

# Alert

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## Senate Bill Would Require TSA Temperature Checks at U.S. Airports

Under a bipartisan bill introduced in the U.S. Senate, the Transportation Security Administration (TSA) would be required to conduct temperature checks on all passengers and other individuals seeking entry to an airport's sterile area. Airlines have been lobbying for TSA to conduct such temperature checks for several months. During a 120-day pilot program, TSA would screen all individuals for a fever of 100.4 degrees Fahrenheit or higher before they would be allowed to enter an airport's sterile area.

Under S. 4623, which was introduced in the Senate Commerce, Science and Transportation Committee by ranking minority member Sen. Maria Cantwell (D-Wash.) and cosponsored by majority member Sen. Rick Scott (R-Fla.), TSA must establish the program within 30 days of bill passage and consult with the Secretaries of Transportation, Homeland Security, and Health and Human Services, and the Centers for Disease Control and Prevention. While TSA may choose the pilot program airports, it must "select airports that represent diverse operating conditions, with high, medium, and low passenger throughput." In developing the program, TSA would be required to address a broad list of concerns, including the type of technology to use for screenings, screening procedures (including how to accommodate individuals with disabilities or those observing religious practices), privacy protections, and training for TSA employees. Upon conclusion of the program, TSA must issue a policy for conducting temperature checks for the remainder of the COVID-19 public health emergency.

The Senate bill would require airlines to allow passengers who are prohibited from flying as a result of registering fevers to change or cancel their flights at no cost. Similarly, any employee who registers a fever would be subject to their employer's leave policies. Additionally, the bill requires that DOT modify its passenger notification regulations to require airlines to notify passengers: (1) about safe travel guidelines, (2) that they will be subject to an airport temperature check, and (3) that they should not travel if they have a fever.

TSA arguably already has authority to conduct such checks. The Aviation and Transportation Security Act (49 U.S.C. § 114) affords TSA broad, overarching authority over transportation security, but two of the Act's specific provisions are relevant to passenger temperature screenings: (1) 49 U.S.C. § 114(g)(1), which grants TSA authority to act in response to a "national emergency," and (2) 49 U.S.C. § 114(f)(4) and (16), which afford TSA discretion to carry out unspecified measures "related to transportation security." However, TSA has resisted calls to proactively conduct these checks itself, instead urging them to be done by airports and airlines. Should S. 4623 become law, TSA would no longer have the discretion to resist such calls. A related bill that was introduced in the House in July — H.R. 7651 — calls for a similar pilot program, but that bill has not yet passed the House.



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