

AIRLINE SAFETY AND PILOT TRAINING IMPROVEMENT
ACT OF 2009

OCTOBER 6, 2009.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 3371]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 3371) to amend title 49, United States Code, to improve airline safety and pilot training, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF LEGISLATION

H.R. 3371, the “Airline Safety and Pilot Training Improvement Act of 2009”, requires the Federal Aviation Administration (FAA) to undertake a number of changes to improve airline safety and pilot training.

BACKGROUND AND NEED FOR LEGISLATION

On the evening of February 12, 2009, a Colgan Air Inc. Bombardier Dash 8-Q400, d.b.a. Continental Connection Flight 3407, crashed during an instrument approach to the Buffalo-Niagara International Airport in Buffalo, New York, while en route from Newark Liberty International Airport, New Jersey. The four crew members and 45 passengers were killed and the airplane was destroyed by impact forces and post crash fire; there was one ground fatality.

The National Transportation Safety Board (NTSB) held a three-day public hearing on Flight 3407 from May 12–14, 2009. The investigation is ongoing, and while the NTSB has not yet made any

conclusions or determined the probable cause of the accident, the investigation is focusing on a number of areas including: (1) flight crew experience and training; (2) remedial training programs; (3) commuting policies and practices; (4) fatigue management; and (5) violations of sterile cockpit and the impact on situational awareness.

In fact, the last six fatal part 121 (commercial) air carrier accidents involved regional air carriers, and the NTSB has cited pilot performance as a potential contributing factor in three of those accidents. On June 11, 2009, the Subcommittee on Aviation (Subcommittee) held a hearing on “Regional Air Carriers and Pilot Workforce Issues”, which focused on issues of concern identified by the NTSB about the crash. The Subcommittee’s hearing identified the need to closely examine: the FAA regulations pertaining to pilot training, and flight and duty time limits; FAA oversight of regional air carriers; access to pilot records for hiring; and airline commuting policies and procedures.

SUMMARY OF THE LEGISLATION

Section 1. Short title; table of contents

This section provides that the short title of the bill is the “Airline Safety and Pilot Training Improvement Act of 2009” and sets out the table of contents for the bill.

Sec. 2. Definitions

This section defines terms in the bill, including: advanced qualification program, air carrier, aviation safety action program, flight crewmember, flight operational quality assurance program, line operations safety audit, part 121 air carrier, and part 135 air carrier.

Sec. 3. FAA Task Force on air carrier safety and pilot training

This section establishes an FAA Task Force that will identify aviation industry best practices regarding: air carrier management responsibility for flight crewmember education, pilot training, pilot professional standards, inter-carrier information sharing and mentoring. The Task Force shall report to Congress every 180 days on air carrier progress in implementing best practices, and make recommendations for legislative and regulatory action. The FAA Administrator (Administrator) shall appoint representatives from air carriers, labor, and aviation safety experts to serve on the Task Force. The Task Force should consist of a representative from a respected international organization with knowledge of foreign and domestic regulatory requirements for pilot flight education and training, such as the Flight Safety Foundation.

Sec. 4. Implementation of NTSB flight crewmember training recommendations

Subsection (a) requires the FAA to issue a final rule within 24 months of the date of enactment to increase pilot training requirements by mandating that pilots receive academic and flight training on stall recovery (i.e., recovery from an aerodynamic loss of lift caused by exceeding the critical angle of attack), upset recovery (i.e., an unusual airplane attitude), and remedial training. The NTSB has made recommendations on each of these issues, which

have not been fully addressed by the FAA. For the purposes of this section, the term “flight training” means structured training conducted in an aircraft or in a flight simulation training device to obtain psychomotor skills and refining procedural and cognitive skills.

Subsection (b) requires the FAA to convene a multidisciplinary expert panel to study methods to increase pilots’ familiarity and improve response to stick pusher¹ systems, icing, and microburst weather events. One year after convening the panel, the Administrator shall issue a report to the NTSB and Congress on the panel’s findings. The FAA shall initiate appropriate actions to implement the panel’s recommendations specifically regarding stick pusher training for pilots.

There is currently no explicit FAA training requirement regarding the proper reaction to stick pusher activation. In 2007, the NTSB recommended that the FAA convene a multidisciplinary panel of operational, training, and human factors specialists to study and submit a report on methods to improve familiarity with and response to stick pusher systems and, if warranted, establish training requirements for stick pusher-equipped aircraft. The Committee is concerned that the FAA has not acted on the NTSB’s recommendation, especially since the Subcommittee’s hearing revealed that pilots may not receive adequate training to respond to stick pusher activation.

Sec. 5. Secretary of Transportation responses to safety recommendations

This section requires the Secretary of Transportation (Secretary) to provide Congress with an annual report on each open NTSB recommendation pertaining to part 121 airlines. The Secretary’s report shall detail the action contemplated in response to each recommendation and the proposed date for completed action. If the Secretary does not intend to adopt an NTSB recommendation, the report must contain a description of the reasons that the Secretary refuses to implement the recommendation. This section amends current law (49 U.S.C. §1135), which requires the Secretary to issue an annual report to Congress on open NTSB recommendations from the NTSB’s “Most Wanted List”.

The NTSB also finds it helpful when agencies include the timetable for action on NTSB recommendations in the agencies’ initial 90-day response to a recommendation, as required by 49 U.S.C. §1135(b). Oftentimes, this timetable is not provided in the initial 90-day response. The Committee believes that agencies should provide this timetable to the NTSB in their 90-day response, and that the Secretary should reinforce the importance of this statutory requirement. Additionally, the NTSB reports that from 2004 to 2008, seven of the eight modal agencies in the Department of Transportation (DOT) did not issue a first response to the NTSB within the 90-day statutory timeframe. The Committee is also concerned that the Secretary has not provided Congress with the annual report on the NTSB’s “Most Wanted List” recommendations in a timely fashion.

¹ In an airplane stall, the “stick pusher” applies a nose down pitch force to push the control columns to decrease the airplane’s angle of attack to prevent further degradation into stall, and to begin recovery to normal flight.

Sec. 6. FAA pilot records database

To facilitate airline pilot hiring decisions, this section requires the FAA to initiate the creation of a pilot record database within 90 days of the date of enactment. The database will enable airlines seeking to hire a prospective pilot to have fast, electronic access to a pilot's comprehensive record. The FAA will maintain the database and airlines will be able to access the database for hiring purposes only. Information in the database will include the pilot's licenses, medical certificates, aircraft ratings, check rides², notices of disapproval, other flight proficiency tests, and State motor vehicle driving records.

Pursuant to the Pilot Records Improvement Act of 1996 (PRIA) (P.L. 104-264) (codified at 49 U.S.C. § 44703(h)), all of this information, except for notices of disapproval, is currently collected and held by the FAA and air carriers. However, airlines are only able to access the previous five years of the pilot's employment history, and must obtain a waiver from the pilot to obtain FAA records containing the pilot's licenses. At the Subcommittee's June 11, 2009 hearing, the NTSB stated that having additional data in FAA records, including records of check ride failures, would be beneficial for airlines to fully evaluate a pilot applicant.

H.R. 3371 stipulates that PRIA will remain in effect until the Administrator issues a final rule certifying that the database is fully operational.

This section requires the Administrator to prescribe regulations that may be necessary to protect and secure the personal privacy of any individual whose records are accessed from the database and the confidentiality of those records.

The Administrator shall require written consent of the individual before an air carrier accesses records in the database. To comply with this requirement, the Committee believes that the Administrator should establish an electronic system to verify that an air carrier has obtained the written consent of the individual.

Information contained in the database is exempt from the public disclosure requirements of the Freedom of Information Act (5 U.S.C. § 552), except for: de-identified, summarized data; information to correct a safety problem; information to carry out a criminal investigation or prosecution; information on threats to civil aviation; and such information as the Administrator determines necessary, if withholding the information would not be consistent with FAA's safety responsibilities. The Committee believes that the Administrator has the authority under this clause to allow for the disclosure of information pertaining to civil investigations or enforcement actions against an individual, in the context of NTSB investigations, public hearings, and civil and criminal cases, and other related matters.

The FAA is authorized to use such sums as may be necessary from the operations account to carry out this section.

²A "check ride" refers to the portion of a pilot's examination in which the candidate flies an aircraft with an FAA-designated pilot examiner and is observed and evaluated on his/her competency in the required skills. A check ride is technically referred to as a practical test.

Sec. 7. FAA rulemaking on training programs

Subsection (a) directs the FAA to issue a final rule within 14 months of the date of enactment, on the proposed rule, “Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers”, issued on January 12, 2009. Subsection (b) requires the Administrator to convene a multidisciplinary panel to assess and make recommendations concerning the best methods and optimal time needed for pilots of part 121 and part 135 air carriers to master necessary aircraft systems, maneuvers, and procedures; take offs and landings; crew coordination; the length of time between training events including recurrent training; and the best methods to reliably evaluate mastery of systems, maneuvers, and procedures. The Administrator shall submit a report to Congress on the findings of the panel within one year after the date of enactment.

The NTSB has raised concerns that new airline pilots often have less experience when advancing to captain or to more complex airplanes compared to 20 years ago. The NTSB believes that determining the number of hours required for training requires a study or an assessment of the best methods, and optimal time needed, for pilots to master necessary aircraft systems, maneuvers, and procedures. Other elements critical to such an assessment include determining the appropriate length of time between training events, and identifying the best methods to evaluate professional competence.

Sec. 8. Aviation safety inspectors and operational research analysts

This section requires the DOT Inspector General to provide Congress, within nine months of the date of enactment, a report: assessing the number and experience level of safety inspectors assigned to regional carriers compared with mainline carriers; determining whether the various data sources that inspectors need to access to perform oversight of airlines can be streamlined; and reviewing various safety inspector programs and oversight responsibilities.

Sec. 9. Flight crewmember mentoring, professional development, and leadership

This section requires the FAA to issue a final rule within 24 months of the date of enactment requiring airlines to create a senior mentoring program whereby highly experienced pilots will mentor junior pilots. In addition, airlines are required to form Pilot Professional Development Committees, and to modify training programs to accommodate new-hire pilots with different levels and types of flight experience as well as provide leadership training to pilots-in-command. Leadership training shall include compliance with the sterile cockpit rule.

Sec. 10. Flight crewmember screening and qualifications

This section requires the FAA to issue a final rule within 24 months of the date of enactment requiring part 121 air carriers to implement means and methods to ensure pilots have proper qualifications and experience. Specifically, the rule would require that airlines conduct comprehensive pre-employment screening of prospective pilots that would include an assessment of a pilot’s skills, aptitudes, airmanship, and suitability for functioning in the airline’s operational environment. In addition, this section increases

the experience level of pilots prior to being hired by a commercial airline by mandating that prospective commercial airline pilots hold an Airline Transport Pilot (ATP) license, which requires a minimum of 1,500 flight hours. Under current law, pilots only need a Commercial Pilot license, which requires a minimum of 250 flight hours. Within three years of enactment, all pilots will be required to obtain an ATP license.

This section also includes a provision requiring the FAA to undertake a more streamlined process to review air carrier programs that may already meet the requirements of the final rule.

Sec. 11. Flight schools, flight education and pilot academic training

This section requires the Government Accountability Office to study pilot flight schools, flight training, and academic training requirements. Based on testimony provided at the June 11, 2009 hearing, the Committee believes that academic requirements for pilot certification merit review and may need to be strengthened.

Sec. 12. Voluntary safety programs

This section requires the FAA to issue a report within 180 days on Aviation Safety Action Program (ASAP), a Flight Operational Quality Assurance (FOQA), Line Operations Safety Audit (LOSA), and Advanced Qualification Program. The report shall include: a list of the air carriers using the programs; the benefits and challenges of implementing such programs; how the FAA is using the data derived from each of the programs for safety analysis and accident prevention; and any FAA plans to strengthen the programs.

The NTSB recommended that the FAA require part 121 air carriers to incorporate periodic LOSA observations and methods to address and correct findings resulting from these observations.

The DOT Inspector General has raised concerns with how the FAA is using data derived from these programs to target oversight of air carriers. The FAA should take steps to use the data more effectively for safety analysis and accident prevention, when appropriate.

Sec. 13. ASAP and FOQA implementation plan

This section requires the FAA to create a plan within 180 days of enactment, to facilitate the establishment and implementation of ASAP and FOQA programs by all part 121 air carriers and their unions.

The Committee believes that these programs are valuable as voluntary safety tools, and therefore more air carriers should strive to implement them. In 2007, the NTSB recommended that FAA strongly encourage and assist all part 121 regional air carriers to implement ASAP and FOQA.

Sec. 14. Safety management systems

This section directs the FAA to complete a rulemaking within 24 months of the date of enactment to require air carriers to establish Safety Management Systems (SMS)—a risk-based, systems approach to safety management and oversight. In 2007, the NTSB recommended that all part 121 operators establish an SMS.

Sec. 15. Disclosure of air carriers operating flights for tickets sold for air transportation

To ensure that consumers can quickly discern what airline is operating a flight for which they are purchasing a ticket, this section mandates that the first page of an Internet website that sells airline tickets must disclose to the purchaser of each ticket the air carrier that operates each segment of the flight.

Sec. 16. Pilot fatigue

To address the issue of pilot fatigue, this section directs that the FAA implement a new pilot flight and duty time rule within one year of enactment. An updated rule will more adequately reflect the operating environment of today's pilots and will reflect scientific research on fatigue. In addition, the bill requires air carriers to create fatigue risk management plans to proactively mitigate fatigue. Lastly, this section directs the National Academy of Sciences to conduct a study on the impact of commuting on pilot fatigue. Following the receipt of reports, FAA shall update, as appropriate, its flight and duty time regulations.

Fatigue is on the NTSB's "Most Wanted List" of safety improvements and has been there since the NTSB was created 19 years ago. In 1995, the FAA proposed to amend existing regulations to establish new duty period and flight time limitations, and rest requirements for flight crewmembers in parts 121 and 135. This rulemaking was based on recommendations from an Aviation Rulemaking Committee. According to the FAA, consensus on the proposed rule could not be reached and a final rule was never adopted. In addition, the International Civil Aviation Organization is requiring by November 18, 2009, that all Member countries approve scientifically-based flight and duty times and fatigue risk management plans.

Sec. 17. Flight crewmember pairing and crew resource management techniques

This section requires the FAA to issue a report to Congress on the aviation industry's best practices with regard to flight crewmember pairing and crew resource management (CRM) techniques. The Committee believes that CRM is critical to effective pilot communication and aircraft operation.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

On June 11, 2009, the Subcommittee on Aviation held a hearing on "Regional Air Carriers and Pilot Workforce Issues".

On July 29, 2009, Representative Jerry F. Costello introduced H.R. 3371, the "Airline Safety and Pilot Training Improvement Act of 2009". This bill has not been introduced in a previous Congress. On July 30, 2009, the Committee on Transportation and Infrastructure met in open session, and ordered the bill reported favorably to the House by voice vote with a quorum present.

RECORD VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report

and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with consideration of H.R. 3371, or ordering the bill reported. A motion to order H.R. 3371 reported favorably to the House was agreed to by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS

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

COST OF LEGISLATION

Clause 3(c)(2) 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 402 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 XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII 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 in the report.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to improve airline safety and pilot training.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 3371 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 8, 2009.

Hon. JAMES L. OBERSTAR,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3371, the Airline Safety and Pilot Training Improvement Act of 2009.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 3371—Airline Safety and Pilot Training Improvement Act of 2009

Summary: H.R. 3371 would establish several new procedural requirements and policies related to aviation safety. Assuming appropriation of the necessary funds, CBO estimates that implementing the bill would cost \$15 million over the 2010–2014 period. Enacting the bill would not affect direct spending but could result in additional revenues from civil penalties and regulatory fees. CBO estimates, however, that any such amounts would be negligible.

H.R. 3371 contains intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), because it would impose new requirements on certain public and private entities that employ pilots. CBO estimates that the aggregate cost of intergovernmental mandates in the bill would fall below the annual threshold established in UMRA (\$69 million in 2009, adjusted annually for inflation). In addition, the bill would impose private-sector mandates on certain commercial air carriers and sellers of air carrier tickets. Because the cost of complying with some of those mandates would depend on future regulations, CBO cannot determine whether the aggregate cost to comply with the private-sector mandates in the bill would exceed the annual threshold established in UMRA (\$139 million in 2009, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3371 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	5	5	5	0	0	15
Estimated Outlays	3	5	5	2	0	15

Basis of estimate: H.R. 3371 would establish new safety-related regulatory requirements for the Federal Aviation Administration (FAA) and other federal agencies. Many of the bill's provisions would require various studies, reports, and rulemakings related to training of aircraft pilots and crew members, safety inspectors, and the FAA's oversight of air carriers.

Based on information from the FAA and historical costs for similar activities, CBO estimates that implementing those requirements would require appropriations totaling \$15 million over the next three years. Most of that amount would be used to develop a new database of pilot records that air carriers could access for purposes of evaluating pilot applicants. Other amounts would be used to establish and operate various task forces and to complete other activities required under the bill.

Enacting H.R. 3371 also could result in additional revenues from civil penalties assessed for violations of new requirements that the bill would impose on air carriers, CBO expects that very few violations would occur, however, and that any increases in revenue under H.R. 3371 would be negligible.

Intergovernmental and private-sector impact: H.R. 3371 contains intergovernmental and private-sector mandates, as defined in

UMRA, because it would impose new requirements on certain public and private entities that employ pilots. CBO estimates that the aggregate cost of intergovernmental mandates in the bill would fall below the annual threshold established in UMRA (\$69 million in 2009, adjusted annually for inflation). In addition, the bill would impose private-sector mandates on certain commercial air carriers and sellers of air carrier tickets. Because the cost of complying with some of those mandates would depend on future regulations, CBO cannot determine whether the aggregate cost to comply with the private-sector mandates in the bill would exceed the annual threshold established in UMRA (\$139 million in 2009, adjusted annually for inflation).

MANDATES THAT APPLY TO BOTH PUBLIC AND PRIVATE ENTITIES

Pilot History Reporting Requirements. Section 6 would require certain public and private entities that employ pilots to submit to the FAA the flight history of each pilot that it employs. According to industry sources, air carriers currently keep flight histories in a database used by the air carrier industry. Because that information could easily be transmitted to the FAA, the cost of the mandate for air carriers would be minimal.

The section also would require air carriers, before hiring a pilot, to access and evaluate information pertaining to the pilot from the Pilot Records Database maintained by the FAA. The FAA would be authorized to establish a reasonable charge for the cost of processing a request from the air carriers. Because air carriers already evaluate similar information pertaining to pilots they hire, CBO expects that the incremental cost of complying with this mandate would be minimal. Due to the relatively small number of pilots employed by public entities, CBO expects the costs for state and local governments to be small.

Flight and Duty Time Limitations. Section 16 could impose limitations on the number of hours that pilots can fly or be on duty. According to the FAA, such limitations are already in place, and any further limitations would be incremental in nature. Therefore, the cost to air carriers would be small relative to the annual threshold. Because of the relatively small number of public aircraft affected, CBO estimates the cost to state and local governments would be minimal.

MANDATES THAT APPLY TO PRIVATE ENTITIES ONLY

Air Carriers. The bill would require commercial air carriers to:

- Further train their pilots on handling aircraft stalls and responding to emergency conditions;
- Only hire pilots that hold an Airline Transport Pilot License, which, among other things, requires a minimum of 1,500 hours of flight hours and have appropriate training in multi-engine aircraft;
- Establish a senior mentoring program whereby experienced pilots would mentor junior pilots;
- Form professional development committees, modify training programs to accommodate new-hire pilots with different levels and types of flight experience, and provide leadership and command training for pilots;
- Conduct comprehensive pre-employment screening of prospective pilots that would include an assessment of a pilot's skills, apti-

tudes, airmanship, and suitability for functioning in the airline's operational environment;

- Develop a Safety Management System under the standards established by the FAA; and
- Create a fatigue risk management plan to proactively mitigate fatigue, update the plan every two years, and submit it to the FAA for review and approval.

In addition, the bill would direct the National Academy of Sciences to conduct a study on the impact of commuting on pilot fatigue and following receipt of the report, the FAA would be required to update, as appropriate, its flight and duty time regulations. Those updated regulations could impose a mandate on air carriers.

Many air carriers currently have in place programs that may comply with several of the mandates in the bill. However, the incremental cost of the mandates would depend on regulations yet to be established by the FAA. Thus, CBO cannot determine whether the total cost of complying with the mandates on air carriers would exceed the annual threshold for private-sector mandates in any of the first five years the mandates are in effect.

Sellers of Air Carrier Tickets. Section 15 would require any seller of air carrier tickets to disclose to customers the air carrier that operates each segment of the flight prior to the sale of each ticket. The section also would require Internet Web sites that sell air carrier tickets to disclose the air carrier that operates each segment of the flight on the first display of the website following a search of a requested itinerary. Based on information from industry sources, CBO expects that the cost of complying with those mandates would be minimal.

Estimate prepared by: Federal Costs: Megan Carroll; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

COMPLIANCE WITH HOUSE RULE XXI

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. No provision in the bill includes an earmark, limited tax benefit, or limited tariff benefit under clause 9(e), 9(f), or 9(g) of rule XXI.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATE STATEMENT

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

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 3371 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY OF LEGISLATIVE BRANCH

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

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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

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Subtitle II—Other Government Agencies

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CHAPTER 11—NATIONAL TRANSPORTATION SAFETY BOARD

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SUBCHAPTER III—AUTHORITY

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§ 1135. Secretary of Transportation’s responses to safety recommendations

(a) GENERAL.—When the National Transportation Safety Board submits a recommendation about transportation safety to the Secretary of Transportation, the Secretary shall give *to the National Transportation Safety Board* a formal written response to each recommendation not later than 90 days after receiving the rec-

ommendation. The response shall indicate whether the Secretary intends—

(1) * * *

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(c) ANNUAL REPORT ON AIR CARRIER SAFETY RECOMMENDATIONS.—

(1) IN GENERAL.—The Secretary shall submit to Congress and the Board, on an annual basis, a report on the recommendations made by the Board to the Secretary regarding air carrier operations conducted under part 121 of title 14, Code of Federal Regulations.

(2) RECOMMENDATIONS TO BE COVERED.—The report shall cover—

(A) any recommendation for which the Secretary has developed, or intends to develop, procedures to adopt the recommendation or part of the recommendation, but has yet to complete the procedures; and

(B) any recommendation for which the Secretary, in the preceding year, has issued a response under subsection (a)(2) or (a)(3) refusing to carry out all or part of the procedures to adopt the recommendation.

(3) CONTENTS.—

(A) PLANS TO ADOPT RECOMMENDATIONS.—For each recommendation of the Board described in paragraph (2)(A), the report shall contain—

(i) a description of the recommendation;

(ii) a description of the procedures planned for adopting the recommendation or part of the recommendation;

(iii) the proposed date for completing the procedures; and

(iv) if the Secretary has not met a deadline contained in a proposed timeline developed in connection with the recommendation under subsection (b), an explanation for not meeting the deadline.

(B) REFUSALS TO ADOPT RECOMMENDATIONS.—For each recommendation of the Board described in paragraph (2)(B), the report shall contain—

(i) a description of the recommendation; and

(ii) a description of the reasons for the refusal to carry out all or part of the procedures to adopt the recommendation.

[(c)] (e) PUBLIC AVAILABILITY.—The Board shall make a copy of each recommendation and response available to the public at reasonable cost.

[(d)] (f) REPORTING REQUIREMENTS.—

(1) * * *

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Subtitle VII—Aviation Programs

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PART A—AIR COMMERCE AND SAFETY

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SUBPART II—ECONOMIC REGULATION

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CHAPTER 417—OPERATIONS OF CARRIERS

SUBCHAPTER I—REQUIREMENTS

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§ 41712. Unfair and deceptive practices and unfair methods of competition

(a) * * *

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(c) DISCLOSURE REQUIREMENT FOR SELLERS OF TICKETS FOR FLIGHTS.—

(1) IN GENERAL.—It shall be an unfair or deceptive practice under subsection (a) for any ticket agent, air carrier, foreign air carrier, or other person offering to sell tickets for air transportation on a flight of an air carrier to not disclose, whether verbally in oral communication or in writing in written or electronic communication, prior to the purchase of a ticket—

(A) the name (including any business or corporate name) of the air carrier providing the air transportation; and

(B) if the flight has more than one flight segment, the name of each air carrier providing the air transportation for each such flight segment.

(2) INTERNET OFFERS.—In the case of an offer to sell tickets described in paragraph (1) on an Internet Web site, disclosure of the information required by paragraph (1) shall be provided on the first display of the Web site following a search of a requested itinerary in a format that is easily visible to a viewer.

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SUBPART III—SAFETY

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CHAPTER 447—SAFETY REGULATION

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§ 44703. Airman certificates

(a) * * *

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(h) RECORDS OF EMPLOYMENT OF PILOT APPLICANTS.—

(1) * * *

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(16) *APPLICABILITY.*—This subsection shall cease to be effective on the date specified in regulations issued under subsection (i).

(i) *FAA PILOT RECORDS DATABASE.*—

(1) *IN GENERAL.*—Before allowing an individual to begin service as a pilot, an air carrier shall access and evaluate, in accordance with the requirements of this subsection, information pertaining to the individual from the pilot records database established under paragraph (2).

(2) *PILOT RECORDS DATABASE.*—The Administrator shall establish an electronic database (in this subsection referred to as the “database”) containing the following records:

(A) *FAA RECORDS.*—From the Administrator—

(i) records that are maintained by the Administrator concerning current airman certificates, including airman medical certificates and associated type ratings and information on any limitations to those certificates and ratings;

(ii) records that are maintained by the Administrator concerning any failed attempt of an individual to pass a practical test required to obtain a certificate or type rating under part 61 of title 14, Code of Federal Regulations; and

(iii) summaries of legal enforcement actions resulting in a finding by the Administrator of a violation of this title or a regulation prescribed or order issued under this title that was not subsequently overturned.

(B) *AIR CARRIER AND OTHER RECORDS.*—From any air carrier or other person (except a branch of the Armed Forces, the National Guard, or a reserve component of the Armed Forces) that has employed an individual as a pilot of a civil or public aircraft, or from the trustee in bankruptcy for such air carrier or person—

(i) records pertaining to the individual that are maintained by the 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’s performance as a pilot that are maintained by the air carrier or person 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 taken with respect to the individual that was not subsequently overturned; and

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

(C) NATIONAL DRIVER REGISTER RECORDS.—In accordance with section 30305(b)(8) of this title, from the chief driver licensing official of a State, information concerning the motor vehicle driving record of the individual.

(3) WRITTEN CONSENT; RELEASE FROM LIABILITY.—An air carrier—

(A) shall obtain the written consent of an individual before accessing records pertaining to the individual under paragraph (1); and

(B) may, notwithstanding any other provision of law or agreement to the contrary, require an individual with respect to whom the carrier is accessing records under paragraph (1) to execute a release from liability for any claim arising from accessing the records or the use of such records by the air carrier (other than a claim arising from furnishing information known to be false and maintained in violation of a criminal statute).

(4) REPORTING.—

(A) REPORTING BY ADMINISTRATOR.—The Administrator shall enter data described in paragraph (2)(A) into the database promptly to ensure that an individual's records are current.

(B) REPORTING BY AIR CARRIERS AND OTHER PERSONS.—

(i) IN GENERAL.—Air carriers and other persons shall report data described in paragraphs (2)(B) and (2)(C) to the Administrator promptly for entry into the database.

(ii) DATA TO BE REPORTED.—Air carriers and other persons shall report, at a minimum, under clause (i) the following data described in paragraph (2)(B):

(I) Records that are generated by the air carrier or other person after the date of enactment of this paragraph.

(II) Records that the air carrier or other person is maintaining, on such date of enactment, pursuant to subsection (h)(4).

(5) REQUIREMENT TO MAINTAIN RECORDS.—The Administrator—

(A) shall maintain all records entered into the database under paragraph (2) pertaining to an individual until the date of receipt of notification that the individual is deceased; and

(B) may remove the individual's records from the database after that date.

(6) RECEIPT OF CONSENT.—The Administrator shall not permit an air carrier to access records pertaining to an individual from the database under paragraph (1) without the air carrier first demonstrating to the satisfaction of the Administrator that

the air carrier has obtained the written consent of the individual.

(7) **RIGHT OF PILOT TO REVIEW CERTAIN RECORDS AND CORRECT INACCURACIES.**—*Notwithstanding any other provision of law or agreement, the Administrator, upon receipt of written request from an individual—*

(A) shall make available, not later than 30 days after the date of the request, to the individual for review all records referred to in paragraph (2) pertaining to the individual; and

(B) shall provide the individual with a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records.

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

(9) **PRIVACY PROTECTIONS.**—

(A) USE OF RECORDS.—An air carrier that accesses records pertaining to an individual under paragraph (1) may use the records only to assess the qualifications of the individual in deciding whether or not to hire the individual as a pilot. The air carrier shall take such actions as may be necessary to protect the privacy of the individual and the confidentiality of the records accessed, including ensuring that information contained in the records is not divulged to any individual that is not directly involved in the hiring decision.

(B) DISCLOSURE OF INFORMATION.—

(i) IN GENERAL.—Except as provided by clause (ii), information collected by the Administrator under paragraph (2) shall be exempt from the disclosure requirements of section 552 of title 5.

(ii) EXCEPTIONS.—Clause (i) shall not apply to—

(I) de-identified, summarized information to explain the need for changes in policies and regulations;

(II) information to correct a condition that compromises safety;

(III) information to carry out a criminal investigation or prosecution;

(IV) information to comply with section 44905, regarding information about threats to civil aviation; and

(V) such information as the Administrator determines necessary, if withholding the information would not be consistent with the safety responsibilities of the Federal Aviation Administration.

(10) **PERIODIC REVIEW.**—*Not later than 18 months after the date of enactment of this paragraph, and at least once every 3 years thereafter, the Administrator shall transmit to Congress a statement that contains, taking into account recent developments in the aviation industry—*

(A) recommendations by the Administrator concerning proposed changes to Federal Aviation Administration records, air carrier records, and other records required to be included in the database under paragraph (2); or

(B) reasons why the Administrator does not recommend any proposed changes to the records referred to in subparagraph (A).

(11) REGULATIONS FOR PROTECTION AND SECURITY OF RECORDS.—The Administrator shall prescribe such regulations as may be necessary—

(A) to protect and secure—

(i) the personal privacy of any individual whose records are accessed under paragraph (1); and

(ii) the confidentiality of those records; and

(B) to preclude the further dissemination of records received under paragraph (1) by the person who accessed the records.

(12) GOOD FAITH EXCEPTION.—Notwithstanding paragraph (1), an air carrier may allow an individual to begin service as a pilot, without first obtaining information described in paragraph (2)(B) from the database pertaining to the individual, if—

(A) the air carrier has made a documented good faith attempt to access the information from the database; and

(B) has received written notice from the Administrator that the information is not contained in the database because the individual was employed by an air carrier or other person that no longer exists or by a foreign government or other entity that has not provided the information to the database.

(13) LIMITATIONS ON ELECTRONIC ACCESS TO RECORDS.—

(A) ACCESS BY INDIVIDUALS DESIGNATED BY AIR CARRIERS.—For the purpose of increasing timely and efficient access to records described in paragraph (2), the Administrator may allow, under terms established by the Administrator, an individual designated by an air carrier to have electronic access to the database.

(B) TERMS.—The terms established by the Administrator under subparagraph (A) for allowing a designated individual to have electronic access to the database shall limit such access to instances in which information in the database is required by the designated individual in making a hiring decision concerning a pilot applicant and shall require that the designated individual provide assurances satisfactory to the Administrator that—

(i) the designated individual has received the written consent of the pilot applicant to access the information; and

(ii) information obtained using such access will not be used for any purpose other than making the hiring decision.

(14) AUTHORIZED EXPENDITURES.—Out of amounts appropriated under section 106(k)(1), there is authorized to be expended to carry out this subsection such sums as may be necessary for each of fiscal years 2010, 2011, and 2012.

(15) REGULATIONS.—

(A) *IN GENERAL.*—The Administrator shall issue regulations to carry out this subsection.

(B) *EFFECTIVE DATE.*—The regulations shall specify the date on which the requirements of this subsection take effect and the date on which the requirements of subsection (h) cease to be effective.

(C) *EXCEPTIONS.*—Notwithstanding subparagraph (B)—

(i) the Administrator shall begin to establish the database under paragraph (2) not later than 90 days after the date of enactment of this paragraph;

(ii) the Administrator shall maintain records in accordance with paragraph (5) beginning on the date of enactment of this paragraph; and

(iii) air carriers and other persons shall maintain records to be reported to the database under paragraph (4)(B) beginning on such date of enactment.

[(i) LIMITATION] (j) LIMITATIONS ON LIABILITY; PREEMPTION OF STATE LAW.—

(1) *LIMITATION ON LIABILITY.*—No action or proceeding may be brought by or on behalf of an individual who has applied for or is seeking a position with an air carrier as a pilot and who has signed a release from liability, as provided for under [paragraph (2)] subsection (h)(2) or (i)(3), against—

(A) the air carrier requesting the records of that individual under subsection (h)(1) or accessing the records of that individual under subsection (i)(1);

* * * * *

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

(2) *PREEMPTION.*—No State or political subdivision thereof may enact, prescribe, issue, continue in effect, or enforce any law (including any 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 (h)] subsection (h) or (i).

(3) *PROVISION OF KNOWINGLY FALSE INFORMATION.*—Paragraphs (1) and (2) shall not apply with respect to a person who furnishes information in response to a request made under subsection (h)(1) or who furnished information to the database established under subsection (i)(2), that—

(A) * * *

* * * * *

(4) *PROHIBITION ON ACTIONS AND PROCEEDINGS AGAINST AIR CARRIERS.*—

(A) *HIRING DECISIONS.*—An air carrier may refuse to hire an individual as a pilot if the individual did not provide written consent for the air carrier to receive records under subsection (h)(2)(A) or (i)(3)(A) or did not execute the release from liability requested under subsection (h)(2)(B) or (i)(3)(B).

(B) ACTIONS AND PROCEEDINGS.—No action or proceeding may be brought against an air carrier by or on behalf of an individual who has applied for or is seeking a position as a pilot with the air carrier if the air carrier refused to hire the individual after the individual did not provide written consent for the air carrier to receive records under subsection (h)(2)(A) or (i)(3)(A) or did not execute a release from liability requested under subsection (h)(2)(B) or (i)(3)(B).

[(j)] *(k) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in [subsection (h)] subsection (h) or (i) 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 Administrator, the National Transportation Safety Board, or a court.*

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