

106TH CONGRESS
1ST SESSION

S. 1139

To amend title 49, United States Code, relating to civil penalties for unruly passengers of air carriers and to provide for the protection of employees providing air safety information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 26, 1999

Mr. REID (for himself and Mr. FRIST) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 49, United States Code, relating to civil penalties for unruly passengers of air carriers and to provide for the protection of employees providing air safety information, and for other purposes.

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. PENALTIES FOR UNRULY PASSENGERS.**

4 (a) IN GENERAL.—Chapter 463 of title 49, United
5 States Code, is amended by adding at the end the fol-
6 lowing:

7 **“§ 46317. Interference with cabin or flight crew**

8 **“(a) GENERAL RULE.—**

1 “(1) IN GENERAL.—An individual who inter-
2 feres with the duties or responsibilities of the flight
3 crew or cabin crew of a civil aircraft or takes any
4 action that poses an imminent threat to the safety
5 of the aircraft or other individuals on the aircraft is
6 liable to the United States Government for a civil
7 penalty of not more than \$25,000.

8 “(2) ADDITIONAL PENALTIES.—In addition or
9 as an alternative to the penalty under paragraph
10 (1), the Secretary of Transportation (referred to in
11 this section as the ‘Secretary’) may prohibit the indi-
12 vidual from flying as a passenger on an aircraft used
13 to provide air transportation for a period of not
14 more than 1 year.

15 “(b) NOTIFICATION OF AIR CARRIERS.—Not later
16 than 10 days after issuing an order prohibiting an indi-
17 vidual from flying under subsection (a)(2), the Secretary
18 shall notify all air carriers of—

19 “(1) the prohibition; and

20 “(2) the period of the prohibition.

21 “(c) RESPONSIBILITY OF AIR CARRIERS.—After a
22 notification of an order issued under subsection (a)(2), an
23 air carrier who provides air transportation for the indi-
24 vidual prohibited from flying during the period of the pro-
25 hibition under that subsection is liable to the United

1 States Government for a civil penalty of not more than
2 \$25,000.

3 “(d) COMPROMISE AND SETOFF.—

4 “(1) COMPROMISE.—The Secretary may com-
5 promise the amount of a civil penalty imposed under
6 this section.

7 “(2) SETOFF.—The United States Government
8 may deduct the amount of a civil penalty imposed or
9 compromised under this section from amounts the
10 Government owes the person liable for the penalty.”.

11 (b) CONFORMING AMENDMENT.—The table of sec-
12 tions for chapter 463 of title 49, United States Code, is
13 amended by adding at the end the following:

“46317. Interference with cabin or flight crew.”.

14 **SEC. 2. PROTECTION OF EMPLOYEES PROVIDING AIR SAFE-**
15 **TY INFORMATION.**

16 (a) IN GENERAL.—Chapter 421 of title 49, United
17 States Code, is amended by adding at the end the fol-
18 lowing:

19 “SUBCHAPTER III—WHISTLEBLOWER
20 PROTECTION PROGRAM

21 “§ 42121. Protection of employees providing air safe-
22 ty information

23 “(a) DISCRIMINATION AGAINST AIRLINE EMPLOY-
24 EES.—No air carrier or contractor or subcontractor of an
25 air carrier may discharge an employee of the air carrier

1 or the contractor or subcontractor of an air carrier or oth-
2 erwise discriminate against any such employee with re-
3 spect to compensation, terms, conditions, or privileges of
4 employment because the employee (or any person acting
5 pursuant to a request of the employee)—

6 “(1) provided, caused to be provided, or is
7 about to provide or cause to be provided, to the Fed-
8 eral Government information relating to any viola-
9 tion or alleged violation of any order, regulation, or
10 standard of the Federal Aviation Administration or
11 any other provision of Federal law relating to air
12 carrier safety under this subtitle or any other law of
13 the United States;

14 “(2) has filed, caused to be filed, or is about to
15 file or cause to be filed, a proceeding relating to any
16 violation or alleged violation of any order, regulation,
17 or standard of the Federal Aviation Administration
18 or any other provision of Federal law relating to air
19 carrier safety under this subtitle or any other law of
20 the United States;

21 “(3) testified or will testify in such a pro-
22 ceeding; or

23 “(4) assisted or participated or is about to as-
24 sist or participate in such a proceeding.

1 “(b) DEPARTMENT OF LABOR COMPLAINT PROCE-
2 DURE.—

3 “(1) FILING AND NOTIFICATION.—

4 “(A) IN GENERAL.—In accordance with
5 this paragraph, a person may file (or have a
6 person file on behalf of that person) a com-
7 plaint with the Secretary of Labor if that per-
8 son believes that an air carrier or contractor or
9 subcontractor of an air carrier discharged or
10 otherwise discriminated against that person in
11 violation of subsection (a).

12 “(B) REQUIREMENTS FOR FILING COM-
13 PLAINTS.—A complaint referred to in subpara-
14 graph (A) may be filed not later than 90 days
15 after an alleged violation occurs. The complaint
16 shall state the alleged violation.

17 “(C) NOTIFICATION.—Upon receipt of a
18 complaint submitted under subparagraph (A),
19 the Secretary of Labor shall notify the air car-
20 rier, contractor, or subcontractor named in the
21 complaint and the Administrator of the Federal
22 Aviation Administration of the—

23 “(i) filing of the complaint;

24 “(ii) allegations contained in the com-
25 plaint;

1 “(iii) substance of evidence supporting
2 the complaint; and

3 “(iv) opportunities that are afforded
4 to the air carrier, contractor, or subcon-
5 tractor under paragraph (2).

6 “(2) INVESTIGATION; PRELIMINARY ORDER.—

7 “(A) IN GENERAL.—

8 “(i) INVESTIGATION.—Not later than
9 60 days after receipt of a complaint filed
10 under paragraph (1) and after affording
11 the person named in the complaint an op-
12 portunity to submit to the Secretary of
13 Labor a written response to the complaint
14 and an opportunity to meet with a rep-
15 resentative of the Secretary to present
16 statements from witnesses, the Secretary
17 of Labor shall conduct an investigation
18 and determine whether there is reasonable
19 cause to believe that the complaint has
20 merit and notify in writing the complain-
21 ant and the person alleged to have com-
22 mitted a violation of subsection (a) of the
23 Secretary’s findings.

24 “(ii) ORDER.—Except as provided in
25 subparagraph (B), if the Secretary of

1 Labor concludes that there is reasonable
2 cause to believe that a violation of sub-
3 section (a) has occurred, the Secretary
4 shall accompany the findings referred to in
5 clause (i) with a preliminary order pro-
6 viding the relief prescribed under para-
7 graph (3)(B).

8 “(iii) OBJECTIONS.—Not later than
9 30 days after the date of notification of
10 findings under this paragraph, the person
11 alleged to have committed the violation or
12 the complainant may file objections to the
13 findings or preliminary order and request a
14 hearing on the record.

15 “(iv) EFFECT OF FILING.—The filing
16 of objections under clause (iii) shall not op-
17 erate to stay any reinstatement remedy
18 contained in the preliminary order.

19 “(v) HEARINGS.—Hearings conducted
20 pursuant to a request made under clause
21 (iii) shall be conducted expeditiously and
22 governed by the Federal Rules of Civil
23 Procedure. If a hearing is not requested
24 during the 30-day period prescribed in
25 clause (iii), the preliminary order shall be

1 deemed a final order that is not subject to
2 judicial review.

3 “(B) REQUIREMENTS.—

4 “(i) REQUIRED SHOWING BY COM-
5 PLAINANT.—The Secretary of Labor shall
6 dismiss a complaint filed under this sub-
7 section and shall not conduct an investiga-
8 tion otherwise required under subpara-
9 graph (A) unless the complainant makes a
10 prima facie showing that any behavior de-
11 scribed in paragraphs (1) through (4) of
12 subsection (a) was a contributing factor in
13 the unfavorable personnel action alleged in
14 the complaint.

15 “(ii) SHOWING BY EMPLOYER.—Not-
16 withstanding a finding by the Secretary
17 that the complainant has made the show-
18 ing required under clause (i), no investiga-
19 tion otherwise required under subpara-
20 graph (A) shall be conducted if the em-
21 ployer demonstrates, by clear and con-
22 vincing evidence, that the employer would
23 have taken the same unfavorable personnel
24 action in the absence of that behavior.

“(iii) CRITERIA FOR DETERMINATION
 BY SECRETARY.—The Secretary may de-
 termine that a violation of subsection (a)
 has occurred only if the complainant dem-
 onstrates that any behavior described in
 paragraphs (1) through (4) of subsection
 (a) was a contributing factor in the unfa-
 vorable personnel action alleged in the
 complaint.

“(iv) PROHIBITION.—Relief may not
 be ordered under subparagraph (A) if the
 employer demonstrates by clear and con-
 vincing evidence that the employer would
 have taken the same unfavorable personnel
 action in the absence of that behavior.

“(3) FINAL ORDER.—

“(A) DEADLINE FOR ISSUANCE; SETTLE-
 MENT AGREEMENTS.—

“(i) IN GENERAL.—Not later than
 120 days after conclusion of a hearing
 under paragraph (2), the Secretary of
 Labor shall issue a final order that—

“(I) provides relief in accordance
 with this paragraph; or

“(II) denies the complaint.

1 “(ii) SETTLEMENT AGREEMENT.—At
2 any time before issuance of a final order
3 under this paragraph, a proceeding under
4 this subsection may be terminated on the
5 basis of a settlement agreement entered
6 into by the Secretary of Labor, the com-
7 plainant, and the air carrier, contractor, or
8 subcontractor alleged to have committed
9 the violation.

10 “(B) REMEDY.—If, in response to a com-
11 plaint filed under paragraph (1), the Secretary
12 of Labor determines that a violation of sub-
13 section (a) has occurred, the Secretary of Labor
14 shall order the air carrier, contractor, or sub-
15 contractor that the Secretary of Labor deter-
16 mines to have committed the violation to—

17 “(i) take action to abate the violation;

18 “(ii) reinstate the complainant to the
19 former position of the complainant and en-
20 sure the payment of compensation (includ-
21 ing back pay) and the restoration of terms,
22 conditions, and privileges associated with
23 the employment; and

24 “(iii) provide compensatory damages
25 to the complainant.

1 “(C) COSTS OF COMPLAINT.—If the Sec-
2 retary of Labor issues a final order that pro-
3 vides for relief in accordance with this para-
4 graph, the Secretary of Labor, at the request of
5 the complainant, shall assess against the air
6 carrier, contractor, or subcontractor named in
7 the order an amount equal to the aggregate
8 amount of all costs and expenses (including at-
9 torney and expert witness fees) reasonably in-
10 curred by the complainant (as determined by
11 the Secretary of Labor) for, or in connection
12 with, the bringing of the complaint that re-
13 sulted in the issuance of the order.

14 “(4) FRIVOLOUS COMPLAINTS.—A complaint
15 brought under this section that is found to be frivo-
16 lous or to have been brought in bad faith shall be
17 governed by Rule 11 of the Federal Rules of Civil
18 Procedure.

19 “(5) REVIEW.—

20 “(A) APPEAL TO COURT OF APPEALS.—

21 “(i) IN GENERAL.—Not later than 60
22 days after a final order is issued under
23 paragraph (3), a person adversely affected
24 or aggrieved by that order may obtain re-
25 view of the order in the United States

1 court of appeals for the circuit in which
 2 the violation allegedly occurred or the cir-
 3 cuit in which the complainant resided on
 4 the date of that violation.

5 “(ii) REQUIREMENTS FOR JUDICIAL
 6 REVIEW.—A review conducted under this
 7 paragraph shall be conducted in accord-
 8 ance with chapter 7 of title 5. The com-
 9 mencement of proceedings under this sub-
 10 paragraph shall not, unless ordered by the
 11 court, operate as a stay of the order that
 12 is the subject of the review.

13 “(B) LIMITATION ON COLLATERAL AT-
 14 TACK.—An order referred to in subparagraph
 15 (A) shall not be subject to judicial review in any
 16 criminal or other civil proceeding.

17 “(6) ENFORCEMENT OF ORDER BY SECRETARY
 18 OF LABOR.—

19 “(A) IN GENERAL.—If an air carrier, con-
 20 tractor, or subcontractor named in an order
 21 issued under paragraph (3) fails to comply with
 22 the order, the Secretary of Labor may file a
 23 civil action in the United States district court
 24 for the district in which the violation occurred
 25 to enforce that order.

1 “(B) RELIEF.—In any action brought
 2 under this paragraph, the district court shall
 3 have jurisdiction to grant any appropriate form
 4 of relief, including injunctive relief and compen-
 5 satory damages.

6 “(7) ENFORCEMENT OF ORDER BY PARTIES.—

7 “(A) COMMENCEMENT OF ACTION.—A per-
 8 son on whose behalf an order is issued under
 9 paragraph (3) may commence a civil action
 10 against the air carrier, contractor, or subcon-
 11 tractor named in the order to require compli-
 12 ance with the order. The appropriate United
 13 States district court shall have jurisdiction,
 14 without regard to the amount in controversy or
 15 the citizenship of the parties, to enforce the
 16 order.

17 “(B) ATTORNEY FEES.—In issuing any
 18 final order under this paragraph, the court may
 19 award costs of litigation (including reasonable
 20 attorney and expert witness fees) to any party
 21 if the court determines that the awarding of
 22 those costs is appropriate.

23 “(c) MANDAMUS.—Any nondiscretionary duty im-
 24 posed by this section shall be enforceable in a mandamus
 25 proceeding brought under section 1361 of title 28.

1 “(d) NONAPPLICABILITY TO DELIBERATE VIOLA-
 2 TIONS.—Subsection (a) shall not apply with respect to an
 3 employee of an air carrier, or contractor or subcontractor
 4 of an air carrier who, acting without direction from the
 5 air carrier (or an agent, contractor, or subcontractor of
 6 the air carrier), deliberately causes a violation of any re-
 7 quirement relating to air carrier safety under this subtitle
 8 or any other law of the United States.

9 “(e) CONTRACTOR DEFINED.—In this section, the
 10 term ‘contractor’ means a company that performs safety-
 11 sensitive functions by contract for an air carrier.”.

12 (b) CONFORMING AMENDMENT.—The analysis for
 13 chapter 421 of title 49, United States Code, is amended
 14 by adding at the end the following:

“SUBCHAPTER III—WHISTLEBLOWER PROTECTION PROGRAM

“42121. Protection of employees providing air safety information.

15 (c) CIVIL PENALTY.—Section 46301(a)(1)(A) of title
 16 49, United States Code, is amended by striking “sub-
 17 chapter II of chapter 421,” and inserting “subchapter II
 18 or III of chapter 421,”.

19 **SEC. 3. DEPUTIZING OF STATE AND LOCAL LAW ENFORCE-**
 20 **MENT OFFICERS.**

21 (a) DEFINITIONS.—In this section:

1 (1) AIRCRAFT.—The term “aircraft” has the
2 meaning given that term in section 40102 of title
3 49, United States Code.

4 (2) AIR TRANSPORTATION.—The term “air
5 transportation” has the meaning given that term in
6 section 40102 of title 49, United States Code.

7 (3) ATTORNEY GENERAL.—The term “Attorney
8 General” means the Attorney General of the United
9 States.

10 (b) ESTABLISHMENT OF A PROGRAM TO DEPUTIZED
11 LOCAL LAW ENFORCEMENT OFFICERS.—

12 (1) IN GENERAL.—Not later than 180 days
13 after the date of enactment of this Act, the Attorney
14 General shall—

15 (A) establish a program under which the
16 Attorney General may deputize State and local
17 law enforcement officers as Deputy United
18 States Marshals for the limited purpose of en-
19 forcing Federal laws that regulate security on
20 board aircraft, including laws relating to vio-
21 lent, abusive, or disruptive behavior by pas-
22 sengers of air transportation; and

23 (B) encourage the participation of law en-
24 forcement officers of State and local govern-

1 ments in the program established under sub-
2 paragraph (A).

3 (2) CONSULTATION.—In establishing the pro-
4 gram under paragraph (1), the Attorney General
5 shall consult with appropriate officials of—

6 (A) the Federal Government (including the
7 Administrator of the Federal Aviation Adminis-
8 tration or a designated representative of the
9 Administrator); and

10 (B) State and local governments in any ge-
11 ographic area in which the program may oper-
12 ate.

13 (3) TRAINING AND BACKGROUND OF LAW EN-
14 FORCEMENT OFFICERS.—

15 (A) IN GENERAL.—Under the program es-
16 tablished under this subsection, to qualify to
17 serve as a Deputy United States Marshal under
18 the program, a State or local law enforcement
19 officer shall—

20 (i) meet the minimum background
21 and training requirements for a law en-
22 forcement officer under part 107 of title
23 14, Code of Federal Regulations (or equiv-
24 alent requirements established by the At-
25 torney General); and

1 (ii) receive approval to participate in
2 the program from the State or local law
3 enforcement agency that is the employer of
4 that law enforcement officer.

5 (B) TRAINING NOT FEDERAL RESPONSIBILITY.—The Federal Government shall not be
6 responsible for providing to a State or local law
7 enforcement officer the training required to
8 meet the training requirements under subpara-
9 graph (A)(i). Nothing in this subsection may be
10 construed to grant any such law enforcement
11 officer the right to attend any institution of the
12 Federal Government established to provide
13 training to law enforcement officers of the Fed-
14 eral Government.
15

16 (c) POWERS AND STATUS OF DEPUTIZED LAW EN-
17 FORCEMENT OFFICERS.—

18 (1) IN GENERAL.—Subject to paragraph (2), a
19 State or local law enforcement officer that is depu-
20 tized as a Deputy United States Marshal under the
21 program established under subsection (b) may arrest
22 and apprehend an individual suspected of violating
23 any Federal law described in subsection (b)(1)(A),
24 including any individual who violates a provision
25 subject to a civil penalty under section 46301 of title

1 49, United States Code, or section 46302, 46303,
 2 46504, 46505, or 46507 of that title, or who com-
 3 mits an act described in section 46506 of that title.

4 (2) LIMITATION.—The powers granted to a
 5 State or local law enforcement officer deputized
 6 under the program established under subsection (b)
 7 shall be limited to enforcing Federal laws relating to
 8 security on board aircraft in flight.

9 (3) STATUS.—A State or local law enforcement
 10 officer that is deputized as a Deputy United States
 11 Marshal under the program established under sub-
 12 section (b) shall not—

13 (A) be considered to be an employee of the
 14 Federal Government; or

15 (B) receive compensation from the Federal
 16 Government by reason of service as a Deputy
 17 United States Marshal in the program.

18 (d) STATUTORY CONSTRUCTION.—Nothing in this
 19 section may be construed to—

20 (1) grant a State or local law enforcement offi-
 21 cer that is deputized under the program under sub-
 22 section (b) the power to enforce any Federal law
 23 that is not described in subsection (c); or

24 (2) limit the authority that a State or local law
 25 enforcement officer may otherwise exercise in the ca-

1 pacity under any other applicable State or Federal
2 law.

3 (e) REGULATIONS.—The Attorney General may pro-
4 mulgate such regulations as may be necessary to carry out
5 this section.

○