

115TH CONGRESS
1ST SESSION

S. 755

To amend the Pilot’s Bill of Rights to facilitate appeals, to limit the reexamination of airman certificates, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 29, 2017

Mr. INHOFE introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Pilot’s Bill of Rights to facilitate appeals, to limit the reexamination of airman certificates, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness for Pilots
5 Act”.

6 **SEC. 2. EXPANSION OF PILOT’S BILL OF RIGHTS.**

7 (a) APPEALS OF SUSPENDED AND REVOKED AIRMAN
8 CERTIFICATES.—Section 2(d)(1) of the Pilot’s Bill of
9 Rights (Public Law 112–153; 126 Stat. 1159; 49 U.S.C.
10 44703 note) is amended by striking “or imposing a puni-

1 tive civil action or an emergency order of revocation under
 2 subsections (d) and (e) of section 44709 of such title” and
 3 inserting “suspending or revoking an airman certificate
 4 under section 44709(d) of such title, or imposing an emer-
 5 gency order of revocation under subsections (d) and (e)
 6 of section 44709 of such title”.

7 (b) DE NOVO REVIEW BY DISTRICT COURT; BURDEN
 8 OF PROOF.—Section 2(e) of the Pilot’s Bill of Rights
 9 (Public Law 112–153; 126 Stat. 1159; 49 U.S.C. 44703
 10 note) is amended—

11 (1) by amending paragraph (1) to read as fol-
 12 lows:

13 “(1) IN GENERAL.—In an appeal filed under
 14 subsection (d) in a United States district court with
 15 respect to a denial, suspension, or revocation of an
 16 airman certificate by the Administrator—

17 “(A) the district court shall review the de-
 18 nial, suspension, or revocation de novo, includ-
 19 ing by—

20 “(i) conducting a full independent re-
 21 view of the complete administrative record
 22 of the denial, suspension, or revocation;

23 “(ii) permitting additional discovery
 24 and the taking of additional evidence; and

1 “(iii) making the findings of fact and
2 conclusions of law required by Rule 52 of
3 the Federal Rules of Civil Procedure with-
4 out being bound to any findings of fact of
5 the Administrator or the National Trans-
6 portation Safety Board.”;

7 (2) by redesignating paragraph (2) as para-
8 graph (3); and

9 (3) by inserting after paragraph (1) the fol-
10 lowing:

11 “(2) BURDEN OF PROOF.—In an appeal filed
12 under subsection (d) in a United States district
13 court after an exhaustion of administrative remedies,
14 the burden of proof shall be as follows:

15 “(A) In an appeal of the denial of an ap-
16 plication for the issuance or renewal of an air-
17 man certificate under section 44703 of title 49,
18 United States Code, the burden of proof shall
19 be upon the applicant denied an airman certifi-
20 cate by the Administrator.

21 “(B) In an appeal of an order issued by
22 the Administrator under section 44709 of title
23 49, United States Code, the burden of proof
24 shall be upon the Administrator.”; and

25 (4) by adding at the end the following:

1 “(4) APPLICABILITY OF ADMINISTRATIVE PRO-
 2 CEDURE ACT.—Notwithstanding paragraph (1)(A) of
 3 this subsection or subsection (a)(1) of section 554 of
 4 title 5, United States Code, section 554 of such title
 5 shall apply to adjudications of the Administrator
 6 and the National Transportation Safety Board to
 7 the same extent as that section applied to such adju-
 8 dications before the date of enactment of the Fair-
 9 ness for Pilots Act.”.

10 (c) NOTIFICATION OF INVESTIGATION.—Subsection
 11 (b) of section 2 of the Pilot’s Bill of Rights (Public Law
 12 112–153; 126 Stat. 1159; 49 U.S.C. 44703 note) is
 13 amended—

14 (1) in paragraph (2)(A), by inserting “and the
 15 specific activity on which the investigation is based”
 16 after “nature of the investigation”;

17 (2) in paragraph (3), by striking “timely”; and

18 (3) in paragraph (5), by striking “section
 19 44709(c)(2)” and inserting “section 44709(e)(2)”.

20 (d) RELEASE OF INVESTIGATIVE REPORTS.—Section
 21 2 of the Pilot’s Bill of Rights (Public Law 112–153; 126
 22 Stat. 1159; 49 U.S.C. 44703 note) is further amended by
 23 inserting after subsection (e) the following:

24 “(f) RELEASE OF INVESTIGATIVE REPORTS.—

25 “(1) IN GENERAL.—

1 “(A) EMERGENCY ORDERS.—In any pro-
2 ceeding conducted under part 821 of title 49,
3 Code of Federal Regulations, relating to the
4 amendment, modification, suspension, or rev-
5 ocation of an airman certificate, in which the
6 Administrator issues an emergency order under
7 subsections (d) and (e) of section 44709, sec-
8 tion 44710, or section 46105(c) of title 49,
9 United States Code, or another order that takes
10 effect immediately, the Administrator shall pro-
11 vide to the individual holding the airman certifi-
12 cate the releasable portion of the investigative
13 report at the time the Administrator issues the
14 order. If the complete Report of Investigation is
15 not available at the time the Emergency Order
16 is issued, the Administrator shall issue all por-
17 tions of the report that are available at the time
18 and shall provide the full report within 5 days
19 of its completion.

20 “(B) OTHER ORDERS.—In any non-emer-
21 gency proceeding conducted under part 821 of
22 title 49, Code of Federal Regulations, relating
23 to the amendment, modification, suspension, or
24 revocation of an airman certificate, in which the
25 Administrator notifies the certificate holder of a

1 proposed certificate action under subsections
2 (b) and (c) of section 44709 or section 44710
3 of title 49, United States Code, the Adminis-
4 trator shall, upon the written request of the
5 covered certificate holder and at any time after
6 that notification, provide to the covered certifi-
7 cate holder the releasable portion of the inves-
8 tigative report.

9 “(2) MOTION FOR DISMISSAL.—If the Adminis-
10 trator does not provide the releasable portions of the
11 investigative report to the individual holding the air-
12 man certificate subject to the proceeding referred to
13 in paragraph (1) by the time required by that para-
14 graph, the individual may move to dismiss the com-
15 plaint of the Administrator or for other relief and,
16 unless the Administrator establishes good cause for
17 the failure to provide the investigative report or for
18 a lack of timeliness, the administrative law judge
19 shall order such relief as the judge considers appro-
20 priate.

21 “(3) RELEASABLE PORTION OF INVESTIGATIVE
22 REPORT.—For purposes of paragraph (1), the re-
23 leasable portion of an investigative report is all in-
24 formation in the report, except for the following:

25 “(A) Information that is privileged.

1 “(B) Information that constitutes work
2 product or reflects internal deliberative process.

3 “(C) Information that would disclose the
4 identity of a confidential source.

5 “(D) Information the disclosure of which is
6 prohibited by any other provision of law.

7 “(E) Information that is not relevant to
8 the subject matter of the proceeding.

9 “(F) Information the Administrator can
10 demonstrate is withheld for good cause.

11 “(G) Sensitive security information, as de-
12 fined in section 15.5 of title 49, Code of Fed-
13 eral Regulations (or any corresponding similar
14 ruling or regulation).

15 “(4) RULE OF CONSTRUCTION.—Nothing in
16 this subsection shall be construed to prevent the Ad-
17 ministrator from releasing to an individual subject
18 to an investigation described in subsection (b)(1)—

19 “(A) information in addition to the infor-
20 mation included in the releasable portion of the
21 investigative report; or

22 “(B) a copy of the investigative report be-
23 fore the Administrator issues a complaint.”.

1 **SEC. 3. LIMITATIONS ON REEXAMINATION OF CERTIFICATE**
 2 **HOLDERS.**

3 (a) IN GENERAL.—Section 44709(a) of title 49,
 4 United States Code, is amended—

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

7 “(1) IN GENERAL.—The Administrator”;

8 (2) by striking “reexamine” and inserting “, ex-
 9 cept as provided in paragraph (2), reexamine”; and

10 (3) by adding at the end the following:

11 “(2) LIMITATION ON THE REEXAMINATION OF
 12 AIRMAN CERTIFICATES.—

13 “(A) IN GENERAL.—The Administrator
 14 may not reexamine an airman holding a stu-
 15 dent, sport, recreational, or private pilot certifi-
 16 cate issued under section 44703 of this title if
 17 the reexamination is ordered as a result of an
 18 event involving the fault of the Federal Aviation
 19 Administration or its designee, unless the Ad-
 20 ministrator has reasonable grounds—

21 “(i) to establish that the airman may
 22 not be qualified to exercise the privileges of
 23 a particular certificate or rating, based
 24 upon an act or omission committed by the
 25 airman while exercising those privileges,
 26 after the certificate or rating was issued by

1 the Federal Aviation Administration or its
2 designee; or

3 “(ii) to demonstrate that the airman
4 obtained the certificate or the rating
5 through fraudulent means or through an
6 examination that was substantially and de-
7 monstrably inadequate to establish the air-
8 man’s qualifications.

9 “(B) NOTIFICATION REQUIREMENTS.—Be-
10 fore taking any action to reexamine an airman
11 under subparagraph (A), the Administrator
12 shall provide to the airman—

13 “(i) a reasonable basis, described in
14 detail, for requesting the reexamination;
15 and

16 “(ii) any information gathered by the
17 Federal Aviation Administration, that the
18 Administrator determines is appropriate to
19 provide, such as the scope and nature of
20 the requested reexamination, that formed
21 the basis for that justification.”.

22 (b) AMENDMENT, MODIFICATION, SUSPENSION, OR
23 REVOCATION OF AIRMAN CERTIFICATES AFTER REEXAM-
24 INATION.—Section 44709(b) of title 49, United States
25 Code, is amended—

1 (1) in paragraph (1), by redesignating subpara-
 2 graphs (A) and (B) as clauses (i) and (ii), respec-
 3 tively, and indenting appropriately;

4 (2) by redesignating paragraphs (1) and (2) as
 5 subparagraphs (A) and (B), respectively, and indent-
 6 ing appropriately;

7 (3) in the matter preceding subparagraph (A),
 8 as redesignated, by striking “The Administrator”
 9 and inserting the following:

10 “(1) IN GENERAL.—Except as provided in para-
 11 graph (2), the Administrator”; and

12 (4) by adding at the end the following:

13 “(2) AMENDMENTS, MODIFICATIONS, SUSPEN-
 14 SIONS, AND REVOCATIONS OF AIRMAN CERTIFICATES
 15 AFTER REEXAMINATION.—

16 “(A) IN GENERAL.—The Administrator
 17 may not issue an order to amend, modify, sus-
 18 pend, or revoke an airman certificate held by a
 19 student, sport, recreational, or private pilot and
 20 issued under section 44703 of this title after a
 21 reexamination of the airman holding the certifi-
 22 cate unless the Administrator determines that
 23 the airman—

24 “(i) lacks the technical skills and com-
 25 petency, or care, judgment, and responsi-

1 bility, necessary to hold and safely exercise
 2 the privileges of the certificate; or

3 “(ii) materially contributed to the
 4 issuance of the certificate by fraudulent
 5 means.

6 “(B) STANDARD OF REVIEW.—Any order
 7 of the Administrator under this paragraph shall
 8 be subject to the standard of review provided
 9 for under section 2 of the Pilot’s Bill of Rights
 10 (49 U.S.C. 44703 note).”.

11 (c) CONFORMING AMENDMENTS.—Section
 12 44709(d)(1) of title 49, United States Code, is amended—

13 (1) in subparagraph (A), by striking “sub-
 14 section (b)(1)(A)” and inserting “subsection
 15 (b)(1)(A)(i)”; and

16 (2) in subparagraph (B), by striking “sub-
 17 section (b)(1)(B)” and inserting “subsection
 18 (b)(1)(A)(ii)”.

19 **SEC. 4. EXPEDITING UPDATES TO NOTAM PROGRAM.**

20 (a) IN GENERAL.—

21 (1) Beginning on the date that is 180 days
 22 after the date of enactment of this Act, the Adminis-
 23 trator of the Federal Aviation Administration may
 24 not take any enforcement action against any indi-
 25 vidual for a violation of a NOTAM (as defined in

1 section 3 of the Pilot’s Bill of Rights (49 U.S.C.
2 44701 note)) until the Administrator certifies to the
3 appropriate congressional committees that the Ad-
4 ministrator has complied with the requirements of
5 section 3 of the Pilot’s Bill of Rights, as amended
6 by this section.

7 (2) In this subsection, the term “appropriate
8 congressional committees” means—

9 (A) the Committee on Commerce, Science,
10 and Transportation of the Senate; and

11 (B) the Committee on Transportation and
12 Infrastructure of the House of Representatives.

13 (b) AMENDMENTS.—Section 3 of the Pilot’s Bill of
14 Rights (Public Law 112–153; 126 Stat. 1162; 49 U.S.C.
15 44701 note) is amended—

16 (1) in subsection (a)(2)—

17 (A) in the matter preceding subparagraph

18 (A)—

19 (i) by striking “this Act” and insert-
20 ing “the Fairness for Pilots Act”; and

21 (ii) by striking “begin” and inserting
22 “complete the implementation of”;

23 (B) by amending subparagraph (B) to read
24 as follows:

1 “(B) to continue developing and modern-
 2 izing the NOTAM repository, in a public cen-
 3 tral location, to maintain and archive all
 4 NOTAMs, including the original content and
 5 form of the notices, the original date of publica-
 6 tion, and any amendments to such notices with
 7 the date of each amendment, in a manner that
 8 is Internet-accessible, machine-readable, and
 9 searchable;”;

10 (C) in subparagraph (C), by striking the
 11 period at the end and inserting a semicolon;
 12 and

13 (D) by adding at the end the following:

14 “(D) to specify the times during which
 15 temporary flight restrictions are in effect and
 16 the duration of a designation of special use air-
 17 space in a specific area.”; and

18 (2) by amending subsection (d) to read as fol-
 19 lows:

20 “(d) DESIGNATION OF REPOSITORY AS SOLE
 21 SOURCE FOR NOTAMS.—

22 “(1) IN GENERAL.—The Administrator—

23 “(A) shall consider the repository for
 24 NOTAMs under subsection (a)(2)(B) to be the

1 sole location for airmen to check for NOTAMs;
2 and

3 “(B) may not consider a NOTAM to be
4 announced or published until the NOTAM is in-
5 cluded in the repository for NOTAMs under
6 subsection (a)(2)(B).

7 “(2) PROHIBITION ON TAKING ACTION FOR VIO-
8 LATIONS OF NOTAMS NOT IN REPOSITORY.—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), beginning on the date that
11 the repository under subsection (a)(2)(B) is
12 final and published, the Administrator may not
13 take any enforcement action against an airman
14 for a violation of a NOTAM during a flight if—

15 “(i) that NOTAM is not available
16 through the repository before the com-
17 mencement of the flight; and

18 “(ii) that NOTAM is not reasonably
19 accessible and identifiable to the airman.

20 “(B) EXCEPTION FOR NATIONAL SECUR-
21 ITY.—Subparagraph (A) shall not apply in the
22 case of an enforcement action for a violation of
23 a NOTAM that directly relates to national se-
24 curity.”.

1 **SEC. 5. ACCESSIBILITY OF CERTAIN FLIGHT DATA.**

2 (a) IN GENERAL.—Subchapter I of chapter 471 of
3 title 49, United States Code, is amended by inserting after
4 section 47124 the following:

5 **“§ 47124a. Accessibility of certain flight data**

6 “(a) DEFINITIONS.—In this section:

7 “(1) ADMINISTRATION.—The term ‘Administra-
8 tion’ means the Federal Aviation Administration.

9 “(2) ADMINISTRATOR.—The term ‘Adminis-
10 trator’ means the Administrator of the Federal Avia-
11 tion Administration.

12 “(3) APPLICABLE INDIVIDUAL.—The term ‘ap-
13 plicable individual’ means an individual who is the
14 subject of an investigation initiated by the Adminis-
15 trator related to a covered flight record.

16 “(4) CONTRACT TOWER.—The term ‘contract
17 tower’ means an air traffic control tower providing
18 air traffic control services pursuant to a contract
19 with the Administration under the contract air traf-
20 fic control tower program under section
21 47124(b)(3).

22 “(5) COVERED FLIGHT RECORD.—The term
23 ‘covered flight record’ means any air traffic data (as
24 defined in section 2(b)(4)(B) of the Pilot’s Bill of
25 Rights (49 U.S.C. 44703 note)), created, main-
26 tained, or controlled by any program of the Adminis-

1 tration, including any program of the Administration
2 carried out by employees or contractors of the Ad-
3 ministration, such as contract towers, flight service
4 stations, and controller training programs.

5 “(b) PROVISION OF COVERED FLIGHT RECORD TO
6 ADMINISTRATION.—

7 “(1) REQUESTS.—Whenever the Administration
8 receives a written request for a covered flight record
9 from an applicable individual and the covered flight
10 record is not in the possession of the Administration,
11 the Administrator shall request the covered flight
12 record from the contract tower or other contractor
13 of the Administration in possession of the covered
14 flight record.

15 “(2) PROVISION OF RECORDS.—Any covered
16 flight record created, maintained, or controlled by a
17 contract tower or another contractor of the Adminis-
18 tration that maintains covered flight records shall be
19 provided to the Administration if the Administration
20 requests the record pursuant to paragraph (1).

21 “(3) NOTICE OF PROPOSED CERTIFICATE AC-
22 TION.—If the Administrator has issued, or subse-
23 quently issues, a Notice of Proposed Certificate Ac-
24 tion relying on evidence contained in the covered
25 flight record and the individual who is the subject of

1 an investigation has requested the record, the Ad-
2 ministrator shall promptly produce the record and
3 extend the time the individual has to respond to the
4 Notice of Proposed Certificate Action until the cov-
5 ered flight record is provided.

6 “(c) IMPLEMENTATION.—

7 “(1) IN GENERAL.—Not later than 180 days
8 after the date of enactment of the Fairness for Pi-
9 lots Act, the Administrator shall promulgate regula-
10 tions or guidance to ensure compliance with this sec-
11 tion.

12 “(2) COMPLIANCE BY CONTRACTORS.—

13 “(A) Compliance with this section by a
14 contract tower or other contractor of the Ad-
15 ministration that maintains covered flight
16 records shall be included as a material term in
17 any contract between the Administration and
18 the contract tower or contractor entered into or
19 renewed on or after the date of enactment of
20 the Fairness for Pilots Act.

21 “(B) Subparagraph (A) shall not apply to
22 any contract or agreement in effect on the date
23 of enactment of the Fairness for Pilots Act un-
24 less the contract or agreement is renegotiated,
25 renewed, or modified after that date.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

2 The table of contents for chapter 471 of title 49, United
 3 States Code, is amended by inserting after the item relat-
 4 ing to section 47124 the following:

“47124a. Accessibility of certain flight data.”.

5 **SEC. 6. AUTHORITY FOR LEGAL COUNSEL TO ISSUE CER-**
 6 **TAIN NOTICES.**

7 Not later than 180 days after the date of enactment
 8 of this Act, the Administrator of the Federal Aviation Ad-
 9 ministration shall revise section 13.11 of title 14, Code
 10 of Federal Regulations, to authorize legal counsel of the
 11 Federal Aviation Administration to close enforcement ac-
 12 tions covered by that section with a warning notice, letter
 13 of correction, or other administrative action.

○