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HOUSE OF REPRESENTATIVES

REPORT
105–372

CLARIFICATIONS TO PILOT RECORDS IMPROVEMENT ACT OF 1996

OCTOBER 31, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

REPORT

[To accompany H.R. 2626]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 2626) to make clarifications to the Pilot Records Improvement Act of 1996, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. RECORDS OF EMPLOYMENT OF PILOT APPLICANTS.

Section 44936(f) of title 49, United States Code, is amended—

(1) in paragraph (1) by striking "Before hiring an individual" and inserting "Subject to paragraph (14), before allowing an individual to begin service";

(2) in paragraph (1)(B) by inserting "as a pilot of a civil or public aircraft" before "at any time";

(3) in paragraph (4)—

(A) by inserting "and air carriers" after "Administrator"; and

(B) by striking "paragraph (1)(A)" and inserting "paragraphs (1)(A) and (1)(B)";

(4) in paragraph (5) by striking "this paragraph" and inserting "this subsection";

(5) in paragraph (10)—

(A) by inserting "who is or has been" before "employed"; and

(B) by inserting ", but not later than 30 days after the date" after "reasonable time"; and

(6) by adding at the end the following:

"(14) SPECIAL RULES WITH RESPECT TO CERTAIN PILOTS.—

"(A) PILOTS OF CERTAIN SMALL AIRCRAFT.—Notwithstanding paragraph (1), an air carrier, before receiving information requested about an individual under paragraph (1), may allow the individual to begin service for a period not to exceed 90 days as a pilot of an aircraft with a maximum payload

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capacity (as defined in section 119.3 of title 14, Code of Federal Regulations) of 7,500 pounds or less, or a helicopter, on a flight that is not a scheduled operation (as defined in such section). Before the end of the 90-day period, the air carrier shall obtain and evaluate such information. The contract between the carrier and the individual shall contain a term that provides that the continuation of the individual's employment, after the last day of the 90-day period, depends on a satisfactory evaluation.

"(B) GOOD FAITH EXCEPTION.—Notwithstanding paragraph (1), an air carrier, without obtaining information about an individual under paragraph (1)(B) from an air carrier or other person that no longer exists, may allow the individual to begin service as a pilot if the air carrier required to request the information has made a documented good faith attempt to obtain such information.".

REPORT

Between 1987 and 1994, there were reportedly at least 7 fatal accidents involving scheduled airlines and pilot error where the pilot had demonstrated problems but the airline was not required to check the pilot's records before making the hiring decision. These accidents include the following:

A November 15, 1987 Continental Airlines crash at Denver where 25 passengers died;

A January 19, 1988 Trans-Colorado crash at Durango where 7 passengers died;

A February 19, 1988 AVAir crash near Raleigh-Durham where all 10 passengers died;

An October 28, 1989 Aloha Island Air crash in Hawaii where all 18 passengers died;

An April 22, 1992 Scenic Air crash in Hawaii where all 8 passengers died;

A December 1993 Express II crash near Hibbing, Minnesota where all 16 passengers died; and

A December 13, 1994 American Eagle crash near Raleigh-Durham where 13 passengers died.

The National Transportation Safety Board (NTSB) investigated each of these accidents and in 4 of the cases (Continental, Aloha, Scenic, and American Eagle) recommended that airlines be required to check a pilot's previous performance before hiring that pilot. However, the Federal Aviation Administration (FAA) took no action to require such record checks.

One year after the American Eagle crash, the Subcommittee held a hearing on this issue ("Aviation Safety: Should Airlines Be Required to Share Pilot Performance Records? Hearings before the Subcommittee on Aviation of the House Committee on Transportation and Infrastructure, 104–40, 104th Congress, 1st Session, (December 13 and 14, 1995)). Most witnesses supported legislative action. The NTSB, referring to the four accidents in which it had made recommendations in this area, testified, at p. 78, that "[c]ommercial aircraft accidents are so rare that to have four in seven years attributable, even in part, to a single cause should be—for everyone—conclusive evidence of a serious problem."

In response, the Committee approved (H. Rept. 104–684) and, on July 22, 1996 the House passed 401 to 0, the Airline Pilot Hiring and Safety Act (H.R. 3536). This was combined with a similar Senate bill, the Pilot Records Improvement Act, and incorporated into

the Federal Aviation Reauthorization Act of 1996 as Title V (P.L. 104–264, 110 Stat. 3263 et seq., 49 U.S.C. 44936(f)).

This Act required airlines, before hiring a pilot, to request the records of that pilot from the FAA, the National Driver Register, and the pilot's previous employer. This was designed to ensure that airlines would be able to make informed hiring decisions.

Unfortunately, in the one year that this Act has been in effect, certain problems have developed. The main problem is that the FAA and some airlines have not been able to transfer the required records within the 30 days required by the law. This has meant delays in hiring decisions. This is a particular burden on small aviation businesses that provide air charter services.

H.R. 2626, which was introduced by Congressmen Duncan, Shuster, Oberstar, and Lipinski on October 7, 1997, responds to this problem by permitting all airlines to hire and train pilots before receiving their records. However, they could not use the pilot to fly passengers until the records had been received and evaluated. This is actually the same as the provision that was in the legislation originally passed by the House in July of 1996. In addition, the bill provides further relief for the small air charter companies by allowing them to use the pilot to fly passengers for no more than 90 days before receiving that pilot's records.

This 90-day grace period should not be construed as acceptance by the Committee of delays in the transfer of pilot records. Rather it is an effort by the Committee to ensure that the burden of these delays do not fall disproportionally on the smallest aviation businesses. Indeed, the Committee would urge the FAA to improve its own performance and to use its enforcement powers to ensure that the required records are transferred by airlines promptly so that the deadlines in the law for such transfers are met.

Since the Act was passed, questions have also been raised about the meaning of some of its provisions.

One question that has arisen involves exactly which records must be requested, received, and maintained by air carriers. Section 44936(f)(1)(B) requires the transfer of records involving a pilot's proficiency and route checks, airplane and route qualifications, training, required physical examinations, actions taken concerning release from employment or physical or professional disqualification, alcohol and drug test results, check airman evaluations, and any disciplinary action that was not subsequently overturned.

All of these requirements are directed toward the competency of the individual as a pilot. Indeed, the whole thrust of the 1996 Act was to ensure that the airline would have the information needed to determine whether the applicant was capable of flying the plane safely. While other information, such as how the pilot interacts with customers, may be important, it is not the focus of this legislation. Therefore, while airlines would be free to request and receive other information not directly related to the competency of the individual as a pilot, the Committee does not consider it to be required by the Pilot Records Improvement Act.

Questions have also been raised about the meaning of "disciplinary action taken with respect to the individual that was not subsequently overturned" in section 44936(f)(1)(B)(ii)(II).

In the Committee's view, discipline that has been "subsequently overturned" means either discipline that has been rescinded as a result of a legitimate settlement agreement between the employer and the pilot or the pilot's representative or discipline that has been reversed by the employer or by a panel or an individual given authority to review employment disputes.

A legitimate settlement agreement could include instances where the parties agree that the action that was the subject of discipline did not occur or was not the pilot's fault. However, it should not include instances where the airline agrees to wipe the pilot's record clean in order to pass him or her on to another unsuspecting carrier.

In the Committee's view, in cases where the discipline is rescinded or reversed as explained above, the documents reflecting the charges underlying the initial decision to impose the discipline are not required to be maintained or disclosed.

SECTION-BY-SECTION SUMMARY

Section 1, paragraph (1), changes "Before hiring an individual as a pilot, an air carrier shall request and receive the following information" to "Subject to paragraph 14, before allowing an individual to begin service as a pilot, an air carrier shall request and receive the following information:" The key change is the replacing "hiring an individual as a pilot" with "allowing the individual to begin service as a pilot." This will permit airlines to hire and begin training pilots before receiving the pilot's records from the previous employer. However, the airlines could not let the pilot actually transport passengers until it had received the records. Further relief is provided for small air taxis as described below. This is the same as the version originally passed by the House (H.R. 3536). It will provide some flexibility to airlines without endangering passengers.

Section 1, paragraph (2), modifies the word "individual" by adding after that word the phrase "as a pilot of a civil or public aircraft." Under this change, an airline would have to request records from another business that employed that individual only if that other business employed that individual as a pilot of a non-military aircraft. Currently, the law could be read to require an airline to request records about a pilot applicant from a business that employed that individual in some other capacity. For example, if the pilot was a clerk at a convenience store while awaiting a flying job, the law may require the airline to request records from that store. Obviously, those records would have no bearing on that individual's piloting skills. This provision would make clear that records must be requested only from those former employers who employed the individual as a pilot. The words "civil" and "public" are added to exclude the military from the requirement to supply records. This was the intent of the original House-passed bill.

Section 1, paragraph (3), adds "air carriers" to those who must maintain pilot records for 5 years. It should have no effect since the law already requires airlines to provide records upon request for the previous 5 years. Although the law requires both the FAA and the airlines to provide records upon request to another carrier, the requirement to maintain those records applies only to the FAA.

This change would resolve that apparent drafting oversight and inconsistency.

Section 1, paragraph (4), amends paragraph (5) of current subsection 44936(f) by changing "a person who receives a request for records under this paragraph" to "a person who receives a request for records under this subsection." The request for records is made under subsection (f), not paragraph (5). This change corrects that drafting error.

Section (1), paragraph (5), requires an airline to provide records requested by a pilot to that pilot within 30 days. Current law only requires that the records be provided within a reasonable time. This 30-day deadline is consistent with other provisions in current section 44936.

Section (1), paragraph (6) permits a small air taxi to allow a pilot to begin transporting passengers before it receives the requested records if the pilot will be flying a charter using a helicopter or a small aircraft (about 30 seats or less). This can continue for only 90 days. By that time, if the carrier has not received the records, the pilot would be grounded. The employment contract with the pilot must reflect this. This provision gives small air taxis added flexibility to employ pilots while it awaits that pilot's records. The accidents that provided the original impetus for this law all involved scheduled commuter operations. Given the nature of the operations of the small on-demand air taxis, the pilot record sharing requirement has provided them with few safety benefits and several burdensome compliance problems. This change relieves that burden. Air taxis must still request and receive the records and should remove the pilot if the records revealed a problem of which the carrier had not been aware.

Also, this section states that an airline would not be prevented from hiring a pilot if it made a documented good faith attempt to obtain records but it turns out that one of the pilot's previous employers no longer exists. The documented effort could be a letter that was sent to the previous employer and was returned because the addressee was unknown.

HEARINGS AND LEGISLATIVE HISTORY

The Subcommittee on Aviation held hearings on the issue of pilot record sharing on December 13 and 14, 1995. H.R. 2626 was introduced on October 7, 1997.

On October 23, 1997, the Subcommittee on Aviation reported the bill, by unanimous voice vote, to the Committee on Transportation and Infrastructure. On October 29, 1997, the Committee on Transportation and Infrastructure ordered the bill reported, with an amendment, by voice vote with a quorum present. There were no recorded votes taken during Committee consideration of H.R. 2626.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3)(A) of rule XI of the Rules of House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

Applicability to the Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

Federal Mandates Statement

The Committee adopts as its own the estimate of the Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

Constitutional Authority Statement

Pursuant to clause (2)(l)(4) of rule XI of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under Article I, Section 8 of the Constitution.

Costs of the Legislation

Clause 7 of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

Compliance With House Rule XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, and section 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.
2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2626.
3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2626 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 31, 1997.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2626, a bill to make clarifications to the Pilot Records Improvement Act of 1996, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Clare Doherty (for federal costs) and Jean Wooster (for the impact on the private sector).

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 2626—A bill to make clarifications to the Pilot Records Improvement Act of 1996, and for other purposes

CBO estimates that enacting H.R. 2626 would not have a significant impact on the federal budget. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. The bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not have a significant impact on the budgets of state, local, or tribal governments.

H.R. 2626 would impose a federal private-sector mandate on air carriers. The bill would require that air carriers maintain pilot records for at least five years. Under current law, before hiring an individual as a pilot, air carriers are required to request those records from that person's employers during the five-year period preceding the application for employment. Since air carriers already maintain those records, CBO estimates that they would incur no additional costs.

H.R. 2626 would amend Public Law 104–264, the Federal Aviation Reauthorization Act of 1996, and would give air carriers the ability to allow pilots to fly certain planes for a period not to exceed 90 days before receiving employment records. Based on information from the Federal Aviation Administration, the amendments to Public Law 104–264 could require more oversight and a slight increase in the workload for inspectors but would not result in significant additional costs to the federal government.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Clare Doherty (for federal costs) and Jean Wooster (for the impact on the private sector). This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 44936 OF TITLE 49, UNITED STATES CODE

§ 44936. Employment investigations and restrictions

(a) * * *

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(f) RECORDS OF EMPLOYMENT OF PILOT APPLICANTS.—

(1) IN GENERAL.—[Before hiring an individual] *Subject to paragraph (14), before allowing an individual to begin service* as a pilot, an air carrier shall request and receive the following information:

(A) * * *

* * * * * * *

(B) AIR CARRIER AND OTHER RECORDS.—From any air carrier or other person that has employed the individual *as a pilot of a civil or public aircraft* at any time during the 5-year period preceding the date of the employment application of the individual, or from the trustee in bankruptcy for such air carrier or person—

(i) * * *

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(4) REQUIREMENT TO MAINTAIN RECORDS.—The Administrator *and air carriers* shall maintain pilot records described in [paragraph (1)(A)] *paragraphs (1)(A) and (1)(B)* for a period of at least 5 years.

(5) RECEIPT OF CONSENT; PROVISION OF INFORMATION.—A person shall not furnish a record in response to a request made under paragraph (1) without first obtaining a copy of the written consent of the individual who is the subject of the records requested. A person who receives a request for records under [this paragraph] *this subsection* shall furnish a copy of all of such requested records maintained by the person not later than 30 days after receiving the request.

* * * * * * *

(10) RIGHT OF PILOT TO REVIEW CERTAIN RECORDS.—Notwithstanding any other provision of law or agreement, an air carrier shall, upon written request from a pilot *who is or has been* employed by such carrier, make available, within a reasonable time*, but not later than 30 days after the date* of the request, to the pilot for review, any and all employment records re-

ferred to in paragraph (1)(B) (i) or (ii) pertaining to the employment of the pilot.

*   *   *   *   *   *   *

(14) SPECIAL RULES WITH RESPECT TO CERTAIN PILOTS.—

(A) PILOTS OF CERTAIN SMALL AIRCRAFT.—Notwithstanding paragraph (1), an air carrier, before receiving information requested about an individual under paragraph (1), may allow the individual to begin service for a period not to exceed 90 days as a pilot of an aircraft with a maximum payload capacity (as defined in section 119.3 of title 14, Code of Federal Regulations) of 7,500 pounds or less, or a helicopter, on a flight that is not a scheduled operation (as defined in such section). Before the end of the 90-day period, the air carrier shall obtain and evaluate such information. The contract between the carrier and the individual shall contain a term that provides that the continuation of the individual's employment, after the last day of the 90-day period, depends on a satisfactory evaluation.

(B) GOOD FAITH EXCEPTION.—Notwithstanding paragraph (1), an air carrier, without obtaining information about an individual under paragraph (1)(B) from an air carrier or other person that no longer exists, may allow the individual to begin service as a pilot if the air carrier required to request the information has made a documented good faith attempt to obtain such information.

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