

## AIRLINE PILOT HIRING AND SAFETY ACT OF 1996

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JULY 17, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

### R E P O R T

[To accompany H.R. 3536]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 3536) to amend title 49, United States Code, to require an air carrier to request and receive certain records before allowing an individual to begin service as a pilot, 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. SHORT TITLE.

This Act may be cited as the “Airline Pilot Hiring and Safety Act of 1996”.

#### SEC. 2. EMPLOYMENT INVESTIGATIONS OF PILOTS.

(a) IN GENERAL.—Chapter 447 of title 49, United States Code, is amended by redesignating section 44723 as section 44724 and by inserting after section 44722 the following:

##### “§ 44723. Preemployment review of prospective pilot records

“(a) PILOT RECORDS.—

“(1) IN GENERAL.—Before allowing an individual to begin service as a pilot, an air carrier shall request and receive the following information:

“(A) FAA RECORDS.—From the Administrator of the Federal Aviation Administration, information pertaining to the individual that is maintained by the Administrator concerning—

“(i) current airman certificates (including airman medical certificates) and associated type ratings, including any limitations thereon; and

“(ii) summaries of legal enforcement actions which have resulted in a finding by the Administrator of a violation of this title or a regulation

prescribed or order issued under this title and which have not been subsequently overturned.

“(B) AIR CARRIER RECORDS.—From any air carrier (or the trustee in bankruptcy for the air carrier) that has employed the individual at any time during the 5-year period preceding the date of the employment application of the individual—

“(i) records pertaining to the individual that are maintained by an air carrier (other than records relating to flight time, duty time, or rest time) under regulations set forth in—

“(I) section 121.683 of title 14, Code of Federal Regulations;

“(II) paragraph (A) of section VI, appendix I, part 121 of such title;

“(III) paragraph (A) of section IV, appendix J, part 121 of such title;

“(IV) section 125.401 of such title; and

“(V) section 135.63(a)(4) of such title; and

“(ii) other records pertaining to the individual that are maintained by the air carrier concerning—

“(I) the training, qualifications, proficiency, or professional competence of the individual, including comments and evaluations made by a check airman designated in accordance with section 121.411, 125.295, or 135.337 of such title;

“(II) any disciplinary action relating to the training, qualifications, proficiency, or professional competence of the individual which was taken by the air carrier with respect to the individual and which was not subsequently overturned by the air carrier; and

“(III) any release from employment or resignation, termination, or disqualification with respect to employment.

“(C) NATIONAL DRIVER REGISTER RECORDS.—From the chief driver licensing official of a State, information concerning the motor vehicle driving record of the individual in accordance with section 30305(b)(7) of this title.

“(2) 5-YEAR REPORTING PERIOD.—A person is not required to furnish a record in response to a request made under paragraph (1) if the record was entered more than 5 years before the date of the request, unless the information is about a revocation or suspension of an airman certificate or motor vehicle license that is still in effect on the date of the request.

“(3) REQUIREMENT TO MAINTAIN RECORDS.—The Administrator and each air carrier (or the trustee in bankruptcy for the air carrier) shall maintain pilot records described in paragraph (1) for a period of at least 5 years.

“(4) WRITTEN CONSENT FOR RELEASE.—Neither the Administrator nor any air carrier may furnish a record in response to a request made under paragraph (1) (A) or (B) without first obtaining the written consent of the individual whose records are being requested.

“(5) DEADLINE FOR PROVISION OF INFORMATION.—A person who receives a day following the date of receipt of the request (or on or before the 30th day following the date of obtaining the written consent of the individual in the case of a request under paragraph (1) (A) or (B)), all of the records maintained by the person that have been requested.

“(6) RIGHT TO RECEIVE NOTICE AND COPY OF ANY RECORD FURNISHED.—A person who receives a request for records under paragraph (1) shall provide to the individual whose records have been requested—

“(A) on or before the 20th day following the date of receipt of the request, written notice of the request and of the individual’s right to receive a copy of such records; and

“(B) in accordance with paragraph (9), a copy of such records, if requested by the individual.

“(7) REASONABLE CHARGES FOR PROCESSING REQUESTS AND FURNISHING COPIES.—A person who receives a request for records under paragraph (1) or (9) may establish a reasonable charge for the cost of processing the request and furnishing copies of the requested records.

“(8) RIGHT TO CORRECT INACCURACIES.—An air carrier that receives the records of an individual under paragraph (1)(B) shall provide the individual with a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records before making a final hiring decision with respect to the individual.

“(9) RIGHT OF PILOT TO REVIEW CERTAIN RECORDS.—Notwithstanding any other provision of a law or agreement, an air carrier shall, upon written request from a pilot employed by such carrier, make available, within a reasonable time

of the request, to the pilot for review any and all employment records referred to in paragraph (1)(B) pertaining to the pilot's employment.

“(10) PRIVACY PROTECTIONS.—

“(A) USE OF RECORDS.—An air carrier or employee of an air carrier that receives the records of an individual under paragraph (1) may use such records only to assess the qualifications of the individual in deciding whether or not to hire the individual as a pilot.

“(B) REQUIRED ACTIONS.—Subject to subsection (c), the air carrier or employee of an air carrier shall take such actions as may be necessary to protect the privacy of the pilot and the confidentiality of the records, including ensuring that the information contained in the records is not divulged to any individual that is not directly involved in the hiring decision.

“(C) INDIVIDUALS NOT HIRED.—If the individual is not hired, the air carrier shall destroy or return the records of the individual received under paragraph (1); except that the air carrier may retain any records needed to defend its decisions not to hire the individual.

“(11) STANDARD FORMS.—The Administrator may promulgate—

“(A) standard forms which may be used by an air carrier to request the records of an individual under paragraph (1); and

“(B) standard forms which may be used by a person who receives a request for records under paragraph (1) to obtain the written consent of the individual and to inform the individual of the request and of the individual's right to receive a copy of any records furnished in response to the request.

“(12) REGULATIONS.—The Administrator may prescribe such regulations as may be necessary—

“(A) to protect the personal privacy of any individual whose records are requested under paragraph (1) and to protect the confidentiality of those records;

“(B) to preclude the further dissemination of records received under paragraph (1) by the air carrier who requested them; and

“(C) to ensure prompt compliance with any request under paragraph (1).

“(b) LIMITATION ON LIABILITY; PREEMPTION OF STATE AND LOCAL LAW.—

“(1) LIMITATION ON LIABILITY.—No action or proceeding may be brought by or on behalf of an individual who is seeking a position with an air carrier as a pilot against—

“(A) the air carrier for requesting the individual's records under subsection (a)(1);

“(B) a person who has complied with such request and in the case of a request under subsection (a)(1) (A) or (B) has obtained the written consent of the individual;

“(C) a person who has entered information contained in the individual's records; or

“(D) an agent or employee of a person described in subparagraph (A) or (B);

in the nature of an action for defamation, invasion of privacy, negligence, interference with contract, or otherwise, or under any Federal, State, or local law with respect to the furnishing or use of such records in accordance with subsection (a).

“(2) PREEMPTION.—No State or political subdivision thereof may enact, prescribe, issue, continue in effect, or enforce any law, regulation, standard, or other provision having the force and effect of law that prohibits, penalizes, or imposes liability for furnishing or using records in accordance with subsection (a).

“(3) PROVISION OF KNOWINGLY FALSE INFORMATION.—Paragraphs (1) and (2) shall not apply with respect to a person that furnishes in response to a request made under subsection (a)(1) information that the person knows is false.

“(c) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as precluding the availability of the records of a pilot in an investigation or other proceeding concerning an accident or incident conducted by the Secretary, the National Transportation Safety Board, or a court.”.

(b) CHAPTER ANALYSIS AMENDMENT.—The analysis for chapter 447 of such title is amended by striking

“44723. Annual report.”

and inserting

“44723. Preemployment review of prospective pilot records.

“44724. Annual report.”.

(c) CONFORMING AMENDMENT.—Section 30305(b) of such title is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following:

“(7) An individual who is employed or seeking employment by an air carrier as a pilot may request the chief driver licensing official of a State to provide information about the individual under subsection (a) of this section to the individual’s prospective employer or to the Secretary of Transportation. Information may not be obtained from the Register under this paragraph if the information was entered in the Register more than 5 years before the request, unless the information is about a revocation or suspension still in effect on the date of the request.”.

(d) CIVIL PENALTIES.—Section 46301 of such title is amended by inserting “44723,” after “44716,” in each of subsections (a)(1)(A), (a)(2)(A), (d)(2), and (f)(1)(A)(i).

(e) APPLICABILITY.—The amendments made by this section shall apply to any air carrier hiring an individual as a pilot on or after the 30th day after the date of the enactment of this Act.

#### SEC. 3. RULEMAKING TO ESTABLISH MINIMUM STANDARDS FOR PILOT QUALIFICATIONS.

Not later than 18 months after the date of the enactment of this Act, the Administrator of the Federal Aviation Administration shall issue a notice of a proposed rulemaking to establish—

(1) minimum standards and criteria for preemployment screening tests measuring the biographical factors (psychomotor coordination), general intellectual capacity, instrument and mechanical comprehension, and physical fitness of an applicant for employment as a pilot by an air carrier; and

(2) minimum standards and criteria for pilot training facilities which will be licensed by the Administrator and which will assure that pilots trained at such facilities meet the preemployment screening standards and criteria described in paragraph (1).

#### SEC. 4. SHARING ARMED SERVICES RECORDS.

(a) STUDY.—The Administrator of the Federal Aviation Administration, in conjunction with the Secretary of Defense, shall conduct a study to determine the relevance and appropriateness of requiring the Secretary of Defense to provide to an air carrier, upon request in connection with the hiring of an individual as a pilot, records of the individual concerning the individual’s training, qualifications, proficiency, professional competence, or terms of discharge from the Armed Forces.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall transmit to Congress a report on the results of the study.

#### SEC. 5. MINIMUM FLIGHT TIME.

(a) STUDY.—The Administrator of the Federal Aviation Administration shall conduct a study to determine whether current minimum flight time requirements applicable to individuals seeking employment as a pilot with an air carrier are sufficient to ensure public safety.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall transmit to Congress a report on the results of the study.

### BACKGROUND

Since 1987, according to National Transportation Safety Board (NTSB) investigations, there have been several commercial airplane crashes attributed to pilot error.

Moreover, in a number of these accidents, employers were not aware that the pilots had documented histories of poor performance with their previous airlines.

The NTSB has recommended to the Federal Aviation Administration (FAA) on three separate occasions, as a result of crashes, that air carriers be required to conduct substantive background checks on pilot applicants which would include verification of personal flight records and examination on training, performance, and disciplinary records of previous employers.

In each instance, the FAA indicated that although it agrees with the intent of the recommendations, it does not believe that any benefits derived from such regulatory change would outweigh the costs of promulgating and enforcing the regulatory change.

The first NTSB recommendation, in 1988, was issued following a DC-9 takeoff accident at Denver, Colorado. The investigation revealed that the first officer had been dismissed by his previous employer because of his unsuccessful performance after 30 hours of simulator training. This information was not obtained in the background check performed for the airline by a contract security company.

The second recommendation, in 1990, was issued to the FAA as a result of a commuter accident at Molokai, Hawaii. This investigation revealed that Aloha Island Air did not contact the captain's previous employers. Although the FAA did not issue regulations in this instance, Aloha Island Air implemented a new preemployment screening procedure.

In fact, Aloha Island Air later rejected a captain who misrepresented his employment record. That captain subsequently was hired by Scenic Air Tours, which did not check his background, and he was involved in an accident that prompted a third NTSB recommendation in 1993.

Similarly, the FAA disagreed with the third recommendation, contending that it was the responsibility of the airlines to verify the validity of a pilot's certificates.

On December 13, 1994, American Eagle Flight 3379 from Greensboro, North Carolina to Raleigh-Durham fell about 4 nautical miles short of the runway while attempting an instrument controlled landing in poor weather conditions. Thirteen passengers and the two crew members were fatally injured.

The pilot in the Raleigh-Durham crash had been forced to quit by a previous employer because of poor piloting skills. However, American Eagle hired him just four days later without knowing of his poor performance.

As a result of this crash, the NTSB again made several recommendations to the FAA, including the sharing of pilot performance records among airlines.

According to the NTSB, probable cause of the American Eagle Flight 3379 accident was pilot error. The NTSB specifically stated that the causes of this accident were: (1) the captain's improper assumption that an engine had failed, and (2) the captain's subsequent failure to follow approved procedures for engine failure, single-engine approach and go-around, and stall recovery.

Also contributing to the cause of the accident was the failure of the airline's management to identify, document, monitor, and remedy deficiencies in pilot performance and training.

#### NEED FOR LEGISLATION

FAA rules (14 CFR 121.683 and 135.63(a)(4)) require an employer to maintain current records of each pilot showing the pilot's qualifications, proficiency, and compliance with the applicable sections of Part 121 and Part 135.

Employers are also required to maintain any records concerning the release of a pilot for physical or professional disqualification.

However, the FAA does not require a potential employer to conduct a pilot/applicant background check. And there are no FAA requirements to verify flight experience, determine an applicant's

safety history, pilot training and performance in his or her previous position, or any criminal or driving history.

While the vast majority of air carriers do obtain the driving records of prospective pilots, most do not attempt to obtain pilot performance records.

In 1988, the General Accounting Office surveyed Part 121 and Part 135 carriers and found that many of them did not verify statements in airmen employment applications. Moreover, a majority of them did not even verify the validity of the applicant's airman certificate.

The NTSB completed its own investigation of commuter airline safety in 1994. Its survey showed that twenty percent of these carriers may not conduct background checks on professional references.

Although the FAA has decided to monitor carriers as to whether they check the validity of airman certificates and use FAA data bases on enforcement and accident histories, the FAA has not sought to require a check between airlines. They have indicated that this would be too costly.

There have now been four fatal accidents in less than ten years involving pilots with questionable and undiscovered performance histories. Commercial aircraft accidents are so rare that to have four in seven years is troubling and conclusive evidence of a more serious problem.

While the Committee is greatly impressed with the overall quality of airline pilots in this country, it considers it important to ensure that airlines are aware of a pilot's previous performance when hiring that pilot from another carrier. Ensuring this will help to maintain the high standards of aviation safety that the public expects and prevent the sort of accidents described above. It will also help to weed out those few pilots who undermine the excellent performance and reputation of the pilot community as a whole.

The Committee believes that the proper solution is for airlines to maintain and share reasonable information, rather than establishing a new government system to collect and store information. Accordingly, the reported bill (H.R. 3536) would require an airline, before hiring a pilot, to obtain that pilot's records from the FAA, the National Driver Register, and the airline that the pilot worked for during the previous 5 years. The records to be obtained are not merely the objective information on licenses and qualifications but also subjective evaluations of the applicant's performance as a pilot. The airline could request and receive the information itself or hire a third party acting as an agent of the airline to request and receive the pilot's background information in the same manner as the airline and with the same rights, responsibilities, and legal obligations as the airline.

The Committee is aware that airlines, while sympathetic to the view that pilot performance records should be shared between carriers, are very concerned about the costs of potential law suits that could arise from pilots upset about evaluations in their records. At the same time, the matter of employee privacy rights, that arises when pilot performance records are shared, is an important concern.

The Committee understands these concerns and has addressed both of them in the reported bill.

First, no action or proceeding, in regard to the sharing of pilot records or the information in those records, may be brought by or on behalf of an individual who is seeking a position with an air carrier. An exception to this provision would apply only if an air carrier knowingly provided false information with respect to a pilot's record. This exception is narrowly drawn to allow lawsuits only where the airline actually lies about the pilot. While similar statutes in other areas use the phrase "knows or should have known", the reported bill limits the exception to the situation where the airline actually knew that the information it was transferring was false. This should protect the airlines from frivolous lawsuits while preventing an airline from ruining a good pilot's career because of some manager's personal vendetta.

Second, the sharing of a pilot's records cannot take place until the air carrier has received the written consent of the individual whose records are being requested. The pilot has the right to submit written comments to correct any inaccuracies contained in the records before the carrier makes a final hiring decision with respect to that individual. The pilot, upon written request, must also be afforded the opportunity to review his or her records in a reasonable time frame.

In addition to addressing the issue of pilot record sharing, sections 3, 4, and 5 of the reported bill direct studies in the related areas of minimum pilot qualifications, minimum flight time, and the sharing of military records.

Although the Federal Aviation Regulations (FAR) establish minimum eligibility requirements for obtaining pilot certificates, industry standards have typically exceeded the FAA's regulatory requirements. However, air carrier hiring standards fluctuate with cyclical trends in the air transportation market. Some hiring standards, based on the qualifications of available pilots, become less stringent as demand grows.

The Committee recommends that, in preparation for the issuance of a notice of proposed rule making (NPRM) under section 3 of the reported bill, the Administrator review the 1993 Report of the Pilot and Aviation Maintenance Technician Blue Ribbon Panel.

This report, entitled "Pilots and Aviation Maintenance Technicians for the Twenty-First Century: An Assessment of Availability and Quality," provides basic research required to comprehend the scope of the related problems concerning the qualifications of pilots and pilot training well into the 21st century.

The rulemaking on preemployment screening and flight training school standards, as directed by section 3 of the bill, is necessary to ensure that the commercial pilots who will be operating sophisticated equipment in the complex aerospace system of the future will be the best trained and most qualified aviation personnel in the world.

The pertinent issue is the question of quality and the need to update the minimum training standards to ensure knowledge of computers, human factors, instrument and mechanical comprehension, and physical fitness of an applicant for employment as a pilot by an air carrier in light of increasingly sophisticated equipment.

Section 4 of the reported bill also addresses the issue of sharing military performance records with the civilian aviation industry.

Most military pilot candidates are carefully screened and selected. The ability to select the best qualified candidates for flight training programs further enhances the value of these pilots for the military and, eventually, the civilian air carriers.

In the past, military pilots have satisfied between 35 to 85 percent of the civilian air carrier flight crew member hiring demand.

The Committee understands the importance of the military trained pilot to the civilian aviation industry. Thus, the reported bill requires the FAA in conjunction with the Secretary of Defense to conduct a study to determine the relevance and appropriateness of requiring the Secretary of Defense to provide to an air carrier, upon request in connection with the hiring of an individual as a pilot, records of the individual concerning the individual's training, qualifications, proficiency, professional competence, or terms of discharge from the Armed Forces.

There has also been considerable debate surrounding the adequacy of the FAA's current minimum flight time requirements for pilots. FAA rules (14 CFR 61.129) currently require a minimum of 250 hours of flight time and a proficiency examination in order to obtain a commercial pilot certificate. Section 5 of the reported bill directs the FAA to conduct a study to determine whether current minimum flight time requirements applicable to individuals seeking employment as a pilot with an air carrier are sufficient to ensure public safety.

## SECTION-BY-SECTION SUMMARY

### SECTION 1.—SHORT TITLE

This section provides that the Act may be cited as the "Airline Pilot Hiring and Safety Act of 1996".

### SECTION 2.—EMPLOYMENT INVESTIGATIONS OF PILOTS

This section adds a new section 44723 to the chapter on air safety regulation.

Subsection (a) of section 44723 deals with pilot records. This subsection would require an airline, before hiring a pilot, to request the pilot's records. The hiring airline would be required to request from the FAA, the pilot's license, medical certificate, type rating, and any enforcement actions that resulted in a finding against the pilot that has not been overturned.

In addition, it requires the airline to request records from the pilot's previous airline employer. These records include proficiency and route checks, airplane and route qualifications, training, physical exams, physical or professional disqualifications, drug tests and alcohol tests.

Airlines would be required to request the motor vehicle driving records of the pilot from the National Driver Register.

Similar items would be required at contract carriers and at commuter airlines.

Records that must be furnished are limited to those entered within 5 years of the date of the request unless the record involves a license revocation that is still in effect.

The FAA and the airlines would be required to maintain the relevant records for 5 years. Before any records are released, the FAA



and the airlines must obtain written consent from the pilot. These records must be provided within 30 days.

The pilot must also be informed within 20 days that his or her records have been requested and that the pilot has a right to receive a copy of those records. A reasonable charge may be imposed by those providing the records on those requesting the records.

An airline receiving the records must give the pilot a chance to submit written comments correcting any inaccuracies in those records. The pilot is also afforded the right to review his or her records at the current employer.

The privacy of the pilot is protected by limiting the use of the records received under this section to those involved in the hiring decision and by requiring that the records be destroyed or returned when they are no longer needed.

The FAA would be permitted to provide standard forms to request records, obtain the written consent from pilots, and inform the pilot of the record request. In addition, this section would permit the FAA to promulgate rules protecting the privacy of pilots and ensuring the prompt compliance with a request for records. However, the provisions of section 44723 go into effect in accordance with subsection (e) even if the FAA has not issued any of the rules or forms under this paragraph.

Subsection (b) of section 44723 limits liability and preempts States and local law. Paragraph (1) prohibits lawsuits against an airline or its employees for requesting a pilot's record, complying with such a request, or entering information into the pilot's record. Paragraph (2) preempts any State or local government from passing any law which would undermine this prohibition. However, paragraph (3) provides a limited exception to the prohibition in paragraph (1) by permitting a lawsuit or State action if the airline lied about the pilot.

Subsection (c) of section 44723 makes clear that the privacy protections and other limits in this bill are not meant to hinder the FAA, NTSB, or a court in their ability to obtain records in the course of an investigation of an accident. This section also revises the current law governing the National Driver Register to conform to this bill.

Subsection (d) makes violations of the record-sharing and privacy provisions subject to civil penalties.

Subsection (e) makes the above changes applicable to any airline hiring a pilot 30 days after the date of enactment.

### SECTION 3.—RULEMAKING TO ESTABLISH MINIMUM STANDARDS FOR PILOTS QUALIFICATIONS

This section requires the FAA to issue a proposed rule within 18 months establishing minimum standards for pilot qualifications.

### SECTION 4.—SHARING ARMED SERVICES RECORDS

This section requires the FAA, together with the Defense Department, to report within one year on whether military pilot records should be made available to civilian airlines seeking to hire that pilot.

## SECTION 5.—MINIMUM FLIGHT TIME

This section requires the FAA to conduct a study to determine whether current minimum flight time requirements for an individual seeking employment as a pilot with an air carrier are sufficient. The results of this study must be submitted to Congress not later than 1 year after the date of enactment.

## 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. 3536 was introduced on May 29, 1996.

On May 30, 1996, the Subcommittee on Aviation reported the bill, by unanimous voice vote, to the Committee on Transportation and Infrastructure. On June 6, 1996, the Committee on Transportation and Infrastructure ordered the bill reported, with an amendment, by voice vote with a quorum present.

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

## INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 3536 will have no significant inflationary impact on prices and costs in the operation of the national economy.

## 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(1)(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(1)(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. 3536.

3. With respect to the requirement of clause 2(1)(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. 3536 from the Director of the Congressional Budget Office.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 11, 1996.*

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3536, the Airline Pilot Hiring and Safety Act of 1996, as ordered reported by the House Committee on Transportation and Infrastructure on June 6, 1996. If enacted, this bill would require an air carrier to request and receive certain records before allowing an individual to begin service as a pilot. CBO estimates that implementing H.R. 3536 would cost the Federal Aviation Administration (FAA) between \$500,000 and \$1 million over the next two fiscal years, assuming appropriation of the necessary funds. Enacting H.R. 3536 could increase offsetting collections to the FAA as well as collections of civil penalties, which are federal receipts, but CBO estimates that any such increases would be negligible. Nevertheless, pay-as-you-go procedures would apply.

Bill purpose.—H.R. 3536 would amend Title 49 of the U.S. Code by adding requirements for a preemployment review of prospective pilots' records. Specifically, the bill would:

Require air carriers to gather records from the Federal Aviation Administration (FAA), other air carriers, and state departments of motor vehicles (DMVs) on prospective pilots;

Provide for reasonable charges by the FAA, air carriers, and the DMVs to cover the cost of processing requests and making copies of records;

Allow the FAA to create standard forms for air carriers and individuals to use to request records, and to develop regulations to protect privacy and confidentiality and to ensure compliance, and

Impose civil penalties for violating new hiring requirements.

The bill also would require the FAA to:

Establish minimum standards and criteria for preemployment screening tests and pilot training facilities;

Conduct a study in conjunction with the Department of Defense (DoD) to determine if DoD pilot records should be shared with an air carrier, and

Conduct a study to determine if minimum flight-time requirements are sufficient.

Federal budgetary impact.—Based on information from the FAA, CBO estimates that the cost of processing requests and furnishing copies of records as a requirement of this legislation would be recovered through charges paid by the requesters. In fiscal year 1995, the FAA received over 2,000 requests for records on 14,647 airmen and received between \$450,000 and \$500,000 in offsetting collections for the cost of processing the requests. The FAA does not believe that the number of requests would increase significantly as a result of this bill because many air carriers are already requesting records, conducting preemployment screening, and following standards similar to those in H.R. 3536.

Both the development of standard forms and the privacy regulations would be at the discretion of the Administrator. If the Admin-

istrator chooses to develop standard forms, the cost would be less than \$40,000, and promulgating the regulations to protect privacy and confidentiality would cost about \$175,000. Based on information from the FAA, CBO estimates that the cost of conducting a rulemaking proceeding to establish standards and criteria for preemployment screening tests and pilot training facilities would be approximately \$275,000. The cost of conducting studies on the sharing of DoD records and minimum flight-time requirements and publishing the two reports would be \$200,000.

CBO estimates that likelihood of collecting any civil penalties for violating new hiring requirements is small.

Impact on State, local, and tribal government.—The bill would require state DMV officials to provide information from the National Driver Register on an individual's motor vehicle driving record within 30 days of receiving a request from an air carrier. The bill would allow the states to charge the air carriers a reasonable fee for providing the requested records. H.R. 3536 would also require the DMV officials to, within 20 days, notify the individual in writing of the request and of their right to receive copies of the records. Because the National Driver Register program is a voluntary federal program, these requirements would not constitute mandates as defined by Public Law 104–4. They would, however, result in some costs to states. Based on information from Department of Transportation, state DMVs, and airline industry representatives, CBO estimates that these additional administrative costs would be insignificant.

Private-sector impact.—H.R. 3536 would impose new mandates on air carriers. However, based on information provided by the FAA and industry representatives, CBO estimates that the net direct costs of the private-sector mandates identified in the bill would not exceed the \$100 million threshold established in Public Law 104–4. The bill would require air carriers to obtain information about a pilot's safety record from the FAA, the pilot's previous air carrier employer, and the National Driver Register prior to allowing that individual to begin service as a pilot. The bill would expand the requirements for types of recordkeeping, and increase the minimum period for maintaining pilot records to five years. In addition, an air carrier could not furnish records in response to a request without first obtaining the written consent of the individual whose records are being requested. The bill also would require the FAA to issue a proposed rule within 18 months establishing minimum standards for pilot qualifications.

Title 14 of the Code of Federal Regulations establishes the current mandated level of recordkeeping on pilots by air carriers. Air carriers are currently not required to share records when hiring pilots. Although some air carriers now request such records, industry-wide such requests for records are not a routine part of the hiring process. In 1995, a total of 8,814 pilots were hired and the industry projects that over 10,000 pilots will be hired in 1996 and 1997. To accommodate the requirements of H.R. 3536, additional clerical staff may be needed by the airlines to handle records administration. This burden may be somewhat greater for smaller regional air carriers. Information provided by the air carrier industry

suggests that in total these costs would be well below the threshold for private-sector mandates.

H.R. 3536 would increase the requirements governing the types of records maintained to include records of disciplinary actions and release from employment, and would extend the required record-keeping period for some records from six months or more to five years for all pilot records. Many air carriers keep records longer than the required periods. In 1995 there were between 55,000 and 74,000 commercial pilots employed nationwide. As a result of these additional requirements, air carriers would require additional storage facilities to house more records.

Section 4 of the Unfunded Mandates Reform Act of 1995 excludes from the application of that act legislative provisions that enforce the constitutional rights of individuals. CBO has determined that the bill's provisions limiting an individual's right to bring a claim in federal, state, or local court regarding the furnishing or use of the required records fit within that exclusion.

The CBO staff contacts are Clare Doherty (for federal costs), Karen McVey (for the state, local, and tribal impact), and Dan Lieberman (for the private-sector impact).

Sincerely,

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

#### 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):

### **TITLE 49, UNITED STATES CODE**

\* \* \* \* \*

### **SUBTITLE VI—MOTOR VEHICLE AND DRIVER PROGRAMS**

\* \* \* \* \*

### **CHAPTER 303—NATIONAL DRIVER REGISTER**

\* \* \* \* \*

#### **§ 30305. Access to Register information**

(a) \* \* \*

(b) REQUESTS TO OBTAIN INFORMATION.—(1) \* \* \*

\* \* \* \* \*

(7) *An individual who is employed or seeking employment by an air carrier as a pilot may request the chief driver licensing official of a State to provide information about the individual under subsection (a) of this section to the individual's prospective employer or to the Secretary of Transportation. Information may not be obtained from the Register under this paragraph if the information was en-*

tered in the Register more than 5 years before the request, unless the information is about a revocation or suspension still in effect on the date of the request.

[(7)] (8) A request under this subsection shall be made in the form and way the Secretary of Transportation prescribes by regulation.

\* \* \* \* \*

## SUBTITLE VII—AVIATION PROGRAMS

\* \* \* \* \*

### PART A—AIR COMMERCE AND SAFETY

\* \* \* \* \*

#### SUBPART II—ECONOMIC REGULATION

\* \* \* \* \*

#### CHAPTER 447—SAFETY REGULATION

Sec.

44701. General requirements.

\* \* \* \* \*

[44723. Annual report.]

44723. *Preemployment review of prospective pilot records.*

44724. *Annual report.*

\* \* \* \* \*

#### **§44723. *Preemployment review of prospective pilot records***

(a) **PILOT RECORDS.**—

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

(A) **FAA RECORDS.**—*From the Administrator of the Federal Aviation Administration, information pertaining to the individual that is maintained by the Administrator concerning—*

(i) *current airman certificates (including airman medical certificates) and associated type ratings, including any limitations thereon; and*

(ii) *summaries of legal enforcement actions which have resulted in a finding by the Administrator of a violation of this title or a regulation prescribed or order issued under this title and which have not been subsequently overturned.*

(B) **AIR CARRIER RECORDS.**—*From any air carrier (or the trustee in bankruptcy for the air carrier) that has employed the individual at any time during the 5-year period preceding the date of the employment application of the individual—*

(i) *records pertaining to the individual that are maintained by an air carrier (other than records relat-*

ing to flight time, duty time, or rest time) under regulations set forth in—

(I) section 121.683 of title 14, Code of Federal Regulations;

(II) paragraph (A) of section VI, appendix I, part 121 of such title;

(III) paragraph (A) of section IV, appendix J, part 121 of such title;

(IV) section 125.401 of such title; and

(V) section 135.63(a)(4) of such title; and

(ii) other records pertaining to the individual that are maintained by the air carrier concerning—

(I) the training, qualifications, proficiency, or professional competence of the individual, including comments and evaluations made by a check airman designated in accordance with section 121.411, 125.295, or 135.337 of such title;

(II) any disciplinary action relating to the training, qualifications, proficiency, or professional competence of the individual which was taken by the air carrier with respect to the individual and which was not subsequently overturned by the air carrier; and

(III) any release from employment or resignation, termination, or disqualification with respect to employment.

(C) NATIONAL DRIVER REGISTER RECORDS.—From the chief driver licensing official of a State, information concerning the motor vehicle driving record of the individual in accordance with section 30305(b)(7) of this title.

(2) 5-YEAR REPORTING PERIOD.—A person is not required to furnish a record in response to a request made under paragraph (1) if the record was entered more than 5 years before the date of the request, unless the information is about a revocation or suspension of an airman certificate or motor vehicle license that is still in effect on the date of the request.

(3) REQUIREMENT TO MAINTAIN RECORDS.—The Administrator and each air carrier (or the trustee in bankruptcy for the air carrier) shall maintain pilot records described in paragraph (1) for a period of at least 5 years.

(4) WRITTEN CONSENT FOR RELEASE.—Neither the Administrator nor any air carrier may furnish a record in response to a request made under paragraph (1) (A) or (B) without first obtaining the written consent of the individual whose records are being requested.

(5) DEADLINE FOR PROVISION OF INFORMATION.—A person who receives a request for records under paragraph (1) shall furnish, on or before the 30th day following the date of receipt of the request (or on or before the 30th day following the date of obtaining the written consent of the individual in the case of a request under paragraph (1) (A) or (B)), all of the records maintained by the person that have been requested.

(6) RIGHT TO RECEIVE NOTICE AND COPY OF ANY RECORD FURNISHED.—A person who receives a request for records under

paragraph (1) shall provide to the individual whose records have been requested—

(A) on or before the 20th day following the date of receipt of the request, written notice of the request and of the individual's right to receive a copy of such records; and

(B) in accordance with paragraph (9), a copy of such records, if requested by the individual.

(7) **REASONABLE CHARGES FOR PROCESSING REQUESTS AND FURNISHING COPIES.**—A person who receives a request for records under paragraph (1) or (9) may establish a reasonable charge for the cost of processing the request and furnishing copies of the requested records.

(8) **RIGHT TO CORRECT INACCURACIES.**—An air carrier that receives the records of an individual under paragraph (1)(B) shall provide the individual with a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records before making a final hiring decision with respect to the individual.

(9) **RIGHT OF PILOT TO REVIEW CERTAIN RECORDS.**—Notwithstanding any other provision of a law or agreement, an air carrier shall, upon written request from a pilot employed by such carrier, make available, within a reasonable time of the request, to the pilot for review any and all employment records referred to in paragraph (1)(B) pertaining to the pilot's employment.

(10) **PRIVACY PROTECTIONS.**—

(A) **USE OF RECORDS.**—An air carrier or employee of an air carrier that receives the records of an individual under paragraph (1) may use such records only to assess the qualifications of the individual in deciding whether or not to hire the individual as a pilot.

(B) **REQUIRED ACTIONS.**—Subject to subsection (c), the air carrier or employee of an air carrier shall take such actions as may be necessary to protect the privacy of the pilot and the confidentiality of the records, including ensuring that the information contained in the records is not divulged to any individual that is not directly involved in the hiring decision.

(C) **INDIVIDUALS NOT HIRED.**—If the individual is not hired, the air carrier shall destroy or return the records of the individual received under paragraph (1); except that the air carrier may retain any records needed to defend its decisions not to hire the individual.

(11) **STANDARD FORMS.**—The Administrator may promulgate—

(A) standard forms which may be used by an air carrier to request the records of an individual under paragraph (1); and

(B) standard forms which may be used by a person who receives a request for records under paragraph (1) to obtain the written consent of the individual and to inform the individual of the request and of the individual's right to receive a copy of any records furnished in response to the request.



(12) *REGULATIONS.*—*The Administrator may prescribe such regulations as may be necessary—*

*(A) to protect the personal privacy of any individual whose records are requested under paragraph (1) and to protect the confidentiality of those records;*

*(B) to preclude the further dissemination of records received under paragraph (1) by the air carrier who requested them; and*

*(C) to ensure prompt compliance with any request under paragraph (1).*

*(b) LIMITATION ON LIABILITY; PREEMPTION OF STATE AND LOCAL LAW.—*

*(1) LIMITATION ON LIABILITY.*—*No action or proceeding may be brought by or on behalf of an individual who is seeking a position with an air carrier as a pilot against—*

*(A) the air carrier for requesting the individual's records under subsection (a)(1);*

*(B) a person who has complied with such request and in the case of a request under subsection (a)(1) (A) or (B) has obtained the written consent of the individual;*

*(C) a person who has entered information contained in the individual's records; or*

*(D) an agent or employee of a person described in subparagraph (A) or (B);*

*in the nature of an action for defamation, invasion of privacy, negligence, interference with contract, or otherwise, or under any Federal, State, or local law with respect to the furnishing or use of such records in accordance with subsection (a).*

*(2) PREEMPTION.*—*No State or political subdivision thereof may enact, prescribe, issue, continue in effect, or enforce any law, regulation, standard, or other provision having the force and effect of law that prohibits, penalizes, or imposes liability for furnishing or using records in accordance with subsection (a).*

*(3) PROVISION OF KNOWINGLY FALSE INFORMATION.*—*Paragraphs (1) and (2) shall not apply with respect to a person that furnishes in response to a request made under subsection (a)(1) information that the person knows is false.*

*(c) LIMITATION ON STATUTORY CONSTRUCTION.*—*Nothing in this section shall be construed as precluding the availability of the records of a pilot in an investigation or other proceeding concerning an accident or incident conducted by the Secretary, the National Transportation Safety Board, or a court.*

#### **[§ 44723.] § 44724. Annual report**

Not later than January 1 of each year, the Secretary of Transportation shall submit to Congress a comprehensive report on the safety enforcement activities of the Federal Aviation Administration during the fiscal year ending the prior September 30th. The report shall include—

(1) a comparison of end-of-year staffing levels by operations, maintenance, and avionics inspector categories to staffing goals and a statement on how staffing standards were applied to

make allocations between air carrier and general aviation operations, maintenance, and avionics inspectors;

(2) schedules showing the range of inspector experience by various inspector work force categories, and the number of inspectors in each of the categories who are considered fully qualified;

(3) schedules showing the number and percentage of inspectors who have received mandatory training by individual course, and the number of inspectors by work force categories, who have received all mandatory training;

(4) a description of the criteria used to set annual work programs, an explanation of how these criteria differ from criteria used in the prior fiscal year and how the annual work programs ensure compliance with appropriate regulations and safe operating practices;

(5) a comparison of actual inspections performed during the fiscal year to the annual work programs by field location and, for any field location completing less than 80 percent of its planned number of inspections, an explanation of why annual work program plans were not met;

(6) a statement of the adequacy of Administration internal management controls available to ensure that field managers comply with Administration policies and procedures, including those on inspector priorities, district office coordination, minimum inspection standards, and inspection followup;

(7) the status of efforts made by the Administration to update inspector guidance documents and regulations to include technological, management, and structural changes taking place in the aviation industry, including a listing of the backlog of all proposed regulatory amendments;

(8) a list of the specific operational measures of effectiveness used to evaluate—

- (A) the progress in meeting program objectives;
- (B) the quality of program delivery; and
- (C) the nature of emerging safety problems;

(9) a schedule showing the number of civil penalty cases closed during the 2 prior fiscal years, including the total initial and final penalties imposed, the total number of dollars collected, the range of dollar amounts collected, the average case processing time, and the range of case processing time;

(10) a schedule showing the number of enforcement actions taken (except civil penalties) during the 2 prior fiscal years, including the total number of violations cited, and the number of cited violation cases closed by certificate suspensions, certificate revocations, warnings, and no action taken; and

(11) schedules showing the safety record of the aviation industry during the fiscal year for air carriers and general aviation, including—

- (A) the number of inspections performed when deficiencies were identified compared with inspections when no deficiencies were found;
- (B) the frequency of safety deficiencies for each air carrier; and

(C) an analysis based on data of the general status of air carrier and general aviation compliance with aviation regulations.

\* \* \* \* \*

## SUBPART IV—ENFORCEMENT AND PENALTIES

### CHAPTER 463—PENALTIES

\* \* \* \* \*

#### § 46301. Civil penalties

(a) GENERAL PENALTY.—(1) A person is liable to the United States Government for a civil penalty of not more than \$1,000 for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, any of sections 41301–41306, 41308–41310(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41709, 41711, 41712, or 41731–41742, chapter 419, subchapter II of chapter 421, chapter 441 (except section 44109), or any of sections 44701(a) or (b), 44702–44716, 44723, 44901, 44903(b) or (c), 44905, 44906, 44907(d)(1)(B), 44909(a), 44912–44915, 44932–44938, 46302, 46303, 47107(b) (including any assurance made under such section), or 47115 of this title;

\* \* \* \* \*

(2) A person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman) is liable to the Government for a civil penalty of not more than \$10,000 for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117) or any of sections 44701(a) or (b), 44702–44716, 44723, 44901, 44903(b) or (c), 44905, 44906, 44912–44915, or 44932–44938 of this title; or

\* \* \* \* \*

(d) ADMINISTRATIVE IMPOSITION OF PENALTIES.—(1) \* \* \*

(2) The Administrator of the Federal Aviation Administration may impose a civil penalty for a violation of chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), chapter 441 (except section 44109), or any of sections 44701(a) or (b), 44702–44716, 44723, 44901, 44903(b) or (c), 44905, 44906, 44907(d)(1)(B), 44912–44915, 44932–44938, 46302, 46303, or 47107(b) (as further defined by the Secretary under section 47107(l) and including any assurance made under section 47107(b)) of this title or a regulation prescribed or order issued under any of those provisions. The Administrator shall give written notice of the finding of a violation and the penalty.

\* \* \* \* \*

(f) COMPROMISE AND SETOFF.—(1)(A) The Secretary may compromise the amount of a civil penalty imposed for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), or any of sections 44701(a) or (b), 44702–44716, 44723, 44901,

44903(b) or (c), 44905, 44906, 44907(d)(1)(B), 44912–44915, or  
44932–44938 of this title; or

\* \* \* \* \*

