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Calendar No. 382

109TH CONGRESS *2d Session*	SENATE	REPORT 109–225

AGE 60 RULE

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 65

MARCH 30, 2006.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
49–010 WASHINGTON : 2006

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

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109TH CONGRESS
2nd Session

SENATE

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MARCH 30, 2006.—Ordered to be printed

Mr. STEVENS, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 65]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 65) to amend the age restrictions for pilots, 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.

PURPOSE OF THE BILL

The purpose of this legislation, as reported, is to direct the Secretary of Transportation to adopt the International Civil Aviation Organization (ICAO) standard or recommended practice on age restrictions for commercial air carriers' pilots-in-command from age 60 to age 65.

BACKGROUND AND NEEDS

Domestic policy

Since 1959, Federal regulations have specified that individuals age 60 and older may not serve as airline pilots on any flight operations covered under Title 14 Code of Federal Regulations, Part 121 (c). The Federal Aviation Administration (FAA) adopted, what is commonly referred to as, the "Age 60 Rule" in 1959 because of concerns that a safety hazard was presented by aging pilots in air carrier operations.

The Age 60 Rule has been a matter of considerable debate since the final rule was adopted. In 1959, airlines and pilots were en-

49–010

gaged in a disagreement over mandatory retirement policies imposed by the airlines, typically set at age 60. The early 1960's was the onset of the age of commercial jets and several airlines contended it was in their economic best interest to recruit young pilots leaving the military who had flown jet aircraft rather than training its older, more senior pilots to transition from piston-engine airplanes to jet-powered airplanes. Senior pilots who had been forced into retirement based on these company policies filed grievances. Although an arbitrator sided with the pilots and ordered that they be reinstated, management at one major commercial airline refused to abide by the decision and continued to enforce their age 60 retirement policy. This and other grievances led pilots to strike during the holiday travel season of 1958. To end the strike, the disagreeing airline agreed to many of the pilots' demands. However, the issue of a maximum age limit for pilots was not settled.

The airline in question took its case for pilot age limits to the FAA, writing that it may be necessary for the regulatory agency to set a suitable retirement age. To bolster the argument for age limits, the airline provided the FAA with data showing that younger pilots required fewer hours of flight training to transition from propeller to jet airliners than older pilots and were more likely to successfully complete the training.

As a result, two proposals were subsequently considered by the FAA; one to set a maximum age of 55 for pilots to receive certification to fly jet aircraft, and a second to set an age limit of 60 for all airline pilots. An expert panel was convened to review the proposals and the supporting data provided by the airline, and recommended favorably on adopting both recommendations, but eventually dropped the recommendation to limit jet type-ratings to pilots under the age of 55. However, when the FAA's legal counsel reviewed the proposal, it found that the training data did not provide a compelling argument for setting a maximum age for airline pilots, and recommended that the FAA instead focus on available medical knowledge in setting a maximum age for pilots. The FAA did so, and on December 5, 1959, published a final rule that went into effect on March 15, 1960, establishing that a pilot could no longer fly in airline operations upon reaching age 60.

The Age 60 Rule was justified on the basis of medical concerns over progressive deterioration of important physiological and psychological functions and the risk of sudden incapacitation. The FAA asserted that incapacitation could not be accurately predicted in an individual by available medical tests and criteria. Furthermore, the FAA noted that age is associated with other factors even more difficult to measure and predict including the loss of ability to: perform highly skilled tasks rapidly; resist fatigue; maintain physical stamina; perform effectively in a complex and stressful environment; apply experience, judgment, and reasoning rapidly in new, changing, and emergency situations; and learn new techniques, skills and procedures.

The FAA followed standard rulemaking procedures including an opportunity for public comments and justified the rule as a safety measure. Since then, opponents have criticized the rule as being arbitrary. Some believe that the circumstances under which the rule was adopted have contributed to the longstanding controversy.

In the late 1990's the number of pilots and types of operations subject to the Age 60 Rule was expanded when the FAA phased-in requirements to enhance the safety of scheduled commuter operations and bring them under the more stringent rules of Part 121. Under those requirements, all commuter turbojets and commuter turboprop aircraft with 10 or more passenger seats were required to operate under the same rules as air carriers flying larger aircraft, including the Age 60 Rule. During the transition, pilots over the age of 60 that had been flying for commuter airlines were permitted to continue to do so up until December 20, 1999. Today, Part 121 operations covers scheduled passenger operations of jet and turboprop aircraft having a seating capacity of 10 or more passengers and all-cargo aircraft with a payload capacity of 7,500 pounds or greater. Under the Age 60 Rule, airlines are not permitted to use pilots age 60 and older in these operations.

Opponents of the Age 60 Rule presented the following arguments to the FAA: the rule has no basis in fact; refusal to repeal the rule would constitute arbitrary and capricious action by the FAA that would violate the provisions of the Administrative Procedure Act; refusal to repeal the rule without evidence of a need to retain it in the interest of public safety is inconsistent with Federal policy against age discrimination; and repeal of the rule would have a positive economic impact on the U.S. air carrier industry.

The FAA believes that a review of all of the comments and relevant literature reveals that scientific or medical studies do not provide a definitive answer to the age 60 issue. In 1995, the FAA said that it could not be assured that raising the age 60 limit would maintain or raise the level of safety that the Age 60 Rule offers, and on that basis, the FAA retained the rule. Without further medical evidence to compel the FAA to modify its position, it is apparent any change to the rule requires a legislative mandate.

International policy

ICAO is a specialized agency of the United Nations. It is comprised of 188 Contracting States, including the United States. ICAO policies are recommended standards and practices, not binding on contracting States.

Currently, ICAO's Standards and Recommended Practices states that "an age limit of 60 years is established for pilots engaged in scheduled international air services or non-scheduled international air transport operations for remuneration or hire. It is a Standard for the pilot-in-command and a Recommendation for the co-pilot." Most developed countries do not adhere to this age limitation for pilots.

In 2003, ICAO conducted a survey questioning its membership on the continuing validity of the 60 year upper age limit for airline pilots with the aim of harmonizing their Contracting States policies.

In 2004, ICAO received 116 replies from 112 States and four international organizations. Over 81 percent considered it appropriate to increase the upper age limit. Various age levels between 62 and 68 were considered appropriate; a significant majority favored 65 years.

In 2005, following the survey results, a State letter was sent to all Contracting States proposing to change the upper age limit to

age 65 with two modifications: (1) if the pilot-in-command is older than 60 years, the other flight crew members must be younger than 60; and (2) airline pilots over age 60 must undergo health examinations every 6 months. ICAO speculates that the earliest date at which the amendment would become applicable is November 2006.

LEGISLATIVE HISTORY

On January 24, 2005, Senators Inhofe, Stevens, and Burns introduced S. 65, a bill to amend the age restrictions for pilots.

On July 19, 2005, the Committee on Commerce, Science, and Transportation, Subcommittee on Aviation held a hearing on the FAA Age 60 Rule. Representatives from the FAA, Aerospace Medical Association, Air Line Pilots Association, Southwest Airlines Pilot's Association, Allied Pilots Association, and JetBlue Airways Corporation testified about the issues regarding the mandatory retirement age for airline pilots.

On November 17, 2005, the bill, S. 65, was ordered to be reported favorably with an amendment in the nature of a substitute to the Senate from the Commerce, Science, and Transportation Committee by voice vote in the presence of a quorum.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

DECEMBER 6, 2005.

Hon. TED STEVENS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 65, a bill to amend the age restrictions for pilots.

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

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure.

S. 65—A bill to amend the age restrictions for pilots

S. 65 would direct the Secretary of Transportation to amend federal regulations that prohibit pilots over the age of 60 from operating federally regulated commercial aircraft. Under the bill, that age limit would be increased to 65 years. Based on information from the Federal Aviation Administration, CBO estimates that the proposed change would not significantly affect federal costs. The bill would not affect direct spending or revenues.

S. 65 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

Number of persons covered

Due to the bill as reported, former pilots who have been forced to retire because of the current mandatory retirement age, but are younger than 65 years of age, would no longer be subject to the prohibition and would potentially be eligible to fly as a commercial airline pilot. Pilots under the age of 60 would eventually have the option to fly for a longer period of time.

Economic impact

Due to the bill as reported, some older pilots may decide to continue flying beyond their expected Age 60 retirement dates, and thus continue to earn a salary. Some younger pilots may not be promoted as quickly if more senior pilots continue flying. Airlines may incur the additional costs of employing some of their most senior pilots for five additional years. Those additional costs would be offset, at least in part, when the airlines are able to forego the costs of training younger pilots to replace those who otherwise would have retired because of the Age 60 Rule. If a pilot shortage were to affect small and rural communities, the bill as reported may economically benefit those communities by increasing the supply of pilots.

The bill as reported may cause air carriers to incur the costs of additional or more stringent medical, cognitive, or proficiency testing for pilots who have reached the age of 60.

Privacy

Within the air transportation system, the overriding need to ensure safety has long been settled with respect to pilots' expectations of privacy. Pilots who choose to fly beyond their 60th birthdays may be subjected to additional certification testing or crew pairing standards.

Paperwork

Under the bill as reported, the FAA would incur additional paperwork associated with the change in the current age limit. In addition, air carriers and the FAA may have additional paperwork as a result of new crew standards. Under section 3, the National Transportation Safety Board would be subject to additional paperwork associated with reporting safety implications, if any.

SECTION-BY-SECTION ANALYSIS

Section 1. Modification of FAA's Age 60 Rule

The Secretary of Transportation would be directed to adopt the ICAO standard or recommended practice within 30 days after the

effective date of action taken by the ICAO Secretariat in November 2006.

The Secretary would be only authorized to adopt the new modification if it is consistent with a previously agreed upon Air Navigation Commission directive. That directive would allow commercial carriers pilots-in-command to fly up to their 65th birthday, if the co-pilot is 60 years old or younger.

Section 2. Applicability

Pilots who have previously been terminated or had cessation of employment at a commercial air carrier because of the Age 60 restriction would be able to seek re-employment at a commercial air carrier. However, pilots would not be able to file suit to gain re-employment and cannot file suit to reclaim seniority under any labor agreement in effect between a recognized bargaining unit for pilots and an air carrier engaged in commercial operations.

Section 3. Reporting requirement

The National Transportation Safety Board (NTSB), within two years of the modification, would submit a report to both Senate and House authorizing committees of jurisdiction concerning the effects, if any, the modification has on aviation safety.

ADDITIONAL VIEWS OF SENATORS INOUYE, ROCKEFELLER, DORGAN, CANTWELL, LAUTENBERG, AND PRYOR

On July 19, 2005, the Senate Committee on Commerce, Science, and Transportation held a hearing to examine the FAA's Age 60 rule which raised a number of concerns about moving forward on legislation to alter existing FAA regulations that prohibit a pilot from engaging in Part 121 operations if the pilot has reached his or her 60th birthday.

On November 17, 2005, the Committee approved the bill by voice vote in Executive Session. Despite this action we continue to have serious concerns regarding the repeal of the Age 60 rule (14 CFR 121.383(c)). Any changes to this long-standing safety regulation should be approached cautiously to ensure that any potential risk is minimized and commercial flight remains consistent with existing safety parameters. Congress provided the FAA air safety regulatory authority for U.S., which the agency has consistently exercised in an impartial manner to ensure that the safety of the nation's air transportation system is its primary mission. As noted in the agency's testimony at the hearing, the FAA can not assure Congress that changing the Age 60 rule will maintain or raise the current level of safety. In fact, their most recent empirical studies completed in 2004 continue to indicate that there appears to be a relationship between pilot age and accident rate.

Over the past 45 years, the FAA has thoroughly and comprehensively reviewed its findings on the Age 60 rule on numerous occasions. They continue to believe that the Age 60 rule remains the best determination that can be made of a time when a general decline in health-related functions and overall cognitive capabilities have reached a level where decrements in a pilot's performance may jeopardize safety. In addition, several U.S. Courts of Appeals have reviewed the Age 60 rule and studies related to the rule, and have uniformly denied petitioners' challenges.

The bill would effectively delegate U.S. safety decisions to an international body, despite the fact that the FAA has long been considered the world leader in aviation safety. In fact, the FAA has never delegated the discharge of its safety responsibilities to an international organization. We also will need to look carefully at how physicals pre-age 60 and post-age 60 are performed. Many of the nations that currently allow pilots over the age of 60 to pilot for their commercial airlines have stricter recurring flight medical examinations than are currently conducted in the U.S. If Congress moves forward with legislation regarding the Age 60 rule, this matter must be adequately addressed prior to altering existing regulations.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

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