

Bill Nelson

AMENDMENT NO. _____ Calendar No. _____

Purpose: To authorize NASA to indemnify certain launch providers.

IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.

S. 3346

To authorize the programs of the National Aeronautics and Space Administration, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by MR. NELSON (FOR HIMSELF AND MR. CRUZ)

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . INDEMNIFICATION; NASA LAUNCH SERVICES**
3 **AND REENTRY SERVICES.**

4 (a) IN GENERAL.—Subchapter III of chapter 201 of
5 title 51, United States Code, as amended by section 443
6 of this Act, is further amended by inserting after section
7 20148 the following:

8 **“§ 20149. Indemnification; NASA launch services and**
9 **reentry services**

10 “(a) IN GENERAL.—Under such regulations in con-
11 formity with this section as the Administrator shall pre-
12 scribe taking into account the availability, cost, and terms

1 of liability insurance, any contract between the Adminis-
2 tration and a provider may provide that the United States
3 will indemnify the provider against successful claims (in-
4 cluding reasonable expenses of litigation or settlement) by
5 third parties for death, bodily injury, or loss of or damage
6 to property resulting from launch services and reentry
7 services carried out under the contract that the contract
8 defines as unusually hazardous or nuclear in nature, but
9 only to the extent the total amount of successful claims
10 related to the activities under the contract—

11 “(1) is more than the amount of insurance or
12 demonstration of financial responsibility described in
13 subsection (c)(3); and

14 “(2) is not more than the amount specified in
15 section 50915(a)(1)(B).

16 “(b) TERMS OF INDEMNIFICATION.—A contract
17 made under subsection (a) that provides indemnification
18 shall provide for—

19 “(1) notice to the United States of any claim or
20 suit against the provider for death, bodily injury, or
21 loss of or damage to property; and

22 “(2) control of or assistance in the defense by
23 the United States, at its election, of that claim or
24 suit and approval of any settlement.

25 “(c) LIABILITY INSURANCE OF THE PROVIDER.—

1 “(1) IN GENERAL.—The provider under sub-
2 section (a) shall obtain liability insurance or dem-
3 onstrate financial responsibility in amounts to com-
4 pensate for the maximum probable loss from claims
5 by—

6 “(A) a third party for death, bodily injury,
7 or property damage or loss resulting from a
8 launch service or reentry service carried out
9 under the contract; and

10 “(B) the United States Government for
11 damage or loss to Government property result-
12 ing from a launch service or reentry service car-
13 ried out under the contract.

14 “(2) MAXIMUM PROBABLE LOSSES.—

15 “(A) IN GENERAL.—The Administrator
16 shall determine the maximum probable losses
17 under subparagraphs (A) and (B) of paragraph
18 (1) not later than 90 days after the date that
19 the provider requests such a determination and
20 submits all information the Administrator re-
21 quires.

22 “(B) REVISIONS.—The Administrator may
23 revise a determination under subparagraph (A)
24 if the Administrator determines the revision is
25 warranted based on new information.

1 “(3) AMOUNT OF INSURANCE.—For the total
2 claims related to one launch or reentry, a provider
3 shall not be required to obtain insurance or dem-
4 onstrate financial responsibility of more than—

5 “(A)(i) \$500,000,000 under paragraph
6 (1)(A); or

7 “(ii) \$100,000,000 under paragraph
8 (1)(B); or

9 “(B) the maximum liability insurance
10 available on the world market at reasonable
11 cost.

12 “(4) COVERAGE.—An insurance policy or dem-
13 onstration of financial responsibility under this sub-
14 section shall protect the following, to the extent of
15 their potential liability for involvement in launch
16 services or reentry services:

17 “(A) The Government.

18 “(B) Personnel of the Government.

19 “(C) Related entities of the Government.

20 “(D) Related entities of the provider.

21 “(E) Government astronauts.

22 “(d) NO INDEMNIFICATION WITHOUT CROSS-WAIV-
23 ER.—Notwithstanding subsection (a), the Administrator
24 may not indemnify a provider under this section unless

1 there is a cross-waiver between the Administration and the
2 provider as described in subsection (e).

3 “(e) CROSS-WAIVERS.—

4 “(1) IN GENERAL.—The Administrator, on be-
5 half of the United States, and its departments,
6 agencies, and instrumentalities, shall reciprocally
7 waive claims with a provider under which each party
8 to the waiver agrees to be responsible, and agrees to
9 ensure that its related entities are responsible, for
10 damage or loss to its property, or for losses resulting
11 from any injury or death sustained by its employees
12 or agents, as a result of activities arising out of the
13 performance of the contract.

14 “(2) LIMITATION.—The waiver made by the
15 Government under paragraph (1) shall apply only to
16 the extent that the claims are more than the amount
17 of insurance or demonstration of financial responsi-
18 bility required under subsection (e)(1)(B).

19 “(f) WILLFUL MISCONDUCT.—Indemnification under
20 subsection (a) may exclude claims resulting from the will-
21 ful misconduct of the provider or its related entities.

22 “(g) CERTIFICATION OF JUST AND REASONABLE
23 AMOUNT.—No payment may be made under subsection
24 (a) unless the Administrator or the Administrator’s des-
25 ignee certifies that the amount is just and reasonable.

1 “(h) PAYMENTS.—

2 “(1) IN GENERAL.—Upon the approval by the
3 Administrator, payments under subsection (a) may
4 be made from funds appropriated for such pay-
5 ments.

6 “(2) LIMITATION.—The Administrator shall not
7 approve payments under paragraph (1), except to
8 the extent provided in an appropriation law or to the
9 extent additional legislative authority is enacted pro-
10 viding for such payments.

11 “(3) ADDITIONAL APPROPRIATIONS.—If the
12 Administrator requests additional appropriations to
13 make payments under this subsection, then the re-
14 quest for those appropriations shall be made in ac-
15 cordance with the procedures established under sec-
16 tion 50915.

17 “(i) RULES OF CONSTRUCTION.—

18 “(1) IN GENERAL.—The authority to indemnify
19 under this section shall not create any rights in
20 third persons that would not otherwise exist by law.

21 “(2) OTHER AUTHORITY.—Nothing in this sec-
22 tion may be construed as prohibiting the Adminis-
23 trator from indemnifying a provider or any other
24 NASA contractor under other law, including under
25 Public Law 85–804 (50 U.S.C. 1431 et seq.).

1 “(3) ANTI-DEFICIENCY ACT.—Notwithstanding
2 any other provision of this section—

3 “(A) all obligations under this section are
4 subject to the availability of funds; and

5 “(B) nothing in this section may be con-
6 strued to require obligation or payment of
7 funds in violation of sections 1341, 1342, 1349
8 through 1351, and 1511 through 1519 of title
9 31, United States Code (commonly referred to
10 as the ‘Anti-Deficiency Act’).

11 “(j) RELATIONSHIP TO OTHER LAWS.—The Admin-
12 istrator may not provide indemnification under this sec-
13 tion for an activity that requires a license or permit under
14 chapter 509.

15 “(k) DEFINITIONS.—In this section:

16 “(1) GOVERNMENT ASTRONAUT.—The term
17 ‘government astronaut’ has the meaning given the
18 term in section 50902.

19 “(2) LAUNCH SERVICES.—The term ‘launch
20 services’ has the meaning given the term in section
21 50902.

22 “(3) PROVIDER.—The term ‘provider’ means a
23 person that provides domestic launch services or do-
24 mestic reentry services to the Government.

1 “(4) RELATED ENTITY.—The term ‘related en-
2 tity’ means a contractor or subcontractor.

3 “(5) REENTRY SERVICES.—The term ‘reentry
4 services’ has the meaning given the term in section
5 50902.

6 “(6) THIRD PARTY.—The term ‘third party’
7 means a person except—

8 “(A) the United States Government;

9 “(B) related entities of the Government in-
10 volved in launch services or reentry services;

11 “(C) a provider;

12 “(D) related entities of the provider in-
13 volved in launch services or reentry services; or

14 “(E) a government astronaut.”.

15 (b) CONFORMING AMENDMENT.—The table of con-
16 tents for subchapter III of chapter 201 of title 51, United
17 States Code, as amended by section 443 of this Act, is
18 further amended by inserting after the item relating to
19 section 20148 the following:

 “20149. Indemnification; NASA launch services and reentry services.”.