

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON TRANSPORTATION

Lori D. Wilson, Chair

SB 1372 (Newman) – As Amended April 30, 2024

SENATE VOTE: 26-7

SUBJECT: Airports: third-party vendors: security lanes

SUMMARY: Prohibits a public airport that provides commercial services from entering into an agreement that authorizes a private third-party vendor providing expedited security screening unless certain exempting criteria are met. Specifically, **this bill:**

- 1) Prohibits a public airport that provides commercial services from entering into an agreement that authorizes a private third-party vendor that provides expedited security screening to use the standard security lane or the Transportation Security Administration PreCheck security lane.
- 2) Allows an agreement between a public airport and private third-party vendor if either of the following applies:
 - a) The airport operator entered into the contract with the private third party-vendor before January 1, 2025;
 - b) The private third-party vendor has obtained dedicated TSA security lanes solely for use by the private third-party vendor at that public airport.
- 3) Specifies that, under these provisions, an airline is not a private third-party vendor, and further exempts any services, including priority lanes or lines, offered by an airline solely for use by the airline's passengers, without a separate charge to a passenger by a private third-party vendor.

EXISTING LAW:

- 1) Establishes the Transportation Security Administration (TSA) and the role of Administrator of the TSA for overseeing civil aviation security services at each airport in the United States. (Aviation and Transportation Security Act of 2001; 49 United States Code (U.S.C.) §114, § 44901, and §44903)
- 2) Assigns the Administrator various responsibilities, including managing day-to-day security screening operations for passenger air transportation; hiring, training and testing security screening personnel to provide security screening at all U.S. airports; providing operation guidance to the TSA's field security resources to be implemented by designated Federal Security Directors (FSDs). (49 U.S.C. §44901; 49 U.S.C. §44933-44937)
- 3) Grants the Administrator authority to establish requirements to implement trusted passenger programs and use available technologies to expedite the security screening of passengers who participate in such programs, thereby allowing security screening personnel to focus on those passengers who should be subject to more extensive screening. (Aviation and Transportation Security Act of 2001)

- 4) Establishes the TSA PreCheck Program and requirements for the provision of expedited security screening of passengers, including vetting and risk assessment of applicants with biometric means, and further requires the Administrator to ensure that PreCheck screening operations remain open and available during peak and high-volume travel. (TSA Modernization Act of 2018; 49 U.S.C. §44919)
- 5) Requires the Administrator to approve an application by an airport operator to contract with a qualified private screening company for screening of passengers and property at the airport if it is determined that the approval would not compromise security or detrimentally affect the cost-efficiency or effectiveness of screening at the airport. (49 U.S.C. §44920(a) and (b))
- 6) Requires airport operators to adopt and carry out a security program (or plan) that has been approved by the TSA and to notify TSA of changes that would affect security, including layout or physical structure of any area under the control of the airport operator, airport tenant, aircraft operator, or foreign air carrier used to support the screening process, access, presence, or movement control functions (49 Code of Federal Regulations 1542.101 and 1542.107)
- 7) Requires governing bodies of public airports to manage airport facilities and grant airport concessions in furtherance of the development of state commerce and tourism, including by avoiding wasteful duplication of such services; securing to the users of airports safe, courteous, and quality service; allocating limited airport resources to promote such ends. (Public Utilities Code 21690.7)

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS: In the wake of the September 11th terrorist attacks, Congress enacted the Aviation and Transportation Security Act of 2001, creating the TSA to oversee civil aviation security and prevent similar attacks in the future. For the first time in the country's history, the federal government established a new paradigm of air transportation security protocols for screening passengers and cargo nationwide. With TSA managing security of over 440 federalized airports today, screening has become a tediously familiar experience for travelers.

Congress directed TSA to engage in research and development of new security technologies, recognizing that such technologies would enable expedited screening security procedures. Over time, TSA operations have evolved to reflect advances in identity verification and physical screening. The agency is actively deploying, among other things, biometrics technology, credential authentication technology, automated screening lanes, and computed tomography X-ray scanning in airports across the country. However, the full implementation of these technologies is unlikely to happen anytime soon, due to funding constraints. According to TSA Administrator David Pekoske, speaking on the FY 2025 budget request, low budget allocations in previous fiscal years, operations expenses and diversion of collected passenger fees are a hindrance to roll-out of new technologies for faster screening, for example, preventing full deployment of facial recognition scanners in airports until 2049.

Registered Traveler Program (RTP) and CLEAR. Recognizing its own limitations in timely implementation of new, expedited security technologies, TSA rolled out the RTP in 2006. As detailed in a November 2006 technical document for a "Registered Traveler Program Business Model", TSA actively engaged the private sector to help develop technical standards as well as

operational/business models for “a common infrastructure that allow[ed trusted] passengers to use [expedited screening] at any participating airports” and to create a “fair and seamless platform for airports, airlines and vendors to interface with TSA and each other”.

Today, Secure Identity LLC (doing business as CLEAR Secure, Inc.) is the largest private entity operating under the RTP. CLEAR Secure is a publicly traded company that operates a service known as “Clear Plus” or “CLEAR” which provides a biometric identity verification service for use at major airports, event arenas and sports stadiums. CLEAR is a subscription-based service, currently costing \$189 per passenger per year; discounts are available for family members and through partnerships with American Express, Delta Airlines and United Airlines. CLEAR operates at 57 airports in the U.S., with over 22 million members.

CLEAR Secure provides service at most of California’s biggest airports, with the exceptions of John Wayne International Airport, Hollywood/Burbank Airport, and Fresno International Airport. CLEAR Secure reports that they paid California airports \$13 million in 2023. Proponents of the bill argue that this creates a conflict of interest for airports, in that longer TSA lines encourage more CLEAR customers which could raise additional revenue for the airports if more space were leased. While this may be true, airports also lose out on revenue from concessions when passengers spend hours waiting for security screening. Were airports to lose the CLEAR revenue, they would make it up by charging other companies that utilize the airport space more, such as rental car companies, other concessionaires, or airlines.

At airports where CLEAR is available, a CLEAR customer has their identity verified (by iris or fingerprint scan or face recognition) and their boarding pass scanned by a CLEAR employee. The CLEAR employee then escorts the CLEAR customer to a TSA agent checking government IDs and verifying boarding passes. As the CLEAR customer’s identity has already been verified, the TSA agent generally only looks at the boarding pass and then allows the customer to advance to physical security screening, thereby “skipping” the line for ID and travel document review.

CLEAR membership can be used with or without TSA PreCheck status. CLEAR customers who also have TSA PreCheck go to the TSA PreCheck security checkpoint; those without PreCheck go to the regular checkpoint. According to CLEAR Secure, about 10% of airport patrons are CLEAR customers.

At the initial implementation of the RTP, TSA recognized that the RTP could provide increased efficiency for security screening but could also negatively impact non-Registered Traveler (non-RT) wait times. In its November 2006 Business Model Document, TSA noted that “[r]equests for additional lanes are subject to airport and TSA approval based on the unique operational set-ups of the individual airports and their checkpoints”. In order to minimize impact on non-RT travelers, the agency has informally mandated the use of “zippering” to manage passenger traffic from the standard TSA or TSA PreCheck security lanes and from the corresponding CLEAR lanes. In practice, however, zippering is dependent upon the TSA agent at the checkpoint and passengers traveling in groups or with family are often processed together, irrespective of CLEAR status.

The perceived unfairness of CLEAR customers paying to save time and skip lines has rankled many non-CLEAR passengers. Conversely, many CLEAR customers find the service valuable for this exact reason. According to a recent letter to the editor published in the L.A. Times, one reader writes that: “As a frequent business traveler, I feel Clear is worth the extra annual fee for the time savings, in addition to my PreCheck.”

TSA PreCheck Program. In 2018, Congress passed the TSA Modernization Act, which required TSA to develop the TSA PreCheck Program, an expedited security screening protocol for trusted travelers. TSA PreCheck is modeled after other trusted traveler programs (Global Entry, SENTRI, NEXUS, FAST) authorized by Customs and Border Protection for transit between foreign countries and the United States, though largely across Canadian-U.S.-Mexican borders.

The TSA PreCheck Program costs approximately \$80 per passenger (administrative and processing fees), but gives travelers PreCheck status for five years. Similar to travelers in standard security lanes, travelers with TSA PreCheck status must still have their identification and boarding pass verified by a TSA agent. Unlike standard security lanes, however, TSA PreCheck travelers do not need to remove their shoes and are permitted to leave their laptops/electronics and liquids in their carry-on luggage.

The TSA Modernization Act set specific timeline goals for passenger enrollment in the TSA PreCheck program, and further authorized TSA to work with private contractors to facilitate registrations. CLEAR Secure recently entered into an agreement with TSA to serve as a private contractor promoting and enabling enrollment in the TSA PreCheck Program. CLEAR Secure will likely benefit from enrollment of passengers in TSA PreCheck who decide to subscribe to CLEAR services at the same time.

Reimbursable Security Screening Services Program (RSSP). Starting in 2019, TSA began a new pilot program in eight airports called the “Reimbursable Screening Services Program” (RSSP). The RSSP, which ends in 2025, authorizes private companies or airlines to establish and provide screening services and checkpoints outside an airport terminal’s primary screening area for passengers. Under the program, participants reimburse TSA fully for all personnel and non-personnel costs associated with the additional services at the new checkpoints. TSA states that the RSSP proposals are reviewed to ensure that there is no negative impact on current operations at existing security checkpoints for general travelers.

California currently hosts two RSSP participants, both operating at Los Angeles International Airport (LAX). These include Private Suite (P/S), a luxury airport terminal company advertised as a “back door to your commercial aircraft, [with] private TSA and Customs clearance” and the Delta One Lounge at LAX Terminal 3. The P/S service is subscription-based, with an entrance fee ranging from \$1,095 for one-time access to its salon all the way up to \$4,850 for annual membership, which reduces the salon rate to \$750 per visit. A fully private Delta One TSA screening experience can be accessed through the purchase of a “premium” business class seat on a Delta One-eligible flight, or by Delta 360 members (which is Delta’s invitation-only status).

The RSSP attempts to address three major bottlenecks in airport security screening, which are limited TSA funding for its basic operations, the lack of sufficient space to accommodate more screening, and the dearth of TSA agents to support high passenger through-put. Most airports were designed prior to the 9/11 attacks and had no dedicated space for security screening. Adding additional lines and lanes for CLEAR or other third-party security companies is not always possible. Moreover, insufficient TSA staffing has been an ongoing concern of airlines and passengers over the last few years.

Other “Pay-to-Play” Services. Consumers often pay to jump lines, and CLEAR is not the only instance of consumers paying to get ahead in airports or elsewhere. For example, Southwest customers can pay to pre-board. In fact, many airlines, including American Airlines, Delta Airlines, United Airlines, Southwest, and Jet Blue, offer or have previously offered elite status or

tickets for higher-class seats that afford similar line-jumping benefits as CLEAR. For example, Delta offers priority lines for elite or frequent travelers in select airport locations, including in California (LAX, SNA, SAN, SFO, SJC). Jet Blue offers similar expedited security at LAX, PSP, SMF, SAN, and SJC. This bill allows these airline priority lines for expedited screening to continue operating without requiring a dedicated security lane or TSA agent.

According to the author, “CLEAR, the expedited screening service provider, sold its services to California’s public airports as a way to enhance security and improve efficiency. Yet, recently, CLEAR has been the source of numerous security violations, including at least one incident in which CLEAR escorted past TSA an individual using a boarding pass found in the trash. And while CLEAR may save its customers time, it does so at the direct expense of those who cannot or choose not to purchase its nearly \$200-a-year subscription. SB 1372 seeks to create shared motivation between CLEAR, airports, and TSA to grant premium travelers their own, dedicated lane, separate from those used by the general public. SB 1372 does not ban CLEAR. It’s simply about finding a better basis for the operations of expedited screening programs like CLEAR, so that those who participate can enjoy the benefits of membership without adversely affecting those who don’t.”

Writing in support, the Association of Flight Attendants-CWA, AFL-CIO state, “SB 1372 would restore equal access and treatment at the airport security checkpoint by requiring companies like CLEAR to operate in a dedicated security lane, separate from general travelers and TSA PreCheck members. This separation would preserve CLEAR’s ability to operate in California but in a way that streamlines the security process for everyone moving through California’s airports, whether CLEAR customers or not.”

In opposition, the California Airports Council writes “Airport security checkpoints are managed and controlled by the [TSA] which includes staffing, configuration and overall passenger screening processes. Airport authorities are allowed under federal law to contract with entities that have obtained approval from the TSA, including CLEAR, which screens airport passengers using biometrics. The process by which CLEAR customers are screened through the checkpoint is controlled by the TSA, not the airport. The overall intent is to make airline passenger security screening at airports faster. ...Commercial airports are required to be financially self-sufficient. Thus, airlines pay airport Rates & Charges for use of the airport. Rates & Charges will include landing fees, passenger ticket fees, and services such as parking, fueling and deicing. ...When airports have sources of non-airline revenue, it lowers the Rates & Charges paid by airlines, thus keeping airline operating costs lower, which can directly impact consumer airline ticket prices. Rental cars, concessions, advertising and CLEAR, are all sources of non-airline revenue.”

Committee comments: This bill prohibits a public airport from entering into a contract with a private vendor for security services, unless the contract was executed prior to Jan 1, 2025, or the private vendor obtains a dedicated security lane solely for use by the vendor’s customers. The bill also exempts contracts made between airports and airlines for the provision similar expedited screening services without a dedicated security lane.

There are many examples of consumers paying extra money to access additional privileges both inside and outside of airports. CLEAR Plus provides a significant time-saving benefit to frequent fliers at minimal expense. Unlike other examples of consumers paying to get ahead, the author contends that cutting TSA lines should not be permitted because the TSA provides a government service, not a private service. However, this bill is not uniform in its prohibition of privileged

access, preserving airlines' ability to offer their passengers expedited screening services with purchase of elite status or higher-class seats without obtaining a dedicated security lane.

The bill permits private vendors of expedited security screening services to operate if they can obtain a dedicated security lane. However, this is both an inefficient use of TSA staff and, critically, outside of private vendors and airport operators' control. Requiring a dedicated security lane may result in less agile and adaptive TSA operations to respond to airports' security needs. The RSSP pilot may not address staff allocation issues, as TSA agents staffing RSSP locations will be stationed away from airports' primary screening areas and TSA may have less flexibility to move its TSA agents around as needed.

More importantly, TSA agents are federal employees and TSA exercises approval authority over public airports' allocation of TSA staff and security layout in their airport security plans. Public airports do not have any authority to control the allocation of TSA agents or space to allow for a dedicated security lane solely for the private third-party vendor's use, as required by this bill. Even if TSA did grant a public airport enough TSA agents to staff a dedicated CLEAR lane, the dedicated TSA agent could not help with screening the non-CLEAR security lanes without violating the provisions of this bill.

Government taxes and security fees cover the cost of TSA security screening operations. While this bill may reduce some of the perceived inequity of line-cutting, this bill does not address the underlying issues of funding, staffing and space that are causing such long lines in the first place. Apart from the limited RSSP pilot program, there is no mechanism that allows CLEAR Secure or airlines to reimburse TSA for costs associated with staffing security lanes, let alone paying for dedicated security lanes. CLEAR Secure, airport operators and airlines may have some ability to persuade Congress to grant TSA more funding or to extend the RSSP program.

Related Legislation: None.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of Government Employees Local 1230
Association of Flight Attendants - CWA (AFA)

Opposition

Bay Area Council
Burbank-Glendale-Pasadena Airport Authority
California Airports Council
California Chamber of Commerce
California Travel Association
Chamber of Progress
City of San Jose
LAX Coastal Chamber of Commerce
Los Angeles Area Chamber of Commerce
North San Diego Business Chamber
San Diego Regional Chamber of Commerce
San Francisco Chamber of Commerce

Secure Identity LLC
Technet

Analysis Prepared by: Stephanie Choing / TRANS. / (916) 319-2093