

115TH CONGRESS
1ST SESSION

H. R. 2309

To enhance the security operations of the Transportation Security Administration and stability of the transportation security workforce by applying the personnel system of title 5 of the U.S. Code to employees of the Transportation Security Administration who provide screening of all passengers and property, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2017

Mr. THOMPSON of Mississippi (for himself and Mrs. LOWEY) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To enhance the security operations of the Transportation Security Administration and stability of the transportation security workforce by applying the personnel system of title 5 of the U.S. Code to employees of the Transportation Security Administration who provide screening of all passengers and property, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Rights for Transpor-
3 tation Security Officers Act of 2017”.

4 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

5 (a) FINDINGS.—Congress finds the following:

6 (1) On September 11, 2001, nineteen terrorists,
7 who underwent airport security screening prior to
8 boarding domestic flights, were able to commandeer
9 four airplanes and use those airplanes to perpetrate
10 the most deadly terrorist attack ever to be executed
11 on United States soil.

12 (2) In the aftermath of those attacks, Congress
13 passed the Aviation and Transportation Security Act
14 (ATSA), enacted by President George W. Bush on
15 November 19, 2001 (Public Law 107–71), to en-
16 hance the level of security screening throughout our
17 aviation system and transfer responsibility for such
18 screening from the private sector to a new Federal
19 agency, the Transportation Security Administration
20 (TSA).

21 (3) By establishing TSA, Congress and the
22 American public recognized that the highest level of
23 screener performance was directly linked to employ-
24 ment and training standards, pay and benefits, and
25 the creation of an experienced, committed screening
26 workforce.

1 (4) The ATSA included a statutory footnote al-
2 lowing the TSA Administrator to “employ, appoint,
3 discipline, terminate, and fix the compensation”, in-
4 cluding the “terms, and conditions of employment of
5 Federal Service for such a number of individuals as
6 the Under Secretary determines to be necessary to
7 carry out the screening functions of the Under Sec-
8 retary under section 44901 of title 49, United States
9 Code”.

10 (5) TSA has interpreted the ATSA footnote as
11 applying to the Transportation Security Officer
12 workforce performing screening functions, while all
13 other Transportation Security Administration em-
14 ployees, including managers, are subject to title 5,
15 United States Code, as incorporated in title 49 of
16 such Code.

17 (6) In November 2006, the International Labor
18 Organization ruled that the Bush administration vio-
19 lated international labor law when it prohibited
20 Transportation Security Officers from engaging in
21 collective bargaining.

22 (7) After the Federal Labor Relations Board
23 approved a petition for the election of an exclusive
24 representative, on February 4, 2011, then-TSA Ad-
25 ministrator John Pistole issued a binding determina-

1 tion stating in part “it is critical that every TSA
2 employee feels that he or she has a voice and feels
3 safe raising issues and concerns of all kinds. This is
4 important not just for morale; engagement of every
5 employee is critically important for security”.

6 (8) Subsequently, in 2014, then-Administrator
7 Pistole issued a second determination, which was su-
8 perseded by a 2016 determination, which changed
9 the previous guidelines for collective bargaining and
10 limited the subjects that can be bargained as well as
11 issues in dispute that may be raised to an inde-
12 pendent, third-party neutral decisionmaker.

13 (9) The 2011, 2014, and 2016 determinations
14 cited TSA’s authority under section 44935 note of
15 title 59, United States Code, to create a personnel
16 system that denies the Transportation Security Offi-
17 cer workforce the same title 5 rights as other Fed-
18 eral workers, including the right to present griev-
19 ances to a neutral third party, fair pay under the
20 General Services wage system, including access to
21 overtime pay and earned leave, application of the
22 Fair Labor Standards Act of 1938, fair performance
23 appraisals under chapter 73 of title 5, United States
24 Code, and direct protections against employment dis-
25 crimination found in title 7, United States Code.

1 (10) The Transportation Security Officer work-
2 force is an integral component of the security frame-
3 work in place since the terrorist attacks on Sep-
4 tember 11, 2001, and responsible for screening more
5 than 738 million passengers annually. In the course
6 of their work, Transportation Security Officers not
7 only identify aviation security threats but also iden-
8 tify kidnapping and trafficking victims and prevent
9 firearms from being brought on planes in carry-on
10 bags. In 2016 alone, 3,391 firearms were discovered
11 by Transportation Security Officers at aviation secu-
12 rity checkpoints.

13 (11) Every day, Transportation Security Offi-
14 cers put their safety on the line to protect the flying
15 public and on November 1, 2013, a Transportation
16 Security Officer, Gerardo Hernandez, gave his life to
17 protect the flying public when he was killed by a
18 gunman who attacked the Los Angeles International
19 Airport.

20 (b) SENSE OF CONGRESS.—It is the sense of Con-
21 gress that the personnel system utilized by the Transpor-
22 tation Security Administration pursuant to the authority
23 of section 44935 note of title 49, United States Code, pro-
24 vides insufficient workplace protections for the Transpor-
25 tation Security Officer workforce, the frontline personnel

1 who secure our Nation’s aviation system and that such
2 personnel should be provided protections under title 5,
3 United States Code.

4 **SEC. 3. DEFINITIONS.**

5 For purposes of this Act—

6 (1) the term “covered position” means—

7 (A) a position within the Transportation
8 Security Administration; and

9 (B) any position within the Department of
10 Homeland Security, not described in subpara-
11 graph (A), the duties and responsibilities of
12 which involve providing transportation security
13 in furtherance of the purposes of the Aviation
14 and Transportation Security Act (Public Law
15 107–71), as determined by the Secretary;

16 (2) the term “covered employee” means an em-
17 ployee who holds a covered position;

18 (3) the term “employee” has the meaning given
19 such term by section 2105 of title 5, United States
20 Code;

21 (4) the term “Secretary” means the Secretary
22 of Homeland Security;

23 (5) the term “Administrator” means the official
24 within the Department of Homeland Security who is
25 responsible for overseeing and implementing trans-

1 portation security pursuant to the Aviation and
2 Transportation Security Act, whether designated as
3 the Assistant Secretary of Homeland Security
4 (Transportation Security Administration), the Ad-
5 ministrator of the Transportation Security Adminis-
6 tration, the Undersecretary of Transportation for
7 Security, or otherwise;

8 (6) the term “TSA personnel management sys-
9 tem” means any personnel management system, as
10 established or modified under—

11 (A) section 111(d) of the Aviation and
12 Transportation Security Act; or

13 (B) section 114(n) of title 49, United
14 States Code;

15 (7) the term “agency” means an Executive
16 agency, as defined by section 105 of title 5, United
17 States Code; and

18 (8) the term “conversion date” means the date
19 as of which paragraphs (1) through (3) of section
20 4(b) take effect.

21 **SEC. 4. CONVERSION OF SCREENING PERSONNEL.**

22 (a) **TERMINATION OF CERTAIN PERSONNEL AU-**
23 **THORITIES.**—Effective as of the date of the enactment of
24 this Act—

1 (1) each provision of law cited in section 2(6)
2 is repealed, and any authority to establish or modify
3 a TSA personnel management system under either
4 such provision of law shall terminate;

5 (2) all authority to establish or adjust a human
6 resources management system under chapter 97 of
7 title 5, United States Code, shall terminate with re-
8 spect to covered employees and covered positions;
9 and

10 (3) section 44935 note of title 49, United
11 States Code, is repealed.

12 (b) COVERED EMPLOYEES AND POSITIONS MADE
13 SUBJECT TO SAME PERSONNEL MANAGEMENT SYSTEM
14 AS APPLIES TO CIVIL SERVICE EMPLOYEES GEN-
15 ERALLY.—Effective as of the date determined by the Sec-
16 retary, but in no event later than 60 days after the date
17 of the enactment of this Act—

18 (1) all TSA personnel management policies, let-
19 ters, guidelines, and directives, including the August
20 2016 Determination, shall cease to be effective;

21 (2) any human resources management system
22 established or adjusted under chapter 97 of title 5,
23 United States Code, to the extent otherwise applica-
24 ble with respect to covered employees or covered po-
25 sitions, shall cease to be effective; and

1 (3) covered employees and covered positions
2 shall become subject to the provisions of title 5,
3 United States Code.

4 **SEC. 5. TRANSITION RULES.**

5 (a) **NONREDUCTION IN RATE OF PAY.**—Any conver-
6 sion of an employee from a TSA personnel management
7 system to the provisions of law made applicable with re-
8 spect to such employee by section 4(b)(3) shall be effected,
9 under pay conversion rules prescribed by the Secretary,
10 without any reduction in the rate of basic pay payable to
11 such employee.

12 (b) **PRESERVATION OF OTHER RIGHTS.**—In the case
13 of each individual who is a covered employee as of the con-
14 version date, the Secretary shall take any actions which
15 may be necessary to ensure that—

16 (1) all TSA personnel management policies, let-
17 ters, guidelines, and directives, including the August
18 2016 Determination, shall cease to be effective;

19 (2) all annual leave, sick leave, or other paid
20 leave accrued, accumulated, or otherwise available to
21 a covered employee immediately before the conver-
22 sion date shall remain available to the employee,
23 until used, so long as such individual remains con-
24 tinuously employed by the Department of Homeland
25 Security; and

1 (3) the Government share of any premiums or
2 other periodic charges under the provisions of law
3 governing group health insurance shall remain the
4 same as was the case immediately before the conver-
5 sion date, so long as such individual remains con-
6 tinuously employed by the Department of Homeland
7 Security.

8 **SEC. 6. CONSULTATION REQUIREMENT.**

9 (a) **EXCLUSIVE REPRESENTATIVE.**—The labor orga-
10 nization certified by the Federal Labor Relations Author-
11 ity on June 29, 2011, or successor shall be treated as the
12 exclusive representative of full- and part-time non-super-
13 visory personnel carrying out screening functions under
14 section 44901 of title 49, United States Code, as that term
15 is used in section 111(d) of the Aviation and Transpor-
16 tation Security Act and shall be the exclusive representa-
17 tive for the employees under chapter 71 of title 5, United
18 States Code, with full rights under such chapter 71. Any
19 collective bargaining agreement on the effective date of
20 this legislation shall remain in effect.

21 (b) **CONSULTATION RIGHTS.**—Within 14 days after
22 the date of the enactment of this Act, the Secretary shall
23 consult with the exclusive representative for employees
24 under chapter 71 of title 5, United States Code, on the
25 formulation of plans and deadlines to carry out the conver-

1 sion of covered employees and covered positions under this
2 Act. The Secretary shall provide in writing to the exclusive
3 representative the final plans in accordance with which the
4 Secretary intends to carry out the conversion of covered
5 employees and covered positions under this Act, including
6 with respect to such matters as—

- 7 (1) the proposed conversion date; and
- 8 (2) measures to ensure compliance with section
9 5.

10 (c) **REQUIRED AGENCY RESPONSE.**—If any views or
11 recommendations are presented under subsection (b)(2) by
12 the exclusive representative, the Secretary shall consider
13 the views or recommendations before taking final action
14 on any matter with respect to which the views or rec-
15 ommendations are presented and provide the exclusive
16 representative a written statement of the reasons for the
17 final actions to be taken.

18 (d) **SUNSET PROVISION.**—The provisions of this sec-
19 tion shall cease to be effective as of the conversion date.

20 **SEC. 7. NO RIGHT TO STRIKE.**

21 Nothing in this Act shall be considered—

- 22 (1) to repeal or otherwise affect—
 - 23 (A) section 1918 of title 18, United States
24 Code (relating to disloyalty and asserting the
25 right to strike against the Government); or

1 (B) section 7311 of title 5, United States
2 Code (relating to loyalty and striking); or
3 (2) to otherwise authorize any activity which is
4 not permitted under either provision of law cited in
5 paragraph (1).

6 **SEC. 8. REGULATIONS.**

7 The Secretary may prescribe any regulations nec-
8 essary to carry out this Act.

9 **SEC. 9. DELEGATIONS TO ADMINISTRATOR.**

10 The Secretary may, with respect to any authority or
11 function vested in the Secretary under any of the pre-
12 ceding provisions of this Act, delegate any such authority
13 or function to the Administrator of the Transportation Se-
14 curity Administration under such terms, conditions, and
15 limitations, including the power of redelegation, as the
16 Secretary considers appropriate.

17 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

18 There are authorized to be appropriated such sums
19 as may be necessary to carry out this Act.

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