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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Draft	A Bill to Provide for the Stability and Security of the United States Air Transportation System [15 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	15	09/20/2001	
002	Draft	A Bill to Compensate Victims of the Terrorist Attacks on September 11, 2001 [11 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	11	N.D.	
003	Memorandum	Prospective Liability Fix [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	1	N.D.	
004	Memorandum	Prospective Liability Fix [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	1	N.D.	

COLLECTION TITLE:
Counsel's Office, White House

SERIES:
Kavanaugh, Brett - Subject Files

FOLDER TITLE:
Airlines [2]

FRC ID:
9121

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Presidential Records Act - [44 U.S.C. 2204(a)]

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005	Memorandum	Prospective Liability Fix [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	1	N.D.	
006	Memorandum	Prospective Liability Fix [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	1	N.D.	
007	Memorandum	Prospective Liability Fix [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	1	N.D.	
008	Draft	A Bill to Provide for the Stability and Security of the United States Air Transportation System [9 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	9	09/20/2001	

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009	Bill	Title IV - Retrospecitve Liability [Pages 17-21] [5 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	5	09/20/2001	
010	Draft	Deemed A Citizen of the State [Pages 11-14] [4 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	4	N.D.	
011	Draft	States Code, this cause… [Pages 2 and 9 Only] [3 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	3	09/20/2001	
012	Fax Cover Sheet	Tom Daschle Office of the Majority Leader [with Attachment] [7 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS] - To: Brett Kavanaugh	7	N.D.	

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013	Draft	Retrospective Liability for Damages... [7 PAGES RELEASED IN PART FOR b(6) ON PRA RE-REVIEW 05/20/2025 JLS]	7	09/20/2001	b6;
014	Draft	Retrospective Liability for Damages... [8 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	8	09/20/2001	
015	Draft	Discretion of the Secretary [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	1	N.D.	
016	Draft	Immediate Actins to Ensure the Safety and Financial Stability of Air Carriers [2 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	2	09/19/2001	

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017	Handwritten Note	Discretion of the Secretary [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	1	N.D.	
018	Bill	The Victims of Aircraft Terrorism Compensation Act [3 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	3	N.D.	
019	Draft	Title VI - Liability of Air Carriers… [Pages 11-12 Only] [2 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	2	N.D.	
020	Email	Comments of Title IV of Draft Bill [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS] - To: Brett Kavanaugh - From: M. Edward Whelan	1	09/20/2001	

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021	Draft	Amendments to Title 49, United States Code [Pages 2-10 Only] [9 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	9	N.D.	
022	Draft	A Bill to Provide for the Continued Viability of the United States Air Transportation System [8 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	8	09/19/2001	
023	Draft	..."Terrorist Attack Liability Act of 2001" [2 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	2	N.D.	
024	Draft	..."Terrorist Attack Liability Act of 2001" [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	1	N.D.	

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025	Draft	Federal Cause of Action [with Attachments] [12 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	12	09/20/2001	
026	Draft	To the Maximum Extent Feasible… [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	1	09/21/2001	
027	Draft	Notwithstanding Any Other Provisions of This Title… [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	1	N.D.	
028	Bill	Federal Cause of Action [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	1	09/21/2001	

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029	Resolution	A Bill to Provide for the Stability and Security of the United States Air Transportation System [28 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	28	09/21/2001	
030	Draft	Secretarial Oversight [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	1	N.D.	
031	Draft	Essential Air Service [Page 3 Only] [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	1	09/20/2001	
032	Draft	Title V Air Transportation Safety [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 05/20/2025 JLS]	1	N.D.	

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004	Memorandum	Prospective Liability Fix	1	N.D.	P5;
005	Memorandum	Prospective Liability Fix	1	N.D.	P5;
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Records Not Subject to FOIA

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
015	Draft	Discretion of the Secretary	1	N.D.	P5;
016	Draft	Immediate Actins to Ensure the Safety and Financial Stability of Air Carriers	2	09/19/2001	P5;
017	Handwritten Note	Discretion of the Secretary	1	N.D.	P5;
018	Bill	The Victims of Aircraft Terrorism Compensation Act	3	N.D.	P5;
019	Draft	Title VI - Liability of Air Carriers... [Pages 11-12 Only]	2	N.D.	P5;
020	Email	Comments of Title IV of Draft Bill - To: Brett Kavanaugh - From: M. Edward Whelan	1	09/20/2001	P5;
021	Draft	Amendments to Title 49, United States Code [Pages 2-10 Only]	9	N.D.	P5;

COLLECTION TITLE:
Counsel's Office, White House

SERIES:
Kavanaugh, Brett - Subject Files

FOLDER TITLE:
Airlines [2]

FRC ID:
9121

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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Freedom of Information Act - [5 U.S.C. 552(b)]

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
022	Draft	A Bill to Provide for the Continued Viability of the United States Air Transportation System	8	09/19/2001	P5;
023	Draft	..."Terrorist Attack Liability Act of 2001"	2	N.D.	P5;
024	Draft	..."Terrorist Attack Liability Act of 2001"	1	N.D.	P5;
025	Draft	Federal Cause of Action [with Attachments]	12	09/20/2001	P5;
026	Draft	To the Maximum Extent Feasible...	1	09/21/2001	P5;
027	Draft	Notwithstanding Any Other Provisions of This Title...	1	N.D.	P5;
028	Bill	Federal Cause of Action	1	09/21/2001	P5;

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Counsel's Office, White House

SERIES:
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SUPERSEDED

DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
029	Resolution	A Bill to Provide for the Stability and Security of the United States Air Transportation System	28	09/21/2001	P5;
030	Draft	Secretarial Oversight	1	N.D.	P5;
031	Draft	Essential Air Service [Page 3 Only]	1	09/20/2001	P5;
032	Draft	Title V Air Transportation Safety	1	N.D.	P5;

COLLECTION TITLE:
Counsel's Office, White House

SERIES:
Kavanaugh, Brett - Subject Files

FOLDER TITLE:
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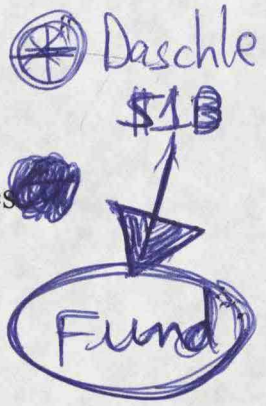
NOT HERE
1) victims assistance prog
2) amdt to prospective

9/20/01 - 1:15 pm draft



A BILL

To provide for the stability and security of the United States air transportation system, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Air Transportation Stability and Security Act of 2001".

SEC. 2. FINDINGS.

The Congress finds that:

(1) The September 11, 2001, terrorist attacks on American Airlines flights 11 and 77 and United Airlines flights 93 and 175 have inflicted massive loss of life, personal injury, suffering, property damage, economic loss, and other harms on tens of thousands of victims.

(2) There is a compelling public interest in ensuring that victims be compensated equitably, uniformly, and expeditiously, and in avoiding

duplicative, and potentially inconsistent, resolution of identical issues in different courts.

(3) There is a compelling and overwhelming public interest in ensuring the stability and security of this Nation's air carriers.

(4) The President has declared a national emergency as a result of the terrorist attacks on September 11, 2001.

(5) Application of existing State and Federal tort law procedures to the exceptional circumstances arising from the terrorist attacks would threaten to overwhelm the State and Federal courts, impose massive litigation costs and delayed recovery, produce uncoordinated, disparate, and grossly inequitable results, and jeopardize the stability and security of the Nation's air carriers.

SEC. 3. AMENDMENTS TO TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 4. SECRETARY OF TRANSPORTATION.

As used in this Act, the term "Secretary" means the Secretary of Transportation.

TITLE I—SECURITY ENHANCEMENT PROGRAM

SEC. 101. SECURITY ENHANCEMENT PROGRAM.

There is hereby **[authorized to be]** appropriated, out of any money in the Treasury not otherwise appropriated, $3,000,000,000 to remain available until expended, for expenditure by the Secretary of Transportation, as the Secretary may determine, for costs relating to or arising from aviation security enhancements. Expenditures by the Secretary under this title may include, without limitation, payments to air carriers, as defined in 49 U.S.C. 40102, to be used for costs relating to or arising from aviation security enhancement.

TITLE II—AIRLINE EMERGENCY RECOVERY PROGRAM

SEC. 201. AIRLINE EMERGENCY RECOVERY PROGRAM.

(a) GENERAL.—Notwithstanding any other provision of law, the Secretary of Transportation is authorized to make emergency payments to air carriers, as defined in 49 U.S.C. 40102, as a result of the September 11, 2001, terrorist attack.

(b) FORMULA.—The Secretary shall allocate from the

total amount made available under this title an emergency payment to each air carrier as follows:

(1) With respect to 80 percent of the total made available under this title, an air carrier payment shall be that percentage of the 80 percent that is equal to the percent of available seat miles the air carrier provided from January 1, 2001, through June 30, 2001, out of all the available seat miles provided in that time period by all of the air carriers qualifying for payment from the 80-percent portion.

(2) With respect to 20 percent of the total made available under this title, the air carrier payment shall be that percentage of the 20 percent that is equal to the percent of revenue ton miles the air carrier provided from January 1, 2001, through June 30, 2001, out of all the revenue ton miles provided in that time period by all of the air carriers qualifying for payment from the 20-percent portion.

(c) PAYMENTS.—The Secretary is authorized to make such terms and conditions the Secretary determines appropriate on the timing and manner of payment. A decision of the Secretary about making an emergency

payment under this title or about a term or condition for making an emergency payment shall be final and unappealable.

(d) TAX TREATMENT.—Section 118 of title 26, United States Code, is amended by inserting at the end the following new subsection:

"(c) For purposes of subsection (a) and section 362(c)(2), amounts received pursuant to section 201(b) of the United States Air Transportation Stabilization Act of 2001 shall be treated as a contribution to the capital of the taxpayer by a person who is not a shareholder of the taxpayer.".

(e) APPROPRIATIONS.—There is hereby **[authorized to be]** appropriated, out of money in the Treasury not otherwise appropriated, $5,000,000,000 to remain available until expended to carry out the provisions of subsections (a) through (c) of this title.

[(e) ESSENTIAL AIR SERVICE.—Section 41742(a)(2) is amended by deleting "$15,000,000" and inserting "$75,000,000."**]**

TITLE III—INSURANCE FOR DOMESTIC AIR TRANSPORTATION

SEC. 301. DOMESTIC INSURANCE AND REIMBURSEMENT

OF INSURANCE COST INCREASES.

(a) GENERAL AUTHORITY.—Section 44302 is amended—

(1) in the caption of section 44302(a), by inserting the phrase "provision of" before the phrase "insurance and reinsurance";

(2) in subsection (a)(1) by deleting all that appears after "foreign flag aircraft" and inserting a period;

(3) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively, and by inserting after subsection (a) the following new subsection (b):

"(b) Reimbursement of insurance cost increases.—The Secretary may reimburse an air carrier for the increase in the cost of insurance, with respect to a premium for coverage ending before October 1, 2002, against loss or damage arising out of any risk from the operation of an American aircraft over the insurance premium that was in effect for a comparable operation during the period beginning September 4, 2001 and ending September 10, 2001, as the Secretary may determine. Such reimbursement

is subject to subsections (a)(2), (c), and (d) of this section, and to section 44303 of this title. Such reimbursement shall be paid from the revolving fund established by section 44307 of this title. The Secretary may impose such further conditions on insurance for which the increase in premium is subject to reimbursement under this section as the Secretary may deem appropriate in the interest of air commerce. This authority shall expire ninety days after enactment of this title.";

(4) by amending subsection (c), as redesignated by this section, to read as follows:

"(c) Presidential approval. The Secretary may provide insurance or reinsurance under subsection (a) of this section or reimburse an air carrier under subsection (b) of this section only with the approval of the President. The President may approve the insurance or reinsurance or the reimbursement only after deciding that the continued operation of the American aircraft or foreign-flag aircraft to be insured or reinsured is necessary in the interest of air commerce or the national security, or to carry out the

foreign policy of the United States Government.";
and

(5) in section 44302(d), as redesignated by this section, by inserting the phrase "or reimbursing an air carrier" after the phrase "insurance or reinsurance".

(b) COVERAGE.—Section 44303 is amended by—

(1) inserting the phrase ", or reimburse insurance costs, as" after the phrase "insurance and reinsurance" in the first sentence; and

(2) in paragraph (1), inserting the phrase "in the interest of air commerce or the national security, or" before the phrase "to carry out the foreign policy".

(c) REINSURANCE.—Section 44304 is amended by—

(1) deleting subsection (b); and

(2) redesignating section 44304(a) as section 44304.

(d) PREMIUMS AND LIMITATIONS ON COVERAGE AND CLAIMS.—Section 44306 is amended—

(1) by redesignating sections 44306(b) and (c) as sections 44306(c) and (d);

(2) in section 44306(c), as redesignated, by inserting the phrase "in the interest of air commerce

or the national security, or" before the phrase "to carry out the foreign policy"; and

(3) by inserting a new section 44306(b) to read as follows:

"(b) Premium Rates for Reinsurance.—In setting premium rates for reinsurance, the Secretary may make allowances to the insurance carrier for expenses incurred in providing services and facilities that the Secretary considers good business practices, except for payments by the carrier for the stimulation or solicitation of insurance business.".

(e) LIMITATION OF LIABILITY.—Notwithstanding any other provision of law, for a period of 180 days from the date of enactment of this Act, no air carrier, or its officers, directors, employees or agents, shall be liable for damages of any kind or amount in connection with any claim of injury to property other than the aircraft involved or death or injury of persons other than aircraft passengers or crew that arises from an act of war or terrorism. Nothing in the foregoing sentence limits in any way the liability of air carriers for loss of or injury to the aircraft involved or injury or death of aircraft passengers or crew.

terrorism, except in actions brought by passengers or employees on the airplane, or their survivors.

SEC. 602. DISCRETION OF THE SECRETARY.

For acts of terrorism committed on or to air carriers for 180 days after enactment of this Act, the Secretary of Transportation, in his discretion, may certify that the air carrier was a victim of an act of terrorism and in the Secretary's judgment, based on his analysis and conclusions regarding the facts and circumstances of each case, should not be responsible for losses suffered by parties other than the passengers and employees on the airplane.

→ victims —

→ liability

DEFINE COLLATERAL SOURCE: ALL SOURCES ~~OF~~ OF BENEFITS, ~~FOR~~ FOR INCL ~~CE~~ INSUR, ~~PENSION~~ employee ~~benefit~~ plans, ~~benefit~~ payments FUNDS, by the federal ~~or~~ state or local government death ~~benefit~~ programs related to

107TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To compensate victims of the terrorist attacks on September 11, 2001.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "September 11th Compensation Act of 2001".

SEC. 2. TABLE OF CONTENTS.

[To be supplied]

SEC. 3. DEFINITIONS.

In this Act:

(1) AIR CARRIER.—The term "air carrier" means a citizen of the United States undertaking by

any means, directly or indirectly, to provide air transportation.

(2) AIR TRANSPORTATION.—The term "air transportation" means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.

(3) CLAIMANT.—The term "claimant" means an individual filing a claim for compensation under section 6(a)(1).

(4) ECONOMIC LOSS.—The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(5) ELIGIBLE INDIVIDUAL.—The term "eligible individual" means an individual determined to be eligible for compensation under section 6(c).

(6) NONECONOMIC LOSSES.—The term "noneconomic losses" means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship,

loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.

(7) SPECIAL MASTER.—The term "Special Master" means the Special Master appointed under section 5(a).

SEC. 4. PURPOSE.

It is the purpose of this Act to provide compensation to any individual (or relative of a deceased individual) who was injured or killed as a result of the terrorist-related aircraft crashes in the United States on September 11, 2001.

SEC. 5. ADMINISTRATION.

(a) IN GENERAL.—The Attorney General, [acting through a Special Master appointed by the Attorney General, ~~by and with the advice and consent of the Senate/ article I judge~~] shall—

(1) administer the compensation program established under this Act;

(2) promulgate all procedural and substantive rules for the administration of this Act; and

(3) employ and supervise hearing officers and other administrative personnel to perform the duties of the Special Master under this Act.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to pay the administrative and support costs for the Special Master in carrying out this Act.

SEC. 6. DETERMINATION OF ELIGIBILITY FOR COMPENSATION.

(a) FILING OF CLAIM.—

(1) IN GENERAL.—A claimant may file a claim for compensation under this Act with the Special Master. The claim shall be on the form developed under paragraph (2) and shall state the factual basis for eligibility for compensation and the amount of compensation sought.

(2) CLAIM FORM.—

(A) IN GENERAL.—The Special Master shall develop a claim form that claimants shall use when submitting claims under paragraph (1). The Special Master shall ensure that such form can be filed electronically, if determined to be practicable.

(B) CONTENTS.—The form developed under subparagraph (A) shall request—

(i) information from the claimant concerning the physical harm that the claimant suffered, or in the case of a claim filed

on behalf of a decedent information confirming the decedent's death, as a result of the terrorist-related aircraft crashes of September 11, 2001; and

(ii) information from the claimant concerning any possible economic and non-economic damages that the claimant suffered as a result of such crashes.

(3) LIMITATION.—No claim may be filed under paragraph (1) after the date that is 2 years after the date on which regulations are promulgated under section 8.

(b) REVIEW AND DETERMINATION.—

(1) REVIEW.—The Special Master shall review a claim submitted under subsection (a) and determine—

(A) whether the claimant is an eligible individual under subsection (c);

(B) with respect to a claimant determined to be an eligible individual—

(i) the extent of the harm to the claimant, including any economic and non-economic losses; and

(ii) the amount of compensation to which the claimant is entitled.

(c) The Special Master shall reduce the amount of compensation determined under (b)(1)(B)(ii) by the amount of collateral sources of compensation that the claimant has received or is entitled to receive as a result of the terrorist-related aircraft crashes of September 2001.

(2) NEGLIGENCE.—With respect to a claimant, the Special Master shall not consider negligence, or any other theory of liability.

(3) DETERMINATION.—Not later than ~~180~~ days after that date on which a claim is filed under subsection (a), the Special Master shall complete a review, make a determination, and provide written notice to the claimant, with respect to the matters that were the subject of the claim under review. Such a determination shall be final and not subject to judicial review.

(4) RIGHTS OF CLAIMANT.—A claimant in a review under paragraph (1) shall have—

(A) the right to be represented by an attorney;

(B) the right to present evidence, including the presentation of witnesses and documents; and

(C) any other ~~[illegible]~~ rights determined appropriate by the ~~Court of Federal Claims~~ Special Master.

(5) NO PUNITIVE DAMAGES.—The Special Master may not include amounts for punitive damages in any compensation paid under a claim under this Act.

(6) No cap the SM shall determined compensation under (b)(1)(B) by the amount reduce the ~~award~~

(ii)

(c) ELIGIBILITY.—

(1) IN GENERAL.—A claimant shall be determined to be an eligible individual for purposes of this paragraph if the Special Master determines that such claimant—

(A) is an individual described in paragraph (2); and

(B) meets the requirements of paragraph (3).

(2) INDIVIDUALS.—A claimant is an individual described in this paragraph if the claimant is—

(A) an individual who—

(i) was present at the World Trade Center, (New York, New York), the Pentagon (Arlington, Virginia), or the site of the aircraft crash at Shanksville, Pennsylvania at the time, or in the immediate aftermath, of the terrorist-related aircraft crashes of September 11, 2001; and

(ii) suffered physical harm or death as a result of such an air crash;

(B) an individual who was a member of the flight crew or a passenger on American Airlines flight 11 or 77 or United Airlines flight 93 or 175, except that an individual [identified]

as one of the hijackers of any of such flights (or their representatives) shall not be eligible to receive compensation under this Act; or

(C) in the case of a decedent who is an individual described in subparagraph (A) or (B), the personal representative of the decedent who files a claim on behalf of the decedent.

(3) REQUIREMENTS.—

(A) SINGLE CLAIM.—Not more than one claim may be submitted under this Act by an individual or on behalf of a deceased individual.

(B) LIMITATION ON CIVIL ACTION.—

(i) IN GENERAL.—Upon the submission of a claim under this Act, the claimant waives the right to file a civil action, or to be a party to an action, for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001 in any Federal or State court.

(ii) PENDING ACTIONS.—In the case of an individual who is a party to a civil action described in clause (i), such individual may not submit a claim under this Act unless such individual withdraws from

such action by the date that is 90 days after the date ~~of enactment of this Act.~~ on which regs are promulgated under §A.

SEC. 7. PAYMENTS TO ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—Not later than 20 days after the date on which a determination is made that an claimant is an eligible individual under section 6(c) and entitled to compensation under this Act, the Special Master shall provide for the payment to such claimant of the amount determined with respect to the claimant. (edited)

(b) PAYMENT AUTHORITY.—This Act constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment of amounts for compensation under this Act. ✓

(c) ADDITIONAL FUNDING.—

(1) IN GENERAL.—The Attorney General is authorized to accept such amounts as may be contributed by individuals, business concerns, or other entities to carry out this Act. ✓ conditions under such terms and ~~conditions~~ as the AG may impose.

(2) USE OF SEPARATE ACCOUNT.—In making payments under this section, amounts contained in any account containing funds provided under paragraph (1) shall be used prior to using appropriated amounts.

SEC. 8. REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Attorney General, in consultation with the Special Master, shall promulgate regulations to carry out this Act, including regulations with respect to—

(1) forms to be used in submitting claims under this Act;

(2) the information to be included in such forms;

(3) procedures for hearing and the presentation of evidence;

(4) procedures ~~for the appointment of facilitator~~ to assist individual in filing and pursuing claims under this Act;

(5) other matter determined appropriate by the Attorney General.

SEC. 9. MISCELLANEOUS PROVISIONS.

[(a) LIMITATION ON LIABILITY.—Air carrier or all business concerns? Does the U.S. backstop? Joint/several liability vs. proportional issue? To be supplied.] [Notwithstanding any other provision of law, liability for all claims, whether for compensatory or punitive damages, arising from the terrorist-related aircraft crashes on September 11, 2001, against any air carrier whose aircraft was involved in such crashes, or against any servants or agents of such a carrier, shall not be in an amount greater than

the limits of the liability coverage maintained by the respective air carriers.]

[(b) SUBROGATION.—The Federal Government shall have the right of subrogation against any individual or business entity with respect to any claim paid under this Act.

[(c) LIMITATION ON TAXATION OF PAYMENTS.—To be supplied]

OK ?

To: David Aufhauser

From: Peter Fisher

Prospective Liability Fix

Background

Airlines essentially carry three types of insurance:

Hull Risk: This insurance covers the cost of the aircraft itself
General Risk: This covers standard losses and crashes due to anything from faulty maintenance to negligence. It does not include losses due to terrorism.
Collateral War Risk: This covers third-party/on the ground damage from a terrorist act.

Senate Version Does:

1. The provision caps any air carrier's collateral war risk liability at $100 million. The United States government will pay anything in excess of that amount.

   In order to qualify for that cap, air carrier must obtain at least $50 million in collateral war risk liability insurance.

2. United States may provide collateral war risk liability insurance to air carriers if the President determines that it is necessary in the interest of air commerce or national security.

   The Secretary of Transportation may charge premiums for this insurance only in the amount that is not harmful to the interests of air commerce or national security.

3. A fund is established to pay the insurance claims if they should be made.

4. The measure is in effect for only six months.

Problems with Other Version:

1. Has federal government offering airlines all forms of insurance and reinsurance

2. Has federal government paying airline carriers insurance premiums for all forms of insurance

3. Caps passengers' access to the general risk insurance fund. Currently & going forward passengers and crews would have access to approximately $1.5 billion in funds. Under this version, they and everyone on the ground would be able to collect only $100 million from the airline.

4. Not clear whether insurance to be offered by federal government is for passengers only – i.e. not for collateral (on the ground damage).

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3. A fund is established to pay the insurance claims if they should be made.

4. The measure is in effect for only six months.

Problems with Other Version:

1. Has federal government offering airlines all forms of insurance and reinsurance

2. Has federal government paying airline carriers insurance premiums for all forms of insurance

3. Caps passengers' access to the general risk insurance fund. Currently & going forward passengers and crews would have access to approximately $1.5 billion in funds. Under this version, they and everyone on the ground would be able to collect only $100 million from the airline.

4. Not clear whether insurance to be offered by federal government is for passengers only – i.e. not for collateral (on the ground damage).

Prospective Liability Fix

Background

Airlines essentially carry three types of insurance:

Hull Risk: This insurance covers the cost of the aircraft itself
General Risk: This covers standard losses and crashes due to anything from faulty maintenance to negligence. It does not include losses due to terrorism.
Collateral War Risk: This covers third-party/on the ground damage from a terrorist act.

Senate Version Does:

1. The provision caps any air carrier's collateral war risk liability at $100 million. The United States government will pay anything in excess of that amount.

   In order to qualify for that cap, air carrier must obtain at least $50 million in collateral war risk liability insurance.

2. United States may provide collateral war risk liability insurance to air carriers if the President determines that it is necessary in the interest of air commerce or national security.

   The Secretary of Transportation may charge premiums for this insurance only in the amount that is not harmful to the interests of air commerce or national security.

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9/20/01 - 1:15 pm draft

A BILL

To provide for the stability and security of the United States air transportation system, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Air Transportation Stability and Security Act of 2001".

SEC. 2. FINDINGS.

The Congress finds that:

(1) The September 11, 2001, terrorist attacks on American Airlines flights 11 and 77 and United Airlines flights 93 and 175 have inflicted massive loss of life, personal injury, suffering, property damage, economic loss, and other harms on tens of thousands of victims.

(2) There is a compelling public interest in ensuring that victims be compensated equitably, uniformly, and expeditiously, and in avoiding

duplicative, and potentially inconsistent, resolution of identical issues in different courts.

(3) There is a compelling and overwhelming public interest in ensuring the stability and security of this Nation's air carriers.

(4) The President has declared a national emergency as a result of the terrorist attacks on September 11, 2001.

(5) Application of existing State and Federal tort law procedures to the exceptional circumstances arising from the terrorist attacks would threaten to overwhelm the State and Federal courts, impose massive litigation costs and delayed recovery, produce uncoordinated, disparate, and grossly inequitable results, and jeopardize the stability and security of the Nation's air carriers.

SEC. 3. AMENDMENTS TO TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 4. SECRETARY OF TRANSPORTATION.

As used in this Act, the term "Secretary" means the Secretary of Transportation.

TITLE I—SECURITY ENHANCEMENT PROGRAM

SEC. 101. SECURITY ENHANCEMENT PROGRAM.

There is hereby **[authorized to be]** appropriated, out of any money in the Treasury not otherwise appropriated, $3,000,000,000 to remain available until expended, for expenditure by the Secretary of Transportation, as the Secretary may determine, for costs relating to or arising from aviation security enhancements. Expenditures by the Secretary under this title may include, without limitation, payments to air carriers, as defined in 49 U.S.C. 40102, to be used for costs relating to or arising from aviation security enhancement.

TITLE II—AIRLINE EMERGENCY RECOVERY PROGRAM

SEC. 201. AIRLINE EMERGENCY RECOVERY PROGRAM.

(a) GENERAL.—Notwithstanding any other provision of law, the Secretary of Transportation is authorized to make emergency payments to air carriers, as defined in 49 U.S.C. 40102, as a result of the September 11, 2001, terrorist attack.

(b) FORMULA.—The Secretary shall allocate from the

total amount made available under this title an emergency payment to each air carrier as follows:

(1) With respect to 80 percent of the total made available under this title, an air carrier payment shall be that percentage of the 80 percent that is equal to the percent of available seat miles the air carrier provided from January 1, 2001, through June 30, 2001, out of all the available seat miles provided in that time period by all of the air carriers qualifying for payment from the 80-percent portion.

(2) With respect to 20 percent of the total made available under this title, the air carrier payment shall be that percentage of the 20 percent that is equal to the percent of revenue ton miles the air carrier provided from January 1, 2001, through June 30, 2001, out of all the revenue ton miles provided in that time period by all of the air carriers qualifying for payment from the 20-percent portion.

(c) PAYMENTS.—The Secretary is authorized to make such terms and conditions the Secretary determines appropriate on the timing and manner of payment. A decision of the Secretary about making an emergency

payment under this title or about a term or condition for making an emergency payment shall be final and unappealable.

(d) TAX TREATMENT.—Section 118 of title 26, United States Code, is amended by inserting at the end the following new subsection:

"(c) For purposes of subsection (a) and section 362(c)(2), amounts received pursuant to section 201(b) of the United States Air Transportation Stabilization Act of 2001 shall be treated as a contribution to the capital of the taxpayer by a person who is not a shareholder of the taxpayer.".

(e) APPROPRIATIONS.—There is hereby **[authorized to be]** appropriated, out of money in the Treasury not otherwise appropriated, $5,000,000,000 to remain available until expended to carry out the provisions of subsections (a) through (c) of this title.

[(e) ESSENTIAL AIR SERVICE.—Section 41742(a)(2) is amended by deleting "$15,000,000" and inserting "$75,000,000."**]**

TITLE III—INSURANCE FOR DOMESTIC AIR TRANSPORTATION

SEC. 301. DOMESTIC INSURANCE AND REIMBURSEMENT

OF INSURANCE COST INCREASES.

(a) GENERAL AUTHORITY.—Section 44302 is amended—

(1) in the caption of section 44302(a), by inserting the phrase "provision of" before the phrase "insurance and reinsurance";

(2) in subsection (a)(1) by deleting all that appears after "foreign flag aircraft" and inserting a period;

(3) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively, and by inserting after subsection (a) the following new subsection (b):

"(b) Reimbursement of insurance cost increases.—The Secretary may reimburse an air carrier for the increase in the cost of insurance, with respect to a premium for coverage ending before October 1, 2002, against loss or damage arising out of any risk from the operation of an American aircraft over the insurance premium that was in effect for a comparable operation during the period beginning September 4, 2001 and ending September 10, 2001, as the Secretary may determine. Such reimbursement

is subject to subsections (a)(2), (c), and (d) of this section, and to section 44303 of this title. Such reimbursement shall be paid from the revolving fund established by section 44307 of this title. The Secretary may impose such further conditions on insurance for which the increase in premium is subject to reimbursement under this section as the Secretary may deem appropriate in the interest of air commerce. This authority shall expire ninety days after enactment of this title.";

(4) by amending subsection (c), as redesignated by this section, to read as follows:

"(c) Presidential approval. The Secretary may provide insurance or reinsurance under subsection (a) of this section or reimburse an air carrier under subsection (b) of this section only with the approval of the President. The President may approve the insurance or reinsurance or the reimbursement only after deciding that the continued operation of the American aircraft or foreign-flag aircraft to be insured or reinsured is necessary in the interest of air commerce or the national security, or to carry out the

foreign policy of the United States Government.";
and

(5) in section 44302(d), as redesignated by this section, by inserting the phrase "or reimbursing an air carrier" after the phrase "insurance or reinsurance".

(b) COVERAGE.—Section 44303 is amended by—

(1) inserting the phrase ", or reimburse insurance costs, as" after the phrase "insurance and reinsurance" in the first sentence; and

(2) in paragraph (1), inserting the phrase "in the interest of air commerce or the national security, or" before the phrase "to carry out the foreign policy".

(c) REINSURANCE.—Section 44304 is amended by—

(1) deleting subsection (b); and

(2) redesignating section 44304(a) as section 44304.

(d) PREMIUMS AND LIMITATIONS ON COVERAGE AND CLAIMS.—Section 44306 is amended—

(1) by redesignating sections 44306(b) and (c) as sections 44306(c) and (d);

(2) in section 44306(c), as redesignated, by inserting the phrase "in the interest of air commerce

or the national security, or" before the phrase "to carry out the foreign policy"; and

(3) by inserting a new section 44306(b) to read as follows:

"(b) Premium Rates for Reinsurance.—In setting premium rates for reinsurance, the Secretary may make allowances to the insurance carrier for expenses incurred in providing services and facilities that the Secretary considers good business practices, except for payments by the carrier for the stimulation or solicitation of insurance business.".

(e) LIMITATION OF LIABILITY.—Notwithstanding any other provision of law, for a period of 180 days from the date of enactment of this Act, no air carrier, or its officers, directors, employees or agents, shall be liable for damages of any kind or amount in connection with any claim of injury to property other than the aircraft involved or death or injury of persons other than aircraft passengers or crew that arises from an act of war or terrorism. Nothing in the foregoing sentence limits in any way the liability of air carriers for loss of or injury to the aircraft involved or injury or death of aircraft passengers or crew.

TITLE IV—RETROSPECTIVE LIABILITY

SEC. 401. RETROSPECTIVE LIABILITY FOR DAMAGES ARISING OUT OF CRASHES OF SEPTEMBER 11, 2001.

(a) GENERAL LIMITATION OF LIABILITY.—Except as provided in subsection (b), no Federal court or agency or State court or agency shall enforce any Federal or State law holding American Airlines, Inc., United Air Lines, Inc., or any other air carrier (as defined in section 40102(a)(2) of title 49, United States Code), their corporate affiliates, directors, officers, employees, or agents, or any manufacturer of parts or components of the aircraft used for American Airlines flights 11 or 77, United Airlines flights 93 or 175, on September 11, 2001, or their corporate affiliates, directors, officers, employees or agents, or any airport or airport authority, or their directors, officers, employees, or agents, or any other person, liable for any damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 or 77, United Airlines flights 93 or 175, on September 11, 2001.

(b) FEDERAL CAUSE OF ACTION.—

(1) AVAILABILITY OF ACTION.—There shall exist a Federal cause of action for damages arising out of the hijacking and subsequent crashes of

American Airlines flights 11 or 77, and United Airlines flights 93 or 175, on September 11, 2001. Notwithstanding section 40120(c) of title 49, United States Code, this cause of action shall be the exclusive remedy for damages arising out of the hijacking and subsequent crashes of such flights.

(2) SUBSTANTIVE LAW.—The substantive law for decision in any such suit shall be derived from the law, including choice of law principles, of the State in which the crash occurred unless such law is inconsistent with or preempted by Federal law.

(3) JURISDICTION.—The United States District Court for the Southern District of New York shall have original and exclusive jurisdiction over all actions brought under this section.

(4) DAMAGES.—If any party to such proceeding is determined to be liable—

(A) no damages in the aggregate ordered by the court to be paid by such party shall exceed the amount of insurance, minus any payments made pursuant to a court approved settlement, which such party is determined to have obtained prior to September 11, 2001, and which is determined to cover such party's liability for any damages arising out of the hijacking

and subsequent crashes of American Airlines flights 11 or 77, or United Airlines flights 93 or 175, on September 11, 2001; and

(B) such party shall not be liable for interest prior to the judgment or for punitive damages intended to punish or deter.

(5) ATTORNEYS FEES.—Reasonable attorneys fees for work performed in any action commenced pursuant to this section shall be subject to the discretion of the court, but in no event shall any attorney charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of the damages ordered by the court to be paid pursuant to this section, or in excess of 20 percent of any court approved settlement made of any claim cognizable under this section. Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

(6) TRIED BY COURT.—Any action against any party under this section shall be tried by the court without a jury.

(c) DISCLAIMER.—Nothing herein implies that American Airlines, Inc., United Airlines, Inc., any other air carrier (as defined in section 40102(a)(2) of title 49, United States Code), their corporate affiliates, directors, officers, employees, or agents, or any manufacturer of parts or components of the aircraft used for American Airlines flights 11 or 77, or United Airlines flights 93 or 175, on September 11, 2001, their corporate affiliates, directors, officers, employees, or agents, or any airport or airport authority, directors, officers, or their employees or agents, or any other person, are liable for damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 or 77, or United Airlines flights 93 or 175, on September 11, 2001.

(d) EXCLUSION.—Nothing in this section shall in any way limit any liability of any person who—

(1) hijacks any aircraft or commits any terrorist act involving an air carrier; or

(2) knowingly participates in a conspiracy to hijack any aircraft or commit any terrorist act involving an air carrier.

(e) RELATIONSHIP TO OTHER LAW.—This section shall supersede any conflicting provisions in any international treaty or law including, but not limited to, the Convention for the Unification of Certain Rules Relating

to International Transportation, Signed at Warsaw on October 12, 1929 ("Warsaw Convention") or all documents amending or implementing the Warsaw Convention, including the Montreal Agreement of 1966 (CAB Agreement 18900, approved by Order F–23680, May 13, 1966) and those documents concerning international air carrier liability for passengers approved by the Department of Transportation in DOT Order 97–1–2, such that passengers for whom the international treaty or law might afford a claim or cause of action are limited to such claim or cause of action as set forth in subsection (b).

(f) STATE DEFINED.—In this section, the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory of possession of the United States or any political subdivision of any of the foregoing.

deemed a citizen of the State in which it is incorporated, the State in which it has its principal place of business, or a State in which it engages in business. The United States District Court for the Southern District of New York shall have supplemental jurisdiction over claims by parties joined under Rules 14, 19, 20, 23, or 24 of the Federal Rules of Civil Procedure, and over parties seeking to intervene under Rule 24.

SEC. 403. REMOVAL.

Any civil action against an air carrier for injury, loss of property, personal injury, or death resulting from the September 11, 2001, terrorist attacks that is filed in state court shall be removable to the United States District Court for the Southern District of New York.

SEC. 404. CONSOLIDATION.

Any civil action against an air carrier filed in any federal court other than the United States District Court for the Southern District of New York for injury, loss of property, personal injury, or death resulting from the September 11, 2001, terrorist attacks shall be dismissed. The United States District Court for the Southern District of New York shall consolidate all civil actions against air carriers subject to this title.

SEC. 405. RESPONSIBILITY OF UNITED STATES.

(a) GENERAL.—Consistent with and limited to the extent specified in subsection (b) below, the United States shall be responsible for payment of money damages awarded against an air carrier found liable in a civil action subject to this title if the combined sum of money damages awarded against the air carrier exceeds or has already exceeded the air carrier's applicable insurance coverage.

(b) AMOUNT OF DAMAGES.—In determining the amount of money damages for which the United States shall be responsible, the court shall calculate the plaintiff's damages, offset by:

(1) the amount, if any, covered by any policy of insurance maintained by or for the benefit of the air carrier or any amount to which the air carrier is entitled;

(2) any amount received by the plaintiff from the United States or any federal agency pursuant to any emergency or disaster relief program as a result of the September 11, 2001, terrorist attacks; and

(3) any amount received by or owed to the plaintiffs under any policy of insurance maintained by or for the benefit of the plaintiffs or any amount to

which the plaintiffs are entitled.

SEC. 406. LIMITATION ON PUNITIVE DAMAGES.

Punitive damages, exemplary damages, and other damages not intended to compensate the plaintiff for actual losses shall not be available in any civil action subject to this title.

SEC. 407. ATTORNEY FEES.

No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 10 per centum of any judgment rendered or settlement reached in any action under this section.

SEC. 408. PREJUDGMENT INTEREST.

Any defendant in an action brought pursuant to this Act shall not be liable for interest prior to judgment.

TITLE VI—LIABILITY OF AIR CARRIERS FOR INJURIES CAUSED BY FUTURE ACTS OF TERRORISM COMMITTED ON OR TO AIR CARRIERS

SEC. 601. LIMITATION ON LIABILITY.

Any air carrier certified as a victim of an act of terrorism under this section shall not be liable in any civil action or proceeding, state or federal, for injury, loss of property, personal injury or death resulting from that act of

terrorism, except in actions brought by passengers or employees on the airplane, or their survivors.

SEC. 602. DISCRETION OF THE SECRETARY.

For acts of terrorism committed on or to air carriers for 180 days after enactment of this Act, the Secretary of Transportation, in his discretion, may certify that the air carrier was a victim of an act of terrorism and in the Secretary's judgment, based on his analysis and conclusions regarding the facts and circumstances of each case, should not be responsible for losses suffered by parties other than the passengers and employees on the airplane.

States Code, this cause of action shall be the exclusive remedy for damages arising out of the hijacking and subsequent crashes of such flights.

(2) SUBSTANTIVE LAW.—The substantive law for decision in any such suit shall be derived from the law, including choice of law principles, of the State in which the crash occurred unless such law is inconsistent with or preempted by Federal law.

(3) JURISDICTION.—The United States District Court for the Southern District of New York shall have original and exclusive jurisdiction over all actions brought under this section.

(4) DAMAGES.—If any party to such proceeding is determined to be liable—

(A) no damages in the aggregate ordered by the court to be paid by such party shall exceed the amount of insurance, minus any payments made pursuant to a court approved settlement, which such party is determined to have obtained prior to September 11, 2001, and which is determined to cover such party's liability for any damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 or 77, or United Airlines flights 93 or 175, on September 11, 2001; and

whom the international treaty or law might afford a claim or cause of action are limited to such claim or cause of action as set forth in subsection (b).

(f) STATE DEFINED.—In this section, the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory of possession of the United States or any political subdivision of any of the foregoing.

(g) APPLICABILITY.—This section applies to any terrorist act involving an air carrier that occurs during the 1-year period beginning on the date of the enactment of this Act.

(*) ~~Pentagon pot of money~~

(1) consolidated in federal court — (NY)

(2) limit or liability to extent of insurance

(3) cap liability for everyone to extent of insurance

fed govt ⇒ claim
victim insurer (**)

govt to subrogate wrongful death -

fly
→ Acrobat

state courts

Delayed Action Scholarship Act (awesome)

TOM DASCHLE

Office of the Majority Leader

S-221 U.S. Capitol
Washington, DC 20510
(202) 224-5556

DATE: _____

TO: Patt

FAX NO: _____

FROM: Andrea Delker

PAGES TO FOLLOW: 6

MESSAGE:

225-5117

"taking it away"

S.L.C.

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TITLE ____—PROVISIONS RELATING TO LIABILITY OF AIR CARRIERS ARISING OUT OF FUTURE ACTS OF WAR OR TERRORISM

SEC. ___. WAR RISK INSURANCE FOR CERTAIN AIR CARRIERS.

(a) IN GENERAL.—Chapter 443 of title 49, United States Code, is amended by adding at the end the following new subchapter:

"SUBCHAPTER II—EXTENSION OF CHAPTER TO WAR RISK INSURANCE FOR DOMESTIC AIR TRANSPORTATION

"§ 44321. General authority

"(a) ESTABLISHMENT OF WAR RISK INSURANCE PROGRAM.—Subject to subsection (b) and the other provisions of this subchapter, the Secretary of Transportation may extend the application of this chapter to the extent necessary to provide insurance and reinsurance against [redacted] third-party loss or damage that arises—

"(1) in connection with the operation of an American aircraft ~~or foreign flag aircraft~~ in domestic air commerce, and

"(2) from an act of war or terrorism.

"(b) PRESIDENTIAL APPROVAL.—The Secretary may provide insurance or reinsurance under subsection (a) of this section only with the approval of the President. The President may approve the insurance or reinsurance only after deciding that the continued operation of the American ~~aircraft or foreign flag aircraft~~ carrier to be insured or reinsured is necessary in the interest of air commerce or the national security.

is this each plane?

"§ 44322. Modification of provisions

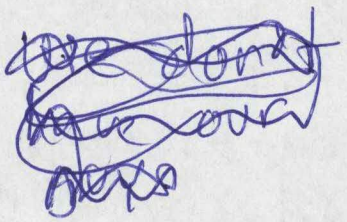
"(a) IN GENERAL.—Except as provided in this section, the provisions of subchapter I shall apply to insurance or reinsurance provided under this subchapter in the same manner as such provisions apply to insurance or reinsurance provided under subchapter I.

"(b) MODIFICATIONS.—The following modifications shall apply for purposes of this subchapter:

"(1) Insurance or reinsurance may be provided for aircraft described in section 44303(1) only if the President decides such insurance or reinsurance is necessary in the interest of air commerce or the national security.

"(2) Section 44304(b) shall not apply.

"(3) The time limit under section 44306(b) may be extended only if the President decides such



important to make clear

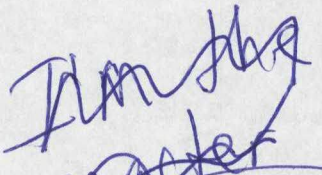
① government not on hook in litigation

② fund — recovery limited by insurance

~~deceased people's families~~

or

look at all the other assets



economic + non-economic

"sobriety of a master"

extension is necessary in the interest of air commerce or the national security.

"§ 44323. Termination

"The authority of the Secretary of Transportation to provide insurance and reinsurance under this subchapter is not effective after the date which is 180 days after the date of enactment of this subchapter."

(b) CONFORMING AMENDMENTS.—(1) Chapter 443 of title 49, United States Code, is amended by inserting the following before section 44301:

"SUBCHAPTER I—INSURANCE OF FOREIGN AIR TRANSPORTATION".

(2) The analysis for such chapter is amended by—

(A) inserting after the chapter heading the following new item:

"SUBCHAPTER I—INSURANCE OF FOREIGN AIR TRANSPORTATION",

and

(B) inserting at the end the following:

"SUBCHAPTER II—EXTENSION OF CHAPTER TO WAR RISK INSURANCE FOR DOMESTIC AIR TRANSPORTATION

"44321. General authority
"44322. Modification of provisions
"44323. Termination".

S.L.C.

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SEC. ___02. TREATMENT OF LIABILITY OF AIR CARRIERS FOR LOSSES OR DAMAGES ARISING OUT OF ACTS OF WAR OR TERRORISM.

(a) IN GENERAL.—In the case of an applicable air carrier, the United States shall pay any liability of such air carrier, its servants or agents that—

(1) arises from third-party loss or damages incurred in an accident within the United States which involves an aircraft operated by such carrier and which results from an act of war or terrorism, and

(2) is in excess of the amount of insurance which such air carrier is required to maintain under subsection (b) with respect to any such accident, or $100 million whichever is greater.

(b) APPLICABLE AIR CARRIER.—For purposes of this section, the term "applicable air carrier" means an air carrier that—

(1) is required to maintain accident liability insurance under part 205 of title 14 of the Code of Federal Regulations,

(2) maintains insurance coverage for each aircraft of at least $~~100,000,000~~ 50,000,000 for third-party injury, loss of property, personal injury, or death incurred in each accident involving the aircraft which results from an act of war or terrorism, and

(3) is certified by the Secretary of Transportation as operating an aircraft that was subject to

?? may need to write this so that it's not nec. ins. coverage that they have — just that they can pay $100m & does this incl. reg lab. ? all risk coverage

an act of war or terrorism resulting in an accident to which this section applies.

(c) FUND FOR PAYMENT OF DAMAGES.—(1) There is established in the Treasury of the United States a revolving fund. The Secretary of the Treasury shall disburse from the fund to carry out this section.

(2) There shall be deposited into the fund—

(A) such amounts as may be appropriated to the fund,

(B) any premiums which the Secretary of Transportation receives under subsection (d), and

(C) any interest on, and the proceeds from the sale or redemption of, the securities which the Secretary may invest in under paragraph (3).

(3) On request of the Secretary of Transportation, the Secretary of the Treasury may invest any part of the amounts in the fund in interest-bearing securities of the United States Government.

(4) The provisions of subsections (c) and (d) of section 44307 of title 49, United States Code, shall apply to the fund.

(d) PREMIUMS.—The Secretary of Transportation, with the approval of the President, may impose premiums on any applicable air carrier to assist in the payment of amounts under subsection (a). Such premiums may be im-

SEC. 1. RETROSPECTIVE LIABILITY FOR DAMAGES ARISING OUT OF CRASHES OF SEPTEMBER 11, 2001.

(a) GENERAL LIMITATION OF LIABILITY.—Except as provided in subsection (b), no Federal court or agency or State court or agency shall enforce any Federal or State law holding American Airlines, Inc., United Air Lines Inc., or any other air carrier (as defined in section 40102(a)(2) of title 49, United States Code), their corporate affiliates, directors, officers, employees, or agents, or any manufacturer of parts or components of the aircraft used for American Airlines flights 11 or 77, or United Airlines flights 93 or 175, on September 11, 2001, or their corporate affiliates, directors, officers, employees or agents, or any airport or airport authority, or their directors, officers, employees, or agents, or any other person, liable for any damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 or 77, or United Airlines flights 93 or 175, on September 11, 2001.

(b) FEDERAL CAUSE OF ACTION.—

(1) AVAILABILITY OF ACTION.—There shall exist a Federal cause of action for damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 or 77, and United Airlines flights 93 or 175, on September 11, 2001. Notwithstanding section 40120(c) of title 49, United

States Code, this cause of action shall be the exclusive remedy for damages arising out of the hijacking and subsequent crashes of such flights.

(2) SUBSTANTIVE LAW.—The substantive law for decision in any such suit shall be derived from the law, including choice of law principles, of the State in which the crash occurred unless such law is inconsistent with or preempted by Federal law.

(3) JURISDICTION.—The United States District Court for the Southern District of New York shall have original and exclusive jurisdiction over all actions brought under this section.

(4) DAMAGES.—If any party to such proceeding is determined to be liable—

(A) no damages in the aggregate ordered by the court to be paid by such party shall exceed the amount of insurance, minus any payments made pursuant to a court approved settlement, which such party is determined to have obtained prior to September 11, 2001, and which is determined to cover such party's liability for any damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 or 77, or United Airlines flights 93 or 175, on September 11, 2001; and

(B) such party shall not be liable for interest prior to the judgment or for punitive damages.

(5) ATTORNEYS FEES.—Reasonable attorneys fees for work performed in any action commenced pursuant to this section shall be subject to the discretion of the court, but in no event shall any attorney charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of the damages ordered by the court to be paid pursuant to this section, or in excess of 20 percent of any court approved settlement made of any claim cognizable under this section. Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

(6) TRIED BY COURT.—Any action against any party under this section shall be tried by the court without a jury.

(c) DISCLAIMER.—Nothing herein implies that American Airlines, Inc., United Airlines, Inc., any other air carrier (as defined in section 40102(a)(2) of title 49, United States Code), their corporate affiliates, directors, officers,

employees, or agents, or any manufacturer of parts or components of the aircraft used for American Airlines flights 11 or 77, or United Airlines flights 93 or 175, on September 11, 2001, their corporate affiliates, directors, officers, employees, or agents, or any airport or airport authority, directors, officers, or their employees or agents, or any other person, are liable for damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 or 77, or United Airlines flights 93 or 175, on September 11, 2001.

(d) EXCLUSION.—Nothing in this section shall in any way limit any liability of any person who—

(1) hijacks any aircraft or commits any terrorist act nvolving an air carrier; or

(2) knowingly participates in a conspiracy to hijack any aircraft or commit any terrorist act involving an air carrier.

(e) RELATIONSHIP TO OTHER LAW.—This section shall supersede any conflicting provisions in any international treaty or law including, but not limited to, the Convention for the Unification of Certain Rules Relating to International Transportation, Signed at Warsaw on October 12, 1929 ("Warsaw Convention") or all documents amending or implementing the Warsaw Convention, including the Montreal Agreement of 1966 (CAB Agreement

⟹ specific amount

- not fair to all involved

AG → special master

individuals injured / kill

→ foreso

only "economic compensation" + non-economic

(years)

exempting liability

after insurance

special master

no federal money

Option A

Option B

18900, approved by Order F–23680, May 13, 1966) and those documents concerning international air carrier liability for passengers approved by the Department of Transportation in DOT Order 97–1–2, such that passengers for whom the international treaty or law might afford a claim or cause of action are limited to such claim or cause of action as set forth in subsection (b).

(f) STATE DEFINED.—In this section, the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory of possession of the United States or any political subdivision of any of the foregoing.

SEC. 2. LIMITED PROSPECTIVE LIABILITY FOR DAMAGES FOR PERIOD OF ONE YEAR.

(a) GENERAL LIMITATION OF LIABILITY.—Except as provided in subsection (b), no Federal court or agency or State court or agency shall enforce any Federal or State law holding any air carrier (as defined in section 40102(a)(2) of title 49, United States Code), their corporate affiliates, directors, officers, employees, or agents, or any manufacturer of parts or components of the aircraft, or their corporate affiliates, directors, officers, employees or agents, or any airport or airport authority, or

① non-ecocs
they're not
pecuniary losses

② wrongful death
* passengers
* cause of action → negligence,
pers inj actions
< wrongful death actions

③ → $$ figures
asbestos 600 $73,000
1 $3,000,000

⇒ prospective liability
war risk insurance clause

uninsurable risk

① war risk
② → prospective → 6-month period

SEC. 1. RETROSPECTIVE LIABILITY FOR DAMAGES ARISING OUT OF CRASHES OF SEPTEMBER 11, 2001.

(a) GENERAL LIMITATION OF LIABILITY.—Except as provided in subsection (b), no Federal court or agency or State court or agency shall enforce any Federal or State law holding American Airlines, Inc., United Air Lines, Inc., or any other air carrier (as defined in section 40102(a)(2) of title 49, United States Code), their corporate affiliates, directors, officers, employees, or agents, or any manufacturer of parts or components of the aircraft used for American Airlines flights 11 or 77, or United Airlines flights 93 or 175, on September 11, 2001, or their corporate affiliates, directors, officers, employees or agents, or any airport or airport authority, or their directors, officers, employees, or agents, or any other person, liable for any damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 or 77, or United Airlines flights 93 or 175, on September 11, 2001.

(b) FEDERAL CAUSE OF ACTION.—

(1) AVAILABILITY OF ACTION.—There shall exist a Federal cause of action for damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 or 77, and United Airlines flights 93 or 175, on September 11, 2001. Notwithstanding section 40120(c) of title 49, United

States Code, this cause of action shall be the exclusive remedy for damages arising out of the hijacking and subsequent crashes of such flights.

(2) SUBSTANTIVE LAW.—The substantive law for decision in any such suit shall be derived from the law, including choice of law principles, of the State in which the crash occurred unless such law is inconsistent with or preempted by Federal law.

(3) JURISDICTION.—The United States District Court for the Southern District of New York shall have original and exclusive jurisdiction over all actions brought under this section.

(4) DAMAGES.—If any party to such proceeding is determined to be liable—

(A) no damages in the aggregate ordered by the court to be paid by such party shall exceed the amount of insurance, minus any payments made pursuant to a court approved settlement, which such party is determined to have obtained prior to September 11, 2001, and which is determined to cover such party's liability for any damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 or 77, or United Airlines flights 93 or 175, on September 11, 2001; and

(B) such party shall not be liable for interest prior to the judgment or for punitive damages.

(5) ATTORNEYS FEES.—Reasonable attorneys fees for work performed in any action commenced pursuant to this section shall be subject to the discretion of the court, but in no event shall any attorney charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of the damages ordered by the court to be paid pursuant to this section, or in excess of 20 percent of any court approved settlement made of any claim cognizable under this section. Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

(6) TRIED BY COURT.—Any action against any party under this section shall be tried by the court without a jury.

(c) DISCLAIMER.—Nothing herein implies that American Airlines, Inc., United Airlines, Inc., any other air carrier (as defined in section 40102(a)(2) of title 49, United States Code), their corporate affiliates, directors, officers,

employees, or agents, or any manufacturer of parts or components of the aircraft used for American Airlines flights 11 or 77, or United Airlines flights 93 or 175, on September 11, 2001, their corporate affiliates, directors, officers, employees, or agents, or any airport or airport authority, directors, officers, or their employees or agents, or any other person, are liable for damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 or 77, or United Airlines flights 93 or 175, on September 11, 2001.

(d) EXCLUSION.—Nothing in this section shall in any way limit any liability of any person who was a knowing participant in any criminal conspiracy to hijack any aircraft or commit any terrorist act.

(e) RELATIONSHIP TO OTHER LAW.—This section shall supersede any conflicting provisions in any international treaty or law including, but not limited to, the Convention for the Unification of Certain Rules Relating to International Transportation, Signed at Warsaw on October 12, 1929 ("Warsaw Convention") or all documents amending or implementing the Warsaw Convention, including the Montreal Agreement of 1966 (CAB Agreement 18900, approved by Order F–23680, May 13, 1966) and those documents concerning international air carrier liability for passengers approved by the Department of Trans-

portation in DOT Order 97–1–2, such that passengers for whom the international treaty or law might afford a claim or cause of action are limited to such claim or cause of action as set forth in subsection (b).

(f) STATE DEFINED.—In this section, the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory of possession of the United States or any political subdivision of any of the foregoing.

SEC. 2. LIMITED PROSPECTIVE LIABILITY FOR DAMAGES FOR PERIOD OF ONE YEAR.

(a) GENERAL LIMITATION OF LIABILITY.—Except as provided in subsection (b), no Federal court or agency or State court or agency shall enforce any Federal or State law holding any air carrier (as defined in section 40102(a)(2) of title 49, United States Code), their corporate affiliates, directors, officers, employees, or agents, or any manufacturer of parts or components of the aircraft, or their corporate affiliates, directors, officers, employees or agents, or any airport or airport authority, or their directors, officers, employees, or agents, or any other person, liable for any damages arising out of a terrorist act involving an air carrier.

(b) FEDERAL CAUSE OF ACTION.—

(1) AVAILABILITY OF ACTION.—There shall exist a Federal cause of action for damages arising out of a terrorist act involving an air carrier. Notwithstanding section 40120(c) of title 49, United States Code, this cause of action shall be the exclusive remedy for damages arising out of a terrorist act involving an air carrier.

(2) SUBSTANTIVE LAW.—The substantive law for decision in any such suit shall be derived from the law, including choice of law principles, of the State in which the court designated under paragraph (3) sits, unless such law is inconsistent with or preempted by Federal law.

(3) JURISDICTION.—The Judicial Panel on Multidistrict Litigation shall designate 1 Federal court which shall have original and exclusive jurisdiction over all actions brought under this section.

(4) DAMAGES.—If any party to such proceeding is determined to be liable—

(A) no damages in the aggregate ordered by the court to be paid by such party shall exceed the amount of insurance, minus any payments made pursuant to a court approved settlement, which such party is determined to have

obtained prior to the terrorist act, and which is determined to cover such party's liability for any damages arising out of the terrorist attack; and

(B) such party shall not be liable for interest prior to the judgment or for punitive damages.

(5) ATTORNEYS FEES.—Reasonable attorneys fees for work performed in any action commenced pursuant to this section shall be subject to the discretion of the court, but in no event shall any attorney charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of the damages ordered by the court to be paid pursuant to this section, or in excess of 20 percent of any court approved settlement made of any claim cognizable under this section. Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than $2,000 or imprisoned not more than 1 year, or both.

(6) TRIED BY COURT.—Any action against any party under this section shall be tried by the court without a jury.

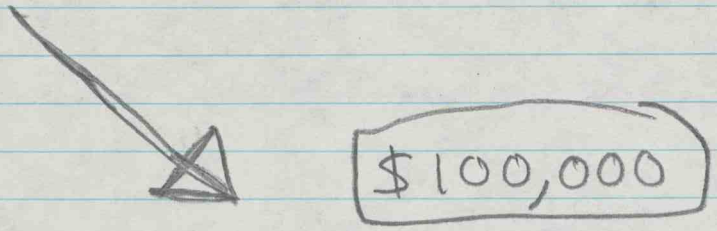
(c) DISCLAIMER.—Nothing herein implies that any air carrier (as defined in section 40102(a)(2) of title 49, United States Code), their corporate affiliates, directors, officers, employees, or agents, or any manufacturer of parts or components of the aircraft used, their corporate affiliates, directors, officers, employees, or agents, or any airport or airport authority, directors, officers, or their employees or agents, or any other person, are liable for damages arising out of a terrorist act.

(d) EXCLUSION.—Nothing in this section shall in any way limit any liability of any person who was a knowing participant in any criminal conspiracy to hijack any aircraft or commit any terrorist act.

(e) RELATIONSHIP TO OTHER LAW.—This section shall supersede any conflicting provisions in any international treaty or law including, but not limited to, the Convention for the Unification of Certain Rules Relating to International Transportation, Signed at Warsaw on October 12, 1929 ("Warsaw Convention") or all documents amending or implementing the Warsaw Convention, including the Montreal Agreement of 1966 (CAB Agreement 18900, approved by Order F–23680, May 13, 1966) and those documents concerning international air carrier liability for passengers approved by the Department of Transportation in DOT Order 97–1–2, such that passengers for

* Dave Crane

* Childress



Laura Petrou
Andrea LaRue

Discretion of the Secretary.

For acts of terrorism committed on or to air carriers for 180 days after enactment of this Act, the Secretary of Transportation, in his discretion, may certify that the air carrier was a victim of an act of terrorism and in the Secretary's judgment, based on his analysis and conclusions regarding the facts and circumstances of each case, should not be responsible for loses suffered above 100,000,000 for all claims arising out of that event. If the Secretary so certifies, the air carrier shall not be liable for an amount above $100,000,000 for all claims arising out of that event and the Government shall be responsible for any liability above such amount. No punitive damages shall be available for any such action.

DRAFT

September 19, 2001

The President is taking steps to ensure the safety of the American public and to restore confidence in our economic foundations. The actions below will enhance the safety of airline passengers, crews and the public. They are designed to restore the confidence of airline customers and industry investors and provide a bridge of assistance to the new environment in which the industry will need to operate.

Immediate actions to ensure the safety and financial stability of air carriers

1. ENHANCING SAFETY: The President has reserved $3 billion of the emergency supplemental funds to pay for enhanced aviation security and safety measures focused on improved airport security, airplane security and the substantial expansion of the FAA's Federal Air Marshal program for domestic flights.

2. TRANSITION ASSISTANCE: The President requests immediate action by Congress to approve $5 billion for a cash infusion to the nation's air carriers to compensate them for the shock to their finances resulting from the terrorist attack.

   The industry has proposed that ninety percent of the available funds would be distributed to the passenger airlines in proportion to each carrier's available seat miles during a six-month period prior to September 10th, and that ten percent of the total would be available to carriers, both passenger and cargo, in proportion to carriers' revenue ton-miles. We would have no objection to this or any other equitable formula.

3. PROSPECTIVE LIABILITY OF CARRIERS: The President requests immediate action by Congress to amend temporarily the existing war risk insurance program, provided by the Department of Transportation, so as to provide temporary terrorism risk insurance prospectively for domestic flights. This will eliminate the risk that carriers become uninsured and permit private insurance arrangements to adjust to the events of last week.

   The legislation would preserve existing rights to bring claims against carriers for all compensatory and punitive damages relating to the death of passengers and crew. In any terrorist attack carriers would not be liable for damages to persons and property on the ground. This temporary legislation would expire after 180 days.

4. RETROSPECTIVE LIABILITY OF CARRIERS FOR EVENTS OF SEPTEMBER 11TH: The President requests immediate action by Congress to enact the Terrorist Attack Liability Act of 2001. It will ensure that all victims of last week's terrorist attack are adequately and equitably compensated and that the financial consequences do not cripple the air carrier industry.

All actions will be consolidated in a single federal court, the U.S. District Court for the Southern District of New York.

There will be a bar on claims for punitive damages that, together with the single jurisdiction, will eliminate spurious claims, while ensuring that all similarly placed victims receive full compensation.

The United States will compensate victim-plaintiffs for any money damages established by the Southern District beyond the limits of the air carriers' and other relevant insurance policies.

Steps to be pursued immediately upon enactment of the above

1. MID-TERM INDUSTRY STABILITY: The President has directed the Department of Transportation, the Department of Treasury, and OMB to begin work with industry representatives and their creditors to identify the next steps – that should be taken by the federal government or the industry – to ensure an efficient and viable air transport system for the American people.

2. INSURANCE COVERAGE FOR ACTS OF TERRORISM: The President has directed the Department of the Treasury and OMB to develop such general insurance reform program as may be needed to provide access by affected industries, including airlines, to appropriate insurance for terrorist attacks. The review and draft legislation, as needed, will be completed and submitted to Congress within 30 days.

§ 601. Discretion of the Secretary.

For acts of terrorism committed on or to air carriers for 180 days after enactment of this Act, the Secretary of Transp. in his discretion, may certify that the air carrier was a victim of an act of terrorism and in the Secretary's judgment, based on his analysis and conclusions regarding the facts & circumstances of each case, should not be responsible for losses suffered ~~by parties other than the~~ above $100,000,000 ~~per incident~~ for all claims so arising out of that event. If the Secretary certifies, the air carrier shall not be liable for an amount above $100,000,000 ~~per incident~~ for all claims arising out of that event. In such cases, the government shall be responsible for amounts over $100,000,000 for that event.

New Sub. for Title VI

THE VICTIMS OF AIRCRAFT TERRORISM COMPENSATION ACT

Sec. 1. EXCLUSIVE REMEDY.

The exclusive remedy for injury or loss arising out of an aircraft terrorist incident shall be a claim for relief brought pursuant to the provisions of this Act. The jurisdiction conferred by this Act includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever against any claimant commencing an action under this section. The laws of the States are expressly preempted to the extent they conflict with this Act.

Sec. 2. ORIGINAL JURISDICTION.

The United States district courts shall have exclusive original jurisdiction over any claim for relief brought pursuant to this Act, without regard to the citizenship of any party or the amount in controversy. Upon motion of any party, any such action pending in any State court (including any such action pending on ENACTMENT DATE) shall be removed to the United States district court.

Sec. 3. SUBSTANTIVE LAW.

The substantive rules for decision in any action for any claim for relief brought pursuant to this Act shall be derived from the law of the State in which the injury or loss occurred.

Sec. 4. RECOVERY.

(a) The total amount of all damages awarded and costs of injunctive relief imposed upon a defendant through judgment or settlement for all claims for relief brought against it under this Act, regardless of whether such claims are joined in one lawsuit, shall not exceed the aggregate limits of the defendant's applicable primary and excess insurance policies (as determined by the court) in effect on the date of the incident, minus any other recovery previously awarded.

(b) In the event of an aircraft terrorist incident involving damages in excess of the amount of aggregate insurance coverage described under subsection (a), the Congress will thoroughly review the particular incident and take whatever action is determined to be necessary (including approval of appropriate compensation plans and appropriation of funds) to provide full and prompt compensation to claimants for all claims for relief arising out of the subject incident.

Sec. 5. LIABILITY FOR NONECONOMIC LOSS.

Each defendant in a tort claim brought pursuant to this Act shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant for the harm to the claimant with respect to which that defendant is liable. The court shall render a separate judgment against each defendant in an amount

determined pursuant to the preceding sentence. [For purposes of determining the amount of noneconomic loss allocated to a defendant, the trier of fact shall determine the percentage of responsibility of each person for the claimant's harm, whether or not such person is a party to the action.]

Sec. 6. LIABILITY FOR PREJUDGMENT INTEREST.

Any defendant in an action brought pursuant to this Act shall not be liable for interest prior to judgment.

Sec. 7. PUNITIVE DAMAGES.

Any defendant in an action brought pursuant to this Act shall not be liable for punitive damages, exemplary damages, or any other damages awarded against any person or entity to punish or deter that person or entity, or others, from engaging in similar behavior in the future.

Sec. 8. ATTORNEY'S FEES.

In any action commenced pursuant to this Act, the amount of attorney's fees shall be reasonable and shall be subject to the discretion of the court. Notwithstanding the foregoing, no attorney shall charge, demand, receive, or collect for services rendered, contingency fees in excess of 20 per centum of any judgment rendered in or 15 per centum of any settlement of a claim brought under this Act. Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery shall be had, shall be fined no more than $2,000 or imprisoned not more than one year, or both.

Sec. 9. DEFINITIONS

For purposes of this title:

(1) AIRCRAFT TERRORIST INCIDENT.--The term "aircraft terrorist incident" means any incident involving the hijacking of any domestic aircraft or the hijacking of any aircraft in United States airspace, including but not limited to the hijacking and subsequent crashes involving American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September, 11, 2001.

(2) CLAIM FOR RELIEF.—The term "claim for relief" means claims for wrongful death, bodily harm, emotional distress accompanied by actual physical injury, property damage, noneconomic loss, direct economic loss, and consequential economic loss, the recovery of which is governed by the Uniform Commercial Code or analogous state commercial or contract law.

(3) CLAIMANT.—The term "claimant" means any person who brings an action covered by this Act and any person on whose behalf such an action is brought. If such an action is brought through or on behalf of an estate, the term includes the claimant's

decedent. If such an action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(4) ECONOMIC LOSS.--The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(5) NONECONOMIC LOSS.—The term "noneconomic loss" means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(6) STATE.—The term "State" means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the foregoing.

Sec. 10. APPLICATION.

This Act applies to all claims for injury or loss arising out of an aircraft terrorist incident, regardless of whether the aircraft terrorist incident occurred before, on, or after the date of enactment of this Act.

Sec. 11. FEDERAL TORT CLAIMS ACT.

Nothing in this Act shall affect the application of the Federal Tort Claims Act.

the United States or any federal agency pursuant to any emergency or disaster relief program as a result of the September 11, 2001, terrorist attacks; and

(3) any amount received by or owed to the plaintiffs under any insurance policy.

SEC. 405. LIMITATION ON PUNITIVE DAMAGES.

Punitive damages, exemplary damages, and other damages not intended to compensate the plaintiff for actual losses shall not be available in any civil action subject to this section.

limit on contingency fees

10%

renewable by FTC

TITLE VI—LIABILITY OF AIR CARRIERS FOR INJURIES CAUSED BY FUTURE ACTS OF TERRORISM COMMITTED ON OR TO AIR CARRIERS

SEC. 601. LIMITATION ON LIABILITY.

Any air carrier certified as a victim of an act of terrorism under this section shall not be liable in any civil action or proceeding, state or federal, for injury, loss of property, personal injury or death resulting from that act of terrorism, except in actions brought by passengers or employees on the airplane, or their survivors.

SEC. 602. DISCRETION OF THE SECRETARY.

For acts of terrorism committed on or to air carriers

for 180 days after enactment of this Act, the Secretary of Transportation, in his discretion, may certify that the air carrier was a victim of an act of terrorism and in the Secretary's judgment should not be responsible for losses suffered by parties other than the passengers and employees on the airplane.

--H.R.2888--

H.R.2888

One Hundred Seventh Congress

of the

United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Wednesday,

the third day of January, two thousand and one

An Act

Making emergency supplemental appropriations for fiscal year 2001 for additional disaster assistance, for anti-terrorism initiatives, and for assistance in the recovery from the tragedy that occurred on September 11, 2001, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to provide emergency supplemental appropriations for fiscal year 2001, namely:

EXECUTIVE OFFICE OF THE PRESIDENT AND FUNDS APPROPRIATED TO THE PRESIDENT

Emergency Response Fund

(INCLUDING TRANSFERS OF FUNDS)

For emergency expenses to respond to the terrorist attacks on the United States that occurred on September 11, 2001, to provide assistance to the victims of the attacks, and to deal with other consequences of the attacks, $40,000,000,000, to remain available until expended, including for the costs of: (1) providing Federal, State, and local preparedness for mitigating and responding to the attacks; (2) providing support to counter, investigate, or prosecute domestic or international terrorism; (3) providing increased transportation security; (4) repairing public facilities and transportation systems damaged by the attacks; and (5) supporting national security: *Provided*, That these funds may be transferred to any authorized Federal Government activity to meet the purposes of this Act: *Provided further*, That the Congress designates the entire amount as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985: *Provided further*, That $40,000,000,000 shall be available only to the extent that an official budget request, that includes designation of the $40,000,000,000 as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, is transmitted by the President to the Congress: *Provided further*, That the President shall consult with the

chairmen and ranking minority members of the Committees on Appropriations prior to the transfer of these funds: *Provided further*, That of the $40,000,000,000 made available herein, $10,000,000,000 shall not be available for transfer to any Department or Agency until 15 days after the Director of the Office of Management and Budget has submitted to the House and Senate Committees on Appropriations a proposed allocation and plan for use of the funds for that Department or Agency; $20,000,000,000 may be obligated only when enacted in a subsequent emergency appropriations bill, in response to the terrorist acts on September 11, 2001: *Provided further*, That the President shall transmit an amended budget request proposing an allocation of funds: *Provided further*, That not less than one-half of the $40,000,000,000 shall be for disaster recovery activities and assistance related to the terrorist acts in New York, Virginia, and Pennsylvania on September 11, 2001, as authorized by law: *Provided further*, That the Director of the Office of Management and Budget shall provide quarterly reports to the Committees on Appropriations on the use of these funds, beginning not later than January 2, 2002: *Provided further*, That the President shall submit to the Congress as soon as practicable detailed requests to meet any further funding requirements for the purposes specified in this Act.

GENERAL PROVISIONS

SEC. 101. Funds appropriated by this Act, or made available by the transfer of funds in this Act, for intelligence activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414).

SEC. 102. Funds appropriated by this Act, or made available by the transfer of funds in this Act, may be obligated and expended notwithstanding section 10 of Public Law 91-672, section 313 of the Foreign Relations Authorization Act, fiscal years 1994 and 1995, and section 15 of the State Department Basic Authorities Act of 1956.

This Act may be cited as the `2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States'.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

END

"Whelan, M Edward III" <M.Edward.Whelan@usdoj.gov>
09/20/2001 09:48:35 AM

Record Type: Record

To: Brett M. Kavanaugh/WHO/EOP@EOP

cc:

Subject: Comments on Title IV of draft bill

A handful of comments:

1. The removal provision needs tweaking. Section 1441(a) provides only for removal to the federal court district in which the state court action is pending, so a case filed in state court outside the territory of the SDNY cannot be removed to SDNY pursuant to section 1441.

One simple fix would be to add a transfer component to the section. E.g.:

SEC. 402. REMOVAL.

Any civil action against an air carrier for injury, loss of property, personal injury, or death resulting from the September 11, 2001, terrorist attacks that is filed in state court shall be removable to federal district court pursuant to section 1441 of title 28. The federal district court to which the action is removed shall then transfer it to the United States District Court for the Southern District of New York.

2. On US responsibility: (a) I don't understand the "may be responsible" language. I think it ought to be "shall be". This should help with subject matter jurisdiction. We don't want the US's role as party defendant to be misperceived as sham. (b) The way this provision is structured, I think the damages award against the air carrier will not have an offset for plaintiff's insurance. This potential liability seems enormous. (c) The provision doesn't make clear that US liability is in place of the air carrier's; it could easily be read to be joint.

If you want me to draft language to address (b) and (c), let me know.

3. Definitions: (a) I think that it would be useful to define "Sept. 11 terrorist attacks" so that every court in which an action is filed doesn't have to make the predicate factual determination whether in fact the airplane crash resulted from terrorist attacks in order to determine whether to dismiss or transfer the case or have it removed. The finding in section 2 might be sufficient, though. (b) I'd define "air carrier" to include its parents, subsidiaries, and affiliates.

4. Section 403: Perhaps have transfer as an alternative to dismissal in first sentence. E.g.:

"Any civil action against an air carrier filed in any federal court other than the United States District Court for the Southern District of New York for injury, loss of property, personal injury, or death resulting from the September 11, 2001, terrorist attacks shall be dismissed OR TRANSFERRED TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK."

5. In at least three places (last sentence of 403, 404(a), and 405), "subject to this section" should be "subject to this Title".

duplicative, and potentially inconsistent, resolution of identical issues in different courts.

(3) There is a compelling and overwhelming public interest in ensuring the ~~financial viability~~ stability and security of this Nation's air carriers.

(4) The President has declared a national emergency as a result of the terrorist attacks on September 11, 2001.

(5) ~~Application~~ of existing State and Federal tort law ~~remedies~~ procedures ~~and~~ to the exceptional circumstances arising from the terrorist attacks would threaten to overwhelm the State and Federal courts, impose massive litigation costs and delayed recovery, produce uncoordinated, disparate, and grossly inequitable results, and jeopardize ~~the financial viability~~ of the Nation's air carriers.

SEC. 3. AMENDMENTS TO TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 4. SECRETARY OF TRANSPORTATION.

As used in this Act, the term "Secretary" means the Secretary of Transportation.

SEC. 5. EFFECTIVE DATE.

~~Except as otherwise expressly provided, this Act and the amendments made by this Act shall be effective on the~~ date of enactment.

TITLE I—SECURITY ENHANCEMENT PROGRAM

SEC. 101. SECURITY ENHANCEMENT PROGRAM.

There is hereby **[authorized to be]** appropriated, out of any money in the Treasury not otherwise appropriated, $3,000,000,000 to remain available until expended, for expenditure by the Secretary of Transportation, as the Secretary may determine, for costs of aviation security enhancements. Expenditures by the Secretary under this title may include, without limitation, payments to air carriers, as defined in 49 U.S.C. 40102, to be used for the purpose of aviation security enhancement.

TITLE II—AIRLINE EMERGENCY RECOVERY PROGRAM

SEC. 201. AIRLINE EMERGENCY RECOVERY PROGRAM.

(a) GENERAL.—Notwithstanding any other provision of law, the Secretary ~~of Transportation~~ is authorized to make emergency payments to air carriers, as defined in 49

U.S.C. 40102, as a result of the September 11, 2001, ~~terrorist attack~~.

(b) FORMULA.—The Secretary shall allocate from the total amount made available under this title an emergency payment to each air carrier as follows:

(1) With respect to 80 percent of the total made available under this title, an air carrier payment shall be that percentage of the 80 percent that is equal to the percent of available seat miles the air carrier provided from January 1, 2001, through June 30, 2001, out of all the available seat miles provided in that time period by all of the air carriers qualifying for payment from the 80-percent portion.

(2) With respect to 20 percent of the total made available under this title, the air carrier payment shall be that percentage of the 20 percent that is equal to the percent of revenue ton miles the air carrier provided from January 1, 2001, through June 30, 2001, out of all the revenue ton miles provided in that time period by all of the air carriers qualifying for payment from the 20-percent portion.

(c) PAYMENTS.—The Secretary is authorized to make

such terms and conditions the Secretary determines appropriate on the timing and manner of payment. A decision of the Secretary about making an emergency payment under this title or about a term or condition for making an emergency payment shall be final.

(d) TAX TREATMENT.—Section 118 of title 26, United States Code, is amended by inserting at the end the following new subsection:

"(c) For purposes of subsection (a) and section 362(c)(2), amounts received pursuant to section 201(b) of the United States Air Transportation Stabilization Act of 2001 shall be treated as a contribution to the capital of the taxpayer by a person who is not a shareholder of the taxpayer.".

(e) APPROPRIATIONS.—There is hereby **[authorized to be]** appropriated, out of money in the Treasury not otherwise appropriated, $5,000,000,000 to remain available until expended to carry out the provisions of subsections (a) through (c) of this title.

[(e) ESSENTIAL AIR SERVICE.—Section 41742(a)(2) is amended by deleting "$15,000,000" and inserting "$75,000,000."**]**

TITLE III—INSURANCE FOR DOMESTIC AIR TRANSPORTATION

SEC. 301. DOMESTIC INSURANCE AND REIMBURSEMENT OF INSURANCE COST INCREASES.

(a) GENERAL AUTHORITY.—Section 44302 is amended—

(1) in the caption of section 44302(a), by inserting the phrase "provision of" before the phrase "insurance and reinsurance";

(2) in subsection (a)(1) by deleting all that appears after "foreign flag aircraft" and inserting a period;

(3) by amending subsection (b) to read as follows:

"(b) Presidential approval. The Secretary may provide insurance or reinsurance under subsection (a) of this section or reimburse an air carrier under subsection (b) of this section only with the approval of the President. The President may approve the insurance or reinsurance or the reimbursement only after deciding that the continued operation of the American aircraft or foreign-flag aircraft to be insured or reinsured is necessary in the interest of air

commerce or the national security, or to carry out the foreign policy of the United States Government.";

(4) in section 44302(c), by inserting the phrase "or reimbursing an air carrier" after the phrase "insurance or reinsurance"; and

(5) by redesignating sections 44302(b) and (c), as amended by this Act, and section 44302(d), as sections 44302(c), (d), and (e) **[what is new subsection (b)?]**.

(b) COVERAGE.—Section 44303 is amended by—

(1) inserting the phrase ", or reimburse insurance costs, as" after the phrase "insurance and reinsurance" in the first sentence; and

(2) in paragraph (1), inserting the phrase "in the interest of air commerce or the national security, or" before the phrase "to carry out the foreign policy".

(c) REINSURANCE.—Section 44304 is amended by—

(1) deleting subsection (b); and

(2) redesignating section 44304(a) as section 44304.

(d) PREMIUMS AND LIMITATIONS ON COVERAGE AND CLAIMS.—Section 44306 is amended—

(1) by redesignating sections 44306(b) and (c) as sections 44306(c) and (d);

(2) in section 44306(c), as redesignated, by inserting the phrase "in the interest of air commerce or the national security, or" before the phrase "to carry out the foreign policy"; and

(3) by inserting a new section 44306(b) to read as follows:

"(b) Premium Rates for Reinsurance.—In setting premium rates for reinsurance, the Secretary may make allowances to the insurance carrier for expenses incurred in providing services and facilities that the Secretary considers good business practices, except for payments by the carrier for the stimulation or solicitation of insurance business.".

Sept 30, 2001

(e) LIMITATION OF LIABILITY.—Notwithstanding any other provision of law, for a period of 180 days from the date of enactment of this Act, no air carrier, or its officers, directors, employees or agents, shall be liable for damages of any kind or amount in connection with any claim of injury to property other than the aircraft involved or death or injury of persons other than aircraft passengers or crew

that arises from an act of war or terrorism. Nothing in the foregoing sentence limits in any way the liability of air carriers for loss of or injury to the aircraft involved or injury or death of aircraft passengers or crew.

TITLE IV—LIABILITY OF AIR CARRIERS FOR INJURIES CAUSED BY ACTS OF TERRORISM COMMITTED ON SEPTEMBER 11, 2001

SEC. 401. SUBJECT MATTER JURISDICTION.

The United States District Court for the Southern District of New York shall have original and exclusive jurisdiction to the full extent permissible under the Constitution of all civil actions against an air carrier for injury, loss of property, personal injury, or death resulting from the September 11, 2001, terrorist attacks. The United States shall be a necessary party-defendant in any such action.

SEC. 402. REMOVAL.

Any civil action against an air carrier for injury, loss of property, personal injury, or death resulting from the September 11, 2001, terrorist attacks that is filed in state court shall be removable to the United States District Court for the Southern District of New York ~~pursuant to section 1441 of title 28~~.

SEC. 403. CONSOLIDATION.

Any civil action against an air carrier filed in any federal court other than the United States District Court for the Southern District of New York for injury, loss of property, personal injury, or death resulting from the September 11, 2001, terrorist attacks shall be dismissed. The United States District Court for the Southern District of New York shall consolidate all civil actions against air carriers subject to this section.

SEC. 404. RESPONSIBILITY OF UNITED STATES.

(a) GENERAL.—The United States may be responsible for payment of money damages awarded against an air carrier in a civil action subject to this section if the combined sum of money damages awarded against the air carrier exceeds or has already exceeded the air carrier's applicable insurance coverage.

(b) AMOUNT OF DAMAGES.—In determining the amount of money damages for which the United States shall be responsible, the court shall calculate the plaintiff's damages, offset by:

(1) the amount, if any, covered by the air carrier's insurance policy;

(2) any amount received by the plaintiff from

9/19/01 - 10:30 pm draft

A BILL

To provide for the continued viability of the United States air transportation system, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Air Transportation Stabilization Act of 2001".

SEC. 2. FINDINGS.

The Congress finds that:

(1) The September 11, 2001, terrorist attacks on American Airlines flights 11 and 77 and United Airlines flights 93 and 175 have inflicted massive loss of life, personal injury, suffering, property damage, economic loss, and other harms on tens of thousands of victims.

(2) There is a compelling public interest in ensuring that victims be compensated equitably, uniformly, and expeditiously, and in avoiding duplicative, and potentially inconsistent, resolution of identical issues in different courts.

(3) There is a compelling and overwhelming public interest in ensuring the financial viability of this Nation's air carriers.

(4) The President has declared a national emergency as a result of the terrorist attacks on

September 11, 2001.

(5) Application of existing State and Federal tort law remedies to the exceptional circumstances arising from the terrorist attacks would threaten to overwhelm the State and Federal courts, impose massive litigation costs and delayed recovery, produce uncoordinated, disparate, and grossly inequitable results, and jeopardize the financial viability of the Nation's air carriers.

SEC. 3. AMENDMENTS TO TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 4. SECRETARY OF TRANSPORTATION.

As used in this Act, the term "Secretary" means the Secretary of Transportation.

SEC. 5. EFFECTIVE DATE.

Except as otherwise expressly provided, this Act and the amendments made by this Act shall be effective on the date of enactment.

TITLE I—SECURITY ENHANCEMENT PROGRAM

SEC. 101. SECURITY ENHANCEMENT PROGRAM.

There is hereby **[authorized to be]** appropriated, out of any money in the Treasury not otherwise appropriated, $3,000,000,000 to remain available until expended, for expenditure by the Secretary of Transportation, as the Secretary may determine, for costs of aviation security enhancements. Expenditures by the Secretary under this title may include, without limitation, payments to air carriers, as defined in 49 U.S.C. 40102, to be used for the

purpose of aviation security enhancement.

TITLE II—AIRLINE EMERGENCY RECOVERY PROGRAM

SEC. 201. AIRLINE EMERGENCY RECOVERY PROGRAM.

(a) General.—Notwithstanding any other provision of law, the Secretary of Transportation is authorized to make emergency payments to air carriers, as defined in 49 U.S.C. 40102, as a result of the September 11, 2001, terrorist attack.

(b) Formula.—The Secretary shall allocate from the total amount made available under this title an emergency payment to each air carrier as follows:

(1) With respect to 80 percent of the total made available under this title, an air carrier payment shall be that percentage of the 80 percent that is equal to the percent of available seat miles the air carrier provided from January 1, 2001, through June 30, 2001, out of all the available seat miles provided in that time period by all of the air carriers qualifying for payment from the 80-percent portion.

(2) With respect to 20 percent of the total made available under this title, the air carrier payment shall be that percentage of the 20 percent that is equal to the percent of revenue ton miles the air carrier provided from January 1, 2001, through June 30, 2001, out of all the revenue ton miles provided in that time period by all of the air carriers qualifying for payment from the 20-percent portion.

(c) Payments.—The Secretary is authorized to make such terms and conditions the Secretary determines appropriate on the timing and manner of payment. A decision of the Secretary about making an emergency

payment under this title or about a term or condition for making an emergency payment shall be final.

(d) Tax Treatment.—Section 118 of title 26, United States Code, is amended by inserting at the end the following new subsection:

"(c) For purposes of subsection (a) and section 362(c)(2), amounts received pursuant to section 201(b) of the United States Air Transportation Stabilization Act of 2001 shall be treated as a contribution to the capital of the taxpayer by a person who is not a shareholder of the taxpayer.".

(e) Appropriations.—There is hereby **[authorized to be]** appropriated, out of money in the Treasury not otherwise appropriated, $5,000,000,000 to remain available until expended to carry out the provisions of subsections (a) through (c) of this title.

[(e) Essential Air Service.—Section 41742(a)(2) is amended by deleting "$15,000,000" and inserting " $75,000,000."**]**

TITLE III—INSURANCE FOR DOMESTIC AIR TRANSPORTATION

SEC. 301. DOMESTIC INSURANCE AND REIMBURSEMENT OF INSURANCE COST INCREASES.

(a) General Authority.—Section 44302 is amended—

(1) in the caption of section 44302(a), by inserting the phrase "provision of" before the phrase "insurance and reinsurance";

(2) in subsection (a)(1) by deleting all that appears after "foreign flag aircraft" and inserting a period;

(3) by amending subsection (b) to read as follows:

"(b) Presidential approval. The Secretary may provide insurance or reinsurance under subsection (a) of this section or reimburse an air carrier under subsection (b) of this section only with the approval of the President. The President may approve the insurance or reinsurance or the reimbursement only after deciding that the continued operation of the American aircraft or foreign-flag aircraft to be insured or reinsured is necessary in the interest of air commerce or the national security, or to carry out the foreign policy of the United States Government.";

(4) in section 44302(c), by inserting the phrase "or reimbursing an air carrier" after the phrase "insurance or reinsurance"; and

(5) by redesignating sections 44302(b) and (c), as amended by this Act, and section 44302(d), as sections 44302(c), (d), and (e) **[what is new subsection (b)?]**.

(b) Coverage.—Section 44303 is amended by—

(1) inserting the phrase ", or reimburse insurance costs, as" after the phrase "insurance and reinsurance" in the first sentence; and

(2) in paragraph (1), inserting the phrase "in the interest of air commerce or the national security, or" before the phrase "to carry out the foreign policy".

(c) Reinsurance.—Section 44304 is amended by—

(1) deleting subsection (b); and

(2) redesignating section 44304(a) as section 44304.

(d) Premiums and Limitations on Coverage and Claims.—Section 44306 is amended—

(1) by redesignating sections 44306(b) and (c) as

sections 44306(c) and (d);

(2) in section 44306(c), as redesignated, by inserting the phrase "in the interest of air commerce or the national security, or" before the phrase "to carry out the foreign policy"; and

(3) by inserting a new section 44306(b) to read as follows:

"(b) Premium Rates for Reinsurance.—In setting premium rates for reinsurance, the Secretary may make allowances to the insurance carrier for expenses incurred in providing services and facilities that the Secretary considers good business practices, except for payments by the carrier for the stimulation or solicitation of insurance business.".

(e) Limitation of Liability.—Notwithstanding any other provision of law, for a period of 180 days from the date of enactment of this Act, no air carrier, or its officers, directors, employees or agents, shall be liable for damages of any kind or amount in connection with any claim of injury to property other than the aircraft involved or death or injury of persons other than aircraft passengers or crew that arises from an act of war or terrorism. Nothing in the foregoing sentence limits in any way the liability of air carriers for loss of or injury to the aircraft involved or injury or death of aircraft passengers or crew.

TITLE IV—LIABILITY OF AIR CARRIERS FOR INJURIES CAUSED BY ACTS OF TERRORISM COMMITTED ON SEPTEMBER 11, 2001

SEC. 401. SUBJECT MATTER JURISDICTION.

The United States District Court for the Southern District of New York shall have original and exclusive jurisdiction to the full extent permissible under the

Constitution of all civil actions against an air carrier for injury, loss of property, personal injury, or death resulting from the September 11, 2001, terrorist attacks. The United States shall be a necessary party-defendant in any such action.

SEC. 402. REMOVAL.

Any civil action against an air carrier for injury, loss of property, personal injury, or death resulting from the September 11, 2001, terrorist attacks that is filed in state court shall be removable to the United States District Court for the Southern District of New York pursuant to section 1441 of title 28.

SEC. 403. CONSOLIDATION.

Any civil action against an air carrier filed in any federal court other than the United States District Court for the Southern District of New York for injury, loss of property, personal injury, or death resulting from the September 11, 2001, terrorist attacks shall be dismissed. The United States District Court for the Southern District of New York shall consolidate all civil actions against air carriers subject to this section.

SEC. 404. RESPONSIBILITY OF UNITED STATES.

(a) General.—The United States may be responsible for payment of money damages awarded against an air carrier in a civil action subject to this section if the combined sum of money damages awarded against the air carrier exceeds or has already exceeded the air carrier's applicable insurance coverage.

(b) Amount of Damages.—In determining the amount of money damages for which the United States shall be responsible, the court shall calculate the plaintiff's damages, offset by:

(1) that amount, if any, covered by the air carrier's insurance policy;

(2) any amount received by the plaintiff from the United States or any federal agency pursuant to any emergency or disaster relief program as a result of the September 11, 2001, terrorist attacks; and

(3) any amount received by or owed to the plaintiffs under any insurance policy.

SEC. 405. LIMITATION ON PUNITIVE DAMAGES.

Punitive damages, exemplary damages, and other damages not intended to compensate the plaintiff for actual losses shall not be available in any civil action subject to this section.

TITLE VI—LIABILITY OF AIR CARRIERS FOR INJURIES CAUSED BY FUTURE ACTS OF TERRORISM COMMITTED ON OR TO AIR CARRIERS

SEC. 601. LIMITATION ON LIABILITY.

Any air carrier certified as a victim of an act of terrorism under this section shall not be liable in any civil action or proceeding, state or federal, for injury, loss of property, personal injury or death resulting from that act of terrorism, except in actions brought by passengers or employees on the airplane, or their survivors.

SEC. 602. DISCRETION OF THE SECRETARY.

For acts of terrorism committed on or to air carriers for 180 days after enactment of this Act, the Secretary of Transportation, in his discretion, may certify that the air carrier was a victim of an act of terrorism and in the Secretary's judgment should not be responsible for losses suffered by parties other than the passengers and employees on the airplane.

--H.R.2888--

H.R.2888

One Hundred Seventh Congress

of the

United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Wednesday,

the third day of January, two thousand and one

An Act

Making emergency supplemental appropriations for fiscal year 2001 for additional disaster assistance, for anti-terrorism initiatives, and for assistance in the recovery from the tragedy that occurred on September 11, 2001, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to provide emergency supplemental appropriations for fiscal year 2001, namely:

EXECUTIVE OFFICE OF THE PRESIDENT AND FUNDS APPROPRIATED TO THE PRESIDENT

Emergency Response Fund

(INCLUDING TRANSFERS OF FUNDS)

For emergency expenses to respond to the terrorist attacks on the United States that occurred on September 11, 2001, to provide assistance to the victims of the attacks, and to deal with other consequences of the attacks, $40,000,000,000, to remain available until expended, including for the costs of: (1) providing Federal, State, and local preparedness for mitigating and responding to the attacks; (2) providing support to counter, investigate, or prosecute domestic or international terrorism; (3) providing increased transportation security; (4) repairing public facilities and transportation systems damaged by the attacks; and (5) supporting national security: *Provided*, That these funds may be transferred to any authorized Federal Government activity to meet the purposes of this Act: *Provided further*, That the Congress designates the entire amount as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985: *Provided further*, That $40,000,000,000 shall be available only to the extent that an official budget request, that includes designation of the $40,000,000,000 as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, is transmitted by the President to the Congress: *Provided further*, That the President shall consult with the

chairmen and ranking minority members of the Committees on Appropriations prior to the transfer of these funds: *Provided further*, That of the $40,000,000,000 made available herein, $10,000,000,000 shall not be available for transfer to any Department or Agency until 15 days after the Director of the Office of Management and Budget has submitted to the House and Senate Committees on Appropriations a proposed allocation and plan for use of the funds for that Department or Agency; $20,000,000,000 may be obligated only when enacted in a subsequent emergency appropriations bill, in response to the terrorist acts on September 11, 2001: *Provided further*, That the President shall transmit an amended budget request proposing an allocation of funds: *Provided further*, That not less than one-half of the $40,000,000,000 shall be for disaster recovery activities and assistance related to the terrorist acts in New York, Virginia, and Pennsylvania on September 11, 2001, as authorized by law: *Provided further*, That the Director of the Office of Management and Budget shall provide quarterly reports to the Committees on Appropriations on the use of these funds, beginning not later than January 2, 2002: *Provided further*, That the President shall submit to the Congress as soon as practicable detailed requests to meet any further funding requirements for the purposes specified in this Act.

GENERAL PROVISIONS

SEC. 101. Funds appropriated by this Act, or made available by the transfer of funds in this Act, for intelligence activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414).

SEC. 102. Funds appropriated by this Act, or made available by the transfer of funds in this Act, may be obligated and expended notwithstanding section 10 of Public Law 91-672, section 313 of the Foreign Relations Authorization Act, fiscal years 1994 and 1995, and section 15 of the State Department Basic Authorities Act of 1956.

This Act may be cited as the `2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States'.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

END

(a) Short title. This section may be cited as the "Terrorist Attack Liability Act of 2001".

(b) Subject matter jurisdiction. Notwithstanding any other statute, the United States District Court for the Southern District of New York shall have original jurisdiction, ~~to the full extent permissible under the Constitution,~~ of all civil actions (i) to which the United States is a party or (ii) between citizens of different States, for injury, loss of property, personal injury, or death resulting from the September 11, 2001, Terrorist Attacks and based on acts or omissions by an " air carrier" (as that term is defined in section 40101(a) of Title 49 of the United States Code). For purposes of this section, a corporation named as a defendant in any such action may choose to be deemed either a citizen of the State in which it is incorporated or a citizen of the State where it has its principal place of business. The United States District Court for the Southern District of New York shall have exclusive trial jurisdiction of all such actions within its jurisdiction.

(c) United States as necessary party defendant. The United States shall be named a defendant in any civil action, filed in state or federal court, for injury, loss of property, personal injury, or death resulting from the September 11, 2001, Terrorist Attacks and based on acts or omissions by an air carrier.

(d) Removal. Any civil action for injury, loss of property, personal injury, or death resulting from the September 11, 2001, Terrorist Attacks and based on acts or omissions by an air carrier that is filed in state court shall be removable, ~~to the full extent permissible under the Constitution,~~ to the United States District Court for the Southern District of New York.

(e) Consolidation. The United States District Court for the Southern District of New York shall consolidate all civil actions subject to this section.

(f) ~~No~~ punitive damages. Punitive damages shall not be available in any civil action subject to this section.

(g) Liability of United States. The United States shall be liable for any judgment for money damages against any air carrier in any civil action subject to this section, but only to the extent that the amount of money damages exceeds the air carrier's applicable insurance coverage for such damages.

(h) ~~Limitation on~~ compensatory damages. In determining the amount of any money damages, the court shall offset any amounts received by the plaintiff from the United States or any federal agency thereof pursuant to any emergency relief program in connection with the September 11, 2001, Terrorist Attacks.

(i) Attorney fees. No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of [25] per centum of any judgment rendered in any action under this section.

(j) Definition. For purposes of this section, the term "September 11, 2001, Terrorist Attacks"

includes the incidents on September 11, 2001, involving American Airlines flights 11 and 77 and United Airlines flights 93 and 175.

(k) No air carrier whom the Secretary of Transportation, in his unreviewable discretion, declares to have been a victim of an act of terrorism occurring on or after the date of enactment of this Act shall be liable in any civil action or proceeding, whether state or federal, for injury, loss of property, personal injury or death resulting from that act of terrorism, except with respect to claims made by passengers.

same future

In the event of attack.

The district courts shall have supplemental jurisdiction over claims by plaintiffs agst persons ~~proposed to be joined~~ made parties under Rule 14, 19, 20, 23, or 24 or over parties proposed to be joined as plaintiffs under Rule 19 or seeking to intervene or defendants as plaintiffs under Rule 24.

(a) Short title. This section may be cited as the "Terrorist Attack Liability Act of 2001".

(b) Subject matter jurisdiction. Notwithstanding any other statute, the United States District Court for the Southern District of New York shall have original jurisdiction of all civil actions (i) to which the United States is a party or (ii) between citizens of different States, for injury, loss of property, personal injury, or death resulting from the September 11, 2001, Terrorist Attacks and based on acts or omissions by an "air carrier" (as that term is defined in section 40101(a) of Title 49 of the United States Code). For purposes of this section, a corporation named as a defendant in any such action may choose to be deemed either a citizen of the State in which it is incorporated or a citizen of the State where it has its principal place of business. The United States District Court for the Southern District of New York shall have exclusive trial jurisdiction of all such actions within its jurisdiction.

(c) Removal. Any civil action for injury, loss of property, personal injury, or death resulting from the September 11, 2001, Terrorist Attacks and based on acts or omissions by an air carrier that is filed in state court shall be removable ~~under~~ pursuant to § —.

(d) Transfer and Consolidation. Any civil action for injury, loss of property, personal injury, or death resulting from the September 11, 2001, Terrorist Attacks and based on acts or omissions by an air carrier shall be transferred to the United States District Court for the Southern District of New York. The United States District Court for the Southern District of New York shall consolidate all civil actions subject to this section pursuant to —.

(e) ~~Liability of United States.~~ The United States shall be liable for any judgment for money damages against any air carrier in any civil action subject to this section, but only to the extent that the amount of money damages exceeds the air carrier's applicable insurance coverage for such damages.

(f) United States as necessary party defendant. The United States shall be named a party defendant in any civil action, filed in state or federal court, for injury, loss of property, personal injury, or death resulting from the September 11, 2001, Terrorist Attacks and based on acts or omissions by an air carrier. ?

(g) ~~Responsibility for payment of compensatory damages.~~ In determining the amount of any money damages, the court shall offset any amounts received by the plaintiff from the United States or any federal agency thereof pursuant to any emergency relief program in connection with the September 11, 2001, Terrorist Attacks. offset

(f) Limitation on punitive damages. Punitive or exemplary damages shall not be available in any civil action subject to this section.

(i) Attorney fees. No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of ~~10~~ 20 per centum of any judgment rendered in any action under this section.

(j) Definition. For purposes of this section, the term "September 11, 2001, Terrorist Attacks"

5790

(b) FEDERAL CAUSE OF ACTION.—

(1) AVAILABILITY OF ACTION.—There shall exist a Federal cause of action for damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 or 77, and United Airlines flights 93 or 175, on September 11, 2001. Notwithstanding section 40120(c) of title 49, United

States Code, this cause of action shall be the exclusive remedy for damages arising out of the hijacking and subsequent crashes of such flights.

(2) SUBSTANTIVE LAW.—The substantive law for decision in any such suit shall be derived from the law, including choice of law principles, of the State in which the crash occurred unless such law is inconsistent with or preempted by Federal law.

(3) JURISDICTION.—The United States District Court for the Southern District of New York shall have original and exclusive jurisdiction over all actions brought [redacted] for any claim (including any claim for loss of property, personal injury, or death) resulting from or relating to the terrorist-related aircraft crashes of September 11, 2001.

5790

(b) FEDERAL CAUSE OF ACTION.—

(1) AVAILABILITY OF ACTION.—There shall exist a Federal cause of action for damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 or 77, and United Airlines flights 93 or 175, on September 11, 2001. Notwithstanding section 40120(c) of title 49, United

States Code, this cause of action shall be the exclusive remedy for damages arising out of the hijacking and subsequent crashes of such flights.

(2) SUBSTANTIVE LAW.—The substantive law for decision in any such suit shall be derived from the law, including choice of law principles, of the State in which the crash occurred unless such law is inconsistent with or preempted by Federal law.

(3) JURISDICTION.—The United States District Court for the Southern District of New York shall have original and exclusive jurisdiction over all actions brought [redacted] for any claim (including any claim for loss of property, personal injury, or death) resulting from or relating to the terrorist-related aircraft crashes of September 11, 2001.

5780

(b) FEDERAL CAUSE OF ACTION.—

(1) AVAILABILITY OF ACTION.—There shall exist a Federal cause of action for damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 or 77, and United Airlines flights 93 or 175, on September 11, 2001. Notwithstanding section 40120(c) of title 49, United

States Code, this cause of action shall be the exclusive remedy for damages arising out of the hijacking and subsequent crashes of such flights.

(2) SUBSTANTIVE LAW.—The substantive law for decision in any such suit shall be derived from the law, including choice of law principles, of the State in which the crash occurred unless such law is inconsistent with or preempted by Federal law.

(3) JURISDICTION.—The United States District Court for the Southern District of New York shall have original and exclusive jurisdiction over all actions brought [redacted] for any claim (including any claim for loss of property, personal injury, or death) resulting from or relating to the terrorist-related aircraft crashes of September 11, 2001.

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(1) AVAILABILITY OF ACTION.—There shall exist a Federal cause of action for damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 or 77, and United Airlines flights 93 or 175, on September 11, 2001. Notwithstanding section 40120(c) of title 49, United

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To the maximum extent feasible, the Secretary of the Treasury shall ensure that the Government is compensated for providing any funds in excess of the compensatory amount and for the risk assumed in making guarantees under this Act. To the extent to which any participating corporation accepts financial assistance, whether in the form of accepting the proceeds of any loans guaranteed by the Government under this Act or accepting grants in excess of the compensatory amount, the Secretary of the Treasury is authorized to enter into contracts under which the Government, contingent on the financial success of the participating corporation, would participate in the gains of the participating corporation or its security holders through the use of such instruments as warrants, stock options, or common or preferred stock or other appropriate equity instruments.

All amounts collected by the Secretary of the Treasury pursuant to this subsection shall be deposited in the Treasury as miscellaneous receipts.

Definitions:

The term "compensatory amount", as used in this Act, is an amount equal to the losses incurred by the participating corporation that are directly attributable to the groundstop order issued by the Department of Transportation on September 11, 2001.

The term "participating corporation", as used in this Act, refers to any corporation receiving any benefits under the terms of this Act.

(A2)

Notwithstanding any of the provision of this title, the Secretary may extend any part of the provisions of this title, including any amendments made by this title, to the vendors, agents and subcontractors of air carriers. For the next 180 days, the Secretary may extend or amend such provision so as to insure that such entities referred to in this paragraph are not responsible in ~~cases of~~ cases of acts of terrorism for losses suffered by third parties that exceed the ~~amount of the vendor's~~ such entities' ~~or subcontractors~~ liability coverage, as determined.

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.....

(Original Signature of Member)

107TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on _____

A BILL

To preserve the continued viability of the United States air transportation system.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Air Transportation Safety and System Stabilization Act".

TITLE I—AIRLINE STABILIZATION

SEC. 101. AVIATION DISASTER RELIEF.

(a) IN GENERAL.—Notwithstanding any other provision of law, the President shall take the following actions to compensate air carriers for losses incurred by the air carriers as a result of the terrorist attacks on the United States that occurred on September 11, 2001:

(1) Subject to such terms and conditions as the President deems necessary, issue Federal credit instruments to air carriers that do not, in the aggregate, exceed $10,000,000,000 and provide the subsidy amounts necessary for such instruments in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(2) Compensate air carriers in an aggregate amount equal to $5,000,000,000 for—

(A) direct losses incurred beginning on September 11, 2001, by air carriers as a result of any Federal ground stop order issued by the Secretary of Transportation or any subsequent order which continues or renews such a stoppage; and

(B) the incremental losses incurred beginning September 11, 2001, and ending Decem-

ber 31, 2001, by air carriers as a direct result of such attacks.

(b) EMERGENCY DESIGNATION.—Congress designates the amount of new budget authority and outlays in all fiscal years resulting from this title as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(e)). Such amount shall be available only to the extent that a request, that includes designation of such amount as an emergency requirement as defined in such Act, is transmitted by the President to Congress.

SEC. 102. AIR TRANSPORTATION STABILIZATION BOARD.

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) BOARD.—The term "Board" means the Air Transportation Stabilization Board established under subsection (b).

(2) FINANCIAL OBLIGATION.—The term "financial obligation" means any note, bond, debenture, or other debt obligation issued by an obligor in connection with financing under this section and section 101(a)(1).

(3) LENDER.—The term "lender" means any non-Federal qualified institutional buyer (as defined by section 230.144A(a) of title 17, Code of Federal

Regulations (or any successor regulation) known as Rule 144A(a) of the Security and Exchange Commission and issued under the Security Act of 1933, including—

(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986 (26 U.S.C. 4974(c)) that is a qualified institutional buyer; and

(B) a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986 (26 U.S.C. 414(d)) that is a qualified institutional buyer.

(4) OBLIGOR.—The term "obligor" means a party primarily liable for payment of the principal of or interest on a Federal credit instrument, which party may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

(b) AIR TRANSPORTATION STABILIZATION BOARD.—

(1) ESTABLISHMENT.—There is established a board (to be known as the "Air Transportation Stabilization Board") to review and decide on applications for Federal credit instruments under section 101(a)(1).

(2) COMPOSITION.—The Board shall consist of—

(A) the Secretary of Transportation or the designee of the Secretary;

(B) the Chairman of the Board of Governors of the Federal Reserve System or the designee of the Chairman who shall be the Chair of the Board;

(C) the Secretary of the Treasury or the designee of the Secretary; and

(D) the Comptroller General of the United States or the designee of the Comptroller General., as a nonvoting member of the Board

(c) FEDERAL CREDIT INSTRUMENTS.—

(1) IN GENERAL.—The Board may enter into agreements with 1 or more obligors to issue Federal credit instruments under section 101(a)(1) if the Board determines, in its discretion, that—

(A) the obligor is an air carrier for which credit is not reasonably available at the time of the transaction;

(B) the intended obligation by the obligor is prudently incurred; and

(C) such agreement is a necessary part of maintaining a safe, efficient, and viable commercial aviation system in the United States.

(2) TERMS AND LIMITATIONS.—

(A) FORMS; TERMS AND CONDITIONS.—A Federal credit instrument shall be issued under section 101(a)(1) in such form and on such terms and conditions and contain such covenants, representatives, warranties, and requirements (including requirements for audits) as the Board determines appropriate.

(B) PROCEDURES.—Not later than 14 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall issue regulations setting forth procedures for application and minimum requirements, which may be supplemented by the Board in its discretion, for the issuance of Federal credit instruments under section 101(a)(1).

(Insert warrant)

(d)

~~(c)~~ MAXIMUM AMOUNT.—The total amount of Federal credit instruments issued with respect to any air carrier under section 101(a)(1) shall not exceed an amount that is equal to the product of—

Strike

(1) $10,000,000,000; and

(2) the ratio of—

(A) the available seat miles of the air carrier for the month of August 2001 as reported to the Secretary of Transportation; to

(B) the total available seat miles of all air carriers for such month as reported to the Secretary.

SEC. 103. SPECIAL RULES FOR COMPENSATION.

(a) DOCUMENTATION.—Subject to subsection (b), the amount of compensation payable to an air carrier under section 101(a)(2) may not exceed the amount of losses described in section 101(a)(2) that the air carrier demonstrates to the satisfaction of the President, using sworn financial statements or other appropriate data, that the air carrier incurred. The Secretary of Transportation may audit such statements and may request any information that the Secretary deems necessary to conduct such audit.

(b) MAXIMUM AMOUNT OF COMPENSATION PAYABLE PER AIR CARRIER.—The maximum total amount of compensation payable to an air carrier under section 101(a)(2) may not exceed the lesser of—

(1) the amount of such air carrier's direct and incremental losses described in section 101(a)(2); or

(2) in the case of—

(A) flights involving passenger-only or combined passenger and cargo transportation, the product of—

(i) $4,500,000,000; and

(ii) the ratio of—

(I) the available seat miles of the air carrier for the month of August 2001 as reported to the Secretary; to

(II) the total available seat miles of all such air carriers for such month as reported to the Secretary; and

(B) flights involving cargo-only transportation, the product of—

(i) $500,000,000; and

(ii) the ratio of—

(I) the revenue ton miles or other auditable measure of the air carrier for cargo for the latest quarter for which data is available as reported to the Secretary; to

(II) the total revenue ton miles or other auditable measure of all such air carriers for cargo for such quarter as reported to the Secretary.

(c) PAYMENTS.—The President may provide compensation to air carriers under section 101(a)(2) in 1 or more payments up to the amount authorized by this title.

SEC. 104. LIMITATION ON CERTAIN EMPLOYEE COMPENSATION.

(a) IN GENERAL.—The President may only issue a Federal credit instrument under section 101(a)(1) to an air carrier after the air carrier enters into a legally binding agreement with the President that, during the 2-year period beginning September 11, 2001, and ending September 11, 2003, no officer or employee of the air carrier whose total compensation exceeded $300,000 in calendar year 2000 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to September 11, 2001)—

(1) will receive from the air carrier total compensation which exceeds, during any 12 consecutive months of such 2-year period, the total compensation received by the officer or employee from the air carrier in calendar year 2000; and

(2) will receive from the air carrier severance pay or other benefits upon termination of employment with the air carrier which exceeds twice the maximum total compensation received by the officer or employee from the air carrier in calendar year 2000.

(b) TOTAL COMPENSATION DEFINED.—In this section, the term "total compensation" includes salary, bonuses, awards of stock, and other financial benefits pro-

vided by an air carrier to an officer or employee of the air carrier.

SEC. 105. CONTINUATION OF CERTAIN AIR SERVICE.

Action of Secretary

(a) The Secretary of Transportation should take appropriate action to ensure that all communities that had scheduled air service before September 11, 2001, continue to receive adequate air transportation service and that essential air service to small communities continues without interruption.

Subsection (b) ADD INSERT SUBSECTION (c) SECRETARIAL OVERSIGHT INSERT →

SEC. 106. REPORTS.

(a) REPORT.—Not later than February 1, 2001, the President shall transmit to the Committee on Transportation and Infrastructure, the Committee on Appropriations, and the Committee on the Budget of the House of Representatives and the Committee on Commerce, Science, and Transportation, the Committee on Appropriations, and the Committee on the Budget of the Senate a report on the financial status of the air carrier industry and the amounts of assistance provided under this title to each air carrier.

(b) UPDATE.—Not later than the last day of the 7-month period following the date of enactment of this Act, the President shall update and transmit the report to the Committees.

SEC. 107. DEFINITIONS.

In this title, the following definitions apply:

(1) AIR CARRIER.—The term "air carrier" has the meaning such term has under section 40102 of title 49, United States Code.

(2) FEDERAL CREDIT INSTRUMENT.—The term "Federal credit instrument" means any guarantee or other pledge by the Board issued under section 101(a)(1) to pledge the full faith and credit of the United States to pay all or part of any of the principal of and interest on a loan or other debt obligation issued by an obligor and funded by a lender.

(3) INCREMENTAL LOSS.—The term "incremental loss" does not include any loss that the President determines would have been incurred if the terrorist attacks on the United States that occurred on September 11, 2001, had not occurred.

TITLE II—AVIATION INSURANCE

SEC. 201. DOMESTIC INSURANCE AND REIMBURSEMENT OF INSURANCE COSTS.

(a) IN GENERAL.—Section 44302 of title 49, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by striking "subsection (b)" and inserting "subsection (c)"; and

(B) by striking "foreign-flag aircraft—" and all that follows through the period at the end of subparagraph (B) and inserting "foreign-flag aircraft.";

(2) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively;

(3) by inserting after subsection (a) the following:

"(b) REIMBURSEMENT OF INSURANCE COST INCREASES.—

"(1) IN GENERAL.—The Secretary may reimburse an air carrier for the increase in the cost of insurance, with respect to a premium for coverage ending before October 1, 2002, against loss or damage arising out of any risk from the operation of an American aircraft over the insurance premium that was in effect for a comparable operation during the period beginning September 4, 2001, and ending September 10, 2001, as the Secretary may determine. Such reimbursement is subject to subsections (a)(2), (c), and (d) of this section and to section 44303.

"(2) PAYMENT FROM REVOLVING FUND.—A reimbursement under this subsection shall be paid

from the revolving fund established by section 44307.

"(3) FURTHER CONDITIONS.—The Secretary may impose such further conditions on insurance for which the increase in premium is subject to reimbursement under this subsection as the Secretary may deem appropriate in the interest of air commerce.

"(4) TERMINATION OF AUTHORITY.—The authority to reimburse air carriers under this subsection shall expire 180 days after the date of enactment of this paragraph.";

(4) in subsection (c) (as so redesignated)—

(A) in the first sentence by inserting ", or reimburse an air carrier under subsection (b) of this section," before "only with the approval"; and

(B) in the second sentence—

(i) by inserting "or the reimbursement" before "only after deciding"; and

(ii) by inserting "in the interest of air commerce or national security or" before "to carry out the foreign policy"; and

(5) in subsection (d) (as so redesignated) by inserting "or reimbursing an air carrier" before "under this chapter".

(b) COVERAGE.—

(1) IN GENERAL.—Section 44303 of such title is amended—

(A) in the matter preceding paragraph (1) by inserting ", or reimburse insurance costs, as" after "insurance and reinsurance"; and

(B) in paragraph (1) by inserting "in the interest of air commerce or national security or" before "to carry out the foreign policy".

(2) DISCRETION OF THE SECRETARY.—For acts of terrorism committed on or to an air carrier during the 180-day period following the date of enactment of this Act, the Secretary of Transportation may certify that the air carrier was a victim of an act of terrorism and in the Secretary's judgment, based on the Secretary's analysis and conclusions regarding the facts and circumstances of each case, shall not be responsible for losses suffered by third parties (as referred to in section 205.5(b)(1) of title 14, Code of Federal Regulations) that exceed $100,000,000, in the aggregate, for all claims by such parties arising out of such act. If the Secretary

so certifies, the air carrier shall not be liable for an amount that exceeds $100,000,000, in the aggregate, for all claims by such parties arising out of such act, and the Government shall be responsible for any liability above such amount. No punitive damages may be awarded against an air carrier (or the Government taking responsibility for an air carrier under this paragraph) under a cause of action arising out of such act.

(c) REINSURANCE.—Section 44304 of such title is amended—

(1) by striking "(a) GENERAL AUTHORITY.—"; and

(2) by striking subsection (b).

(d) PREMIUMS.—Section 44306 of such title is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following:

"(b) ALLOWANCES IN SETTING PREMIUM RATES FOR REINSURANCE.—In setting premium rates for reinsurance, the Secretary may make allowances to the insurance carrier for expenses incurred in providing services and facilities that the Secretary considers good business prac-

tices, except for payments by the air carrier for the stimulation or solicitation of insurance business.".

(e) CONFORMING AMENDMENT.—Section 44305(b) of such title is amended by striking "44302(b)" and inserting "44302(c)".

Insert →

TITLE III—TAX PROVISIONS

SEC. 301. EXTENSION OF DUE DATE FOR EXCISE TAX DEPOSITS; TREATMENT OF LOSS COMPENSATION.

(a) EXTENSION OF DUE DATE FOR EXCISE TAX DEPOSITS.—

(1) IN GENERAL.—In the case of an eligible air carrier, any airline-related deposit required under section 6302 of the Internal Revenue Code of 1986 to be made after September 10, 2001, and before November 15, 2001, shall be treated for purposes of such Code as timely made if such deposit is made on or before November 15, 2001. If the Secretary of the Treasury so prescribes, the preceding sentence shall be applied by substituting for "November 15, 2001" each place it appears—

(A) "January 15, 2002", or

(B) such earlier date after November 15, 2001, as such Secretary may prescribe.

(2) ELIGIBLE AIR CARRIER.—For purposes of this subsection, the term "eligible air carrier" means any domestic corporation engaged in the trade or business of transporting (for hire) persons by air if such transportation is available to the general public.

(3) AIRLINE-RELATED DEPOSIT.—For purposes of this subsection, the term "airline-related deposit" means any deposit of—

(A) taxes imposed by subchapter C of chapter 33 of such Code (relating to transportation by air), and

(B) taxes imposed by chapters 21, 22, and 24 with respect to employees engaged in a trade or business referred to in paragraph (2).

(b) TREATMENT OF LOSS COMPENSATION.—Nothing in any provision of law shall be construed to exclude from gross income under the Internal Revenue Code of 1986 any compensation received under section 101(a)(2) of this Act.

TITLE IV—VICTIM COMPENSATION

SEC. 401. SHORT TITLE.

This title may be cited as the "September 11th Victim Compensation ~~Act~~ Fund of 2001".

SEC. 402. DEFINITIONS.

In this title, the following definitions apply:

(1) AIR CARRIER.—The term "air carrier" means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation and includes employees and agents of such citizen.

(2) AIR TRANSPORTATION.—The term "air transportation" means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.

(3) CLAIMANT.—The term "claimant" means an individual filing a claim for compensation under section 405(a)(1).

(4) COLLATERAL SOURCE.—The term "collateral source" means all collateral sources, including life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the terrorist-related aircraft crashes of September 11, 2001.

(5) ECONOMIC LOSS.—The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to

the extent recovery for such loss is allowed under applicable State law.

(6) ELIGIBLE INDIVIDUAL.—The term "eligible individual" means an individual determined to be eligible for compensation under section 405(c).

(7) NONECONOMIC LOSSES.—The term "noneconomic losses" means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(8) SPECIAL MASTER.—The term "Special Master" means the Special Master appointed under section 404(a).

SEC. 403. PURPOSE.

It is the purpose of this title to provide compensation to any individual (or personal representative of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes of September 11, 2001.

SEC. 404. ADMINISTRATION.

(a) IN GENERAL.—The Attorney General, acting through a Special Master appointed by the Attorney General, shall—

(1) administer the compensation program established under this title;

(2) promulgate all procedural and substantive rules for the administration of this title; and

(3) employ and supervise hearing officers and other administrative personnel to perform the duties of the Special Master under this title.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to pay the administrative and support costs for the Special Master in carrying out this title.

SEC. 405. DETERMINATION OF ELIGIBILITY FOR COMPENSATION.

(a) FILING OF CLAIM.—

(1) IN GENERAL.—A claimant may file a claim for compensation under this title with the Special Master. The claim shall be on the form developed under paragraph (2) and shall state the factual basis for eligibility for compensation and the amount of compensation sought.

(2) CLAIM FORM.—

(A) IN GENERAL.—The Special Master shall develop a claim form that claimants shall use when submitting claims under paragraph (1). The Special Master shall ensure that such form can be filed electronically, if determined to be practicable.

(B) CONTENTS.—The form developed under subparagraph (A) shall request—

(i) information from the claimant concerning the physical harm that the claimant suffered, or in the case of a claim filed on behalf of a decedent information confirming the decedent's death, as a result of the terrorist-related aircraft crashes of September 11, 2001;

(ii) information from the claimant concerning any possible economic and non-economic losses that the claimant suffered as a result of such crashes; and

(iii) information regarding collateral sources of compensation the claimant has received or is entitled to receive as a result of such crashes.

(3) LIMITATION.—No claim may be filed under paragraph (1) after the date that is 2 years after

the date on which regulations are promulgated under section 407.

(b) REVIEW AND DETERMINATION.—

(1) REVIEW.—The Special Master shall review a claim submitted under subsection (a) and determine—

(A) whether the claimant is an eligible individual under subsection (c);

(B) with respect to a claimant determined to be an eligible individual—

(i) the extent of the harm to the claimant, including any economic and noneconomic losses; and

(ii) the amount of compensation to which the claimant is entitled based on the harm to the claimant, the facts of the claim, and the individual circumstances of the claimant.

(2) NEGLIGENCE.—With respect to a claimant, the Special Master shall not consider negligence or any other theory of liability.

(3) DETERMINATION.—Not later than 120 days after that date on which a claim is filed under subsection (a), the Special Master shall complete a review, make a determination, and provide written no-

tice to the claimant, with respect to the matters that were the subject of the claim under review. Such a determination shall be final and not subject to judicial review.

(4) RIGHTS OF CLAIMANT.—A claimant in a review under paragraph (1) shall have—

(A) the right to be represented by an attorney;

(B) the right to present evidence, including the presentation of witnesses and documents; and

(C) any other due process rights determined appropriate by the Special Master.

(5) NO PUNITIVE DAMAGES.—The Special Master may not include amounts for punitive damages in any compensation paid under a claim under this title.

(6) COLLATERAL COMPENSATION.—The Special Master shall reduce the amount of compensation determined under paragraph (1)(B)(ii) by the amount of the collateral source compensation the claimant has received or is entitled to receive as a result of the terrorist-related aircraft crashes of September 11, 2001.

(c) ELIGIBILITY.—

(1) IN GENERAL.—A claimant shall be determined to be an eligible individual for purposes of this subsection if the Special Master determines that such claimant—

(A) is an individual described in paragraph (2); and

(B) meets the requirements of paragraph (3).

(2) INDIVIDUALS.—A claimant is an individual described in this paragraph if the claimant is—

(A) an individual who—

(i) was present at the World Trade Center, (New York, New York), the Pentagon (Arlington, Virginia), or the site of the aircraft crash at Shanksville, Pennsylvania at the time, or in the immediate aftermath, of the terrorist-related aircraft crashes of September 11, 2001; and

(ii) suffered physical harm or death as a result of such an air crash;

(B) an individual who was a member of the flight crew or a passenger on American Airlines flight 11 or 77 or United Airlines flight 93 or 175, except that an individual identified by the Attorney General to have been a participant

or conspirator in the terrorist-related aircraft crashes of September 11, 2001, or a representative of such individual shall not be eligible to receive compensation under this title; or

(C) in the case of a decedent who is an individual described in subparagraph (A) or (B), the personal representative of the decedent who files a claim on behalf of the decedent.

(3) REQUIREMENTS.—

(A) SINGLE CLAIM.—Not more than one claim may be submitted under this title by an individual or on behalf of a deceased individual.

(B) LIMITATION ON CIVIL ACTION.—

(i) IN GENERAL.—Upon the submission of a claim under this title, the claimant waives the right to file a civil action (or to be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001. The preceding sentence does not apply to a civil action to recover collateral source obligations.

(ii) PENDING ACTIONS.—In the case of an individual who is a party to a civil

action described in clause (i), such individual may not submit a claim under this title unless such individual withdraws from such action by the date that is 90 days after the date on which regulations are promulgated under section 407.

SEC. 406. PAYMENTS TO ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—Not later than 20 days after the date on which a determination is made by the Special Master regarding the amount of compensation due a claimant under this title, the Special Master shall authorize payment to such claimant of the amount determined with respect to the claimant.

(b) PAYMENT AUTHORITY.—This title constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment of amounts for compensation under this title.

(c) ADDITIONAL FUNDING.—

(1) IN GENERAL.—The Attorney General is authorized to accept such amounts as may be contributed by individuals, business concerns, or other entities to carry out this title, under such terms and conditions as the Attorney General may impose.

(2) USE OF SEPARATE ACCOUNT.—In making payments under this section, amounts contained in any account containing funds provided under paragraph (1) shall be used prior to using appropriated amounts.

SEC. 407. REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Attorney General, in consultation with the Special Master, shall promulgate regulations to carry out this title, including regulations with respect to—

(1) forms to be used in submitting claims under this title;

(2) the information to be included in such forms;

(3) procedures for hearing and the presentation of evidence;

(4) procedures to assist an individual in filing and pursuing claims under this title; and

(5) other matters determined appropriate by the Attorney General.

SEC. 408. LIMITATION ON AIR CARRIER LIABILITY.

(a) IN GENERAL.—Notwithstanding any other provision of law, liability for all claims, whether for compensatory or punitive damages, arising from the terrorist-related aircraft crashes of September 11, 2001, against any

air carrier shall not be in an amount greater than the limits of the liability coverage maintained by the air carrier.

(b) SUBJECT MATTER JURISDICTION.—The United States District Court for the Southern District of New York shall have original and exclusive jurisdiction, to the full extent permissible under the Constitution, over all civil actions for any claim (including any claim for loss of property, personal injury, or death) resulting from or relating to the terrorist-related aircraft crashes of September 11, 2001. If such a civil action is filed in any court other than the United States District Court for the Southern District of New York, such action shall be dismissed without prejudice.

(c) EXCLUSION.—Nothing in this section shall in any way limit any liability of any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act.

SEC. 409. MISCELLANEOUS PROVISIONS.

(a) SUBROGATION.—The United States shall have the right of subrogation with respect to any claim paid by the United States under this title.

(b) LIMITATION ON TAX LIABILITY.—No payments by the United States under this title shall be subject to Federal, State, or local tax.

Title VI – General Provisions

501 – Severability

OK

Secretarial oversight. IN CONTRACT

(c)(1) Notwithstanding any other provision of law, the Secretary of Transportation is authorized to require an air carrier receiving direct financial assistance under this Act to maintain scheduled air service ~~and the frequency of that service~~ to any point served by that carrier prior to September 11, 2001.

AGREEMENTS

(2) In applying the preceding paragraph, the Secretary of Transportation may require air carriers receiving direct financial assistance under this Act to enter into agreements which will, to the maximum extent practicable, ensure that all communities that had scheduled air service before September 11, 2001, continue to receive adequate air transportation service.

Notes

Paragraph 1. ~~Empowers the Secretary to require service, but does not mandate that he use that~~ power.

Paragraph 2. Includes the "maximum extent practicable" clause to account for economic conditions. ~~It does not lock the Secretary into any~~ level of service.

~~SEC.~~ (b). **ESSENTIAL AIR SERVICE.**

There are authorized to be appropriated to the Secretary of Transportation for the essential air service program under subchapter II of chapter 417 of title 49, United States Code, ~~such sums as may be necessary~~ $120M for fiscal year 2002 ~~and for each fiscal year thereafter.~~

Title V

Air Transportation Safety

INCREASED → AIR TRANSPORTATION SAFETY

SEC. 501

The Congress affirms the President's decision to spend $3 billion in airline safety and security in conjunction with this Act in order to restore public confidence in the airline industry.

CONGRESS ALSO INTENDS TO ACT EXPEDITIOUSLY IN CONSULTATION WITH THE SECRETARY OF TRANSPORTATION, TO STRENGTHEN AIRPORT SECURITY AND TAKE FURTHER MEASURES TO ENHANCE THE SECURITY OF AIR TRAVEL.

SEC. 502 CONGRESSIONAL COMMITMENT.