



Chris Cox

House Policy Committee

Policy Perspective

Terrorism Risk Protection Act Makes Insurance More Affordable and Speeds Victim Compensation

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The House will vote today on H.R. 3357, the Terrorism Risk Protection Act—a measure essential to America’s economic security. As Members of both parties have repeatedly pointed out, this bill does not “bail out” insurance companies: insurers would remain profitable absent this legislation, simply by refusing to insure against acts of terrorism or by charging prohibitive premiums for such insurance. Rather, this legislation protects every other sector of the economy—every non-insurance worker and employer—by providing a temporary legislative backstop that will make it possible for American companies to gain the insurance they need to continue operating in the post-September 11 environment.

One of the most vital elements in ensuring the continued availability and affordability of terrorism risk insurance is a package of common-sense liability reforms to streamline the compensation process for victims, maximize recoveries for the most serious injuries, protect blameless American taxpayers from unlimited liability, and limit the damage to the American economy from future acts of terrorism.

This legislation accomplishes these goals with reforms similar to those recently enacted by Congress in two bipartisan bills, the Aviation Security Act adopted on November 16, 2001 and the Air Transportation Safety and System Stabilization Act adopted on September 20, 2001. The Terrorism Risk Protection Act also includes reforms adopted years ago in the Federal Tort Claims Act to establish fair rules when federal taxpayers may be financially responsible for court awards.

Unlike the two recent antiterrorism bills, however, the Terrorism Risk Protection Act provides for *unlimited* compensation for economic damages like death, injury, medical expenses, and property damage—the most critical losses caused by terrorism.

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H.R. 3357 Contains Badly-Needed Legal Reforms

Specifically, the bill's provisions:

- Create a new federal cause of action for claims arising out of acts of terrorism. Although heard in federal court, such claims would continue to be decided under the pre-existing laws of the state in which the act of terrorism occurred (except to the extent that these laws are inconsistent with other provisions of this Act).
- Establish a “fair share” rule for non-economic damages like pain and suffering. Parties would be liable for such non-economic damages in direct proportion to their own responsibility for them. Parties who are in any way responsible, however, remain liable for *all* economic damages like death, injury, medical expenses, and property damage: a party who was 1% responsible for damages arising from a terrorist incident would remain 100% responsible for compensating *all* such economic damages, no matter how extensive.
- Prevent double recoveries by requiring the courts to take account of other compensation received for the same damages (so-called “collateral source” compensation).
- Help ensure that sufficient funds will remain available to compensate the most serious losses like death and physical injury by allowing punitive damages to be assessed only against terrorists.
- Help maximize compensation for victims by providing for judicial review of attorneys fees, subject to an upper limit of 20% of the recovery.

None of these reforms limits the liability of actual terrorists.

Why H.R. 3357 is Necessary

Just as limited legal reforms were integral to the two earlier responses to terrorism that Congress has already passed since September 11, the legal reforms in H.R. 3357 are essential to making terrorism risk insurance available and affordable, limiting unjustified taxpayer liability, and expediting and enhancing compensation of victims. Here's why:

- Without these reforms, federal taxpayers who are in no way responsible for acts of terrorism would be on the hook for *unlimited* noneconomic and punitive damages assessed against non-terrorist defendants—parties who are not responsible for the sort of vicious, premeditated attacks that took place on September 11.
- Moreover, any attempt to limit these protections to insurers would merely shift and magnify the terrorism risk borne by insureds. Although the entire purpose of this legislation is to facilitate the availability of terrorism risk insurance for insureds, such a

limitation—far from promoting the availability of insurance—would instead actually *codify* its unavailability.

- Further, the sort of catastrophic terrorist acts that this legislation addresses will, like the September 11 attack, strain the full resources of the federal government, insured defendants, and insurers simply to compensate the most fundamental injuries, like medical expenses and destruction of property. Without these reforms, the legal system would allow plaintiffs to further recover unlimited non-economic and punitive damages against any party, no matter how marginal their responsibility or how much the plaintiff had already received from other sources in compensation for the same injuries—all subject, of course, to unlimited attorneys fees unsupervised by the courts, and unrelated to the amount of effort or risk undertaken by the attorney.

Such a system would randomly and grossly overcompensate some plaintiffs who won the “race to the courthouse,” thereby exhausting the fund of public and private monies available for compensation before other victims had been compensated for the most basic losses, like the death or permanent maiming of a family breadwinner. Such a system would pit victim against victim, promote overreaching by unscrupulous attorneys, and impose on top of already horrific costs inflicted by terrorism a whole range of crushing litigation expenses.

That is why some observers have described efforts to strip these provisions from this economic rescue legislation as “piracy on a hospital ship,” and why bipartisan majorities in both houses of Congress overwhelmingly passed similar reforms twice since September 11 as part of vital antiterrorist legislation.

The existing legal system is simply not designed to redress premeditated attempts to inflict mass murder and cripple the American economy. The 1993 World Trade Center bombing, for example, killed six people but resulted in 500 lawsuits by 700 individuals, businesses, and insurance companies claiming \$500 million in damages. Eight years later, these cases are just now coming to trial, and hundreds of plaintiffs have yet to receive a penny in compensation. And bipartisan majorities of both houses of Congress have already twice acknowledged that allowing the existing tort system to address the September 11 terrorist attacks would have imposed catastrophic economic consequences on the United States above and beyond the losses caused by the attacks themselves—including paralyzing the commercial aviation industry that is the lifeblood of interstate and foreign commerce. Congress must apply this lesson to future acts of terrorism, as well—and continue to focus our closest attention on inflicting “punitive damage” on international terrorists, those truly responsible.