



1 Purpose: In the nature of a substitute.

2
3

4 S. 316

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

7 Referred to the Committee on _____ and ordered to be
8 printed

9 Ordered to lie on the table and to be printed

10 AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED TO BE
11 PROPOSED BY _____

12 Viz:

13 Strike all after the enacting clause and insert the following:

14 **SECTION 1. SHORT TITLE.**

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

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

17 (a) Definitions.—In this section:

18 (1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the
19 Transportation Security Administration.

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

22 (3) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of
23 Congress” means—

24 (A) the Committee on Commerce, Science, and Transportation and the Committee
25 on Homeland Security and Governmental Affairs of the Senate; and

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

27 (4) COVID–19 PUBLIC HEALTH EMERGENCY.—The term “COVID–19 public health
28 emergency” means the public health emergency first declared on January 31, 2020, by the
29 Secretary of Health and Human Services under section 319 of the Public Health Service Act
30 (42 U.S.C. 247d) with respect to the 2019 Novel Coronavirus (COVID–19) and includes
31 any renewal of such declaration pursuant to such section 319.

32 (5) FEVER.—The term “fever” means 100.4 degrees Fahrenheit or higher.

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

2 (7) STERILE AREA.—The term “sterile area” has the meaning given that term in section
3 1540.5 of title 49, Code of Federal Regulations (or any successor regulation).

4 (8) TEMPERATURE CHECK.—The term “temperature check” means the screening of
5 individuals for a fever.

6 (b) Establishment of Pilot Program.—

7 (1) IN GENERAL.—Not later than 90 days after date of the enactment of this Act, the
8 Administrator, in coordination with the Secretary of Transportation, the Secretary of Health
9 and Human Services, and the Director of the Centers for Disease Control and Prevention,
10 shall, subject to the availability of appropriations, establish a 180-day pilot program
11 (referred to in this section as the “pilot program”) to conduct temperature checks for
12 domestic and international passengers, individuals accompanying those passengers, crew
13 members, and other individuals who pass through airport security screening locations at
14 which screening is conducted by the Transportation Security Administration.

15 (2) SELECTION OF SCREENING LOCATIONS.—The Administrator, in the discretion of the
16 Administrator, shall select airport security screening locations described in paragraph (1)
17 that represent diverse operating conditions, such as high, medium, and low passenger
18 throughput, and airport locations for the pilot program.

19 (c) Screening.—The pilot program shall require temperature checks of individuals, including
20 passengers, individuals accompanying those passengers, crew members, and other individuals
21 who pass through airport security screening locations selected for the pilot program under
22 subsection (b), for fevers when such individuals first present themselves for screening at such a
23 screening location. An individual who registers a fever shall be subject to secondary medical
24 screening by medical professionals. An individual who registers a fever during a temperature
25 check conducted under the pilot program shall be denied admission to the sterile area of the
26 airport, subject to the terms of and any applicable exemptions under the pilot program.

27 (d) Elements.—In developing the pilot program, the Administrator shall, in the discretion of
28 the Administrator, address the following elements:

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

30 (2) Policies applicable to screening procedures, including a cost-benefit analysis, which
31 may include consideration of whether procedures can address accommodating individuals
32 with medically documented disabilities or religious objections.

33 (3) Procedures for individuals who register a fever, which shall include secondary
34 medical screening procedures to be administered by medical professionals, including the
35 use of available viral testing methods and demonstration of vaccination.

36 (4) Mechanisms to protect, to the maximum extent practicable, the privacy and medical
37 information of individuals subjected to temperature checks.

38 (5) Procedures to protect employees and contractors of the Transportation Security
39 Administration and reduce the risk of exposure to COVID–19 when conducting temperature
40 checks and carrying out the pilot program.

41 (6) Procedures for exempting individuals who have a fever unrelated to COVID–19,

1 including in relation to secondary medical screening procedures, as described in paragraph
2 (3).

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

5 (8) Policies to ensure a final decision regarding access by an individual to the sterile area
6 of an airport is made and carried out by a designated management official.

7 (9) Policies to ensure, to the maximum extent practicable, the continued security,
8 operations, and efficient throughput of individuals at airport security screening locations
9 and airports selected for the pilot program under subsection (b).

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

12 (e) Equipment.—The Administrator may conduct temperature checks under the pilot program
13 only using a device lawfully manufactured and distributed, in accordance with guidance and
14 recommendations issued by the Secretary of Health and Human Services, to measure the body
15 temperature of an individual.

16 (f) Procurement and Coordination.—The Administrator shall procure temperature screening
17 equipment and implement best practices for conducting passenger temperature checks and
18 secondary medical screenings under the pilot program.

19 (g) Partnerships.—

20 (1) IN GENERAL.—The Administrator may enter into partnerships or contracts with
21 private entities, universities or other academic institutions, national laboratories, public
22 health authorities, or other entities to develop, evaluate, or improve technology for purposes
23 of detecting fevers or to conduct secondary medical screening under the pilot program.

24 (2) AIRPORTS.—The Administrator may partner with airports that have temperature
25 screening programs to develop best practices, share data, and implement the pilot program,
26 but may not require airports to share in the costs of the pilot program.

27 (3) NON-APPLICABILITY OF FACAA.—The Federal Advisory Committee Act (5 U.S.C.
28 App.) shall not apply to a partnership authorized in this subsection.

29 (h) Treatment of Individuals Prohibited in the Sterile Area.—

30 (1) PASSENGERS.—Under the pilot program, a passenger who is prohibited from flying
31 after registering a fever and undergoing secondary medical screening under the pilot
32 program shall be allowed to reschedule, request a voucher, or cancel the flight reservation at
33 no cost to the passenger. If the passenger elects to cancel the flight reservation, the air
34 carrier operating the flight shall refund to the passenger any previously paid fares, fees, and
35 taxes applicable to the flight not later than 45 days after the date on which the passenger
36 cancels the flight reservation.

37 (2) EMPLOYEES AND CONTRACTORS.—Any airport or air carrier employee or contractor,
38 including an employee or contractor of an airport vendor or airport tenant, who is prohibited
39 from entering the sterile area of the airport after registering a fever and undergoing
40 secondary medical screening under the pilot program shall be subject to the leave policies
41 and procedures of the employer of the employee or contractor.

1 (i) Passenger Notification System.—The Administrator shall design, test, and implement a
2 notification system, to be operated by Transportation Security Administration, for alerting
3 passengers of temperature checks under the pilot program that includes—

4 (1) a notification of relevant public health guidelines relating to safe traveling in air
5 transportation;

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

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

12 (j) Report on the Pilot Program.—Not later than 120 days after the completion of the pilot
13 program, based on the results of the pilot program and the most up-to-date and best available
14 public health information, data, and evidence-based or evidence-informed scientific information,
15 the Administrator, in coordination with the Secretary, the Secretary of Transportation, the
16 Secretary of Health and Human Services, and the Director of the Centers for Disease Control and
17 Prevention, shall submit to the appropriate committees of Congress a report—

18 (1) setting forth the findings of the pilot program; and

19 (2) making recommendations for deploying a temperature check program and secondary
20 medical screenings at airport security screening locations at which screening is conducted
21 by the Transportation Security Administration for domestic and international passengers,
22 individuals accompanying those passengers, crew members, and other individuals who pass
23 through such screening locations to respond to public health emergencies.