

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 67

To regulate interstate commerce by providing for uniform standards of liability for harm arising out of general aviation accidents.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 5), 1993

Mrs. KASSEBAUM (for herself, Mr. DOLE, Mr. MCCAIN, Mr. DANFORTH, Mr. SMITH, and Mr. GORTON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To regulate interstate commerce by providing for uniform standards of liability for harm arising out of general aviation accidents.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “General Aviation Acci-  
5       dent Liability Standards Act of 1993”.

6       **SEC. 2. FINDINGS AND PURPOSE.**

7       (a) FINDINGS.—The Congress finds that—

1           (1) transportation by air of passengers contin-  
2           ues to comprise an increasingly important compo-  
3           nent of the Nation's overall transportation system;

4           (2) although the incidence of injuries to pas-  
5           sengers in general aviation accidents has decreased,  
6           the number of general aviation accident liability  
7           claims against general aviation aircraft manufactur-  
8           ers and the amount of damages sought in such  
9           claims is increasing at disproportionate rates, be-  
10          yond any relationship to the quality of the aircraft  
11          manufactured and in use;

12          (3) the current system for determining liability  
13          and damages for compensating individuals injured in  
14          general aviation accidents is inadequate;

15          (4) competent general aviation manufacturers  
16          and component part manufacturers are ceasing or  
17          limiting production of general aviation aircraft or  
18          some models of such aircraft because of the increas-  
19          ing costs and unavailability of product liability insur-  
20          ance;

21          (5) the increase in the number of liability  
22          claims and the size of awards and settlements, and  
23          the excessive time and expense devoted to the resolu-  
24          tion of such claims, impose a substantial economic

1       burden on general aviation manufacturers and their  
2       dealers;

3               (6) the Federal Government has an interest in  
4       the general aviation accident liability system because  
5       the Federal Government has established a com-  
6       prehensive system for regulating general aviation, in-  
7       cluding—

8               (A) establishing standards for design, con-  
9       struction, and certification of general aviation  
10       aircraft;

11              (B) establishing standards for maintenance  
12       of aircraft, licensing of repair facilities, and li-  
13       censing of persons who may perform or approve  
14       maintenance, repairs, and inspections;

15              (C) establishing standards for training and  
16       licensing of pilots;

17              (D) establishing a comprehensive air con-  
18       trol system;

19              (E) conducting investigations to determine  
20       the probable cause of aviation accidents and  
21       prevent future accidents; and

22              (F) conducting other activities necessary to  
23       assure a safe air transportation system;

1           (7) this Federal system is the exclusive legal  
2 authority for regulating aviation operations and  
3 safety;

4           (8) it is in the national interest to reduce un-  
5 necessary expenditures related to general aviation  
6 accident liability claims while providing more rapid  
7 and more efficient compensation for individuals  
8 harmed in general aviation accidents; and

9           (9) Federal action to reform the general avia-  
10 tion accident liability system will result in—

11                   (A) the maintenance of airworthy general  
12 aviation aircraft; and

13                   (B) a more rational general aviation acci-  
14 dent liability system.

15           (b) PURPOSE.—It is the purpose of this Act to estab-  
16 lish standards for determining liability for harm arising  
17 out of general aviation accidents.

18 **SEC. 3. DEFINITIONS.**

19 For purposes of this Act—

20           (1) the term “Administrator” means the Ad-  
21 ministrator of the Federal Aviation Administration;

22           (2) the term “claimant” means any person who  
23 brings a general aviation accident liability action  
24 subject to this Act, and any person on whose behalf  
25 such an action is brought, including—

1 (A) the claimant's decedent; and

2 (B) the claimant's parent or guardian, if  
3 the action is brought through or on behalf of a  
4 minor or incompetent;

5 (3) the term "general aviation accident" means  
6 any accident which arises out of the operation of any  
7 general aviation aircraft and which results in harm;

8 (4) the term "general aviation aircraft" means  
9 any powered aircraft for which a type certificate or  
10 an airworthiness certificate has been issued by the  
11 Administrator under the Federal Aviation Act of  
12 1958 (49 U.S.C. App. 1301 et seq.) which, at the  
13 time such certificate was originally issued, had a  
14 maximum seating capacity of fewer than 20 pas-  
15 sengers, and which is not, at the time of the acci-  
16 dent, engaged in scheduled passenger carrying oper-  
17 ations, as defined in regulations issued under the  
18 Federal Aviation Act of 1958 (49 U.S.C. App. 1301  
19 et seq.);

20 (5) the term "general aviation manufacturer"  
21 means—

22 (A) the builder or manufacturer of the air-  
23 frame of a general aviation aircraft;

24 (B) the manufacturer of the engine of a  
25 general aviation aircraft; and

1 (C) the manufacturer of any system, com-  
2 ponent, subassembly, or other part of a general  
3 aviation aircraft;

4 (6) the term “harm” means—

5 (A) property damage or bodily injury sus-  
6 tained by a person;

7 (B) death resulting from such bodily in-  
8 jury;

9 (C) pain and suffering which is caused by  
10 such bodily injury; and

11 (D) emotional harm (including bereave-  
12 ment and loss of affection, care, or society)  
13 which is caused by such bodily injury;

14 (7) the term “product” means a general avia-  
15 tion aircraft and any system, component, subassem-  
16 bly, or other part of a general aviation aircraft; and

17 (8) the term “property damage” means physical  
18 injury to tangible property, including loss of use of  
19 tangible property.

20 **SEC. 4. PREEMPTION; APPLICABILITY.**

21 (a) EFFECT ON STATE LAWS.—This Act supersedes  
22 any State law regarding recovery, under any legal theory,  
23 for harm arising out of a general aviation accident, to the  
24 extent that this Act establishes a rule of law or procedure  
25 applicable to the claim.

1 (b) EFFECT ON SOVEREIGN IMMUNITY.—Nothing in  
2 this Act shall be construed to supersede or to waive or  
3 affect any defense of sovereign immunity asserted by the  
4 United States or any State.

5 (c) EFFECT ON LIABILITY.—Nothing in this Act  
6 shall be construed to affect the liability of a manufacturer,  
7 owner, or operator of any aircraft that is not a general  
8 aviation aircraft, or a person who repairs, maintains, or  
9 provides any other support for any aircraft that is not a  
10 general aviation aircraft, for damages for harm arising out  
11 of the operation of an aircraft that is not a general avia-  
12 tion aircraft.

13 (d) WORKERS' COMPENSATION.—No right of action  
14 for harm exists under this Act if that right would be incon-  
15 sistent with the provisions of any applicable workers' com-  
16 pensation law.

17 (e) APPLICABILITY.—The provisions of this Act shall  
18 apply only to—

19 (1) any manufacturer, owner, or operator of  
20 any general aviation aircraft, and any person who  
21 repairs, maintains, or provides any other support for  
22 such an aircraft;

23 (2) any occupant of a general aviation aircraft  
24 at the time of a general aviation accident, and any

1 person who brings an action for harm caused by  
2 such accident on behalf of such occupant; and

3 (3) any nonoccupant of a general aviation air-  
4 craft at the time of a general aviation accident, only  
5 if such nonoccupant is bringing an action for harm  
6 caused by such accident which arises out of the  
7 harm to an occupant of such aircraft at the time of  
8 such accident.

9 **SEC. 5. UNIFORM STANDARDS OF LIABILITY FOR GENERAL**  
10 **AVIATION ACCIDENTS.**

11 (a) IN GENERAL.—Any person claiming damages for  
12 harm arising out of a general aviation accident may bring  
13 an action against a party and may recover damages from  
14 such party, if such party was negligent and such neg-  
15 ligence is a proximate cause of the claimant's harm.

16 (b) ACTIONS AGAINST GENERAL AVIATION MANU-  
17 FACTURERS.—

18 (1) DEFECTIVE CONDITION.—Any person  
19 claiming damages for harm arising out of a general  
20 aviation accident may bring an action against a gen-  
21 eral aviation manufacturer of a product and may re-  
22 cover damages from such general aviation manufac-  
23 turer if—

24 (A) the product, when it left the control of  
25 the manufacturer, was in a defective condition

1           unreasonably dangerous for its intended pur-  
2           pose, according to engineering and manufactur-  
3           ing practices which were reasonably feasible;

4           (B) the defective condition is a proximate  
5           cause of the claimant's harm; and

6           (C) the general aviation aircraft was being  
7           used at the time of the accident for a purpose  
8           and in a manner for which it was designed and  
9           manufactured.

10          (2) EXTENT OF KNOWLEDGE.—Any person  
11          claiming damages for harm arising out of a general  
12          aviation accident may bring an action against a gen-  
13          eral aviation manufacturer of a product and may re-  
14          cover damages from such general aviation manufac-  
15          turer if—

16                (A) at the time that the product  
17                left the control of the manufacturer, the man-  
18                ufacturer—

19                   (i) knew, or in the exercise of reason-  
20                   able care should have known, about a dan-  
21                   ger connected with the product that caused  
22                   the claimant's harm; and

23                   (ii) failed to provide the warnings or  
24                   instructions that a person exercising rea-  
25                   sonable care would have provided with re-

1           spect to the danger which caused the harm  
2           alleged by the claimant, unless such  
3           warnings or instructions, if provided,  
4           would not have materially affected the con-  
5           duct of the user of the product; or

6           (B) after the product left the con-  
7           trol of the general aviation manufacturer, the  
8           manufacturer—

9                   (i) knew, or in the exercise of reason-  
10                  able care should have known, about the  
11                  danger which caused the claimant's harm;  
12                  and

13                  (ii) failed to take reasonable steps to  
14                  provide warnings or instructions, after the  
15                  manufacture of the product, which would  
16                  have been provided by a person exercising  
17                  reasonable care, unless such warnings or  
18                  instructions, if provided, would not have  
19                  materially affected the conduct of the  
20                  product user,

21           and the failure to provide warnings or instruc-  
22           tions described in subparagraph (A) or (B) is a  
23           proximate cause of the claimant's harm.

24           (3) EXPRESS WARRANTIES.—Any person claim-  
25           ing damages for harm arising out of general aviation

1 accident may bring an action against a general avia-  
2 tion manufacturer of a product and may recover  
3 damages from such general aviation manufacturer  
4 if—

5 (A) the manufacturer made an express  
6 warranty with respect to the product;

7 (B) such warranty relates to that aspect of  
8 the product which caused the harm;

9 (C) the product failed to conform to such  
10 warranty; and

11 (D) the failure of the product to conform  
12 to such warranty is a proximate cause of the  
13 claimant's harm.

14 (c) DEFENSES.—

15 (1) IN GENERAL.—In an action governed by  
16 subsection (b), a general aviation manufacturer shall  
17 not be liable if such manufacturer proves, by a pre-  
18 ponderance of the evidence, that—

19 (A) the defective condition could have been  
20 corrected by compliance with action described in  
21 an airworthiness directive issued by the Admin-  
22 istrator; and

23 (B) such directive was issued at a reason-  
24 able time before the date of the accident and

1 after the product left the control of the general  
2 aviation manufacturer.

3 (2) ADMISSIBILITY OF CERTAIN EVIDENCE.—In  
4 any action governed by subsection (b), evidence of  
5 compliance with standards, conditions or specifica-  
6 tions established, adopted or approved by the Fed-  
7 eral Aviation Administration shall be admissible with  
8 regard to whether the product was defective and un-  
9 reasonably dangerous for its intended purpose.

10 **SEC. 6. COMPARATIVE RESPONSIBILITY.**

11 (a) IN GENERAL.—All actions for harm arising out  
12 of a general aviation accident shall be governed by the  
13 principles of comparative responsibility. Comparative re-  
14 sponsibility attributed to the claimant's conduct shall not  
15 bar recovery in an action under this Act, but shall reduce  
16 any damages awarded to the claimant in an amount pro-  
17 portionate to the responsibility of the claimant. The trier  
18 of fact shall determine comparative responsibility by mak-  
19 ing findings indicating the percentage of total responsibil-  
20 ity for the claimant's harm attributable to the claimant,  
21 each defendant, each third-party defendant, and any other  
22 person not a party to the action.

23 (b) SEVERAL LIABILITY.—Except as provided in sub-  
24 section (c), a defendant is severally but not jointly liable  
25 in any action for harm arising out of a general aviation

1 accident, and the liability of any defendant in any such  
2 action shall be determined on the basis of such defendant's  
3 proportionate share of responsibility for the claimant's  
4 harm.

5 (c) EXCEPTION.—In any action for harm arising out  
6 of a general aviation accident—

7 (1) a general aviation manufacturer who is the  
8 builder or manufacturer of the airframe of the gen-  
9 eral aviation aircraft involved is jointly and severally  
10 liable for harm caused by a defective system, compo-  
11 nent, subassembly, or other part of such aircraft  
12 that the manufacturer installed or certified as part  
13 of the original type design for such aircraft; and

14 (2) a general aviation manufacturer who is the  
15 manufacturer of a system or component of the gen-  
16 eral aviation aircraft involved is jointly and severally  
17 liable for damages caused by a defective subassembly  
18 or other part of such system or component.

19 (d) ACTIONS FOR INDEMNITY.—A general aviation  
20 manufacturer and any other person jointly liable under  
21 subsection (c) shall have the right to bring an action for  
22 indemnity or contribution against any person with whom  
23 they are jointly liable under subsection (c).

1 **SEC. 7. TIME LIMITATION ON LIABILITY.**

2 (a) LIMITATION ON CIVIL ACTIONS.—Except as pro-  
3 vided in subsection (b), no civil action for harm arising  
4 out of a general aviation accident which is brought against  
5 a general aviation manufacturer may be brought for harm  
6 which is alleged to have been caused by an aircraft or a  
7 system, component, subassembly, or other part of an air-  
8 craft and which occurs more than—

9 (1) 20 years from—

10 (A) the date of delivery of the aircraft to  
11 its first purchaser or lessee, if delivered directly  
12 from the manufacturer; or

13 (B) the date of first delivery of the aircraft  
14 to a person engaged in the business of selling  
15 or leasing such an aircraft; or

16 (2) with respect to any system, component, sub-  
17 assembly, or other part which replaced another prod-  
18 uct in, or which was added to, the aircraft, and  
19 which is alleged to have caused the claimant's harm,  
20 twenty years from the date of the replacement or  
21 addition.

22 (b) EXPRESS WARRANTY EXCEPTION.—Subsection  
23 (a) does not apply in the case of harm to a claimant which  
24 occurs after the period set forth in subsection (a) if the  
25 general aviation manufacturer or the seller of the product  
26 that caused the claimant's harm gave an express warranty

1 that the product would be suitable, for the purpose for  
2 which it was intended, for a longer period of time.

3 (c) EFFECTS ON OTHER DUTIES.—Nothing in this  
4 section shall be construed to affect a person’s duty to pro-  
5 vide, after the sale or lease of an aircraft, to aircraft own-  
6 ers, and to repair facilities to which a license or certificate  
7 to perform repairs has been issued by the Administrator,  
8 additional or modified warnings or instructions regarding  
9 the use or maintenance of such aircraft or any system,  
10 component, or other part of such aircraft.

11 **SEC. 8. SUBSEQUENT REMEDIAL MEASURES.**

12 In any general aviation accident liability action gov-  
13 erned by this Act, evidence of any measure taken after  
14 an event which, if taken previously, would have made the  
15 event less likely to occur is not admissible to provide liabil-  
16 ity. Such evidence is admissible to the extent permitted  
17 under rule 407 of the Federal Rules of Evidence.

18 **SEC. 9. ADMISSIBILITY OF CERTAIN EVIDENCE.**

19 In an action governed by this Act, evidence of Fed-  
20 eral, State, or local income tax liability or any Social Secu-  
21 rity or other payroll tax liability attributable to past or  
22 future earnings, support, or profits and the present value  
23 of future earnings, support, or profits alleged to have been  
24 lost or diminished because of harm arising out of a general

1 aviation accident is admissible regarding proof of the  
2 claimant's harm.

3 **SEC. 10. PUNITIVE DAMAGES.**

4 (a) AWARD STANDARD.—Punitive damages may be  
5 awarded in an action under this Act for harm arising out  
6 of a general aviation accident only if the claimant estab-  
7 lishes by clear and convincing evidence that the harm suf-  
8 fered was the direct result of conduct manifesting a con-  
9 scious, flagrant indifference to the safety of those persons  
10 who might be harmed by use of the general aviation air-  
11 craft involved.

12 (b) EVIDENTIARY LIMITATION.—Evidence regarding  
13 the financial worth of a defendant or the defendant's prof-  
14 its or any other evidence relating solely to a claim for pu-  
15 nitive damages under this Act is not admissible unless the  
16 claimant establishes, before any such evidence is offered,  
17 that the claimant can present evidence that will establish  
18 prima facie proof of conduct manifesting a conscious, fla-  
19 grant indifference to the safety of those persons who might  
20 be harmed by use of the general aviation aircraft involved.

21 **SEC. 11. TIME LIMITATION ON BRINGING ACTIONS.**

22 Any action for harm arising out of a general aviation  
23 accident shall be barred, notwithstanding any State law,  
24 unless—

1           (1) the complaint is filed not later than 2 years  
2           after the date on which the accident occurred which  
3           caused the claimant's harm; and

4           (2) the summons and complaint are properly  
5           served upon the defendant not later than 120 days  
6           after the filing of such complaint, unless the party  
7           on whose behalf such service is required can show  
8           good cause why such service was not made within  
9           such 120-day period.

10 Paragraph (2) of this subsection shall not apply to service  
11 of process in a foreign country pursuant to rule 4(i) of  
12 the Federal Rules of Civil Procedure or any similar State  
13 law.

14 **SEC. 12. SANCTIONS.**

15           It is the intent of Congress that, with respect to any  
16 action governed by this Act, the sanctions for violation of  
17 rule 11 of the Federal Rules of Civil Procedure, including  
18 orders to pay to the other party or parties the amount  
19 of their reasonable expenses, including a reasonable attor-  
20 ney's fee, be strictly enforced.

21 **SEC. 13. JURISDICTION.**

22           (a) IN GENERAL.—The district courts of the United  
23 States, concurrently with the State courts, shall have  
24 original jurisdiction, in all civil actions where the matter  
25 in controversy exceeds the sum or value of \$50,000, exclu-

1 sive of interest and costs, for harm arising out of a general  
2 aviation accident and in all actions for indemnity or con-  
3 tribution described in section 6(d).

4 (b) REMOVAL TO DISTRICT COURT.—A civil action  
5 which is brought in a State court may be removed to the  
6 district court of the United States for the district embrac-  
7 ing the place where the action is pending, without the con-  
8 sent of any other party, by any defendant against whom  
9 a claim in such action is asserted for harm arising out  
10 of a general aviation accident.

11 (c) DETERMINATION UNDER STATE LAW.—In any  
12 case commenced in or removed to a district court of the  
13 United States under subsection (a) or (b), the court shall  
14 have jurisdiction to determine all claims under State law  
15 that arise out of the same general aviation accident, if a  
16 substantial question of fact is common to the claims under  
17 State law and to the Federal claim, defense, or counter-  
18 claim.

19 (d) VENUE.—

20 (1) IN GENERAL.—A civil action in which the  
21 district courts of the United States have jurisdiction  
22 under subsection (a) may be brought only in a dis-  
23 trict in which—

24 (A) the accident giving rise to the claim  
25 occurred; or

1 (B) any plaintiff or defendant resides.

2 (2) MOTIONS TO TRANSFER.—In an action  
3 pending in a district court of the United States  
4 under paragraph (1), a district court may, on mo-  
5 tion of any party or its own motion, transfer the ac-  
6 tion to any other district for the convenience of par-  
7 ties and witnesses in the interest of justice.

8 (3) CORPORATE RESIDENCES.—For purposes of  
9 this subsection, a corporation shall be considered to  
10 be a resident of any State in which it is incorporated  
11 or licensed to do business or is doing business.

12 **SEC. 14. SEVERABILITY.**

13 If any provision of this Act or the application of the  
14 provision to any person or circumstance is held invalid,  
15 the remainder of this Act and the application of the provi-  
16 sion to any other person or circumstance shall not be af-  
17 fected by such invalidation.

18 **SEC. 15. EFFECTIVE DATE.**

19 (a) APPLICABILITY.—This Act shall apply to any civil  
20 action for harm arising out of a general aviation accident  
21 which is filed on or after the date of enactment of this  
22 Act.

23 (b) LIBERAL LEAVE TO AMEND.—If an action gov-  
24 erned by this Act is filed not later than 180 days after  
25 the date of enactment of this Act, liberal leave shall be

- 1 given to a party to amend any pleading, motion, statement
- 2 of jurisdiction or venue, or other matter to conform to the
- 3 provisions of this Act.

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