

Calendar No. 207

117TH CONGRESS
1ST SESSION**S. 316**

To establish a temperature checks pilot program for air transportation, and for other purposes.

 IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2021

Ms. CANTWELL (for herself and Mr. SCOTT of Florida) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

DECEMBER 17, 2021

Reported by Ms. CANTWELL, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To establish a temperature checks pilot program for air transportation, 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.**

4 This Act may be cited as the “Fly Safe and Healthy
5 Act of 2021”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) ADMINISTRATOR.—The term “Adminis-
4 trator” means the Administrator of the Transpor-
5 tation Security Administration.

6 (2) AIR TRANSPORTATION.—The term “air
7 transportation” has the meaning given that term in
8 section 40102 of title 49, United States Code.

9 (3) COVID-19 PUBLIC HEALTH EMERGENCY.—
10 The term “COVID-19 public health emergency”
11 means the public health emergency first declared on
12 January 31, 2020, by the Secretary of Health and
13 Human Services under section 319 of the Public
14 Health Service Act (42 U.S.C. 247d) with respect to
15 the 2019 Novel Coronavirus (COVID-19) and in-
16 cludes any renewal of such declaration pursuant to
17 such section 319.

18 (4) FEVER.—The term “fever” means 100.4
19 degrees Fahrenheit or higher, or the meaning given
20 that term pursuant to guidelines of the Centers for
21 Disease Control and Prevention related to COVID-
22 19.

23 (5) SECRETARY.—The term “Secretary” means
24 the Secretary of Transportation.

25 (6) STERILE AREA.—The term “sterile area”
26 has the meaning given that term in section 1540.5

1 of title 49, Code of Federal Regulations (or any suc-
2 cessor regulation).

3 (7) **TEMPERATURE CHECK.**—The term “tem-
4 perature check” means the screening of individuals
5 for a fever.

6 **SEC. 3. TEMPERATURE CHECKS PILOT PROGRAM.**

7 (a) **IN GENERAL.**—Not later than 30 days after the
8 enactment of this Act, the Administrator, in consultation
9 with the Secretary, the Secretary of Homeland Security,
10 the Secretary of Health and Human Services, and the Di-
11 rector of the Centers for Disease Control and Prevention,
12 shall establish a 120-day pilot program to conduct tem-
13 perature checks for domestic and international passengers,
14 individuals accompanying those passengers, crew mem-
15 bers, and other individuals who pass through airports and
16 airport security screening locations (referred to in this sec-
17 tion as the “pilot program”). The Administrator shall se-
18 lect airports that represent diverse operating conditions,
19 such as high, medium, and low passenger throughput, and
20 locations for the pilot program.

21 (b) **SCREENING.**—The pilot program shall require
22 screening of passengers, individuals accompanying those
23 passengers, crew members, and other individuals who pass
24 through airports and airport security screening locations
25 for fevers. An individual who is found to have a fever shall

1 be subject to secondary medical screening. An individual
2 who registers a fever during a temperature check con-
3 ducted under the pilot program shall be denied admission
4 to the sterile area of the airport.

5 (c) ELEMENTS.—In developing the pilot program, the
6 Administrator shall address—

7 (1) the types of technology that may be used to
8 conduct temperature checks;

9 (2) policies applicable to screening procedures;

10 (3) procedures for individuals who register a
11 fever, which shall include secondary screening by a
12 medical professional;

13 (4) mechanisms for protecting the privacy and
14 medical information of individuals subjected to tem-
15 perature checks;

16 (5) procedures for accommodating individuals
17 with disabilities or observing certain religious prac-
18 tices, as appropriate;

19 (6) procedures for exempting individuals who
20 may have a fever unrelated to COVID-19;

21 (7) training on the policies, procedures, and
22 equipment for employees responsible for imple-
23 menting the pilot program, to be completed prior to
24 initiation of such program; and

1 (8) policies to ensure a final decision regarding
2 access to the sterile area of an airport are made and
3 carried out by a supervisor.

4 (d) EQUIPMENT.—The Administrator only may con-
5 duct temperature checks under the program established
6 under this section using a device lawfully manufactured
7 and distributed, or a device manufactured and distributed
8 in accordance with guidance issued by the Secretary of
9 Health and Human Services, to measure the body tem-
10 perature of a person.

11 (e) PROCUREMENT AND COORDINATION.—

12 (1) IN GENERAL.—The Administrator, in co-
13 ordination with the Commissioner of U.S. Customs
14 and Border Protection, shall procure temperature
15 screening equipment and implement best practices
16 for conducting passenger temperature checks under
17 the pilot program.

18 (2) RULE OF CONSTRUCTION.—Paragraph (1)
19 shall not be construed as requiring the pilot program
20 to be conducted at U.S. Customs and Border Pro-
21 tection screening locations.

22 (f) PARTNERSHIPS.—

23 (1) IN GENERAL.—The Administrator may
24 enter into partnerships or contracts with private en-
25 tities, universities or other academic institutions, na-

1 tional laboratories, public health authorities, or other
 2 entities to develop, evaluate, or improve technology
 3 for purposes of detecting fevers or conducting sec-
 4 ondary medical screening under the pilot program.

5 (2) AIRPORTS.—The Administrator may part-
 6 ner with airports that have temperature screening
 7 programs to develop best practices, share data, and
 8 implement the pilot program, but may not require
 9 airports to share in the costs of the pilot program
 10 except by mutual agreement.

11 (g) TREATMENT OF INDIVIDUALS PROHIBITED IN
 12 THE STERILE AREA.—

13 (1) PASSENGERS.—The pilot program shall re-
 14 quire air carriers to permit a passenger who is pro-
 15 hibited from flying because they have a fever or as
 16 a result of a secondary medical screening to resched-
 17 ule or cancel the flight the passenger was ticketed
 18 for at no cost to the passenger.

19 (2) EMPLOYEES AND CONTRACTORS.—Any air-
 20 port or airline employee or contractor that is prohib-
 21 ited from entering the sterile area of the airport be-
 22 cause they have a fever or as a result of a secondary
 23 medical screening under the pilot program shall be
 24 subject to the leave policies and procedures of such
 25 individual's employer.

1 (h) PROGRAM FOR REMAINDER OF COVID-19 PUB-
 2 LIC HEALTH EMERGENCY.—Not later than 90 days after
 3 the completion of the pilot program, based on the results
 4 of the pilot program and the most up-to-date and best
 5 available public health information, data, and evidence-
 6 based or evidence-informed scientific information, the Ad-
 7 ministrator, in coordination with the Secretary, the Sec-
 8 retary of Homeland Security, the Secretary of Health and
 9 Human Services, and the Director of the Centers for Dis-
 10 ease Control and Prevention, shall issue policy for deploy-
 11 ing a temperature check program at airports and airport
 12 security screening locations through the end of the
 13 COVID-19 public health emergency for domestic and
 14 international passengers, individuals accompanying those
 15 passengers, crew members, and other individuals who pass
 16 through airports and airport security screening locations.

17 (i) AUTHORITY.—The Administrator shall issue regu-
 18 lations to implement the temperature check program
 19 under subsection (h), including with respect to secondary
 20 screening requirements.

21 **SEC. 4. INCLUSION OF INFORMATION ABOUT TRAVELING**
 22 **DURING PUBLIC HEALTH EMERGENCIES IN**
 23 **PASSENGER NOTIFICATION SYSTEM.**

24 (a) IN GENERAL.—The Secretary shall revise section
 25 175.25 of title 49, Code of Federal Regulations, to require

1 the inclusion in the passenger notification system during
 2 the COVID-19 public health emergency of—

3 (1) relevant guidelines relating to safe traveling
 4 in air transportation;

5 (2) a message discouraging any individual who
 6 has a fever from traveling in air transportation; and

7 (3) a notification that each passenger and any
 8 individual accompanying a passenger into the sterile
 9 area of the airport will undergo a temperature check
 10 if the pilot program established under section 3 is in
 11 effect in that airport.

12 (b) **TIMELINES.**—The Secretary shall—

13 (1) revise section 175.25 of title 49, Code of
 14 Federal Regulations, in accordance with the require-
 15 ments of subsection (a) not later than 30 days after
 16 the date of enactment of this Act; and

17 (2) provide for the implementation of such revi-
 18 sions not later than 90 days after such date of en-
 19 actment.

20 **SECTION 1. SHORT TITLE.**

21 *This Act may be cited as the “Fly Safe and Healthy*
 22 *Act of 2021”.*

23 **SEC. 2. TEMPERATURE CHECKS PILOT PROGRAM.**

24 (a) **DEFINITIONS.**—*In this section:*

1 (1) *ADMINISTRATOR*.—The term “Adminis-
2 trator” means the Administrator of the Transpor-
3 tation Security Administration.

4 (2) *AIR TRANSPORTATION*.—The term “air trans-
5 portation” has the meaning given that term in section
6 40102 of title 49, United States Code.

7 (3) *APPROPRIATE COMMITTEES OF CONGRESS*.—
8 The term “appropriate committees of Congress”
9 means—

10 (A) the Committee on Commerce, Science,
11 and Transportation and the Committee on
12 Homeland Security and Governmental Affairs of
13 the Senate; and

14 (B) the Committee on Homeland Security of
15 the House of Representatives.

16 (4) *COVID–19 PUBLIC HEALTH EMERGENCY*.—
17 The term “COVID–19 public health emergency”
18 means the public health emergency first declared on
19 January 31, 2020, by the Secretary of Health and
20 Human Services under section 319 of the Public
21 Health Service Act (42 U.S.C. 247d) with respect to
22 the 2019 Novel Coronavirus (COVID–19) and in-
23 cludes any renewal of such declaration pursuant to
24 such section 319.

1 (5) *FEVER*.—The term “fever” means 100.4 de-
2 *grees Fahrenheit or higher.*

3 (6) *SECRETARY*.—The term “Secretary” means
4 *the Secretary of Homeland Security.*

5 (7) *STERILE AREA*.—The term “sterile area” has
6 *the meaning given that term in section 1540.5 of title*
7 *49, Code of Federal Regulations (or any successor reg-*
8 *ulation).*

9 (8) *TEMPERATURE CHECK*.—The term “tempera-
10 *ture check” means the screening of individuals for a*
11 *fever.*

12 (b) *ESTABLISHMENT OF PILOT PROGRAM*.—

13 (1) *IN GENERAL*.—Not later than 90 days after
14 *date of the enactment of this Act, the Administrator,*
15 *in coordination with the Secretary of Transportation,*
16 *the Secretary of Health and Human Services, and the*
17 *Director of the Centers for Disease Control and Pre-*
18 *vention, shall, subject to the availability of appropri-*
19 *ations, establish a 180-day pilot program (referred to*
20 *in this section as the “pilot program”) to conduct*
21 *temperature checks for domestic and international*
22 *passengers, individuals accompanying those pas-*
23 *sengers, crew members, and other individuals who*
24 *pass through airport security screening locations at*

1 *which screening is conducted by the Transportation*
2 *Security Administration.*

3 (2) *SELECTION OF SCREENING LOCATIONS.—The*
4 *Administrator, in the discretion of the Administrator,*
5 *shall select airport security screening locations de-*
6 *scribed in paragraph (1) that represent diverse oper-*
7 *ating conditions, such as high, medium, and low pas-*
8 *senger throughput, and airport locations for the pilot*
9 *program.*

10 (c) *SCREENING.—The pilot program shall require tem-*
11 *perature checks of individuals, including passengers, indi-*
12 *viduals accompanying those passengers, crew members, and*
13 *other individuals who pass through airport security screen-*
14 *ing locations selected for the pilot program under subsection*
15 *(b), for fevers when such individuals first present themselves*
16 *for screening at such a screening location. An individual*
17 *who registers a fever shall be subject to secondary medical*
18 *screening by medical professionals. An individual who reg-*
19 *isters a fever during a temperature check conducted under*
20 *the pilot program shall be denied admission to the sterile*
21 *area of the airport, subject to the terms of and any applica-*
22 *ble exemptions under the pilot program.*

23 (d) *ELEMENTS.—In developing the pilot program, the*
24 *Administrator shall, in the discretion of the Administrator,*
25 *address the following elements:*

1 (1) *The types and costs of technology that may*
2 *be used to conduct temperature checks.*

3 (2) *Policies applicable to screening procedures,*
4 *including a cost-benefit analysis, which may include*
5 *consideration of whether procedures can address ac-*
6 *commodating individuals with medically documented*
7 *disabilities or religious objections.*

8 (3) *Procedures for individuals who register a*
9 *fever, which shall include secondary medical screening*
10 *procedures to be administered by medical profes-*
11 *sionals, including the use of available viral testing*
12 *methods and demonstration of vaccination.*

13 (4) *Mechanisms to protect, to the maximum ex-*
14 *tent practicable, the privacy and medical information*
15 *of individuals subjected to temperature checks.*

16 (5) *Procedures to protect employees and contrac-*
17 *tors of the Transportation Security Administration*
18 *and reduce the risk of exposure to COVID–19 when*
19 *conducting temperature checks and carrying out the*
20 *pilot program.*

21 (6) *Procedures for exempting individuals who*
22 *have a fever unrelated to COVID–19, including in re-*
23 *lation to secondary medical screening procedures, as*
24 *described in paragraph (3).*

1 (7) *Training on the policies, procedures, and*
2 *equipment for employees responsible for implementing*
3 *the pilot program, to be completed prior to initiation*
4 *of such program.*

5 (8) *Policies to ensure a final decision regarding*
6 *access by an individual to the sterile area of an air-*
7 *port is made and carried out by a designated man-*
8 *agement official.*

9 (9) *Policies to ensure, to the maximum extent*
10 *practicable, the continued security, operations, and ef-*
11 *ficent throughput of individuals at airport security*
12 *screening locations and airports selected for the pilot*
13 *program under subsection (b).*

14 (10) *Consultation and cooperation with airport*
15 *authorities at airports selected for the pilot program,*
16 *including in relation to mitigating any disruption of*
17 *airport operations.*

18 (e) *EQUIPMENT.*—*The Administrator may conduct*
19 *temperature checks under the pilot program only using a*
20 *device lawfully manufactured and distributed, in accord-*
21 *ance with guidance and recommendations issued by the Sec-*
22 *retary of Health and Human Services, to measure the body*
23 *temperature of an individual.*

24 (f) *PROCUREMENT AND COORDINATION.*—*The Admin-*
25 *istrator shall procure temperature screening equipment and*

1 *implement best practices for conducting passenger tempera-*
2 *ture checks and secondary medical screenings under the*
3 *pilot program.*

4 (g) *PARTNERSHIPS.—*

5 (1) *IN GENERAL.—The Administrator may enter*
6 *into partnerships or contracts with private entities,*
7 *universities or other academic institutions, national*
8 *laboratories, public health authorities, or other enti-*
9 *ties to develop, evaluate, or improve technology for*
10 *purposes of detecting fevers or to conduct secondary*
11 *medical screening under the pilot program.*

12 (2) *AIRPORTS.—The Administrator may partner*
13 *with airports that have temperature screening pro-*
14 *grams to develop best practices, share data, and im-*
15 *plement the pilot program, but may not require air-*
16 *ports to share in the costs of the pilot program.*

17 (3) *NON-APPLICABILITY OF FACA.—The Federal*
18 *Advisory Committee Act (5 U.S.C. App.) shall not*
19 *apply to a partnership authorized in this subsection.*

20 (h) *TREATMENT OF INDIVIDUALS PROHIBITED IN THE*
21 *STERILE AREA.—*

22 (1) *PASSENGERS.—Under the pilot program, a*
23 *passenger who is prohibited from flying after reg-*
24 *istering a fever and undergoing secondary medical*
25 *screening under the pilot program shall be allowed to*

1 *reschedule, request a voucher, or cancel the flight res-*
2 *ervation at no cost to the passenger. If the passenger*
3 *elects to cancel the flight reservation, the air carrier*
4 *operating the flight shall refund to the passenger any*
5 *previously paid fares, fees, and taxes applicable to the*
6 *flight not later than 45 days after the date on which*
7 *the passenger cancels the flight reservation.*

8 (2) *EMPLOYEES AND CONTRACTORS.*—*Any air-*
9 *port or air carrier employee or contractor, including*
10 *an employee or contractor of an airport vendor or*
11 *airport tenant, who is prohibited from entering the*
12 *sterile area of the airport after registering a fever and*
13 *undergoing secondary medical screening under the*
14 *pilot program shall be subject to the leave policies and*
15 *procedures of the employer of the employee or con-*
16 *tractor.*

17 (i) *PASSENGER NOTIFICATION SYSTEM.*—*The Admin-*
18 *istrator shall design, test, and implement a notification sys-*
19 *tem, to be operated by Transportation Security Adminis-*
20 *tration, for alerting passengers of temperature checks under*
21 *the pilot program that includes—*

22 (1) *a notification of relevant public health guide-*
23 *lines relating to safe traveling in air transportation;*

1 (2) a message discouraging any individual who
2 has a fever or other symptoms of COVID–19 from
3 traveling in air transportation; and

4 (3) a notification that each passenger and any
5 individual accompanying a passenger into the sterile
6 area of the airport will undergo a temperature check,
7 subject to a secondary medical screening, if the pilot
8 program established under subsection (b) is in effect
9 in that airport.

10 (j) *REPORT ON THE PILOT PROGRAM.*—Not later than
11 120 days after the completion of the pilot program, based
12 on the results of the pilot program and the most up-to-date
13 and best available public health information, data, and evi-
14 dence-based or evidence-informed scientific information, the
15 Administrator, in coordination with the Secretary, the Sec-
16 retary of Transportation, the Secretary of Health and
17 Human Services, and the Director of the Centers for Disease
18 Control and Prevention, shall submit to the appropriate
19 committees of Congress a report—

20 (1) setting forth the findings of the pilot pro-
21 gram; and

22 (2) making recommendations for deploying a
23 temperature check program and secondary medical
24 screenings at airport security screening locations at
25 which screening is conducted by the Transportation

1 *Security Administration for domestic and inter-*
2 *national passengers, individuals accompanying those*
3 *passengers, crew members, and other individuals who*
4 *pass through such screening locations to respond to*
5 *public health emergencies.*

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Reported with an amendment