

Union Calendar No. 334

107TH CONGRESS
2^D SESSION

H. R. 4635

[Report No. 107-555, Part I]

To amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 1, 2002

Mr. YOUNG of Alaska (for himself and Mr. MICA) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

JULY 8, 2002

Additional sponsors: Mr. THUNE, Mr. BARR of Georgia, Mr. SCHAFFER, Mr. JOHNSON of Illinois, Mr. LATOURETTE, Mr. SHUSTER, Mr. REHBERG, Mr. SANDLIN, Mr. CULBERSON, Mr. TIAHRT, Mr. HAYES, Mr. BARTLETT of Maryland, Mr. TANCREDO, Mr. MASCARA, Mr. KINGSTON, Mr. SMITH of New Jersey, Mr. BUYER, Mr. ENGLISH, Mr. HALL of Texas, Mr. BOOZMAN, Mr. STENHOLM, Mr. GOODE, Mr. BAKER, Mr. KERNS, Mr. TIBERI, Mr. JEFF MILLER of Florida, Mr. CANTOR, Mr. BARTON of Texas, Mr. HILLEARY, Mr. COOKSEY, Mr. HANSEN, Mr. WILSON of South Carolina, Mr. KOLBE, Mrs. JO ANN DAVIS of Virginia, Mr. SESSIONS, Mrs. CUBIN, Mr. CALVERT, Mr. STUMP, Mr. MCINNIS, Mr. BRYANT, Mr. PLATTS, Mr. LINDER, Mr. AKIN, Mr. CANNON, Mr. CHAMBLISS, Mr. TAYLOR of Mississippi, Mr. PICKERING, Mr. HEFLEY, Mr. TURNER, Mr. ROSS, Mr. UPTON, Mr. LUCAS of Kentucky, Mr. STRICKLAND, Mr. BARCIA, and Mr. DOOLITTLE

JULY 8, 2002

Reported with an amendment and referred to the Committee on the Judiciary for a period ending not later than July 9, 2002, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k) of rule X

[Strike out all after the enacting clause and insert the part printed in italic]

JULY 9, 2002

Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on May 1, 2002]

A BILL

To amend title 49, United States Code, to establish a program for Federal flight deck officers, 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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Arming Pilots Against*
5 *Terrorism Act”.*

6 **SEC. 2. FEDERAL FLIGHT DECK OFFICER PROGRAM.**

7 *(a) IN GENERAL.—Subchapter I of chapter 449 of title*
8 *49, United States Code, is amended by adding at the end*
9 *the following:*

10 **“§ 44921. Federal flight deck officer program**

11 *“(a) ESTABLISHMENT.—The Under Secretary of*
12 *Transportation for Security shall establish a pilot program*
13 *to deputize volunteer pilots of air carriers providing air*
14 *transportation or intrastate air transportation as Federal*
15 *law enforcement officers to defend the flight decks of aircraft*
16 *of such air carriers against acts of criminal violence or air*

1 *piracy. Such officers shall be known as ‘Federal flight deck*
2 *officers’.*

3 “(b) *PROCEDURAL REQUIREMENTS.*—

4 “(1) *IN GENERAL.*—*Not later than 2 months*
5 *after the date of enactment of this section, the Under*
6 *Secretary shall establish procedural requirements to*
7 *carry out the program under this section.*

8 “(2) *COMMENCEMENT OF PROGRAM.*—*Beginning*
9 *2 months after the date of enactment of this section,*
10 *the Under Secretary shall begin the process of select-*
11 *ing, training, and deputizing pilots as Federal flight*
12 *deck officers under the program; except that, if the*
13 *procedures required under paragraph (1) are not es-*
14 *tablished before the last day of such 2-month period,*
15 *the Under Secretary shall not begin the process of se-*
16 *lecting, training, and deputizing pilots until the date*
17 *on which the procedures are established or the last*
18 *day of the 4-month period beginning on such date of*
19 *enactment, whichever occurs first.*

20 “(3) *ISSUES TO BE ADDRESSED.*—*The proce-*
21 *dural requirements established under paragraph (1)*
22 *shall address the following issues:*

23 “(A) *The type of firearm to be used by a*
24 *Federal flight deck officer.*

1 “(B) *The type of ammunition to be used by*
2 *a Federal flight deck officer.*

3 “(C) *The standards and training needed to*
4 *qualify and requalify as a Federal flight deck of-*
5 *ficer.*

6 “(D) *The placement of the firearm of a Fed-*
7 *eral flight deck officer on board the aircraft to*
8 *ensure both its security and its ease of retrieval*
9 *in an emergency.*

10 “(E) *Analyze the risk of catastrophic failure*
11 *of an aircraft as a result of the discharge of a*
12 *firearm to be used in the program into the avi-*
13 *onics, electrical systems, or other sensitive areas*
14 *of the aircraft.*

15 “(F) *The division of responsibility between*
16 *pilots in the event of an act of criminal violence*
17 *or air piracy if only one pilot is a Federal flight*
18 *deck officer and if both pilots are Federal flight*
19 *deck officers.*

20 “(G) *Procedures for ensuring that the fire-*
21 *arm of a Federal flight deck officer does not leave*
22 *the cockpit if there is a disturbance in the pas-*
23 *senger cabin of the aircraft or if the pilot leaves*
24 *the cockpit for personal reasons.*

1 “(H) *Interaction between a Federal flight*
2 *deck officer and a Federal air marshal on board*
3 *the aircraft.*

4 “(I) *The process for selection of pilots to*
5 *participate in the program based on their fitness*
6 *to participate in the program.*

7 “(J) *Storage and transportation of firearms*
8 *between flights, including international flights,*
9 *to ensure the security of the firearms.*

10 “(K) *Methods for ensuring that security*
11 *personnel will be able to identify whether a pilot*
12 *is authorized to carry a firearm under the pro-*
13 *gram.*

14 “(L) *Methods for ensuring that pilots (in-*
15 *cluding Federal flight deck officers) will be able*
16 *to identify whether a passenger is a law enforce-*
17 *ment officer who is authorized to carry a firearm*
18 *aboard the aircraft.*

19 “(M) *Any other issues that the Under Sec-*
20 *retary considers necessary.*

21 “(4) *PREFERENCE.—In selecting pilots to par-*
22 *ticipate in the program, the Under Secretary shall*
23 *give preference to pilots who are former military or*
24 *law enforcement personnel.*

1 “(5) *CLASSIFIED INFORMATION.*—*Notwith-*
2 *standing section 552 of title 5 but subject to section*
3 *40119 of this title, information developed under para-*
4 *graph (3)(E) shall not be disclosed.*

5 “(6) *NOTICE TO CONGRESS.*—*The Under Sec-*
6 *retary shall provide notice to the Committee on*
7 *Transportation and Infrastructure of the House of*
8 *Representatives and the Committee on Commerce,*
9 *Science, and Transportation of the Senate after com-*
10 *pleting the analysis required by paragraph (3)(E).*

11 “(c) *TRAINING, SUPERVISION, AND EQUIPMENT.*—

12 “(1) *IN GENERAL.*—*The Under Secretary shall*
13 *provide the training, supervision, and equipment nec-*
14 *essary for a pilot to be a Federal flight deck officer*
15 *under this section at no expense to the pilot or the air*
16 *carrier employing the pilot.*

17 “(2) *TRAINING.*—

18 “(A) *IN GENERAL.*—*The Under Secretary*
19 *shall base the requirements for the training of*
20 *Federal flight deck officers under subsection (b)*
21 *on the training standards applicable to Federal*
22 *air marshals; except that the Under Secretary*
23 *shall take into account the differing roles and re-*
24 *sponsibilities of Federal flight deck officers and*
25 *Federal air marshals.*

1 “(B) *ELEMENTS.*—*The training of a Fed-*
2 *eral flight deck officer shall include, at a min-*
3 *imum, the following elements:*

4 “(i) *Training to ensure that the officer*
5 *achieves the level of proficiency with a fire-*
6 *arm required under subparagraph (C)(i).*

7 “(ii) *Training to ensure that the officer*
8 *maintains exclusive control over the officer’s*
9 *firearm at all times, including training in*
10 *defensive maneuvers.*

11 “(iii) *Training to assist the officer in*
12 *determining when it is appropriate to use*
13 *the officer’s firearm and when it is appro-*
14 *priate to use less than lethal force.*

15 “(C) *TRAINING IN USE OF FIREARMS.*—

16 “(i) *STANDARD.*—*In order to be depu-*
17 *tized as a Federal flight deck officer, a pilot*
18 *must achieve a level of proficiency with a*
19 *firearm that is required by the Under Sec-*
20 *retary. Such level shall be comparable to the*
21 *level of proficiency required of Federal air*
22 *marshals.*

23 “(ii) *CONDUCT OF TRAINING.*—*The*
24 *training of a Federal flight deck officer in*
25 *the use of a firearm may be conducted by*

1 *the Under Secretary or by a firearms train-*
2 *ing facility approved by the Under Sec-*
3 *retary.*

4 “(iii) *REQUALIFICATION.—The Under*
5 *Secretary shall require a Federal flight deck*
6 *officer to requalify to carry a firearm under*
7 *the program. Such requalification shall*
8 *occur quarterly or at an interval required*
9 *by a rule issued under subsection (i).*

10 “(d) *DEPUTIZATION.—*

11 “(1) *IN GENERAL.—The Under Secretary may*
12 *deputize, as a Federal flight deck officer under this*
13 *section, a pilot who submits to the Under Secretary*
14 *a request to be such an officer and whom the Under*
15 *Secretary determines is qualified to be such an officer.*

16 “(2) *QUALIFICATION.—A pilot is qualified to be*
17 *a Federal flight deck officer under this section if—*

18 “(A) *the pilot is employed by an air car-*
19 *rier;*

20 “(B) *the Under Secretary determines that*
21 *the pilot meets the standards established by the*
22 *Under Secretary for being such an officer; and*

23 “(C) *the Under Secretary determines that*
24 *the pilot has completed the training required by*
25 *the Under Secretary.*

1 “(3) *DEPUTIZATION BY OTHER FEDERAL AGEN-*
2 *CIES.—The Under Secretary may request another*
3 *Federal agency to deputize, as Federal flight deck offi-*
4 *cers under this section, those pilots that the Under*
5 *Secretary determines are qualified to be such officers.*

6 “(4) *MAXIMUM NUMBER.—The maximum num-*
7 *ber of pilots that may be deputized under the pilot*
8 *program as Federal flight deck officers may not ex-*
9 *ceed 2 percent of the total number of pilots that are*
10 *employed by air carriers engaged in air transpor-*
11 *tation or intrastate transportation on the date of en-*
12 *actment of this section.*

13 “(5) *REVOCAION.—The Under Secretary may*
14 *revoke the deputization of a pilot as a Federal flight*
15 *deck officer if the Under Secretary finds that the pilot*
16 *is no longer qualified to be such an officer.*

17 “(e) *COMPENSATION.—Pilots participating in the pro-*
18 *gram under this section shall not be eligible for compensa-*
19 *tion from the Federal Government for services provided as*
20 *a Federal flight deck officer. The Federal Government and*
21 *air carriers shall not be obligated to compensate a pilot for*
22 *participating in the program or for the pilot’s training or*
23 *qualification and requalification to carry firearms under*
24 *the program.*

25 “(f) *AUTHORITY TO CARRY FIREARMS.—*

1 “(1) *IN GENERAL.*—*The Under Secretary shall*
2 *authorize, while the program under this section is in*
3 *effect, a Federal flight deck officer to carry a firearm*
4 *while engaged in providing air transportation or*
5 *intrastate air transportation. Notwithstanding sub-*
6 *section (c)(1), the officer may purchase a firearm and*
7 *carry that firearm aboard an aircraft of which the of-*
8 *ficer is the pilot in accordance with this section if the*
9 *firearm is of a type that may be used under the pro-*
10 *gram.*

11 “(2) *PREEMPTION.*—*Notwithstanding any other*
12 *provision of Federal or State law, a Federal flight*
13 *deck officer, whenever necessary to participate in the*
14 *program, may carry a firearm in any State and from*
15 *one State to another State.*

16 “(3) *CARRYING FIREARMS OUTSIDE UNITED*
17 *STATES.*—*In consultation with the Secretary of State,*
18 *the Under Secretary may take such action as may be*
19 *necessary to ensure that a Federal flight deck officer*
20 *may carry a firearm in a foreign country whenever*
21 *necessary to participate in the program.*

22 “(g) *AUTHORITY TO USE FORCE.*—*Notwithstanding*
23 *section 44903(d), the Under Secretary shall prescribe the*
24 *standards and circumstances under which a Federal flight*
25 *deck officer may use, while the program under this section*

1 *is in effect, force (including lethal force) against an indi-*
2 *vidual in the defense of the flight deck of an aircraft in*
3 *air transportation or intrastate air transportation.*

4 “(h) *LIMITATION ON LIABILITY.—*

5 “(1) *LIABILITY OF AIR CARRIERS.—An air car-*
6 *rier shall not be liable for damages in any action*
7 *brought in a Federal or State court arising out of a*
8 *Federal flight deck officer’s use of or failure to use a*
9 *firearm.*

10 “(2) *LIABILITY OF FEDERAL FLIGHT DECK OFFI-*
11 *CERS.—A Federal flight deck officer shall not be liable*
12 *for damages in any action brought in a Federal or*
13 *State court arising out of the acts or omissions of the*
14 *officer in defending the flight deck of an aircraft*
15 *against acts of criminal violence or air piracy unless*
16 *the officer is guilty of gross negligence or willful mis-*
17 *conduct.*

18 “(3) *LIABILITY OF FEDERAL GOVERNMENT.—For*
19 *purposes of an action against the United States with*
20 *respect to an act or omission of a Federal flight deck*
21 *officer, the officer shall be treated as an employee of*
22 *the Federal Government.*

23 “(i) *DURATION OF PROGRAM.—*

24 “(1) *IN GENERAL.—Except as otherwise provided*
25 *in this subsection, the pilot program established under*

1 *this section shall be in effect for a period of 2 years*
2 *beginning on the date that the 250th pilot is depu-*
3 *tized as a Federal flight deck officer under this sec-*
4 *tion.*

5 *“(2) RISK-BENEFIT DETERMINATION DECI-*
6 *SION.—Before the last day of such 2-year period, the*
7 *Under Secretary shall determine whether the security*
8 *benefits of the Federal flight deck officer pilot pro-*
9 *gram outweigh the risks of the program.*

10 *“(3) TERMINATION OF PILOT PROGRAM.—If the*
11 *Under Secretary determines under paragraph (2) that*
12 *the risks outweigh the benefits, the Under Secretary*
13 *shall publish a notice in the Federal Register termi-*
14 *nating the pilot program and explaining the reasons*
15 *for the decision to terminate and shall provide ade-*
16 *quate notice of the decision to Federal flight deck offi-*
17 *cers and other individuals as necessary.*

18 *“(4) CONTINUATION OF PROGRAM.—*

19 *“(A) IN GENERAL.—If the Under Secretary*
20 *determines under paragraph (2) that the benefits*
21 *outweigh the risks, the Under Secretary shall*
22 *publish a notice in the Federal Register an-*
23 *nouncing the continuation of the program, shall*
24 *continue the program in accordance with this*

1 *section, and may increase the number of Federal*
2 *flight deck officers participating in the program.*

3 “(B) NOTICE OF PROPOSED RULEMAKING.—
4 *Not later than 60 days after the date of publica-*
5 *tion of a notice continuing the program, the*
6 *Under Secretary shall issue a notice of proposed*
7 *rulemaking to provide for continuation of the*
8 *program. In conducting the proposed rule-*
9 *making, the Under Secretary shall readdress*
10 *each of the issues to be addressed under sub-*
11 *section (b)(3) and, in addition, shall address the*
12 *following issues:*

13 “(i) *The use of various technologies by*
14 *Federal flight deck officers, including smart*
15 *gun technologies and nonlethal weapons.*

16 “(ii) *The necessity of hardening crit-*
17 *ical avionics, electrical systems, and other*
18 *vulnerable equipment on aircraft.*

19 “(iii) *The standards and circumstances*
20 *under which a Federal flight deck officer*
21 *may use force (including lethal force)*
22 *against an individual in defense of the*
23 *flight deck of an aircraft.*

24 “(5) REEVALUATION.—*Not later than 3 years*
25 *after the date of publication of a notice continuing the*

1 *program, the Under Secretary shall reevaluate the*
2 *program and shall report to Congress on whether, in*
3 *light of additional security measures that have been*
4 *implemented (such as reinforced doors and universal*
5 *employee biometric identification), the program is*
6 *still necessary and should be continued or terminated.*

7 *“(j) APPLICABILITY.—*

8 *“(1) EXEMPTION.—This section shall not apply*
9 *to air carriers operating under part 135 of title 14,*
10 *Code of Federal Regulations, and to pilots employed*
11 *by such carriers to the extent that such carriers and*
12 *pilots are covered by section 135.119 of such title or*
13 *any successor to such section.*

14 *“(2) PILOT DEFINED.—The term ‘pilot’ means*
15 *an individual who has final authority and responsi-*
16 *bility for the operation and safety of the flight or, if*
17 *more than 1 pilot is required for the operation of the*
18 *aircraft or by the regulations under which the flight*
19 *is being conducted, the individual designated as sec-*
20 *ond in command.”.*

21 *(b) CONFORMING AMENDMENTS.—*

22 *(1) CHAPTER ANALYSIS.—The analysis for such*
23 *chapter is amended by inserting after the item relat-*
24 *ing to section 44920 the following:*

“44921. Federal flight deck officer program.”.

1 (2) *FLIGHT DECK SECURITY*.—Section 128 of the
2 *Aviation and Transportation Security Act (Public*
3 *Law 107–71) is repealed.*

4 (c) *FEDERAL AIR MARSHAL PROGRAM*.—

5 (1) *SENSE OF CONGRESS*.—*It is the sense of*
6 *Congress that the Federal air marshal program is*
7 *critical to aviation security.*

8 (2) *LIMITATION ON STATUTORY CONSTRUCC-*
9 *TION*.—*Nothing in this Act, including any amend-*
10 *ment made by this Act, shall be construed as pre-*
11 *venting the Under Secretary of Transportation for Se-*
12 *curity from implementing and training Federal air*
13 *marshals.*

14 **SEC. 3. CREW TRAINING.**

15 Section 44918(e) of title 49, United States Code, is
16 amended—

17 (1) by striking “The Administrator” and insert-
18 ing the following:

19 “(1) *IN GENERAL*.—*The Under Secretary*”;

20 (2) by adding at the end the following:

21 “(2) *ADDITIONAL REQUIREMENTS*.—*In updating*
22 *the training guidance, the Under Secretary, in con-*
23 *sultation with the Administrator, shall issue a rule*
24 *to—*

1 “(A) require both classroom and hands-on
2 situational training in the following elements of
3 self defense:

4 “(i) recognizing suspicious activities
5 and determining the seriousness of an oc-
6 currence;

7 “(ii) deterring a passenger who might
8 present a problem;

9 “(iii) crew communication and coordi-
10 nation;

11 “(iv) the proper commands to give to
12 passengers and attackers;

13 “(v) methods to restrain an attacker;

14 “(vi) use of available items aboard the
15 aircraft for self-defense;

16 “(vii) appropriate responses to defend
17 oneself, including the use of force against an
18 attacker;

19 “(viii) use of protective devices as-
20 signed to crew members (to the extent such
21 devices are approved by the Administrator
22 or Under Secretary);

23 “(ix) the psychology of terrorists to
24 cope with their behavior and passenger re-
25 sponses to that behavior;

1 “(x) how to respond to aircraft maneu-
2 vers that may be authorized to defend
3 against an act of criminal violence or air
4 piracy;

5 “(B) require training in the proper conduct
6 of a cabin search;

7 “(C) establish the required number of hours
8 of training and the qualifications for the train-
9 ing instructors;

10 “(D) establish the intervals, amount, and
11 elements of recurrent training;

12 “(E) ensure that air carriers provide the
13 initial training required by this paragraph
14 within 24 months of the date of enactment of this
15 subparagraph; and

16 “(F) ensure that no person is required to
17 participate in any hands-on training activity
18 that that person believes will have an adverse
19 impact on his or her health or safety.

20 “(3) RESPONSIBILITY OF UNDER SECRETARY.—
21 In developing the rule under paragraph (2), the
22 Under Secretary shall consult with law enforcement
23 personnel and security experts who have expertise in
24 self-defense training, terrorism experts, and represent-
25 atives of air carriers, employees of air carriers, and

1 *educational institutions offering law enforcement*
2 *training programs.”; and*

3 *(3) by aligning the remainder of the text of*
4 *paragraph (1) (as designated by paragraph (1) of this*
5 *section) with paragraphs (2) and (3) (as added by*
6 *paragraph (2) of this section).*

7 **SEC. 4. COMMERCIAL AIRLINE SECURITY STUDY.**

8 *(a) STUDY.—The Secretary of Transportation shall*
9 *conduct a study of the following:*

10 *(1) The number of armed Federal law enforce-*
11 *ment officers (other than Federal air marshals), who*
12 *travel on commercial airliners annually and the fre-*
13 *quency of their travel.*

14 *(2) The cost and resources necessary to provide*
15 *such officers with supplemental training in aircraft*
16 *anti-terrorism training that is comparable to the*
17 *training that Federal air marshals are provided.*

18 *(3) The cost of establishing a program at a Fed-*
19 *eral law enforcement training center for the purpose*
20 *of providing new Federal law enforcement recruits*
21 *with standardized training comparable to the train-*
22 *ing that Federal air marshals are provided.*

23 *(4) The feasibility of implementing a certifi-*
24 *cation program designed for the purpose of ensuring*
25 *Federal law enforcement officers have completed the*

1 *training described in paragraph (2) and track their*
2 *travel over a 6-month period.*

3 *(5) The feasibility of staggering the flights of*
4 *such officers to ensure the maximum amount of flights*
5 *have a certified trained Federal officer on board.*

6 *(b) REPORT.—Not later than 6 months after the date*
7 *of enactment of this Act, the Secretary shall transmit to*
8 *Congress a report on the results of the study. The report*
9 *may be submitted in classified and redacted form.*

10 **SEC. 5. TECHNICAL AMENDMENTS.**

11 *Section 44903 of title 49, United States Code, is*
12 *amended—*

13 *(1) by redesignating subsection (i) (relating to*
14 *short-term assessment and deployment of emerging se-*
15 *curity technologies and procedures) as subsection (j);*

16 *(2) by redesignating the second subsection (h)*
17 *(relating to authority to arm flight deck crew with*
18 *less-than-lethal weapons) as subsection (i); and*

19 *(3) by redesignating the third subsection (h) (re-*
20 *lating to limitation on liability for acts to thwart*
21 *criminal violence for aircraft piracy) as subsection*
22 *(k).*

Calendar No. 334

107TH CONGRESS
2^D SESSION

H. R. 4635

[Report No. 107-555, Part I]

A BILL

To amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes.

JULY 9, 2002

Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed