AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

106TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 106–32

TO CLARIFY THE APPLICATION OF THE ACT POPULARLY KNOWN AS THE "DEATH ON THE HIGH SEAS ACT" TO AVIATION INCIDENTS

FEBRUARY 24, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

REPORT

[To accompany H.R. 603]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 603) to amend title 49, United States Code, to clarify the application of the Act popularly known as the "Death on the High Seas Act" to aviation incidents, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

Airline travel is remarkably safe. Indeed, last year, there was not even one passenger death on U.S. commercial airlines.

Of course, this excellent safety record is of little consolation to those who lose loved ones in aviation disasters that do occur.

One of the problems that past accidents have brought to light is the sometimes insensitive treatment of the families of accident victims. On June 19, 1996, following the ValuJet crash, the Aviation Subcommittee held a hearing on these problems and heard firsthand from family members about the difficulties they encountered. At that hearing, a commitment was made to deal with these problems by legislation.

On July 31, 1996, following the TWA 800 tragedy, the Aviation Disaster Family Assistance Act, was introduced. This bill was approved by the Committee (Report 104–793) and subsequently passed the House by a vote of 401 to 4 on September 18, 1996. The final legislation was incorporated into the Federal Aviation Reauthorization Act of 1996 as Title VII (P.L. 104–264, 110 Stat. 3264

69–006

et seq.). Among other things, this legislation included the following features—

The establishment of a position within the National Transportation Safety Board (NTSB) to act as a liaison with the families;

A requirement that the NTSB designate an independent organization to take primary responsibility for the emotional care and support of the families;

An assurance that passenger possessions will be returned to the families;

A requirement that the passenger manifest be turned over to the NTSB and the designated organization; and

A prohibition on lawyer solicitation within 30 days of the accident.

The Committee continues to be concerned about the treatment of families after airline disasters.

One issue that has arisen, affecting the families of the TWA 800 crash and also an earlier crash involving Korean Airlines 007, involves the Death on the High Seas Act, 46 U.S.C. 761 et seq. The issue arises because the Supreme Court decided, in the case of *Zicherman* v. *Korean Airlines,* 116 S.Ct. 629 (1996), that the Death on the High Seas Act (DOHSA) applies to lawsuits that arise out of an aircraft crash in the ocean more than a marine league (about 3 miles) from land.

In the Zicherman case, the court concluded that Articles 17 and 24(2) of the Warsaw Convention governing international air transportation, Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, T.S. No. 876 (1934) (reprinted in note following 49 U.S.C. App 1502 (1988 ed.)), permit compensation only for a legally recognizable harm, but leave the determination of what harm is legally recognizable to the applicable domestic law. The court further concluded that when a plane crashes into the high seas, the applicable domestic law is DOHSA. Under DOHSA, only pecuniary losses are recognized. Therefore, the family of a deceased passenger could recover damages for the wages that the person would have received but not for the pain and suffering of that person or the loss of that person's companionship.

The effect of this decision is to treat families differently depending on whether their relative died in an aircraft that crashed into the ocean or one that crashed into land. If the plane crashes into the ocean, DOHSA applies and the family is entitled only to pecuniary damages. However, if a plane crashes into the land or close to land, the applicable tort law would apply. These generally permit the award of non-pecuniary damages such as loss of companionship.

Given the nature and speed of air travel, it is often a matter of happenstance as to where an aircraft crashes. The result is that a family's rights under the law depend on pure chance. At the Subcommittee's hearing on this issue, parents noted that where DOHSA applied, the life of their child was made to appear practically worthless in the eyes of the law.

The Supreme Court recognized the inequity of this result and stated that "Congress may choose to enact special provisions appli-

cable to Warsaw Convention cases, as some countries have done." The reported bill (H.R. 603) would do this and in such a way as to ensure that all families would be treated the same regardless of where a plane happened to crash.

The reported bill amends the aviation laws in Title 49 to make clear that DOHSA does not apply in the case of aviation accidents. This change would apply to all pending cases if the court of original jurisdiction had not yet rendered a final decision. It would apply even if the court had rendered a decision on preliminary matters in the case, including the applicability of DOHSA, as long as the court had not rendered a final decision in the case.

The Committee believes that the retroactive nature of this legislation is fully justified under the Supreme Court's decision in *Plaut* v. *Spendthrift Farm, Inc.,* 115 S.Ct. 1447 (1995). In that case, the Court stated, at 1457, that "[w]hen a new law makes clear that it is retroactive, an appellate court must apply that law in reviewing judgments still on appeal that were rendered before the law was enacted, and must alter the outcome accordingly." Therefore, the Committee would be justified in developing retroactive legislation that would have the affect of overturning final court decisions that were pending at the appellate level. However, the reported bill does not go that far. Rather it would only affect cases still pending in the District Court.

The reported bill also does not attempt to dictate what law should apply in the future to aircraft accidents on the high seas. Instead, the Committee expects this issue to be resolved by the courts under normal choice of law analysis. See, for example, *Pescatore* v. *Pan Am,* 97 F.3d 1 (2nd Cir. 1996) *cert denied sub nom,* 112 S.Ct. 331.

In the Committee's view, the reported bill will help to ensure that families of airline accident victims will receive fair treatment under the law. The Committee continues to look at other areas of concern and may consider changes where problems arise.

SECTION-BY-SECTION SUMMARY

Section 1.—Clarification amendment

This section clarifies that courts should not look to the Death on the High Seas Act for the controlling law in lawsuits arising out of aviation crashes into the high seas.

Section 2.—Applicability

This section states that the amendment made by section 1 applies to cases pending in the lower courts on or before the date of enactment and to lawsuits filed after the date of enactment.

HEARINGS AND LEGISLATIVE HISTORY

H.R. 603 was introduced on February 4, 1999. The Subcommittee on Aviation held hearings on the issue of the applicability of the Death on the High Seas Act on July 10, 1997.

On February 11, 1999, the Committee on Transportation and Infrastructure ordered the bill reported by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under Article I, Section 8 of the Constitution.

COSTS OF THE LEGISLATION

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 19, 1999.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 603, a bill to amend Title 49, United States Code, to clarify the application of the act popularly known as the "Death on the High Seas Act" to aviation incidents.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Reis and Victoria Heid Hall.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XII of the Rules of the House of Representatives, and section 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 603.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 603 from the Director of the Congressional Budget Office.

H.R. 603—A bill to amend Title 49, United States Code, to clarify the application of the act popularly known as the "Death on the High Seas Act" to aviation incidents

H.R. 603 would amend Title 49 of the U.S. Code so that the Death on the High Seas Act of 1920 (DOHSA) would not apply to aviation incidents. The Warsaw Convention of 1929 and DOHSA provide families of victims of aviation disasters with legal remedies to seek financial compensation for the loss of a family member. Under the Warsaw Convention, which is the primary basis for lawsuits related to international airline disasters, families of passengers who die in an aviation disaster can seek limited financial compensation for their loss. Under DOSHA, a family can only seek compensation if the family was financially dependent upon the deceased. The Supreme Court recently ruled that DOHSA applies to lawsuits when an aviation crash occurs more than three miles from land. By making DOHSA inapplicable to aviation incidents, H.R. 603 would broaden the circumstances under which relatives can seek compensation for the death of a family member in an aviation incident over the ocean. It could also lead to larger awards.

Based on information from the Department of Transportation, CBO estimates that it is unlikely that enacting H.R. 603 would have a significant impact on the federal budget. The bill could affect federal spending if the government becomes either a defendant or a plaintiff in a future civil action related to aviation, but CBO has no basis for estimating the likelihood or outcome of any such potential actions.

H.R. 603 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments. Although the bill could potentially increase an airline's liability in the event of a crash at sea, CBO estimates that the bill would not significantly increase the costs of operating airlines.

The CBO staff contacts for this estimate are Deborah Reis and Victoria Heid Hall. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(g) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SECTION 40120 OF TITLE 49, UNITED STATES CODE

§ 40120. Relationship to other laws

(a) NONAPPLICATION.—Except as provided in the International Navigational Rules Act of 1977 (33 U.S.C. 1601 et seq.), the naviga-

tion and shipping laws of the United States (*including the Act entitled "An Act relating to the maintenance of actions for death on the high seas and other navigable waters", approved March 30, 1920, commonly known as the Death on the High Seas Act (46 U.S.C. App. 761–767; 41 Stat. 537–538))* and the rules for the prevention of collisions do not apply to aircraft or to the navigation of vessels related to those aircraft.

* * * * * * *

○