

Public Law 102-345
102d Congress

An Act

To amend the Federal Aviation Act of 1958 relating to administrative assessment of civil penalties.

Aug. 26, 1992
[H.R. 5481]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FAA Civil
Penalty
Administrative
Assessment Act
of 1992.
49 USC app.
1301 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "FAA Civil Penalty Administrative Assessment Act of 1992".

SEC. 2. ADMINISTRATIVE ASSESSMENT.

(a) **IN GENERAL.**—Section 901(a)(3) of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)(3)) is amended to read as follows:

49 USC app.
1471.

"(3) **ADMINISTRATIVE ASSESSMENT.**—

"(A) **GENERAL AUTHORITY.**—Upon written notice and finding of a violation by the Administrator, the Administrator, or the delegate of the Administrator, may assess a civil penalty for a violation of title III, V, VI, or XII or section 1101 or 1115(e)(2)(B) or any rule, regulation, or order issued thereunder.

"(B) **NO REEXAMINATION OF LIABILITY OR AMOUNT.**—In the case of a civil penalty assessed by the Administrator under this paragraph, the issue of liability or amount of civil penalty shall not be reexamined in any subsequent suit for collection of such civil penalty.

"(C) **CONTINUING JURISDICTION OF DISTRICT COURTS.**—Notwithstanding subparagraph (A), the United States district courts shall have exclusive jurisdiction of any civil penalty initiated by the Administrator—

"(i) which involves an amount in controversy in excess of \$50,000;

"(ii) which is an in rem action or in which an in rem action based on the same violation has been brought;

"(iii) regarding which an aircraft subject to lien has been seized by the United States; and

"(iv) in which a suit for injunctive relief based on the violation giving rise to the civil penalty has also been brought.

"(D) **PROCEDURES WITH RESPECT TO VIOLATIONS BY PILOTS, FLIGHT ENGINEERS, MECHANICS, AND REPAIRMEN.**—

"(i) **NOTICE OF CHARGES.**—Before issuing an order assessing a civil penalty under this paragraph against a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman, the Administrator shall advise such person of the charges or any reasons relied upon by the Administrator for the proposed action and shall provide such person an opportunity to answer

any charges and be heard as to why such order should not be issued.

“(ii) APPEAL TO NTSB.—Any person acting in the capacity of a pilot, flight engineer, mechanic, or repairman against whom an order assessing a civil penalty is issued by the Administrator under this paragraph may appeal the order to the National Transportation Safety Board, and the Board shall, after notice and a hearing on the record in accordance with section 554 of title 5, United States Code, affirm, modify, or reverse the order of the Administrator.

“(iii) WEIGHT AFFORDED TO FINDINGS AND INTERPRETATIONS OF FAA.—In the conduct of its hearings under this subparagraph, the National Transportation Safety Board shall not be bound by any findings of fact of the Administrator but shall be bound by all validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration and of written agency policy guidance available to the public relating to sanctions to be imposed under this subsection unless the Board finds that any such interpretation is arbitrary, capricious, or otherwise not in accordance with law. The Board may, consistent with this subsection, modify the type of sanctions to be imposed from assessment of a civil penalty to suspension or revocation of a certificate.

“(iv) EFFECT OF FILING OF APPEAL.—The filing of an appeal of an order of the Administrator with the National Transportation Safety Board under this subparagraph shall stay the effectiveness of the order.

“(v) JUDICIAL REVIEW.—A person substantially affected by an order of the National Transportation Safety Board under this subparagraph or the Administrator, in any case in which the Administrator determines that such an order will have a significant adverse impact on the implementation of this Act, may obtain judicial review of such order under the provisions of section 1006 of this Act. The Administrator shall be a party to all proceedings for judicial review under this clause. In any such proceeding, the findings of fact of the Board shall be conclusive if supported by substantial evidence.

“(E) PROCEDURES WITH RESPECT TO VIOLATIONS BY OTHER PERSONS.—

“(i) GENERAL PROCEDURES.—A civil penalty may be assessed against any person (other than a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman) by the Administrator under this paragraph only after notice and an opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code.

“(ii) STANDARD OF REVIEW.—In any appeal from a decision of an administrative law judge, the Administrator shall consider only the following issues:

“(I) Whether each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence.

“(II) Whether each conclusion of law is made in accordance with applicable law, precedent, and public policy.

“(III) Whether the administrative law judge committed any prejudicial errors that support the appeal.

“(iii) TIME FOR COMMENCING PROCEEDING.—Except where good cause exists, a civil penalty action shall not be initiated under this subparagraph after 2 years from the date the violation occurred.

“(F) LIMITATION ON APPLICABILITY.—This paragraph only applies to violations occurring on or after the date of the enactment of the FAA Civil Penalty Administrative Assessment Act of 1992.

“(G) MAXIMUM AMOUNT.—The maximum amount of a civil penalty which may be assessed by the Administrator or the National Transportation Safety Board under this paragraph may not exceed \$50,000.

“(H) DEFINITIONS.—In this paragraph, the following definitions apply:

“(i) FLIGHT ENGINEER.—The term ‘flight engineer’ means a person who holds a flight engineer certificate issued under part 63 of title 14 of the Code of Federal Regulations.

“(ii) MECHANIC.—The term ‘mechanic’ means a person who holds a mechanic certificate issued under part 65 of title 14 of the Code of Federal Regulations.

“(iii) PILOT.—The term ‘pilot’ means a person who holds a pilot certificate issued under part 61 of title 14 of the Code of Federal Regulations.

“(iv) REPAIRMAN.—The term ‘repairman’ means a person who holds a repairman certificate issued under part 65 of title 14 of the Code of Federal Regulations.”

(b) REPEAL OF DEMONSTRATION PROGRAM.—Section 905 of such Act (49 U.S.C. App. 1475) is repealed.

(c) CONTINUATION OF FORMER PROGRAMS WITH RESPECT TO PREENACTMENT VIOLATIONS.—Notwithstanding subsections (a) and (b) of this section, sections 901(a)(3) and 905 of the Federal Aviation Act of 1958 as in effect on July 31, 1992, shall continue in effect on and after such date of enactment with respect to violations of the Federal Aviation Act of 1958 occurring before such date of enactment.

49 USC app.
1471 note.

SEC. 3. CONFORMING AMENDMENTS TO REVOCATION OF CERTIFICATES PROCEDURE.

(a) GENERAL AUTHORITY.—Section 609(a) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1429(a)) is amended—

(1) by striking the fifth sentence and inserting the following: “In the conduct of its hearings under this subsection, the Board shall not be bound by any findings of fact of the Administrator but shall be bound by all validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration and of written agency policy guidance available to the public relating to sanctions to be imposed under this subsection unless the Board finds that any such interpretation is arbitrary, capricious, or otherwise not in accordance with law. The Board may, consistent with this subsection, modify

the type of sanction to be imposed from suspension or revocation of a certificate to assessment of a civil penalty.”; and

(2) by striking the last sentence and inserting the following: “A person substantially affected by an order of the Board under this subsection, or the Administrator in any case in which the Administrator determines that such an order will have a significant adverse impact on the implementation of this Act, may obtain judicial review of such order under the provisions of section 1006 of this Act. The Administrator shall be a party to all proceedings for judicial review under this subsection. In any such proceeding, the findings of fact of the Board shall be conclusive if supported by substantial evidence.”.

(b) CONTROLLED SUBSTANCE ACTIVITIES.—Section 609(c)(3) of such Act is amended—

49 USC app.
1429.

(1) by striking the third sentence and inserting the following: “In the conduct of its hearings under this paragraph, the Board shall not be bound by any findings of fact of the Administrator but shall be bound by all validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration and of written agency policy guidance available to the public relating to sanctions to be imposed under this subsection unless the Board finds that any such interpretation is arbitrary, capricious, or otherwise not in accordance with law.”; and

(2) by striking the last sentence and inserting the following: “A person substantially affected by an order of the Board under this paragraph, or the Administrator in any case in which the Administrator determines that such an order will have a significant adverse impact on the implementation of this Act, may obtain judicial review of such order under the provisions of section 1006 of this Act. The Administrator shall be a party to all proceedings for judicial review under this paragraph. In any such proceeding, the findings of fact of the Board shall be conclusive if supported by substantial evidence.”.

SEC. 4. CONFORMING AMENDMENT TO ISSUANCE OF CERTIFICATE PROCEDURE.

Section 602(b)(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1422(b)(1)) is amended by inserting “but shall be bound by all

49 USC app.
1422.

validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration unless the Board finds that any such interpretation is arbitrary, capricious, or otherwise not in accordance with law” after “findings of fact of the Administrator”.

Approved August 26, 1992.

LEGISLATIVE HISTORY—H.R. 5481:

HOUSE REPORTS: No. 102-671 (Comm. on Public Works and Transportation).

CONGRESSIONAL RECORD, Vol. 138 (1992):

Aug. 3, considered and passed House.

Aug. 12, considered and passed Senate.