

SCREENING AND VETTING PASSENGER
EXCHANGE ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 4581

TO REQUIRE THE SECRETARY OF HOMELAND SECURITY TO
DEVELOP BEST PRACTICES FOR UTILIZING ADVANCED
PASSENGER INFORMATION AND PASSENGER NAME RECORD DATA
FOR COUNTERTERRORISM SCREENING AND VETTING
OPERATIONS, AND FOR OTHER PURPOSES



SEPTEMBER 4, 2018.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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{ REPORT
115-334

SCREENING AND VETTING PASSENGER EXCHANGE ACT

SEPTEMBER 4, 2018.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany H.R. 4581]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 4581) to require the Secretary of Homeland Security to develop best practices for utilizing advanced passenger information and passenger name record data for counterterrorism screening and vetting operations, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

H.R. 4581, the Screening and Vetting Passenger Exchange Act of 2017, requires the Secretary of Homeland Security to develop best practices for the Department of Homeland Security (DHS or the Department) when using passenger name record data and advance passenger information for counterterrorism screening and vetting operations. It also directs DHS to make unclassified versions of best practices available to Visa Waiver Program (VWP) countries

and other appropriate countries, and provide assistance to those countries in implementing such best practices.

II. BACKGROUND AND THE NEED FOR LEGISLATION

DHS's Customs and Border Protection and Transportation Security Administration use advance passenger information data and passenger name record data to confirm a traveler's identity and their travel patterns before the passenger enters the United States. These data sets are vital to identify travelers with potential ties to criminal organizations and terrorist groups and to determine whether stopping them from traveling is necessary. In addition to our own data, the European Union agreed in 2012 to provide passenger name record data for passengers flying to the United States to ensure safety and prevent transnational crime and terrorism, and on guidelines for the use and transfer of the information.¹ This agreement allowed DHS to receive additional information on passengers flying to the United States.

Currently, the United States has not developed best practices for using passenger data. Identifying best practices will allow DHS and its components to screen and vet travelers in the most effective and efficient way.

Additionally, many of our allies, including those that participate in the VWP,² do not have the capabilities or procedures needed to utilize this sort of advanced data for screening and vetting purposes.

The Committee has held several hearings examining the need for strong information sharing with partner governments to identify and screen potential security threats. For example, in 2015, the Committee held a roundtable with officials from the Department, U.S. Customs and Border Protection, and the U.S. Department of State, as well as a private sector expert, about the VWP.³ Participants discussed the need to enhance the VWP in light of the recent terrorist attacks in Europe, including the November 13, 2015 terrorist attacks in Paris, France. Dr. Marc Frey, who previously served as the Director of the VWP from 2007–2010, explained that “DHS and Congress must ensure that participating countries are fully meeting their information-sharing obligations.” In 2016, the Committee held a hearing with officials from the Department of State, U.S. Citizenship and Immigration Services, U.S. Immigration and Customs Enforcement, and the DHS Inspector General about the security of visa programs in the United States. Witnesses discussed the roles they play in determining if an applicant is eligible for a visa and the need to enhance screening.⁴

¹2012 O.J. (L 174) 1, available at [https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:22012X0704\(01\)](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:22012X0704(01)).

²The Visa Waiver Program allows temporary visitors from certain European countries to enter the United States as nonimmigrant visitors for business or pleasure without obtaining a visa. The VWP sets a standard for participating countries; travelers are required to present e-passports (passports with a chip containing biometric information), requires information sharing on criminal and security concerns, and requires reporting on lost and stolen travel documents.

³*Strengthening the Visa Waiver Program After the Paris Attacks: Roundtable Before the S. Comm. On Homeland Sec. & Governmental Affairs*, 114th Cong. (2015), available at https://www.hsgac.senate.gov/hearings/roundtable_-strengthening-the-visa-waiver-program-after-the-paris-attacks.

⁴*The Security of U.S. Visa Program: Hearing Before the S. Comm. On Homeland Sec. & Governmental Affairs*, 114th Cong. (2016), available at <https://www.hsgac.senate.gov/hearings/the-security-of-us-visa-programs>.

The Act would direct DHS to improve information sharing and screening by and with foreign partners by sharing best practices and assisting countries with the implementation of those best practices. By sharing unclassified versions of these best practices with countries that participate in the VPM, and others as appropriate, we will help limit the travel of individuals who may pose a threat before they arrive in the United States, and assist in strengthening the security of the partner country.

III. LEGISLATIVE HISTORY

Representative Brian Fitzpatrick (R-PA-8) introduced H.R. 4581, the Screening and Vetting Passenger Exchange Act of 2017, on December 7, 2017, with Rep. Kathleen Rice (D-NY-4), Rep. John Katko (R-NY-24), Rep. Mike Gallagher (R-WI-8), Rep. Clay Higgins (R-LA-3), Rep. John Rutherford (R-FL-4), Rep. Thomas Garrett Jr. (R-VA-5), and Rep. Michael McCaul (R-TX-10). On December 12, 2017, Rep. Bonnie Watson Coleman (D-NJ-12) and Rep. Val Butler Demings (D-FL-10) joined as cosponsors of the bill. On January 9, 2018, H.R. 4581 passed the House by a vote of 415 to 1.

H.R. 4581 was referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered the Act at a business meeting on June 13, 2018. During the business meeting, a substitute amendment was offered by Chairman Ron Johnson. The bill and the substitute amendment were agreed to by voice vote en bloc. Senators Johnson, Portman, Lankford, Enzi, McCaskill, Carper, Peters, Hassan, Harris and Jones were present for both votes.

IV. SECTION-BY-SECTION ANALYSIS OF THE ACT, AS REPORTED

Section 1. Short title

This section establishes the short title of the Act as the “Screening and Vetting Passenger Exchange Act of 2017.”

Section 2. Passenger screening best practices

Subsection (a) directs DHS to develop best practices for using passenger name record data and advanced passenger information for the purpose of counterterrorism screening and vetting.

Subsection (b) requires that DHS, to the greatest extent practicable, make available unclassified versions of best practices to appropriate countries, including VWP countries, and assist those countries with implementing the best practices.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this Act and determined that the Act will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the Act contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 22, 2018.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4581, the Screening and Vetting Passenger Exchange Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 4581—Screening and Vetting Passenger Exchange Act of 2017

H.R. 4581 would require the Department of Homeland Security (DHS) to develop effective practices for screening certain people entering the United States through the review of information provided by those travelers. The act would direct DHS to share those practices with certain other countries. DHS is currently carrying out activities similar to those that would be required by the act; thus, CBO estimates that implementing H.R. 4581 would not significantly affect spending by DHS.

Enacting H.R. 4581 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 4581 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 4581 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On February 12, 2018, CBO transmitted a cost estimate for H.R. 4581 as passed by the House of Representatives on January 9, 2018. CBO's estimates of the budgetary effects of the two versions of the legislation are the same.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE ACT, AS REPORTED

Because H.R. 4581 would not repeal or amend any provision of current law, it would not make changes in existing law within the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.