

# H.R.5005

## Homeland Security Act of 2002

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### TITLE XIV--ARMING PILOTS AGAINST TERRORISM

#### SEC. 1401. SHORT TITLE.

This title may be cited as the 'Arming Pilots Against Terrorism Act'.

#### SEC. 1402. FEDERAL FLIGHT DECK OFFICER PROGRAM.

(a) IN GENERAL- Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

##### 'Sec. 44921. Federal flight deck officer program

'(a) ESTABLISHMENT- The Under Secretary of Transportation for Security shall establish a program to deputize volunteer pilots of air carriers providing passenger air transportation or intrastate passenger air transportation as Federal law enforcement officers to defend the flight decks of aircraft of such air carriers against acts of criminal violence or air piracy. Such officers shall be known as 'Federal flight deck officers'.

##### '(b) PROCEDURAL REQUIREMENTS-

'(1) IN GENERAL- Not later than 3 months after the date of enactment of this section, the Under Secretary shall establish procedural requirements to carry out the program under this section.

'(2) COMMENCEMENT OF PROGRAM- Beginning 3 months after the date of enactment of this section, the Under Secretary shall begin the process of training and deputizing pilots who are qualified to be Federal flight deck officers as Federal flight deck officers under the program.

'(3) ISSUES TO BE ADDRESSED- The procedural requirements established under paragraph (1) shall address the following issues:

'(A) The type of firearm to be used by a Federal flight deck officer.

'(B) The type of ammunition to be used by a Federal flight deck officer.

'(C) The standards and training needed to qualify and requalify as a Federal flight deck officer.

`(D) The placement of the firearm of a Federal flight deck officer on board the aircraft to ensure both its security and its ease of retrieval in an emergency.

`(E) An analysis of the risk of catastrophic failure of an aircraft as a result of the discharge (including an accidental discharge) of a firearm to be used in the program into the avionics, electrical systems, or other sensitive areas of the aircraft.

`(F) The division of responsibility between pilots in the event of an act of criminal violence or air piracy if only 1 pilot is a Federal flight deck officer and if both pilots are Federal flight deck officers.

`(G) Procedures for ensuring that the firearm of a Federal flight deck officer does not leave the cockpit if there is a disturbance in the passenger cabin of the aircraft or if the pilot leaves the cockpit for personal reasons.

`(H) Interaction between a Federal flight deck officer and a Federal air marshal on board the aircraft.

`(I) The process for selection of pilots to participate in the program based on their fitness to participate in the program, including whether an additional background check should be required beyond that required by section 44936(a)(1).

`(J) Storage and transportation of firearms between flights, including international flights, to ensure the security of the firearms, focusing particularly on whether such security would be enhanced by requiring storage of the firearm at the airport when the pilot leaves the airport to remain overnight away from the pilot's base airport.

`(K) Methods for ensuring that security personnel will be able to identify whether a pilot is authorized to carry a firearm under the program.

`(L) Methods for ensuring that pilots (including Federal flight deck officers) will be able to identify whether a passenger is a law enforcement officer who is authorized to carry a firearm aboard the aircraft.

`(M) Any other issues that the Under Secretary considers necessary.

`(N) The Under Secretary's decisions regarding the methods for implementing each of the foregoing procedural requirements shall be subject to review only for abuse of discretion.

`(4) PREFERENCE- In selecting pilots to participate in the program, the Under Secretary shall give preference to pilots who are former military or law enforcement personnel.

`(5) CLASSIFIED INFORMATION- Notwithstanding section 552 of title 5 but subject to section 40119 of this title, information developed under paragraph (3)(E) shall not be disclosed.

`(6) NOTICE TO CONGRESS- The Under Secretary shall provide notice to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate after completing the analysis required by paragraph (3)(E).

`(7) MINIMIZATION OF RISK- If the Under Secretary determines as a result of the analysis under paragraph (3)(E) that there is a significant risk of the catastrophic failure of an aircraft as a result of the discharge of a firearm, the Under Secretary shall take such actions as may be necessary to minimize that risk.

`(c) TRAINING, SUPERVISION, AND EQUIPMENT-

`(1) IN GENERAL- The Under Secretary shall only be obligated to provide the training, supervision, and equipment necessary for a pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot.

`(2) TRAINING-

`(A) IN GENERAL- The Under Secretary shall base the requirements for the training of Federal flight deck officers under subsection (b) on the training standards applicable to Federal air marshals; except that the Under Secretary shall take into account the differing roles and responsibilities of Federal flight deck officers and Federal air marshals.

`(B) ELEMENTS- The training of a Federal flight deck officer shall include, at a minimum, the following elements:

`(i) Training to ensure that the officer achieves the level of proficiency with a firearm required under subparagraph (C)(i).

`(ii) Training to ensure that the officer maintains exclusive control over the officer's firearm at all times, including training in defensive maneuvers.

`(iii) Training to assist the officer in determining when it is appropriate to use the officer's firearm and when it is appropriate to use less than lethal force.

`(C) TRAINING IN USE OF FIREARMS-

`(i) STANDARD- In order to be deputized as a Federal flight deck officer, a pilot must achieve a level of proficiency with a firearm that is required by the Under Secretary. Such level shall be comparable to the level of proficiency required of Federal air marshals.

`(ii) CONDUCT OF TRAINING- The training of a Federal flight deck officer in the use of a firearm may be conducted by the Under Secretary or by a firearms training facility approved by the Under Secretary.

`(iii) REQUALIFICATION- The Under Secretary shall require a Federal flight deck officer to requalify to carry a firearm under the program. Such requalification shall occur at an interval required by the Under Secretary.

`(d) DEPUTIZATION-

`(1) IN GENERAL- The Under Secretary may deputize, as a Federal flight deck officer under this section, a pilot who submits to the Under Secretary a request to be such an officer and whom the Under Secretary determines is qualified to be such an officer.

`(2) QUALIFICATION- A pilot is qualified to be a Federal flight deck officer under this section if—

`(A) the pilot is employed by an air carrier;

`(B) the Under Secretary determines (in the Under Secretary's discretion) that the pilot meets the standards established by the Under Secretary for being such an officer; and

`(C) the Under Secretary determines that the pilot has completed the training required by the Under Secretary.

`(3) DEPUTIZATION BY OTHER FEDERAL AGENCIES- The Under Secretary may request another Federal agency to deputize, as Federal flight deck officers under this section, those pilots that the Under Secretary determines are qualified to be such officers.

`(4) REVOCATION- The Under Secretary may, (in the Under Secretary's discretion) revoke the deputization of a pilot as a Federal flight deck officer if the Under Secretary finds that the pilot is no longer qualified to be such an officer.

`(e) COMPENSATION- Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer. The Federal Government and air carriers shall not be obligated to compensate a pilot for participating in the program or for the pilot's training or qualification and requalification to carry firearms under the program.

`(f) AUTHORITY TO CARRY FIREARMS-

`(1) IN GENERAL- The Under Secretary shall authorize a Federal flight deck officer to carry a firearm while engaged in providing air transportation or intrastate air transportation. Notwithstanding subsection (c)(1), the officer may purchase a firearm and carry that firearm aboard an aircraft of which the officer is the pilot in accordance with this section if the firearm is of a type that may be used under the program.

`(2) PREEMPTION- Notwithstanding any other provision of Federal or State law, a Federal flight deck officer, whenever necessary to participate in the program, may carry a firearm in any State and from 1 State to another State.

`(3) CARRYING FIREARMS OUTSIDE UNITED STATES- In consultation with the Secretary of State, the Under Secretary may take such action as may be necessary to ensure that a Federal flight deck officer may carry a firearm in a foreign country whenever necessary to participate in the program.

`(g) AUTHORITY TO USE FORCE- Notwithstanding section 44903(d), the Under Secretary shall prescribe the standards and circumstances under which a Federal flight deck officer may use, while the program under this section is in effect, force (including lethal force) against an individual in the defense of the flight deck of an aircraft in air transportation or intrastate air transportation.

`(h) LIMITATION ON LIABILITY-

`(1) LIABILITY OF AIR CARRIERS- An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of a Federal flight deck officer's use of or failure to use a firearm.

`(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS- A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending the flight deck of an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

`(3) LIABILITY OF FEDERAL GOVERNMENT- For purposes of an action against the United States with respect to an act or omission of a Federal flight deck officer in defending the flight deck of an aircraft, the officer shall be treated

as an employee of the Federal Government under chapter 171 of title 28, relating to tort claims procedure.

`(i) PROCEDURES FOLLOWING ACCIDENTAL DISCHARGES- If an accidental discharge of a firearm under the pilot program results in the injury or death of a passenger or crew member on an aircraft, the Under Secretary—

`(1) shall revoke the deputization of the Federal flight deck officer responsible for that firearm if the Under Secretary determines that the discharge was attributable to the negligence of the officer; and

`(2) if the Under Secretary determines that a shortcoming in standards, training, or procedures was responsible for the accidental discharge, the Under Secretary may temporarily suspend the program until the shortcoming is corrected.

`(j) LIMITATION ON AUTHORITY OF AIR CARRIERS- No air carrier shall prohibit or threaten any retaliatory action against a pilot employed by the air carrier from becoming a Federal flight deck officer under this section. No air carrier shall—

`(1) prohibit a Federal flight deck officer from piloting an aircraft operated by the air carrier, or

`(2) terminate the employment of a Federal flight deck officer, solely on the basis of his or her volunteering for or participating in the program under this section.

`(k) APPLICABILITY-

`(1) EXEMPTION- This section shall not apply to air carriers operating under part 135 of title 14, Code of Federal Regulations, and to pilots employed by such carriers to the extent that such carriers and pilots are covered by section 135.119 of such title or any successor to such section.

`(2) PILOT DEFINED- The term 'pilot' means an individual who has final authority and responsibility for the operation and safety of the flight or, if more than 1 pilot is required for the operation of the aircraft or by the regulations under which the flight is being conducted, the individual designated as second in command.'

(b) CONFORMING AMENDMENTS-

(1) CHAPTER ANALYSIS- The analysis for such chapter is amended by inserting after the item relating to section 44920 the following:  
'44921. Federal flight deck officer program.'

(2) FLIGHT DECK SECURITY- Section 128 of the Aviation and Transportation Security Act (Public Law 107-71) is repealed.

(c) FEDERAL AIR MARSHAL PROGRAM-

(1) SENSE OF CONGRESS- It is the sense of Congress that the Federal air marshal program is critical to aviation security.

(2) LIMITATION ON STATUTORY CONSTRUCTION- Nothing in this Act, including any amendment made by this Act, shall be construed as preventing the Under Secretary of Transportation for Security from implementing and training Federal air marshals.

**SEC. 1403. CREW TRAINING.**

(a) IN GENERAL- Section 44918(e) of title 49, United States Code, is amended—

(1) by striking 'The Administrator' and inserting the following:

'(1) IN GENERAL- The Under Secretary';

(2) by adding at the end the following:

'(2) ADDITIONAL REQUIREMENTS- In updating the training guidance, the Under Secretary, in consultation with the Administrator, shall issue a rule to—

'(A) require both classroom and effective hands-on situational training in the following elements of self defense:

'(i) recognizing suspicious activities and determining the seriousness of an occurrence;

'(ii) deterring a passenger who might present a problem;

'(iii) crew communication and coordination;

'(iv) the proper commands to give to passengers and attackers;

'(v) methods to subdue and restrain an attacker;

'(vi) use of available items aboard the aircraft for self-defense;

'(vii) appropriate and effective responses to defend oneself, including the use of force against an attacker;

'(viii) use of protective devices assigned to crew members (to the extent such devices are approved by the Administrator or Under Secretary);

`(ix) the psychology of terrorists to cope with their behavior and passenger responses to that behavior;

`(x) how to respond to aircraft maneuvers that may be authorized to defend against an act of criminal violence or air piracy;

`(B) require training in the proper conduct of a cabin search, including the duty time required to conduct the search;

`(C) establish the required number of hours of training and the qualifications for the training instructors;

`(D) establish the intervals, number of hours, and elements of recurrent training;

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

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

`(3) RESPONSIBILITY OF UNDER SECRETARY- (A) CONSULTATION- In developing the rule under paragraph (2), the Under Secretary shall consult with law enforcement personnel and security experts who have expertise in self-defense training, terrorism experts, and representatives of air carriers, the provider of self-defense training for Federal air marshals, flight attendants, labor organizations representing flight attendants, and educational institutions offering law enforcement training programs.

`(B) DESIGNATION OF OFFICIAL- The Under Secretary shall designate an official in the Transportation Security Administration to be responsible for overseeing the implementation of the training program under this subsection.

`(C) NECESSARY RESOURCES AND KNOWLEDGE- The Under Secretary shall ensure that employees of the Administration responsible for monitoring the training program have the necessary resources and knowledge.'; and

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

(b) ENHANCE SECURITY MEASURES- Section 109(a) of the Aviation and Transportation Security Act (49 U.S.C. 114 note; 115 Stat. 613-614) is amended by adding at the end the following:

(9) Require that air carriers provide flight attendants with a discreet, hands-free, wireless method of communicating with the pilots.'

(c) BENEFITS AND RISKS OF PROVIDING FLIGHT ATTENDANTS WITH NONLETHAL WEAPONS-

(1) STUDY- The Under Secretary of Transportation for Security shall conduct a study to evaluate the benefits and risks of providing flight attendants with nonlethal weapons to aide in combating air piracy and criminal violence on commercial airlines.

(2) REPORT- Not later than 6 months after the date of enactment of this Act, the Under Secretary shall transmit to Congress a report on the results of the study.

#### **SEC. 1404. COMMERCIAL AIRLINE SECURITY STUDY.**

(a) STUDY- The Secretary of Transportation shall conduct a study of the following:

(1) The number of armed Federal law enforcement officers (other than Federal air marshals), who travel on commercial airliners annually and the frequency of their travel.

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

(3) The cost of establishing a program at a Federal law enforcement training center for the purpose of providing new Federal law enforcement recruits with standardized training comparable to the training that Federal air marshals are provided.

(4) The feasibility of implementing a certification program designed for the purpose of ensuring Federal law enforcement officers have completed the training described in paragraph (2) and track their travel over a 6-month period.

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

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

## **SEC. 1405. AUTHORITY TO ARM FLIGHT DECK CREW WITH LESS-THAN-LETHAL WEAPONS.**

(a) IN GENERAL- Section 44903(i) of title 49, United States Code (as redesignated by section 6 of this Act) is amended by adding at the end the following:

“(3) REQUEST OF AIR CARRIERS TO USE LESS-THAN-LETHAL WEAPONS- If, after the date of enactment of this paragraph, the Under Secretary receives a request from an air carrier for authorization to allow pilots of the air carrier to carry less-than-lethal weapons, the Under Secretary shall respond to that request within 90 days.”.

(b) CONFORMING AMENDMENTS- Such section is further amended—

(1) in paragraph (1) by striking ‘Secretary’ the first and third places it appears and inserting ‘Under Secretary’; and

(2) in paragraph (2) by striking ‘Secretary’ each place it appears and inserting ‘Under Secretary’.

## **SEC. 1406. TECHNICAL AMENDMENTS.**

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

(1) by redesignating subsection (i) (relating to short-term assessment and deployment of emerging security technologies and procedures) as subsection (j);

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

(3) by redesignating the third subsection (h) (relating to limitation on liability for acts to thwart criminal violence for aircraft piracy) as subsection (k).