparagraph (A), the Under Sec-
2 retary shall suspend the contract of the private
3 screening company to provide screening services
4 under this section.”.

5 (b) RULE OF CONSTRUCTION.—Nothing in sub-
6 section (q) of section 44920 of title 49, United States
7 Code, as added by subsection (a) of this section, may be
8 construed as in any manner affecting any other provision
9 of law relating to protections for the reporting of prob-
10 lems, deficiencies, waste, or vulnerabilities, including pro-
11 tections against retaliation related to such reporting.

○