

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce and Consumer Services Committee

BILL: SB 316

INTRODUCER: Senator Bennett

SUBJECT: Airline Travel

DATE: March 5, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinely</u>	<u>Cooper</u>	<u>CM</u>	Favorable
2.	_____	_____	<u>TR</u>	_____
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 316 would impose the following requirements 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 if the purchaser is unable to use the ticket, with exceptions.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Airline Ticket Refund Policies for Flight Cancellations

The U.S. Department of Transportation (DOT) reports that in December 2006, 3 percent of scheduled airline flights at U.S. airports were canceled.¹ Airlines cancel scheduled flights for any number of reasons. These reasons range from carrier action relating to maintenance or crew issues (arguably circumstances within the airlines control), to circumstances beyond the control

¹ U.S. Department of Transportation, Air Travel Consumer Report, February 2007, available at <http://airconsumer.ost.dot.gov/reports/2007/February/200702atcr.doc>.

of the airline, such as actual, threatened, or reported adverse weather events; civil unrest; labor disputes; government directives; or shortages of labor, fuel, or facilities.

When flights are cancelled, the airlines may attempt to mitigate the inconvenience to the passengers by offering the ticket holder another flight, providing overnight accommodations, or providing alternative means of transportation to their destination. If the ticket holder cannot be accommodated, the airline may offer to refund the purchase price of the ticket. These mitigation or refund policies are specified in the contract of carriage, which is a component of the contract between the airline and the ticket holder.

Airline Deregulation Act of 1978 – Preemption of Regulatory Authority

From 1938 to 1978, the Civil Aeronautics Board (CAB) regulated all fares, routes, and services of domestic air transportation. Under federal law, states had authority to regulate intrastate fares and prosecute violations of state laws against deceptive trade practices.

In 1978 Congress enacted the Airline Deregulation Act, which was intended to:

“...encourage, develop, and attain an air transportation system that relied on competitive market forces to determine the quality, variety, and price of air services.”²

The act also transferred regulatory authority over the airline industry from the CAB to the DOT. In developing regulations, the Secretary of DOT is required to consider “...preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation.”³

The act also preempts state and local governments from enacting legislation regulating certain areas of air transportation. Specifically,

A State, political subdivision of a State, or political authority of at least 2 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.⁴ (emphasis added)

The DOT interprets *Morales v Trans World Airlines* to mean that this preemption precludes state regulation of airlines in the following areas: flight frequency and timing, liability limits,

² “Construction and Application of § 105 Airline Deregulation Act (49 U.S.C.A. § 41713), Pertaining to Preemption of Authority over Prices, Routes, and Services” by Ann K. Wooster, 149 A.L.R. Fed. 299.

³ 49 U.S.C. Section 40101(a)(9).

⁴ 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)

reservation and boarding practices, insurance, smoking rules, meal service, entertainment, bonding and corporate financing.⁵

Communication with DOT staff also indicates that the department interprets the Airline Deregulation Act of 1978 to give them the authority to mandate specific remedies for flight cancellations, thus ensuring a uniform policy for all airlines in all states.⁶ For example, DOT has issued an “industry letter” requiring 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.”⁷ In addition, DOT has stated that denying a refund or imposing a financial penalty for rescheduling flights that have been cancelled by the airline (either necessitated by carrier action or for weather or mechanical reasons) is a violation of the Unfair and Deceptive Trade Practices provisions of the Airline Deregulation Act of 1978, regardless of the airline’s contract of carriage.⁸ Furthermore, DOT has stated that it will pursue action against the any airline with such policies.⁹

DOT also interprets the act to prohibit the state and local government from imposing conditions and restrictions on airline tickets and cancellation policies, to the extent that the courts would consider the respective conditions or restrictions *related to* airline prices, routes, or services.¹⁰

Currently, no state has imposed a law or regulation that imposes a penalty on airlines when flights are cancelled.¹¹

Recent Preemption Issue

On July 1, 2002, two pilots were arrested for operating an aircraft while intoxicated, in violation of s. 860.13, F.S. Prior to the trial, the defendants moved to dismiss the charges based on the claim that Florida law governing operation of an aircraft while intoxicated is preempted by the the general preemption of regulation of air transportation in the 1978 federal Airline

⁵ December, 2006 communication with DOT Assistant General Counsel citing *Morales v. Trans World Airlines*, 504 U.S. 374 (1992).

⁶ Department of Transportation staff, August, 2006. It is important to note that the federal courts give deference to executive agency interpretation of statutes affecting their area of jurisdiction. In *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, the court ruled that “...(w)e have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations.” 467 U.S. 837, 444 (1984).

⁷ DOT Industry Letter, originally sent 9/25-01. <http://airconsumer.ost.dot.gov.rules.20010925.htm>.

⁸ DOT Industry Letter, originally dated 7/15/96. <http://airconsumer.ost.dot.gov.rules.19960715.htm> The Unfair and Deceptive Trade Practices provision of the Airline Deregulation Act of 1978, states that “...the Secretary may investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation.”; 49 U.S.C. § 41712(a); Also see 14 C.F.R. § 374, which requires air carriers to comply with the Consumer Credit Protection Act, 15 U.S.C. 1601-1661, the Truth and Lending Act, as supplemented by the Fair Credit Billing Act, 15 U.S.C. 1601-1661, which requires “disclosure of credit terms to the consumer” and prohibits “inaccurate or unfair credit billing and credit card practices.”

⁹ *Id.*

¹⁰ Department of Transportation staff, September 2006.

¹¹ Research conducted by staff of the National Conference of State Legislatures (NCSL), August, 2006.

Deregulation Act.¹² The U.S. District Court for the Southern District of Florida granted the motion and held that the state action was preempted.¹³ However, on appeal, the Eleventh Circuit Court reversed.¹⁴

In 2006, the Third District Court of Appeals of Florida held that the preemption claim was barred, but that even if the claim was not barred the court would have held that the state action was not preempted by federal law.¹⁵ Specifically, with regards to the preemption clause in the 1978 Airline Deregulation Act, the court held that if Congress intended for the U.S. Code to preempt state criminal law then Congress would have expressly done so.¹⁶

Definition of Terrorism

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.

Airline Ticket Expiration Policy

Airlines may offer refundable fares and state within the contract of carriage the expiration date.¹⁷ Some airlines voluntarily make exceptions for nonrefundable tickets for events such as death of a family member, schedule change made by the airline, or if the passenger contracts certain illnesses.¹⁸ Refundability is regulated exclusively by DOT (U.S.) to the extent that it relates to rates, routes, or services.¹⁹

Tickets are generally nontransferable, unless specified by the ticket.²⁰ Currently, the transferability of tickets and the transfer fee is regulated exclusively by DOT (U.S.) to the extent that it relates to rates, routes, or services.²¹

¹² The preemption claim was based on the ADA's preemption clause, 49 U.S.C. § 41713(b).

¹³ See *Hughes v. Eleventh Judicial Circuit of Fla.*, 274 F. Supp.2d 1334 (S.D. Fla. 2003).

¹⁴ See *Hughes v. Attorney Gen. of Fla.*, 377 F.3d 1258 (11th Cir. 2004).

¹⁵ See *Cloyd v State*, 943 So.2d 149 (3d DCA 2006).

¹⁶ *Id.*

¹⁷ See e.g. Southwest Airlines' Contract of Carriage, p. 11 (http://www.southwest.com/travel_center/coc.pdf).

¹⁸ See e.g. American Airlines' Customer Service FAQ's available at www.aa.com.

¹⁹ December, 2006 Communication with DOT Assistant General Counsel, citing *Morales v Trans World Airlines*.

²⁰ *Id.* See also Delta Airlines' Contract of Carriage, p. 16-17

(http://images.delta.com.edgesuite.net/delta/pdfs/contract_of_carriage_dom.pdf).

²¹ December, 2006 Communication with DOT Assistant General Counsel, citing *Morales v Trans World Airlines*.

Pending Federal Legislation

Recent events involving cancelled flights and extreme delays have been chronicled by the popular press. One response has been the introduction of the “Airline Passenger Bill of Rights Act of 2007” in the U.S. Senate.²² This bill would ensure passengers the right to deplane after being in a closed aircraft for three hours, and require airlines to provide passengers with necessary services such as food, water, and adequate restroom facilities while the plane is delayed on the ground.²³

III. Effect of Proposed Changes:

Section 1 creates an undesignated provision in law to require that 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. 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.

Section 2 creates an undesignated provision in law to prohibit 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.

Section 3 provides an effective date of July 1, 2007.

²² Press Release of Senator Boxer, “Boxer and Snowe Introduce Passengers’ Bill of Rights”, February 17, 2007, *available at* <http://boxer.senate.gov/news/releases/recod/cfm?id=269529>.

²³ *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Supremacy Clause of the U.S. Constitution provides Congress the authority to preempt law and policies of state and local governments²⁴ 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.”²⁵

Federal law preempts state authority to impose regulations *related to* a price, route or service of an air carrier that may provide air transportation.²⁶ 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.²⁷

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.²⁸

²⁴ Article VI of the US Constitution.

²⁵ Corwin & Peltason’s Understanding the Constitution, 15th Edition, J. W. Peltason & Sue Davis (Harcourt College Publishers, NY, 2000), p. 205.

²⁶ 49 U.S.C. § 41712(a).

²⁷ December 2006 communication with DOT Assistant General Counsel, citing *Morales*; see also 44 Fed. Reg. 9950-51 (1979).

²⁸ See *American Airlines v. Wolens*.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

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.

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

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
