

SENATE BILL REPORT

SB 5396

As of February 26, 2025

Title: An act relating to supporting the continued employment of pilots applying for federal aviation administration medical certificates.

Brief Description: Supporting the continued employment of pilots applying for federal aviation administration medical certificates. [**Revised for 1st Substitute:** Supporting the continued employment of individuals applying for federal aviation administration medical certificates.]

Sponsors: Senators Liias, Harris, Nobles, Chapman, Saldaña, Cleveland, Krishnadasan, Lovick, Warnick and Wilson, C..

Brief History:

Committee Activity: Labor & Commerce: 1/28/25, 2/21/25 [DPS-WM].
Ways & Means: 2/26/25.

Brief Summary of First Substitute Bill

- Provides that Paid Family and Medical Leave Program (PFML) benefits may be available for leave taken by an employee during the application process for the issuance of a Federal Aviation Administration (FAA) medical certificate related to mental and neurologic standards.
- Requires the employer to pay the employee certain compensation during the application process once the employee has exhausted all available PFML during the FAA medical certification application process related to mental and neurologic standards.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5396 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Saldaña, Chair; Conway, Vice Chair; King, Ranking Member; Alvarado, MacEwen, Ramos, Schoesler and Stanford.

Staff: Susan Jones (786-7404)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Josh Hinman (786-7281)

Background: Federal Aviation Administration Medical Certificates. Most pilots and certain other employees must possess valid Federal Aviation Administration (FAA) medical certificates in order to exercise the privileges of their airman certificates. The periodic medical examinations required for medical certification are conducted by designated aviation medical examiners, who are physicians with a special interest in aviation safety and training in aviation medicine. The standards for medical certification are contained in the Federal Aviation Regulations. Pilots and other employees who have a history of certain medical conditions described in these standards are mandatorily disqualified from flying. Pilots who do not meet medical standards may still be qualified under special issuance provisions or the exemption process. This may require that either additional medical information be provided or practical flight tests be conducted.

Paid Family and Medical Leave Program—General. The Paid Family and Medical Leave Program (PFML) provides partial wage replacement to employees on leave for specified family and medical reasons. The program is funded through premiums paid by employers and employees. The program is administered by the Employment Security Department (ESD).

Premiums. Premiums are assessed quarterly and remitted to ESD in conjunction with employer reporting in the month following the end of each quarter. Premiums are paid on wages up to the maximum wages subject to tax for Social Security, or the Social Security cap.

The 2025 total PFML premium rate is 0.92 percent. Premiums are split between family leave and medical leave based on the percentage of paid claims for each type of claim. For 2025, the family premium is 48.22 percent and the medical premium is 51.78 percent of the total premium. Employers may withhold from employees up to 100 percent of the family leave premium and up to 45 percent of the medical leave premium. For 2025, this would allocate 71.52 percent of the premiums to employees and 28.48 percent of the premium to employers. Small employers, those with 49 or fewer employees, are generally exempt from paying the employer portion of the premium.

Eligibility and Benefits. Employees are eligible for benefits under PFML after working at least 820 hours in a qualifying period. A qualifying period is the first four of the last five full calendar quarters, or the last four full calendar quarters. The program generally allows

for up to 12 weeks of paid family leave or paid medical leave for eligible workers, and under certain circumstances, up to 16 to 18 weeks of combined family and medical leave. Benefits are paid after a seven-day waiting period. An employee is not entitled to leave under certain circumstances, including an employee on suspension from their employment.

Benefits depend on the amount of the employee's average weekly wage and may provide up to 90 percent of the employee's weekly pay for each week of leave. The 2025 maximum weekly PFML benefit is \$1,542 and the minimum is \$100.

Summary of Bill (First Substitute): PFML medical leave benefits may be available as a serious health condition for any leave taken by an employee during the application process for the issuance of an FAA medical certificate related to mental and neurologic standards (application process). The application process also includes the administrative review, records request and review period, and any period of reconsideration of the denial of a medical certificate. Employees suspended from flying due to requirements during the FAA medical certification application process related to mental and neurologic standards are not disqualified from PFML, except for absences related to specified willful actions by the employee.

Once an employee has exhausted all available PFML during the application process, the employer must pay the pilot at least 50 percent of the normal hourly compensation for all hours the employee would have been regularly scheduled to work during the application process.

The employer is exempt from this requirement if the employer, or the employee's bargaining representative if the employee is covered by a collective bargaining agreement, offers a short or long-term disability plan with a monthly benefit that pays at least 50 percent of the employee's wages, or at least \$6,000, for a period of at least 24 months.

The requirement for the employer to pay compensation during the application process ceases after the receipt of a final denial without the ability for reconsideration and other specified circumstances, including certain willful actions by the employee; and no longer applies when the employee reaches age 65. This requirement may not be construed to prevent the termination of a pilot's employment who is physically unable to perform their duties outside of whatever mental or neurological conditions necessitated the medical certification application.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

- Expands the provisions of the bill to all employees subject to the FAA medical certification application process, rather than just pilots; and modifies the title.
- Modifies the language in regards to the certification application, review, &and reconsideration process.

- Makes leave from work made necessary during the application process a Paid Family and Medical Leave “serious health condition,” rather than included in the term “medical leave.”
- Provides that an absence because of substance use, rather than for treatment, does not qualify for PFML leave during the application process.
- Disqualifies an individual from PFML leave for an absence occasioned by a willful intent to bring injury to or sickness of the employee or another, even if an exception would apply during the application process.
- Requires, after exhaustion of the PFML leave, the employer to pay 50 percent of the normal compensation during the application process, rather than 100 percent; and the employer is exempt from this requirement if the employer, or the employee's bargaining representative if the employee is covered by a collective bargaining agreement, offers a short or long-term disability plan with a monthly benefit that pays at least 50 percent of the employee's wages, or at least \$6,000, for a period of at least 24 months.
- Provides that the requirement to pay compensation or offer a disability plan cease after receipt of final denial without the ability for reconsideration and other specified circumstances, including certain willful actions by the employee; and no longer applies when the employee reaches age 65.

Appropriation: None.

Fiscal Note: Requested on February 21, 2025.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Labor & Commerce): *The committee recommended a different version of the bill than what was heard.* PRO: The awareness of this issue came in 2023 when a flight was disrupted by a pilot who had been attempting to self-medicate for depression using psychedelics, almost causing a catastrophic event. This raised awareness of the challenges for pilots to access necessary care.

In 2022 anonymized surveys of nearly 4000 pilots provided that 56 percent reported a history of health-care avoidant behavior. Another 2016 anonymous voluntary survey of nearly 3500 pilots identified that about 13 percent of respondents met the threshold for depression. People suffering from mental health conditions need care to ensure their well-being is maintained and that they don't progress further in that illness. According to the CDC, the general adult population between 2015 and 2018, needing antidepressants was around 13.2 percent. In the pilot population, that percentage is only 0.29 percent. With 174,000 airline transport pilots in the U.S., there are likely 22,500 pilots avoiding mental health care.

More pilots are coming forward with common issues related to their mental health. It is imperative that they feel comfortable seeking diagnosis and treatment for their mental health concerns. However, the majority of pilots do not choose the path toward mental wellness because of financial loss and financial uncertainty.

When applying for FAA medical certificates, pilots must disclose any mental health condition, including any symptoms, treatment, or possible diagnosis. Immediately after that, they will lose flying privileges. A long investigative process begins which can take months or years to certifications reissued and the pilot return to flying. For the average pilot who starts on an approved medication to treat a mental health condition, they must be stabilized on the medication for six months and they must receive three expensive evaluations once they're stabilized, which can take another two to three months. Testifiers described their experiences. One testifier described the process as humiliating, humbling, time consuming, and expensive. Another testifier stated that the process took 592 days to complete.

During this time, most pilots go uncompensated or undercompensated. This bill would help fill a gap in the current policies. Only 0.1 percent of pilots who disclose issues are denied recertification. So 99.9 percent of these folks will end up back at work.

The bill ensures that pilots qualify for the PFML benefits while they are seeking medical recertification. Once those benefits are exhausted, we want to make sure that pilots continue to receive compensation to keep their families afloat. We want people to know that even at the federal level, we may be behind, but The Evergreen State will take care of our pilots.

OTHER: We strongly support mental health efforts for pilots to be able to obtain the treatment they need without ending their flying careers. The FAA process is a very outdated system and processes creates a lot of uncertainty both for our pilots as well as for the airlines.

The bill introduces a novel and concerning requirement for an employer to pay the pilot the normal hourly compensation for all hours they would have been regularly scheduled to work during the FAA application process and until final determination. Final denials are rare, and lengthy and indefinite deferrals are common and can delay the process significantly for years.

The companies have invested in programs and benefits to support pilots, including company funded employee assistance program with access to coaches and therapists. An airline representative stated that specific to pilots, they have a director of health services responsible for working directly with pilots to coordinate resolution of FAA medical issues, including approval. There is significant pay protection for employees, particularly pilots that are available for mental health issues that are bargained through the CBAs.

Pilots applying for their FAA medical certificate have access to some of the industry's leading leave benefits. Once they've exhausted all sick leave, short-term disability, paid family and medical leave benefits, pilots are covered by a company paid long-term disability program that pays 50 percent of wages, plus healthcare and retirement benefits until the FAA makes that final determination. There are also supplemental programs provided for short-term disability through the company as well as through the unions that represent them.

The current version of this bill would require a large implementation effort, and a challenging effective date.

A patchwork of different states with different protections is not going to be effective in driving the change with the FAA, which is really where the change needs to happen. How the FAA approaches the issue of mental health both medically and procedurally to reduce the wait time for pilots needs to be the focus of the effort.

Persons Testifying (Labor & Commerce): PRO: Senator Marko Liias, Prime Sponsor; Brian Bomhoff, Pilot Mental Health Campaign; Dr. Keith Lemmon, Pilot Mental Health Campaign; Brad Maas, Pilot Mental Health Campaign; Adam Walker, Pilot Mental Health Campaign; Stephanie Day, Pilot Mental Health Campaign.

OTHER: Scott Kennedy, Alaska Airlines; Jeremy Horn, Horizon Air; Dana Debel, Delta Air Lines; Alison Eldridge, Employment Security Department; Josh Dye, Employment Security.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: Testifying on behalf of airline pilots who may have their flying privileges suspended for mental issues. When this occurs, this absence is unpaid and this acts as a deterrent from seeking mental health diagnosis and treatment. This bill allows for PFML during this period. We understand the claims will be lower than as stated in the previous fiscal analysis, and that this bill is projected to have only a marginal impact on the rate.

Mental health is a complicated issue and we want to support the mental well-being of Washington State. The original fiscal note was high. The 1100 scale in the original note was overstated. This would be groundbreaking legislation and allow pilots' voices to be heard. We continue to advocate for pilots across the state.

Persons Testifying (Ways & Means): PRO: Chris Finlayson, Pilot Mental Health Campaign; Christoph Mair, Washington State Labor Council, AFL-CIO.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.