

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual liberty- The bill creates new restrictions and penalties for airlines and dictates the policies they must have in regards to delayed and canceled flights.

B. EFFECT OF PROPOSED CHANGES:

Background

Prior to 1978 all domestic air transportation was regulated by the Civil Aeronautics Board (CAB). The CAB regulated air transport in terms of fares, routes and schedules. In 1978 Congress enacted the Airline Deregulation Act, which effectively removed governmental control from commercial aviation and sought to expose the passenger airline industry to market forces¹.

The act intended for various restrictions on airline operations to be removed over four years, with complete elimination of restrictions on domestic routes and services by December 31, 1981, and the end of all domestic fare regulation by January 1, 1983. The act transferred regulatory authority of the airline industry to the Department of Transportation. The Secretary of DOT is required to consider "...preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation" and "...encourage, develop, and maintain an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices; and to decide on the variety and quality of, and determine prices for, air transportation services."²

The act also states that "A state, political subdivision of a State, or political authority of at least two States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation."³ *Morales v Trans World Airlines* has been interpreted by DOT to mean that the preemption includes state airline regulation in the following areas: flight frequency and timing, liability limits, reservation and boarding practices, insurance, smoking rules, meal service, entertainment, bonding and corporate financing.

DOT issued an industry letter on July 15, 1996, stating that denying a refund or imposing a financial penalty for rescheduling flights that have been canceled by the airline (either by carrier action or an "act of god") is a violation of the Unfair and Deceptive Trade Practices provisions of the Airline Deregulation Act of 1978 and DOT stated they would pursue action against an airline with such policies.⁴ This issue was addressed in another industry letter sent by DOT on September 25, 2001. It required that "refunds should be provided upon request to passengers who wish to cancel their trip as a result of a flight cancellation or significant schedule change made by the carrier."⁵

The growing dissatisfaction of airline passengers in regards to cancelled flights and extreme delays have been chronicled by the press in recent months. This has led to introduction in the U.S. Senate of the "Airline Passenger Bill of Rights Act of 2007." The bill will require that passengers be permitted to deplane after sitting on the tarmac for over three hours, and require airlines to provide passengers with necessary services.

¹ <http://www.econlib.org/library/Enc/AirlineDeregulation.html>

² 49 U.S.C Section 40101(a)(9)

³ 49 U.S.C. § 41713 (b)(1) The preemption clause in the Airline Deregulation Act of 1978 does not prevent ticket holders from suing airlines to enforce contract provisions which the airlines voluntarily included in the ticket purchase agreement. *American Airlines v. Wolens*, 513 U.S. 219 (1995). Also see *Morales v. Trans World Airlines*, 504 U.S. 374 (1992)

⁴ DOT Industry Letter, originally dated 7/15/96. <http://airconsumer.ost.dot.gov.rules.19960715.htm>

⁵ DOT Industry Letter, originally sent 9/25/01. <http://airconsumer.ost.dot.gov.rules.20010925.htm>

Chapter 775, F.S., provides definitions and general provisions relating to crimes. Currently, s. 775.30, F.S., defines terrorism as an activity that:

- (1)(a) Involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or
- (b) Involves a violation of s. 815.06; and
- (2) Is intended to:
 - (a) Intimidate, injure, or coerce a civilian population;
 - (b) Influence the policy of a government by intimidation or coercion; or
 - (c) Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

Proposed Changes

HB 305 creates an undesignated provision in law to require that when an airline flight is cancelled or delayed by more than one hour, the airline must honor the purchaser's ticket at a later date or reimburse the purchaser the cost of the ticket and pay the purchaser an amount equal to the airline's flight-change fee. This requirement does not apply when the flight delay or cancellation is caused by:

- Inclement weather;
- An immediate terrorist threat;
- International conditions that are not related to terrorism, including riots, civil unrest, embargoes, or war; or
- A condition outside the control of the airline.

Similar to s.750.30, F.S., a terrorist threat is defined as:

A threat of a violent act or threat of an act that is dangerous to human life, that is in violation of the criminal laws of this State or of the United States, and that is intended to: intimidate, injure, or coerce a civilian population; influence the policy of a government by intimidation or coercion; or affect the conduct of a government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

The bill specifies that in addition to any other penalties or remedies provided by law, a person aggrieved by a knowing and willful violation of this section may bring a civil action in a court of competent jurisdiction against the airline for the recovery of actual and consequential damages, court costs, and reasonable attorney's fees. The bill also creates a misdemeanor of the second degree for airlines that violate these provisions, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. It is unclear as to whether these provisions would apply only to flights that originate in Florida or whether they could be applied other flights.

HB 305 also prohibits airlines from imposing an expiration date for airline tickets for flights that originate in Florida. In addition, airlines must allow customers to transfer non refundable airline tickets to another party, provided the "missed flight" was not "due to the fault of the purchaser." Transfer fees are restricted to \$50 or 25 percent of the original price of the ticket, whichever is less.

The bill provides an effective date of July 1, 2007.

C. SECTION DIRECTORY:

Section 1: Creates an undesignated section of law under specified conditions that an airline must honor purchaser's ticket at later date or reimburse purchaser cost of ticket; provides definitions; creates a second degree misdemeanor; provides for awards and damages.

Section 2: Creates an undesignated section of law prohibiting airlines from imposing an expiration date for airline tickets for flights that originate in Florida; requiring transfer of tickets under certain conditions.

Section 3: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would impose the following requirement or restrictions on airlines operating in Florida:

- When an airline flight is cancelled or delayed by more than 1 hour, the airline must honor the purchaser's ticket at a later date or reimburse the purchaser the cost of the ticket and pay the purchaser an amount equal to the airline's flight-change fee, with exceptions;
- Airlines may not impose an expiration date for an airline ticket issued anywhere in the world for an airline flight originating in Florida; and
- Airlines must allow nonrefundable tickets be transferred to another person, with exceptions.

The airlines will likely incur costs in paying ticket-purchasers for cancelled flights, there will be an indeterminate, negative fiscal impact on airlines. It is likely that any increased operations cost will be transferred to all airline consumers.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

The Supremacy Clause of the U.S. Constitution provides Congress the authority to preempt law and policies of state and local governments⁶ and calls attention to one of the key principles of the U.S. Constitution: the Constitution, and all federal laws and federal treaties that are consistent with it, are supreme. Conflicting provisions of a state constitution, a state law or local ordinance are “null and void.”⁷

Federal law preempts state authority to impose regulations *related to* a price, route or service of an air carrier that may provide air transportation.⁸ The DOT, interpreting the breadth of preemption upheld in *Morales*, stated that federal regulation preempts state regulation of air transportation carriers in the following areas: flight frequency and timing, liability limits, reservation and boarding practices, insurance, smoking rules, meal service, entertainment, bonding, and corporate financing.⁹

To the extent the courts recognize that this preemption also extends to penalties for cancellation of flights, the requirement imposed by this bill may be deemed in violation of federal law.

To the extent that the courts would consider regulating airline ticket expiration dates, refundability, and transferability a regulation of “reservation and boarding practices,” the regulation may also be deemed in violation of federal law.

In the absence of any of these proposed requirements, to the extent that an airline voluntarily makes such provisions as part of the contract of carriage, courts may enforce these provisions in a private right of action under state contract law.¹⁰

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

⁶ Article VI of the US Constitution.

⁷ Corwin & Peltason's Understanding the Constitution, 15th Edition, J. W. Peltason & Sue Davis (Harcourt College Publishers, NY, 2000), p. 205.

⁸ 49 U.S.C. § 41712(a).

⁹ December 2006 communication with DOT Assistant General Counsel, citing *Morales*; see also 44 Fed. Reg. 9950-51 (1979).

¹⁰ See *American Airlines v. Wolens*.