

115TH CONGRESS
2D SESSION

S. 3399

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

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

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-

1 including the head of an agency, shall use coach-class
2 accommodations.

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

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

9 (B) the covered employee is serving in, or
10 applying to, as applicable, a position in the De-
11 partment of Defense.

12 (b) EXCEPTIONS.—

13 (1) FIRST-CLASS AND BUSINESS CLASS.—Sub-
14 ject to the other provisions of this subsection, the
15 head of the agency employing a covered employee (or
16 to which a covered employee is applying, as applica-
17 ble), or in the case of the head of an agency, the
18 White House Chief of Staff, may sign a waiver au-
19 thORIZING the covered employee or the agency head,
20 as applicable, to use—

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

23 (i) no coach-class accommodations are
24 available on any flight that is scheduled
25 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-

1 tion described in clause (ii) or (iii) of sub-
2 paragraph (A);

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

7 (iii)(I) regularly scheduled flights be-
8 tween origin and destination points, includ-
9 ing connecting points, provide only other
10 than coach-class accommodations; and

11 (II) the covered employee or the agen-
12 cy head certifies, on the voucher of the
13 covered employee or the agency head, that
14 the situation described in subclause (I) ap-
15 plies;

16 (iv) the transportation costs of the
17 covered employee or the agency head are
18 paid in full through the acceptance by the
19 agency in which the covered employee or
20 the agency head is employed, or to which
21 the covered employee is applying, as appli-
22 cable, of payment from a non-Federal
23 source in accordance with chapter 300 of
24 title 41, Code of Federal Regulations, or
25 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

1 covered employee is applying, as applicable), or in
2 the case of the head of an agency, the White House
3 Chief of Staff, may authorize a covered employee or
4 an agency head, as applicable, to use accommoda-
5 tions other than coach-class accommodations for of-
6 ficial travel only on a case-by-case basis, unless the
7 covered employee or the agency head has a disability
8 or a special need that has been certified under para-
9 graph (4).

10 (4) CERTIFICATION OF DISABILITY OR SPECIAL
11 NEED.—

12 (A) DISABILITY.—

13 (i) IN GENERAL.—A disability de-
14 scribed in paragraph (1)(A)(ii) shall be
15 certified annually, unless the disability is a
16 lifelong condition, in which case the dis-
17 ability shall be certified once.

18 (ii) CONTENTS.—A certification re-
19 quired under clause (i) shall include, at a
20 minimum—

21 (I) a written statement by a com-
22 petent medical authority stating that
23 a special accommodation for the cov-
24 ered employee is necessary;

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

4 (III) a recommendation regard-
5 ing the suitable class of transportation
6 for the covered employee based on the
7 disability.

8 (B) SPECIAL NEED.—The special need of a
9 covered employee, including the head of an
10 agency, described in paragraph (1)(A)(ii) shall
11 be certified annually (unless the special need is
12 a lifelong condition, in which case the special
13 need shall be certified once) in accordance with
14 the procedures of the agency in which the cov-
15 ered employee is employed, or to which the cov-
16 ered employee is applying, as applicable.

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

23 (6) INCLUSION OF ATTENDANT.—If a covered
24 employee, including the head of an agency, the travel
25 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-

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

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

8 (7) the term “other than coach-class accom-
9 modations”—

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

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

14 (8) the term “scheduled flight time”—

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

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

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

○