

115TH CONGRESS  
2D SESSION

# S. 3399

To provide standards relating to airline travel by Federal employees for official business.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 28, 2018

Mr. MERKLEY (for himself and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To provide standards relating to airline travel by Federal employees for official business.

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.**

4       This Act may be cited as the “Fly Smart Act”.

5       **SEC. 2. AIRLINE ACCOMMODATIONS FOR OFFICIAL GOV-**  
6       **ERNMENT TRAVEL.**

7       (a) IN GENERAL.—

8               (1) COACH-CLASS REQUIREMENT.—Except as  
9       provided in subsection (b), for official travel, both  
10      domestic and international, a covered employee, in-

cluding the head of an agency, shall use coach-class accommodations.

(2) BAN ON MILITARY AIRCRAFT FOR DOMESTIC TRAVEL.—A covered employee, including the head of an agency, may not travel on a military aircraft for domestic official travel unless—

(A) the destination of the covered employee is a military installation; or

(B) the covered employee is serving in, or applying to, as applicable, a position in the Department of Defense.

(b) EXCEPTIONS.—

(1) FIRST-CLASS AND BUSINESS CLASS.—Subject to the other provisions of this subsection, the head of the agency employing a covered employee (or to which a covered employee is applying, as applicable), or in the case of the head of an agency, the White House Chief of Staff, may sign a waiver authorizing the covered employee or the agency head, as applicable, to use—

(A) first-class accommodations for official travel if—

(i) no coach-class accommodations are available on any flight that is scheduled to—

1 (I) leave not more than 24 hours  
2 before the proposed departure time of  
3 the covered employee or the agency  
4 head; or

5 (II) arrive not more than 24  
6 hours after the proposed arrival time  
7 of the covered employee or the agency  
8 head;

9 (ii) the use of first-class accommoda-  
10 tions is necessary to accommodate a dis-  
11 ability or a special need that has been cer-  
12 tified under paragraph (4); or

13 (iii) the use of first-class accommoda-  
14 tions is necessary because of exceptional  
15 security circumstances, which—

16 (I) shall be established by the in-  
17 dividual signing the waiver;

18 (II) shall be found only when re-  
19 quired to meet the mission of the  
20 agency in which the covered employee  
21 or the agency head is employed, or to  
22 which the covered employee is apply-  
23 ing, as applicable; and

24 (III) include a situation in  
25 which—

1 (aa) the use of accommoda-  
2 tions other than first-class ac-  
3 commodations would endanger—

4 (AA) the life of the cov-  
5 ered employee or the agency  
6 head; or

7 (BB) Government prop-  
8 erty;

9 (bb) the covered employee  
10 is—

11 (AA) an agent on pro-  
12 tective detail; and

13 (BB) accompanying an  
14 individual who is authorized  
15 to use first-class accom-  
16 modations; or

17 (cc) the covered employee is  
18 a courier or control officer ac-  
19 companying controlled pouches or  
20 packages; and

21 (B) business-class accommodations for offi-  
22 cial travel if—

23 (i) the use of business-class accom-  
24 modations is necessary because of a situa-

tion described in clause (ii) or (iii) of subparagraph (A);

(ii) coach-class accommodations on an authorized or approved foreign airline do not provide adequate sanitation or health standards;

(iii)(I) regularly scheduled flights between origin and destination points, including connecting points, provide only other than coach-class accommodations; and

(II) the covered employee or the agency head certifies, on the voucher of the covered employee or the agency head, that the situation described in subclause (I) applies;

(iv) the transportation costs of the covered employee or the agency head are paid in full through the acceptance by the agency in which the covered employee or the agency head is employed, or to which the covered employee is applying, as applicable, of payment from a non-Federal source in accordance with chapter 300 of title 41, Code of Federal Regulations, or any successor regulation;

1 (v) subject to paragraph (5), with re-  
2 spect to a situation in which the origin or  
3 the destination of the travel is outside the  
4 continental United States—

5 (I) the scheduled flight time is  
6 more than 14 hours; and

7 (II) the covered employee or the  
8 agency head is required to report to  
9 duty not later than the day after the  
10 date on which the travel of the cov-  
11 ered employee or the agency head be-  
12 gins;

13 (vi) the use of the accommodations re-  
14 sults in overall cost savings to the Federal  
15 Government by avoiding additional subsist-  
16 ence costs, overtime, or lost productive  
17 time while the covered employee or the  
18 agency head waits for coach-class accom-  
19 modations to become available;

20 (vii) no space is available in coach-  
21 class accommodations in time to accom-  
22 plish the mission of the agency in which  
23 the covered employee or the agency head is  
24 employed, or to which the covered em-

1            ployee is applying, as applicable, which is  
2            urgent and cannot be postponed; or

3            (viii) when required because of the  
4            mission of the agency in which the covered  
5            employee or the agency head is employed,  
6            or to which the covered employee is apply-  
7            ing, as applicable, consistent with the in-  
8            ternal procedures of that agency.

9            (2) DISCLOSURE OF COST.—Not later than 90  
10          days after the date on which official travel for which  
11          the head of an agency or the White House Chief of  
12          Staff has signed a waiver under paragraph (1) ends,  
13          the head of the agency or the White House Chief of  
14          Staff, as applicable, shall disclose on a public  
15          website—

16                (A) the signed waiver;

17                (B) the exception under that paragraph on  
18          which the head of the agency or the White  
19          House Chief of Staff relied when authorizing  
20          the travel; and

21                (C) the cost of any flight in other than  
22          coach-class accommodations with respect to the  
23          waiver.

24            (3) NO BLANKET APPROVAL.—The head of the  
25          agency employing a covered employee (or to which a

covered employee is applying, as applicable), or in the case of the head of an agency, the White House Chief of Staff, may authorize a covered employee or an agency head, as applicable, to use accommodations other than coach-class accommodations for official travel only on a case-by-case basis, unless the covered employee or the agency head has a disability or a special need that has been certified under paragraph (4).

(4) CERTIFICATION OF DISABILITY OR SPECIAL NEED.—

(A) DISABILITY.—

(i) IN GENERAL.—A disability described in paragraph (1)(A)(ii) shall be certified annually, unless the disability is a lifelong condition, in which case the disability shall be certified once.

(ii) CONTENTS.—A certification required under clause (i) shall include, at a minimum—

(I) a written statement by a competent medical authority stating that a special accommodation for the covered employee is necessary;



(II) an approximate duration of the special accommodation described in subclause (I); and

(III) a recommendation regarding the suitable class of transportation for the covered employee based on the disability.

(B) SPECIAL NEED.—The special need of a covered employee, including the head of an agency, described in paragraph (1)(A)(ii) shall be certified annually (unless the special need is a lifelong condition, in which case the special need shall be certified once) in accordance with the procedures of the agency in which the covered employee is employed, or to which the covered employee is applying, as applicable.

(5) APPLICATION OF 14-HOUR RULE.—A covered employee, including the head of an agency, who travels using business-class accommodations under paragraph (1)(B)(v) shall not be eligible for a rest stop on the way to, or upon arrival at, the duty site of the covered employee.

(6) INCLUSION OF ATTENDANT.—If a covered employee, including the head of an agency, the travel of whom in accommodations other than coach-class

1 accommodations is authorized because of a disability  
 2 or special need that is certified under paragraph (4),  
 3 is authorized to have an attendant accompany that  
 4 covered employee, the head of the agency employing  
 5 the covered employee (or to which a covered em-  
 6 ployee is applying, as applicable), or in the case of  
 7 the head of an agency, the White House Chief of  
 8 Staff, may also authorize the attendant to use other  
 9 than coach-class accommodations during that travel.

10 (7) LIMIT ON DELEGATION.—The head of an  
 11 agency and the White House Chief of Staff may not  
 12 delegate the duties and authorities under this sub-  
 13 section, except for the duties and authorities under  
 14 paragraph (2).

15 (c) RULES OF CONSTRUCTION.—

16 (1) UPGRADES.—Nothing in this section may  
 17 be construed to prevent a covered employee from up-  
 18 grading to first-class accommodations or business-  
 19 class accommodations for official travel at the per-  
 20 sonal expense of the covered employee, including  
 21 through the redemption by the covered employee of  
 22 frequent flyer benefits.

23 (2) TWO CABINS AVAILABLE.—

24 (A) DIFFERENT SEAT TYPES.—If an air-

25 line flight has 2 classes of accommodations

1           available with 2 distinctly different seating  
2           types (including a situation in which the girth  
3           and pitch of the seats between the 2 cabins are  
4           different), the airline terms the front cabin as  
5           business-class accommodations or higher, and  
6           the tickets for the flight are fare-coded as busi-  
7           ness-class accommodations, the front cabin  
8           shall be construed to be other than coach-class  
9           accommodations for the purposes of this sec-  
10          tion.

11                 (B) IDENTICAL SEAT TYPES.—If an airline  
12           flight has 2 cabins available with 1 type of seat-  
13           ing available for the entire aircraft (such that  
14           the girth and pitch of the seats are identical in  
15           both cabins), the seats in the front cabin are  
16           fare-coded as full-fare economy class, and only  
17           restricted economy fares are available in the  
18           rear cabin, the entire aircraft shall be construed  
19           to be coach-class accommodations for the pur-  
20           poses of this section.

21   **SEC. 3. DEFINITIONS.**

22         In this Act—

23                 (1) the term “agency” has the meaning given  
24           the term “Executive agency” in section 105 of title  
25           5, United States Code;

1           (2) the term “business-class accommodations”  
 2       means a premium class of accommodation offered by  
 3       an airline that—

4           (A) is more expensive, and offers more  
 5       amenities, than coach-class accommodations;

6           (B) is less expensive, and offers fewer  
 7       amenities, than first-class accommodations; and

8           (C) is occasionally described by the airline  
 9       using terms including “business”, “business  
 10      elite”, “business first”, “world business”, “con-  
 11      noisseur”, and “envoy”;

12       (3) the term “coach-class accommodations”—

13           (A) means the basic class of accommoda-  
 14      tion offered to a traveler on an airline and  
 15      which is normally the lowest fare offered by the  
 16      airline, without regard to the terminology used  
 17      to describe the accommodations; and

18           (B) is occasionally described by an airline  
 19      using terms including—

20           (i) “tourist class” or “economy-class”;

21           and

22           (ii) “single class” if the airline offers  
 23      1 class of accommodations to all travelers;

24       (4) the term “covered employee” means—

1 (A) an employee traveling on official busi-  
2 ness;

3 (B) an individual who is—

4 (i) interviewing for a position as an  
5 employee; and

6 (ii) performing pre-employment inter-  
7 view travel;

8 (C) an employee who is required to inter-  
9 rupt the official business travel of the employee  
10 to perform emergency travel as a result of—

11 (i) an incapacitating illness or injury;  
12 or

13 (ii) a personal emergency situation; or

14 (D) an employee who—

15 (i) is employed in a law enforcement  
16 or investigative capacity; and

17 (ii) along with the family members of  
18 the employee, is required to relocate tem-  
19 porarily to safeguard the life of the em-  
20 ployee, and any family members of the em-  
21 ployee, as applicable, because of a threat  
22 resulting from the assigned duties of the  
23 employee;

24 (5) the term “employee” means an individual  
25 employed in or under an agency, including an indi-

vidual employed intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis and an individual serving without pay or at \$1 a year;

(6) the term “first-class accommodations” means the highest class of accommodation offered by an airline with respect to cost and amenities;

(7) the term “other than coach-class accommodations”—

(A) means any class of accommodation above coach-class accommodations; and

(B) includes first-class accommodations and business-class accommodations; and

(8) the term “scheduled flight time”—

(A) with respect to air travel, means the flight time between the originating departure point of the travel and the ultimate arrival point of the travel;

(B) includes scheduled non-overnight time spent at an airport during a change of planes; and

(C) does not include time spent at the originating or ultimate arrival airport.

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