

AVIATION DISASTER FAMILY ASSISTANCE ACT OF 1996

SEPTEMBER 17, 1996.—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

R E P O R T

[To accompany H.R. 3923]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 3923) to amend title 49, United States Code, to require the National Transportation Safety Board and individual air carriers to take actions to address the needs of families of passengers involved in aircraft accidents, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Aviation Disaster Family Assistance Act of 1996”.

SEC. 2. ASSISTANCE BY NATIONAL TRANSPORTATION SAFETY BOARD TO FAMILIES OF PASSENGERS INVOLVED IN AIRCRAFT ACCIDENTS.

(a) **AUTHORITY TO PROVIDE ASSISTANCE.**—

(1) **IN GENERAL.**—Subchapter III of chapter 11 of title 49, United States Code, is amended by adding at the end the following:

“§ 1136. Assistance to families of passengers involved in aircraft accidents

“(a) **IN GENERAL.**—As soon as practicable after being notified of an aircraft accident within the United States involving an air carrier or foreign air carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall—

“(1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families; and

“(2) designate an independent nonprofit organization, with experience in disasters and posttrauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

“(b) RESPONSIBILITIES OF THE BOARD.—The Board shall have primary Federal responsibility for facilitating the recovery and identification of fatally-injured passengers involved in an accident described in subsection (a).

“(c) RESPONSIBILITIES OF DESIGNATED ORGANIZATION.—The organization designated for an accident under subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:

“(1) To provide mental health and counseling services, in coordination with the disaster response team of the air carrier or foreign air carrier involved.

“(2) To take such actions as may be necessary to provide an environment in which the families may grieve in private.

“(3) To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.

“(4) To communicate with the families as to the roles of the organization, government agencies, and the air carrier or foreign air carrier involved with respect to the accident and the post-accident activities.

“(5) To arrange a suitable memorial service, in consultation with the families.

“(d) PASSENGER LISTS.—

“(1) REQUESTS FOR PASSENGER LISTS.—

“(A) REQUESTS BY DIRECTOR OF FAMILY SUPPORT SERVICES.—It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the air carrier or foreign air carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the aircraft involved in the accident.

“(B) REQUESTS BY DESIGNATED ORGANIZATION.—The organization designated for an accident under subsection (a)(2) may request from the air carrier or foreign air carrier involved in the accident a list described in subparagraph (A).

“(2) USE OF INFORMATION.—The director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

“(e) CONTINUING RESPONSIBILITIES OF THE BOARD.—In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident—

“(1) are briefed, prior to any public briefing, about the accident, its causes, and any other findings from the investigation; and

“(2) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

“(f) USE OF AIR CARRIER RESOURCES.—To the extent practicable, the organization designated for an accident under subsection (a)(2) shall coordinate its activities with the air carrier or foreign air carrier involved in the accident so that the resources of the carrier can be used to the greatest extent possible to carry out the organization’s responsibilities under this section.

“(g) PROHIBITED ACTIONS.—

“(1) ACTIONS TO IMPEDE THE BOARD.—No person (including a State or political subdivision) may impede the ability of the Board (including the director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.

“(2) UNSOLICITED COMMUNICATIONS.—In the event of an accident involving an air carrier providing interstate or foreign air transportation, no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney, representative of an attorney, insurance company, or air carrier litigation representative to an individual injured in the accident, or to a relative of an individual involved in the accident, before the 30th day following the date of the accident.

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

“(1) AIRCRAFT ACCIDENT.—The term ‘aircraft accident’ means any aviation disaster regardless of its cause or suspected cause.

“(2) PASSENGER.—The term ‘passenger’ includes an employee of an air carrier aboard an aircraft.”.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 11 of such title is amended by inserting after the item relating to section 1135 the following:

“1136. Assistance to families of passengers involved in aircraft accidents.”.

(b) PENALTIES.—Section 1155(a)(1) of such title is amended—

(1) by striking “or 1134(b) or (f)(1)” and inserting “, section 1134(b), section 1134(f)(1), or section 1136(g)”; and

(2) by striking “either of” and inserting “any of”.

SEC. 3. AIR CARRIER PLANS TO ADDRESS NEEDS OF FAMILIES OF PASSENGERS INVOLVED IN AIRCRAFT ACCIDENTS.

(a) IN GENERAL.—Chapter 411 of title 49, United States Code, is amended by adding at the end the following:

“§ 41113. Plans to address needs of families of passengers involved in aircraft accidents

“(a) SUBMISSION OF PLANS.—Not later than 6 months after the date of the enactment of this section, each air carrier holding a certificate of public convenience and necessity under section 41102 of this title shall submit to the Secretary and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in any aircraft accident involving an aircraft of the air carrier and resulting in a major loss of life.

“(b) CONTENTS OF PLANS.—A plan to be submitted by an air carrier under subsection (a) shall include, at a minimum, the following:

“(1) A plan for publicizing a reliable, toll-free telephone number, and for providing staff, to handle calls from the families of the passengers.

“(2) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, either by utilizing the services of the organization designated for the accident under section 1136(a)(2) of this title or the services of other suitably trained individuals.

“(3) An assurance that the notice described in paragraph (2) will be provided to the family of a passenger as soon as the air carrier has verified that the passenger was aboard the aircraft (whether or not the names of all of the passengers have been verified) and, to the extent practicable, in person.

“(4) An assurance that the air carrier will provide to the director of family support services designated for the accident under section 1136(a)(1) of this title, and to the organization designated for the accident under section 1136(a)(2) of this title, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the aircraft (whether or not such names have been verified), and will periodically update the list.

“(5) An assurance that the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger.

“(6) An assurance that if requested by the family of a passenger, any possession of the passenger within the control of the air carrier (regardless of its condition) will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation.

“(7) An assurance that any unclaimed possession of a passenger within the control of the air carrier will be retained by the air carrier for at least 18 months.

“(8) An assurance that the family of each passenger will be consulted about construction by the air carrier of any monument to the passengers, including any inscription on the monument.

“(9) An assurance that the treatment of the families of nonrevenue passengers (and any other victim of the accident) will be the same as the treatment of the families of revenue passengers.

“(10) An assurance that the air carrier will work with any organization designated under section 1136(a)(2) of this title on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following each accident.

“(11) An assurance that the air carrier will provide reasonable compensation to any organization designated under section 1136(a)(2) of this title for services provided by the organization.

“(12) An assurance that the air carrier will assist the family of a passenger in traveling to the location of the accident and provide for the physical care of the family while the family is staying at such location.

“(13) An assurance that the air carrier will commit sufficient resources to carry out the plan.

“(c) CERTIFICATE REQUIREMENT.—After the date that is 6 months after the date of the enactment of this section, the Secretary may not approve an application for a certificate of public convenience and necessity under section 41102 of this title unless the applicant has included as part of such application a plan that meets the requirements of subsection (b).

“(d) LIMITATION ON LIABILITY.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the air carrier in preparing or providing a passenger list pursuant to a plan submitted by the air carrier under subsection (b), unless such liability was caused by conduct of the air carrier which was grossly negligent or which constituted intentional misconduct.

“(e) AIRCRAFT ACCIDENT AND PASSENGER DEFINED.—In this section, the terms ‘aircraft accident’ and ‘passenger’ have the meanings such terms have in section 1136 of this title.”.

(b) CONFORMING AMENDMENT.—The table of sections for such chapter is amended by adding at the end the following:

“41113. Plans to address needs of families of passengers involved in aircraft accidents.”.

SEC. 4. ESTABLISHMENT OF TASK FORCE.

(a) ESTABLISHMENT.—The Secretary of Transportation, in cooperation with the National Transportation Safety Board, the Federal Emergency Management Agency, the American Red Cross, air carriers, and families which have been involved in aircraft accidents shall establish a task force consisting of representatives of such entities and families, representatives of air carrier employees, and representatives of such other entities as the Secretary considers appropriate.

(b) MODEL PLAN AND RECOMMENDATIONS.—The task force established pursuant to subsection (a) shall develop—

(1) a model plan to assist air carriers in responding to aircraft accidents;

(2) recommendations on methods to ensure that attorneys and representatives of media organizations do not intrude on the privacy of families of passengers involved in an aircraft accident;

(3) recommendations on methods to ensure that the families of passengers involved in an aircraft accident who are not citizens of the United States receive appropriate assistance;

(4) recommendations on methods to ensure that State mental health licensing laws do not act to prevent out-of-state mental health workers from working at the site of an aircraft accident or other related sites;

(5) recommendations on the extent to which military experts and facilities can be used to aid in the identification of the remains of passengers involved in an aircraft accident; and

(6) recommendations on methods to improve the timeliness of the notification provided by air carriers to the families of passengers involved in an aircraft accident, including—

(A) an analysis of the steps that air carriers would have to take to ensure that an accurate list of passengers on board the aircraft would be available within 1 hour of the accident and an analysis of such steps to ensure that such list would be available within 3 hours of the accident;

(B) an analysis of the added costs to air carriers and travel agents that would result if air carriers were required to take the steps described in subparagraph (A); and

(C) an analysis of any inconvenience to passengers, including flight delays, that would result if air carriers were required to take the steps described in subparagraph (A).

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to Congress a report containing the model plan and recommendations developed by the task force under subsection (b).

SEC. 5. LIMITATION ON STATUTORY CONSTRUCTION.

Nothing in this Act or any amendment made by this Act may be construed as limiting the actions that an air carrier may take, or the obligations that an air carrier may have, in providing assistance to the families of passengers involved in an aircraft accident.

REPORT

Airline travel is the safest mode of transportation. In 1995, 162 people died in commercial U.S. air carrier accidents. Over 3,300 people die per month on the nation's highways. Since aviation accidents are infrequent, airlines and government agencies are not always prepared to deal with all aspects of an aviation disaster. One area that clearly needs improvement is the communication with the families of accident victims.

After an accident, information about the crash and its victims is often difficult to obtain. Information as simple as who was on the aircraft can take hours or days to confirm. Family and friends of victims of aviation accidents have been so disappointed, and even outraged, with the way they were treated by government agencies, the involved airlines, the media, and certain lawyers that they have begun to organize and demand better information and treatment.

Insensitivity or ignorance by the involved airline or a government representative has caused additional pain and suffering to the families of accident victims. Some of these horror stories after aviation accidents include:

Impersonal messages left on answering machines such as one family that received a message as follows: "This is Pan Am calling. Your daughter Diane was on Pan Am flight 103. The plane went down over Scotland. There were no survivors. If you have any questions you may call us."

Another family recounts the story about how when they heard about the crash, they called the hotline number, but did not get any information until the next morning. The airline told them that their son was indeed a passenger, and the caller offered to report back every 15 minutes but never called back once.

After a crash near Roselawn, Indiana, there was a mass burial of the unidentified remains about which many of the victims' families claim they were not informed.

After an accident near Pittsburgh, some families claim that 38 caskets of unidentified human remains were buried without their knowledge the day before a special service was held where only 2 caskets containing unidentified human remains were shown. An airline spokesman said at the time that the airline did not tell relatives about the 38 caskets unless they asked because it thought the knowledge would be too distressing. Some families thought that the airline's attempt to "protect" them was unnecessary and deceitful.

Six months after the accident, relatives of people who died aboard USAir Flight 427 near Pittsburgh found some of their loved ones' belongings in a trash bin outside the hangar where the wreckage of the plane was stored. They found rings, watches, other jewelry, personal planners, address books, wallets, and other things that were important to the victims' family. These belongings were in poor condition since the items sat in the mud in a dumpster for 6 months.

These are only a few of the post-accident horror stories told by family members of aviation accident victims. Some of these family

members have been motivated to organize support groups. These groups are interested in making communication with the concerned parties better in anticipation of future aviation accidents.

Groups that have organized include the National Air Disaster Alliance and several organizations representing the families of victims of the bombing of Pan Am 103. These groups are seeking a more organized approach to dealing with tragic air disasters. They made a variety of recommendations in hearings before the Subcommittee on Aviation including:

Establishing a reliable 1-800 phone number assigned exclusively to handle accident related calls from family members and which is able to handle the large number of calls received after the accident.

Notifying family members in person by an appropriately trained person (such as a police officer or minister).

Giving family members immediate access to the passenger manifest list, regardless of its accuracy.

Designating a third party responsible for post trauma communication with the families including meetings immediately after the crash and at regular intervals thereafter.

Providing family members with printed material to explain the role of the National Transportation Safety Board (NTSB), the Department of Transportation (DOT), and the Federal Aviation Administration (FAA).

Requiring the airlines, coroner, and other involved parties to share all information they have about the crash and the victims with the family members as soon as it is available.

Requiring that everything be returned to family members and survivors and that nothing is destroyed.

Ensuring that if a mass burial plot is used, it should belong to the families. Families should decide what is written on the monument, and there should be written documentation that the families agreed to the inscriptions.

Providing better control of the media at the crash site.

These and other recommendations were discussed at the Aviation Subcommittee's hearing on June 19. At that time, the Subcommittee heard from the Department of Transportation (DOT), National Transportation Safety Board (NTSB), airlines, and family representatives including representatives of the Pan Am 103 bombing and the ValuJet crash. Interest in this issue was heightened by the recent TWA disaster.

Witnesses at the June 19 hearing discussed the above recommendations and the organization that could most successfully implement them. Some witnesses recommended that the American Red Cross be appointed to coordinate victims' families concerns. As with natural disasters, the Red Cross could quickly mobilize and have an immediate response team to deal with victims' families. Other witnesses believed that the Department of Transportation (DOT) or National Transportation Safety Board (NTSB) should provide a family advocate. The airlines argued that they should continue to have the primary responsibility in this area.

An additional issue discussed at the hearing was the inappropriateness of lawyers approaching families of victims immediately after a crash. Lawyers in Florida after the recent ValuJet crash

were characterized as overzealous attorneys who relentlessly pursued grieving relatives of crash victims. After employees from one law firm handed out business cards in the hotel lobby where family members were staying, and before and after a memorial service at the Everglades crash site, some relatives requested an injunction against the lawyers.

Another issue that received a great deal of attention since the TWA crash was the time it takes to notify families of the fate of their loved one. Airlines say that they can produce a passenger manifest instantly but that it is not 100% accurate and the list may contain no more than a first initial and last name of a passenger. Verifying the passenger list and obtaining names and phone numbers of next-of-kin can be delayed because names are misspelled, passengers travel under fictitious names, names are changed through marriage or divorce, passengers travel on someone else's ticket, passengers are bumped from flights at the last moment, passengers miss connections, and stand-by passengers are added at the last minute. Airlines fear that providing inaccurate information would be worse than providing no information at all so they usually seem to provide no information to families at all until the list has been verified.

Current law (49 U.S.C. 44909) requires U.S. airlines to provide the passenger manifest to the Secretary of State within 3 hours of being notified of an aviation disaster outside of the U.S. Implementation of this provision has been blocked since 1993 by successive Appropriations Acts, most recently section 319 of Public Law 104-50 (the FY 96 appropriation). There is no similar provision in current law applying to flights within the U.S.

In order to address the problems discussed above and at the June 19th hearing, the reported bill, H.R. 3923, the Aviation Disaster Family Assistance Act of 1996 was introduced on July 31, 1996. The reported bill would require the NTSB to designate both a director of family support services within the agency and an independent third party outside of government, such as the Red Cross, to help address the needs of the families. Notification of next-of-kin would continue to be the responsibility of the airlines but the manifest would have to be given immediately to the director and to the Red Cross, if requested, so that they could provide families with whatever information is available.

The NTSB is selected as the Federal government point of contact since it is involved in every incident and has the greatest storehouse of experience.

By a memorandum dated September 9, 1996, the President asked that the NTSB act as coordinator of federal services for families of aircraft accident victims and directed departments of the Executive Branch to recognize NTSB's role and enter into cooperative memoranda of understanding. This action complements the provisions of the reported bill.

However, the memorandum contemplates a commitment of federal resources outside the control of the NTSB while at the same time making NTSB the focal point of their delivery. Whether this can work in practice depends on the willingness of the Executive Branch agencies to bring forth their resources when called upon. The Committee urges these agencies to review existing resources to

ensure that the NTSB is given the resources to do the job called for by the September 9 memorandum and this legislation.

SECTION-BY-SECTION SUMMARY

Section 1.—Short title

This section provides that the Act may be cited as the “Aviation Disaster Family Assistance Act of 1996”.

Section 2.—Assistance by the National Transportation Safety Board to families of passengers involved in aircraft accidents

This section authorizes the National Transportation Safety Board (NTSB) to provide assistance to families of passengers involved in aircraft accidents within the United States. This includes not only those accidents that occur within the 50 States and the territories and possessions of the United States but also those that occur within the territorial sea of the United States as established by Presidential proclamation 5928 (December 27, 1988) and any other aircraft accident for which the NTSB is the lead aviation investigatory agency. The provision applies only to accidents involving air carriers and foreign air carriers as those terms are used in 49 U.S.C. 40102. This refers to commercial airlines, both large jet carriers and commuters, and to both scheduled airlines and charter airlines.

Subsection (a) adds a new section 1136 to title 49. Subsection (a) of this new section 1136 directs the NTSB Chairman to take action as soon as practical after being notified of an airline accident involving a major loss of life. This terminology is used to give the agency flexibility in deciding when to invoke the procedures of this section. It is the Committee’s observation that the complaints that gave rise to the need of this legislation have occurred only in major airline accidents where there have been a large number of deaths. While any loss of life is tragic, it seems that the procedures of the reported bill are not needed in accidents where there are few deaths. It will be the responsibility of the agency to decide where to draw the line in individual cases. Where the procedures of this bill are to be invoked, the NTSB Chairman is required to take the following actions:

(1) designate an NTSB employee as a director of family support services who shall be a point of contact within the government for the families and a liaison between the airline and the families;

(2) designate an independent organization with experience in disasters to be responsible for coordinating the emotional care and support of the families. In the hearings, most of the testimony focused on the Red Cross as the agency best qualified to perform the functions envisioned by this paragraph. However, the Salvation Army and other groups have also indicated an interest. The Committee has the highest regard for the Red Cross but considers it best to leave the decision as to which organization to designate to the NTSB. Also the provision is drafted with sufficient flexibility so that the NTSB could, if it considers it to be appropriate, select the organization on an annual or other periodic basis and then designate or notify that

organization each time an accident occurs. In this way, the designated organization might be better able to put systems in place, develop preparedness plans with major airlines and the NTSB, and be ready to respond immediately when a crash occurs. Whatever organization is selected, that organization will be responsible for coordinating the emotional care and support of the families. The physical care, such as providing transportation, hotel accommodations, and meals should continue to be the responsibility of the airline involved.

Subsection (b) of section 1136 states the NTSB shall have the primary Federal responsibility for facilitating the recovery and identification of passengers killed in the accident. While the actual hands-on work of recovery and identification is usually the responsibility of local authorities and medical examiners, this provision is intended to ensure that the NTSB can take such action as may be necessary to speed the recovery and identification of those killed in the accident.

Subsection (c) of section 1136 sets forth the following specific responsibilities of the independent organization designated above.

(1) Provide mental health and counseling services in coordination with the airline.

(2) Provide an environment where the families can grieve in private free from intrusion by lawyers and the press.

(3) Meet with families who come to the scene, contact the other families, and stay in contact until such time as assistance is no longer needed.

(4) Communicate with the families about the roles of the parties involved.

(5) Arrange a suitable memorial service in consultation with the families.

Subsection (d) of section 1136 directs the NTSB's director of family support services to request the passenger list as soon as possible. The subsection also gives the designated organization the option of requesting that list. Recipients of that list could not release it publicly but they could use it to provide information to the families. This is designed to supplement, but not replace, the airline's notification of the next-of-kin. Neither the family support services director or the designated organization would be responsible for the formal notification. That remains with the airline involved. However, this subsection is intended to give families another option for information in the first hours after the accident if they feel the airline is not being sufficiently responsive. Obviously, this list will have to be handled with care since it may not be entirely accurate.

Subsection (e) of section 1136 requires that NTSB brief the families prior to any public briefing about the accident. Additionally, the Board is required to individually inform the families about and allow them to attend any public hearings or Board meetings about the accident. Individually informing the families requires more than a notice in the Federal Register or other general announcement.

Subsection (f) requires the designated organization to coordinate its activities with the airline and enables it to use the resources of the airline to help it carry out its duties under this legislation.

Subsection (g) prohibits any person from impeding the NTSB, the director of family support services, or designated organization in carrying out their responsibilities or the ability of the families to have contact with one another. This subsection also includes a prohibition on lawyers making unsolicited communications to families within 30 days of the accident. This provision is designed to protect the privacy and tranquility of aircraft accident victims and their families from intrusive, unsolicited contact by lawyers, law firm employees, or others related to potential litigation during the period of immediate grieving. A similar prohibition in Florida (Rule 4-7.4(b)(1)) was recently upheld by the Supreme Court, *Florida Bar v. Went for It, Inc.*, 115 S.Ct. 2371 (1995).

Subsection (h) defines an aircraft accident under this bill as including any aviation disaster regardless of its cause or suspected cause. It also defines "passenger" so that airline employees are afforded the same benefits that passengers receive under this legislation.

Subsection (b) of section 2 of this bill establishes a \$1,000 civil penalty for anyone who impedes the NTSB, family advocate, or designated organization or who makes an unsolicited communication in violation of subsection (g) above.

Section 3.—Air carrier plans to address needs of families of passengers involved in aircraft accidents

This section adds a new section 41113 to title 49 requiring airlines to have plans to address the needs of families after accidents. Subsection (a) of section 41113 requires each airline to submit a plan to the Secretary and the NTSB within 6 months setting forth how that airline plans to address the needs of families of passengers involved in an accident. Subsection (b) sets forth the minimum elements of the plan, as follows:

(1) A reliable toll-free telephone number and the staff to handle the calls from families.

(2) A process for notifying families of the fate of passengers before the passenger list is publicly released using suitably trained individuals.

(3) An assurance that a family is notified in person, if practical, and as soon as the airline confirms that the next of kin of that family was in fact on board the aircraft even if the airline has not verified all the names on the passenger manifest.

(4) An assurance that the airline will provide the passenger manifest to the family support services director and the designated organization immediately upon request.

(5) An assurance that the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger.

(6) An assurance that, if requested by the family, the airline will return the possessions of the passenger unless those possessions are needed for the accident investigation.

(7) An assurance that any unclaimed items will be retained for at least 18 months.

(8) An assurance that each family will be consulted about the construction of any monument and the inscription thereon.

(9) An assurance that the treatment of the families of non-revenue passengers and victims on the ground will be the same as the treatment of the families of revenue passengers.

(10) An assurance that the airline will work with the designated organization on an ongoing basis to help the families.

(11) An assurance that the airline will provide reasonable compensation to the designated organization.

(12) An assurance that the airline will assist the family in traveling to the location of the accident and provide for the physical care, such as hotel and meals, of the families.

(13) An assurance that the airline will commit sufficient resources to carry out the above plan.

Subsection (c) of section 4113 requires a new airline to have a plan complying with the above requirements before receiving a certificate to fly from DOT.

Subsection (d) states that an airline shall not be liable for damages arising out of the preparation or provision of a passenger list to the family services director or the designated organization.

Subsection (e) of section 41113 defines an aircraft accident and passenger in the same way as section 1136 summarized above.

Section 4.—Establishment of task force

This section direct DOT, to establish a task force with NTSB, the Federal Emergency Management Agency (FEMA), the Red Cross, the airlines, airline employees, the families, and other appropriate parties that would—

(1) develop a model plan that airlines could adopt and use to meet the needs of families of passengers involved in airline accidents:

(2) make recommendations on ways to ensure that lawyers and the press do not intrude on the privacy of families;

(3) recommend ways to ensure that citizens of other countries receive appropriate assistance;

(4) recommend ways to ensure that State mental health licensing laws do not act to prevent out-of-state mental health workers from helping at the location of the accident;

(5) recommend whether and how to get the military experts and facilities involved in the identification of passenger remains to help speed up the process; and

(6) recommend ways to speed up the notification of next-of-kin including analysis of the costs and delays that would result if any of these recommendations were adopted.

This section lists the key members of the task force but that is not intended to be the exclusive list. Among the family members, the Committee recommends that the National Air Disaster Alliance and the organizations representing the families of Pan Am 103 be included on the Task Force. In addition, the Committee believes that the National Foundation for Mortuary Care and the Tragedy Assistance Program for Survivors (TAPS) would be valuable additions to the Task Force.

Section 5.—Limitation on statutory construction

This section makes clear that airlines may do more than the minimum required by this bill to help the families. The Committee strongly believes that they should.

HEARINGS AND LEGISLATIVE HISTORY

The Subcommittee on Aviation held hearings on the issue of treatment of families after airline accidents on June 19, 1996. H.R. 3923 was introduced on July 31, 1996. A hearing was held on that bill on September 5, 1996.

On September 11, 1996, the Subcommittee on Aviation reported the bill, by unanimous voice vote, to the Committee on Transportation and Infrastructure. On September 12, 1996 the Committee on Transportation and Infrastructure ordered the bill reported, with an amendment, by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 3923 will have no significant inflationary impact on prices and costs in the operation of the national economy.

COSTS OF THE LEGISLATION

Clause 7 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.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(B) of rule XI 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 2(1)(3)(D) of rule XI 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. 3923.

3. With respect to the requirement of clause 2(1)(3)(C) of Rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 3923 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 16, 1996.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3923, the Aviation Disaster Family Assistance Act of 1996, as ordered reported by the House Committee on Transportation and Infrastructure on September 12, 1996. This bill would require the National Transportation Safety Board (NTSB) and air carriers to become actively involved in addressing the needs of families of passengers involved in aircraft accidents. CBO estimates that implementing H.R. 3923 would cost the federal government about \$750,000 in fiscal year 1997, and about \$700,000 each year thereafter, assuming appropriations of the necessary amounts. Enacting H.R. 3923 could increase collections of civil penalties, which are federal receipts, but CBO estimates that any such increases would be less than \$500,000 annually. Nevertheless, pay-as-you-go procedures would apply.

Bill Purpose.—H.R. 3923 would require the NTSB to designate an employee to be a director of family support services and to serve as the contact person for families of passengers who are in aircraft accidents and the liaison between the air carrier and such families. The director of family support services also would be responsible for obtaining the passenger lists and providing information on such lists to families of passengers to the extent that the director considers appropriate.

The bill also would require the NTSB to designate an independent nonprofit organization that would be responsible for mental health counseling, meeting with the contacting families, and arranging memorial services. The NTSB would facilitate the recovery and identification of passengers and work closely with families to ensure that they are informed of developments in the investigation of an accident. The designated organization would be compensated by air carriers.

In addition, this bill would require the Secretary of Transportation, NTSB, the Federal Emergency Management Agency, the American Red Cross, air carriers, and families that have been involved in aircraft accidents to establish a task force comprised of representatives of these groups, air carrier employees, and other entities designated by the Secretary. This task force would, in addition to developing numerous recommendations, transmit a report to the Congress within a year of the bill's enactment.

Federal Budgetary Impact.—Based on information from the Department of Transportation, CBO estimates that the NTSB would need an additional seven employees to fulfill the new requirements at a cost of about \$700,000 annually. These staff positions would include the director of family support services and other technical and administrative staff. The work of the task force and the report to the Congress would cost the Office of the Secretary an additional \$50,000 in 1997. In both cases, such spending would be subject to appropriation of the necessary amounts.

The bill would prohibit two types of actions. It would establish civil penalties for hindering the ability of the NTSB and the non-profit organization to carry out their responsibilities or the ability of families of passengers to contact each other. Civil penalties would also be established against lawyers who make unsolicited contacts with injured individuals or family members before 30 days after an accident. CBO estimates that establishing such penalties would increase governmental receipts by less than \$500,000 annually.

Intergovernmental Mandates.—H.R. 3923 contains an intergovernmental mandate because it would prohibit any person, including a state and local government, from impeding the NTSB or the designated organization in their authorized assistance activities. CBO estimates that state and local governments would not incur any costs in complying with this mandate.

Private-Sector Mandates.—CBO has identified three private-sector mandates in this bill. Two of these mandates would prohibit certain activities related to aircraft accidents, as explained above. The other would impose new planning requirements on air carriers. CBO estimates that the net direct costs to the private sector would be well under the \$100 million threshold. Compliance with the two prohibitions would impose no costs on the private sector. CBO estimates that the penalties associated with violating those prohibitions could result in payments to the government but that such receipts would total less than \$500,000 annually.

The third mandate pertains to the bill's requirement that air carriers holding a certificate of public convenience and necessity submit and comply with a plan that addresses the needs of the families of passengers, including employees of the air carrier on the aircraft, involved in an aircraft accident resulting in a major loss of life. This plan would be submitted to the Secretary of Transportation and the Chairman of the National Transportation Safety Board no later than six months after enactment of the bill. Air carriers that hold a certificate of public convenience and necessity include both passenger and cargo air carriers, many of which are currently modifying their existing plans to address the needs of the families of passengers involved in aircraft accidents. Based on information from a sampling of passenger and cargo carriers, CBO estimates that the net direct costs of any further modifications would be small for large carriers since they are revising their current plans to increase consideration of the needs of the families of those passengers.

However, some of the new and small cargo-only carriers and air carriers based in Alaska do not have any type of formal written plan and this bill would require them to submit one. There are fewer than 40 such carriers in Alaska. According to some of those carriers, the cost of designing a plan would not be large since it would involve a one-time effort of a current employee. Implementation costs would be small in any given year since the air carrier would have to carry out the plan only if it were involved in an aircraft accident resulting in a major loss of life. Netted against those costs would be savings that affected air carriers might realize by a provision that would limit the liability of an air carrier arising out of its performance in preparing or providing the passenger list

pursuant to the requirements of this bill. Thus, net direct costs to air carriers should be well below the threshold for private-sector mandates.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Clare Doherty (for federal costs), and Karen McVey (for the state and local costs), and Jean Wooster (for the impact on the private sector).

Sincerely,

JUNE E. O'NEILL, *Director.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

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SUBTITLE II—OTHER GOVERNMENT AGENCIES

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CHAPTER 11—NATIONAL TRANSPORTATION SAFETY BOARD

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SUBCHAPTER III—AUTHORITY

1131. General authority.

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1136. *Assistance to families of passengers involved in aircraft accidents.*

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SUBCHAPTER III—AUTHORITY

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§1136. Assistance to families of passengers involved in aircraft accidents

(a) *IN GENERAL.*—As soon as practicable after being notified of an aircraft accident within the United States involving an air carrier or foreign air carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall—

(1) *designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families; and*

(2) *designate an independent nonprofit organization, with experience in disasters and posttrauma communication with families, which shall have primary responsibility for coordinating*

the emotional care and support of the families of passengers involved in the accident.

(b) *RESPONSIBILITIES OF THE BOARD.—The Board shall have primary Federal responsibility for facilitating the recovery and identification of fatally-injured passengers involved in an accident described in subsection (a).*

(c) *RESPONSIBILITIES OF DESIGNATED ORGANIZATION.—The organization designated for an accident under subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:*

(1) *To provide mental health and counseling services, in coordination with the disaster response team of the air carrier or foreign air carrier involved.*

(2) *To take such actions as may be necessary to provide an environment in which the families may grieve in private.*

(3) *To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.*

(4) *To communicate with the families as to the roles of the organization, government agencies, and the air carrier or foreign air carrier involved with respect to the accident and the post-accident activities.*

(5) *To arrange a suitable memorial service, in consultation with the families.*

(d) *PASSENGER LISTS.—*

(1) *REQUESTS FOR PASSENGER LISTS.—*

(A) *REQUESTS BY DIRECTOR OF FAMILY SUPPORT SERVICES.—It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the air carrier or foreign air carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the aircraft involved in the accident.*

(B) *REQUESTS BY DESIGNATED ORGANIZATION.—The organization designated for an accident under subsection (a)(2) may request from the air carrier or foreign air carrier involved in the accident a list described in subparagraph (A).*

(2) *USE OF INFORMATION.—The director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.*

(e) *CONTINUING RESPONSIBILITIES OF THE BOARD.—In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident—*

(1) are briefed, prior to any public briefing, about the accident, its causes, and any other findings from the investigation; and

(2) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

(f) *USE OF AIR CARRIER RESOURCES.*—To the extent practicable, the organization designated for an accident under subsection (a)(2) shall coordinate its activities with the air carrier or foreign air carrier involved in the accident so that the resources of the carrier can be used to the greatest extent possible to carry out the organization’s responsibilities under this section.

(g) *PROHIBITED ACTIONS.*—

(1) *ACTIONS TO IMPEDE THE BOARD.*—No person (including a State or political subdivision) may impede the ability of the Board (including the director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.

(2) *UNSOLICITED COMMUNICATIONS.*—In the event of an accident involving an air carrier providing interstate or foreign air transportation, no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney, representative of an attorney, insurance company, or air carrier litigation representative to an individual injured in the accident, or to a relative of an individual involved in the accident, before the 30th day following the date of the accident.

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

(1) *AIRCRAFT ACCIDENT.*—The term “aircraft accident” means any aviation disaster regardless of its cause or suspected cause.

(2) *PASSENGER.*—The term “passenger” includes an employee of an air carrier aboard an aircraft.

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SUBCHAPTER IV—ENFORCEMENT AND PENALTIES

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§ 1155. Aviation penalties

(a) *CIVIL PENALTY.*—(1) A person violating section 1132 [or 1134(b) or (f)(1)], section 1134(b), section 1134(f)(1), or section 1136(g) (related to an aircraft accident) of this title or a regulation prescribed or order issued under [either of] any of those sections is liable to the United States Government for a civil penalty of not more than \$1,000. A separate violation occurs for each day a violation continues.

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SUBTITLE VII—AVIATION PROGRAMS

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SUBPART II—ECONOMIC REGULATION

CHAPTER 411—AIR CARRIER CERTIFICATES

Sec.

41101. Requirement for a certificate.

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41113. *Plans to address needs of families of passengers involved in aircraft accidents.*

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§41113. Plans to address needs of families of passengers involved in aircraft accidents

(a) *SUBMISSION OF PLANS.*—Not later than 6 months after the date of the enactment of this section, each air carrier holding a certificate of public convenience and necessity under section 41102 of this title shall submit to the Secretary and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in any aircraft accident involving an aircraft of the air carrier and resulting in a major loss of life.

(b) *CONTENTS OF PLANS.*—A plan to be submitted by an air carrier under subsection (a) shall include, at a minimum, the following:

(1) A plan for publicizing a reliable, toll-free telephone number, and for providing staff, to handle calls from the families of the passengers.

(2) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, either by utilizing the services of the organization designated for the accident under section 1136(a)(2) of this title or the services of other suitably trained individuals.

(3) An assurance that the notice described in paragraph (2) will be provided to the family of a passenger as soon as the air carrier has verified that the passenger was aboard the aircraft (whether or not the names of all of the passengers have been verified) and, to the extent practicable, in person.

(4) An assurance that the air carrier will provide to the director of family support services designated for the accident under section 1136(a)(1) of this title, and to the organization designated for the accident under section 1136(a)(2) of this title, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the aircraft (whether or not such names have been verified), and will periodically update the list.

(5) An assurance that the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger.

(6) An assurance that if requested by the family of a passenger, any possession of the passenger within the control of the air carrier (regardless of its condition) will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation.

(7) *An assurance that any unclaimed possession of a passenger within the control of the air carrier will be retained by the air carrier for at least 18 months.*

(8) *An assurance that the family of each passenger will be consulted about construction by the air carrier of any monument to the passengers, including any inscription on the monument.*

(9) *An assurance that the treatment of the families of non-revenue passengers (and any other victim of the accident) will be the same as the treatment of the families of revenue passengers.*

(10) *An assurance that the air carrier will work with any organization designated under section 1136(a)(2) of this title on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following each accident.*

(11) *An assurance that the air carrier will provide reasonable compensation to any organization designated under section 1136(a)(2) of this title for services provided by the organization.*

(12) *An assurance that the air carrier will assist the family of a passenger in traveling to the location of the accident and provide for the physical care of the family while the family is staying at such location.*

(13) *An assurance that the air carrier will commit sufficient resources to carry out the plan.*

(c) *CERTIFICATE REQUIREMENT.—After the date that is 6 months after the date of the enactment of this section, the Secretary may not approve an application for a certificate of public convenience and necessity under section 41102 of this title unless the applicant has included as part of such application a plan that meets the requirements of subsection (b).*

(d) *LIMITATION ON LIABILITY.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the air carrier in preparing or providing a passenger list pursuant to a plan submitted by the air carrier under subsection (b), unless such liability was caused by conduct of the air carrier which was grossly negligent or which constituted intentional misconduct.*

(e) *AIRCRAFT ACCIDENT AND PASSENGER DEFINED.—In this section, the terms “aircraft accident” and “passenger” have the meanings such terms have in section 1136 of this title.*

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