

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 471

To amend the Federal Aviation Act of 1958 to enhance competition among air carriers by prohibiting an air carrier who operates a computer reservation system from discriminating against other air carriers participating in the system and among travel agents which subscribe to the system, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1993

Mr. OBERSTAR introduced the following bill; which was referred to the  
Committee on Public Works and Transportation

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## A BILL

To amend the Federal Aviation Act of 1958 to enhance competition among air carriers by prohibiting an air carrier who operates a computer reservation system from discriminating against other air carriers participating in the system and among travel agents which subscribe to the system, 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. SHORT TITLE.**

4 This Act may be cited as the “Airline Competition  
5 Enhancement Act of 1993”.

1 **SEC. 2. COMPUTER RESERVATION SYSTEMS.**

2 (a) IN GENERAL.—Title IV of the Federal Aviation  
3 Act of 1958 (49 U.S.C. App. 1371–1389) is amended by  
4 adding at the end the following new section:

5 **“SEC. 420. COMPUTER RESERVATIONS SYSTEMS.**

6 “(a) PROHIBITIONS AGAINST VENDOR DISCRIMINA-  
7 TION.—

8 “(1) IN GENERAL.—No vendor, in the operation  
9 of its computer reservation system, may unjustly dis-  
10 criminate among participants in such system. For  
11 purposes of this subsection, unjust discrimination  
12 shall include, but not be limited to, practices prohib-  
13 ited by this subsection. A prohibition of a practice  
14 for which an effective date is specified in paragraph  
15 (2) shall take effect on such date.

16 “(2) SPECIFIED PROHIBITED CRS OPERATIONAL  
17 PRACTICES.—No vendor, in the operation of its com-  
18 puter reservation system, may—

19 “(A)(i) make available to subscribers an  
20 integrated display in which information is or-  
21 dered or emphasized based upon factors relat-  
22 ing to air carrier identity; or

23 “(ii) supply information from its computer  
24 reservations system to any person creating or  
25 attempting to create such an integrated display  
26 if the vendor knows or has reason to know that

1 such person intends to create or attempt to cre-  
2 ate such an integrated display; except that the  
3 prohibition contained in this clause shall not  
4 apply to the extent that the vendor is supplying  
5 the information to a subscriber creating, in ac-  
6 cordance with the conditions of the exception  
7 contained in subsection (c)(1), an integrated  
8 display using information from the system;

9 “(B) make available, after September 30,  
10 1994, to a subscriber any subscriber trans-  
11 action capability which is more functional, time-  
12 ly, complete, accurate, reliable, secure, or effi-  
13 cient, is easier for the subscriber to use or ac-  
14 cess, or provides to the subscriber a different  
15 level of confirmation of transactions, with re-  
16 spect to one participant than with respect to  
17 any other participant; except to the extent that  
18 the vendor is offering the other participant the  
19 opportunity to participate in such capability at  
20 the same price and terms as other participants  
21 and the participant has not accepted such offer;

22 “(C) make available, after September 30,  
23 1994, to a participant any participant trans-  
24 action capability which is more functional, time-  
25 ly, complete, accurate, reliable, secure, or effi-

1           cient with respect to one participant than with  
2           respect to any other participant; except to the  
3           extent that the vendor is offering the other par-  
4           ticipant the opportunity to participate in such  
5           capability at the same price and terms as other  
6           participants and the participant has not accept-  
7           ed such offer;

8           “(D) charge any separate participant fee  
9           for, or require compliance with any terms or  
10          conditions relating to, the provision of any com-  
11          puter reservation system feature, function, or  
12          service which the vendor offers as a separate  
13          option to the participant for the purpose of  
14          complying with the requirements of this sub-  
15          section, unless such fee, terms, or conditions  
16          are reasonable; or

17          “(E) directly or indirectly prohibit a sub-  
18          scriber from obtaining or using any other com-  
19          puter reservation system.

20          “(3) PROHIBITION AGAINST INDUCING DIS-  
21          CRIMINATION.—No vendor or air carrier shall re-  
22          quire, or provide any incentives to induce, any sub-  
23          scriber to use information from a computer reserva-  
24          tion system to create an integrated display in which

1 information is ordered or emphasized based upon  
2 factors relating to air carrier identity.

3 “(4) USE OF THIRD-PARTY HARDWARE, SOFT-  
4 WARE, AND DATA BASES.—

5 “(A) IN GENERAL.—Except on grounds of  
6 demonstrated technological incompatibility, no  
7 vendor may prohibit or unreasonably restrict,  
8 directly or indirectly—

9 “(i) the interconnection to its com-  
10 puter reservation system equipment of  
11 computer hardware or software supplied by  
12 a person other than such vendor; or

13 “(ii) the use by a subscriber, to access  
14 directly any other computer reservation  
15 system or data base, of hardware and com-  
16 munications lines supplied by any other  
17 vendor.

18 “(B) SPECIFIED PROHIBITIONS.—The  
19 practices prohibited by subparagraph (A) in-  
20 clude, but are not limited to, the following:

21 “(i) The imposition of fees in excess  
22 of reasonable levels to certify or inter-  
23 connect third-party equipment or to use  
24 equipment supplied by any other vendor to

1 access any other computer reservation sys-  
2 tem or data base.

3 “(ii) Undue delays or redundant or  
4 unnecessary testing before certifying or  
5 interconnecting such equipment or access.

6 “(iii) The imposition of requirements  
7 that subscribers use the vendor’s computer  
8 reservation system for any minimum num-  
9 ber or percentage of the subscriber’s book-  
10 ings.

11 “(iv) Refusals to provide any services,  
12 compensation, or other benefits normally  
13 provided subscribers on account of the sub-  
14 scriber’s using third-party equipment or  
15 the subscriber’s using the same equipment  
16 for access to both the vendor’s computer  
17 reservations system and other computer  
18 reservation systems and data bases.

19 “(v) The termination of a subscriber  
20 contract because of the subscriber’s use of  
21 third-party equipment or the use of the  
22 same equipment for access to the vendor’s  
23 computer reservations system and any  
24 other computer reservation systems or data  
25 bases.

1           “(5) EXTENSION OF CONTRACT AS CONDITION  
2 TO PROVIDING ADDITIONAL SYSTEM COMPONENTS.—  
3 No vendor may require, as a condition for providing  
4 to a subscriber additional computer reservation sys-  
5 tem components (including software and enhance-  
6 ments), that the term of the subscriber contract for  
7 previously provided system components be extended.

8           “(6) USE OF SYSTEM IN SALE OF AIR TRANS-  
9 PORTATION SERVICES.—No vendor may require use  
10 of its computer reservation system by the subscriber  
11 in any sale by the subscriber of air transportation  
12 services of the vendor.

13           “(7) USE OF SYSTEM AS CONDITION TO COM-  
14 PENSATION FOR SALE OF SERVICES.—No vendor  
15 may require that a subscriber use or subscribe to its  
16 computer reservation system as a condition to the  
17 receipt of any compensation for the sale of air trans-  
18 portation services by the subscriber.

19           “(8) CONDITIONAL PRICES.—No vendor may  
20 charge prices to subscribers conditioned in whole or  
21 in part on the identity of air carriers whose air  
22 transportation services are sold by the subscriber.

23           “(b) SUBSCRIBER CONTRACT RESTRAINTS.—

24           “(1) TERM OF CONTRACT.—

1           “(A) GENERAL RULE.—Except as provided  
2           in subparagraph (B), no subscriber contract  
3           provision shall be enforceable in law or equity  
4           after the 180th day following the date of the  
5           enactment of this section to the extent that  
6           such provision provides for the term of the con-  
7           tract to be more than 3 years.

8           “(B) GRANDFATHER OF CERTAIN EXIST-  
9           ING CONTRACTS.—This paragraph shall not  
10          apply to a contract—

11                 “(i) which is in effect on the date of  
12                 the enactment of this section,

13                 “(ii) which is for a term of not more  
14                 than 5 years, and

15                 “(iii) with respect to which all parties  
16                 to the contract have agreed, in writing,  
17                 after such date of enactment and before  
18                 the 180th day following such date of enact-  
19                 ment, that the contract will be enforceable,  
20                 subject to other paragraphs of this sub-  
21                 section, until the last day of its term.

22           “(2) OTHER PROVISIONS.—No subscriber con-  
23           tract provision shall be enforceable in law or equity  
24           to the extent that such provision—

1           “(A) forms a basis for a claim of actual or  
2 liquidated damages by the vendor in the event  
3 of cancellation of the contract, except as  
4 follows:

5                   “(i) damages related to the vendor’s  
6 actual cost of removing its equipment from  
7 the subscriber’s premises;

8                   “(ii) the unamortized share of the  
9 vendor’s actual cost of installing such  
10 equipment in the subscriber’s premises ex-  
11 clusive of any element of capital invest-  
12 ment in such equipment; and

13                   “(iii) other amounts owed to the ven-  
14 dor by the subscriber during the unexpired  
15 term of the contract, but in no event in-  
16 cluding amounts which are in the nature of  
17 a penalty for cancellation or which other-  
18 wise become due upon cancellation;

19           “(B) extends, or provides for the extension  
20 of, the contract beyond its stated date of termi-  
21 nation, whether because of the addition or dele-  
22 tion of equipment or because of some other  
23 event;

24           “(C) provides an expiration date later than  
25 the earliest expiration date of any other con-

1 tract for computer reservations services or  
2 equipment between the same subscriber and  
3 vendor;

4 “(D) directly or indirectly requires that the  
5 subscriber use the vendor’s computer reserva-  
6 tions system for a minimum volume of trans-  
7 actions, whether measured as an absolute num-  
8 ber, a percentage of total transactions of any  
9 kind, or otherwise (including making failure to  
10 comply with such a requirement a breach or  
11 violation of the contract or a ground for termi-  
12 nation of the contract); and

13 “(E) directly or indirectly requires the sub-  
14 scriber to use a minimum number or ratio of  
15 system components based upon or related to the  
16 number of system components leased from an-  
17 other vendor (including making failure to com-  
18 ply with such a requirement a breach or viola-  
19 tion of the contract or a ground for termination  
20 of the contract).

21 “(c) PROHIBITION OF SUBSCRIBER MODIFICATION  
22 OF INFORMATION.—No subscriber may use computer soft-  
23 ware or hardware to modify information in a computer  
24 reservation system or derived from a computer reservation  
25 system in such a way as to produce—

1           “(1) integrated displays of such information in  
2           which information is ordered or emphasized based  
3           on factors relating to air carrier identity, except that  
4           the subscriber may use the software or hardware to  
5           create such displays of air transportation services—

6                   “(A) if, before such use, the displays have  
7                   been requested by a customer of the subscriber  
8                   in writing;

9                   “(B) if the request is kept on file by the  
10                  subscriber until there has been a period of at  
11                  least 2 years in which the customer has not  
12                  purchased any services from the subscriber; and

13                  “(C) if the software or hardware is used  
14                  only with respect to such customer; or

15           “(2) displays of such information which provide  
16           subscriber transaction capability which violates sub-  
17           section (a)(2)(B) or participant transaction capabil-  
18           ity which violates subsection (a)(2)(C).

19           “(d) REPORTING.—

20                   “(1) QUARTERLY REPORTS.—Not later than  
21                   the last day of the 1st calendar quarter following the  
22                   date of the enactment of this section and of each  
23                   calendar quarter following such 1st calendar quarter  
24                   and ending on or before December 31, 1994, each  
25                   vendor shall submit to the Secretary a report de-

1 scribing the manner in which the vendor proposes to  
2 achieve and is achieving compliance with subsections  
3 (a)(2)(A), (a)(2)(B), (a)(2)(C), and (a)(2)(D).

4 “(2) REPORT OF SECRETARY.—On or before  
5 September 30, 1993, the Secretary shall transmit to  
6 the Committee on Public Works and Transportation  
7 of the House of Representatives and the Committee  
8 on Commerce, Science, and Transportation of the  
9 Senate a report, based on the reports filed by ven-  
10 dors pursuant to paragraph (1) of this subsection—

11 “(A) which describes the progress which  
12 each vendor has made in achieving compliance  
13 with subsections (a)(2)(A), (a)(2)(B), (a)(2)(C),  
14 and (a)(2)(D);

15 “(B) which compares and contrasts the  
16 participant transaction capabilities and sub-  
17 scriber transaction capabilities, including the  
18 protocols of each vendor with each participant;  
19 and

20 “(C) which includes a tentative finding by  
21 the Secretary as to whether each vendor is  
22 making satisfactory progress toward, and is  
23 likely to achieve, compliance with each of such  
24 subsections in accordance with any time limit  
25 contained in such subsection.

1 The Secretary shall provide each vendor a copy of  
2 the report transmitted under this paragraph within  
3 30 days after the date of such transmittal.

4 “(3) SUPPLEMENTAL VENDOR REPORT.—If the  
5 report transmitted under paragraph (2) includes a  
6 finding of the Secretary that a vendor is not making  
7 satisfactory progress toward, or is not likely to  
8 achieve, compliance with subsection (a)(2)(A),  
9 (a)(2)(B), (a)(2)(C), or (a)(2)(D) in accordance with  
10 any time limit contained in such subsection, the Sec-  
11 retary shall require the vendor to submit to the Sec-  
12 retary a supplemental report describing the manner  
13 in which the vendor proposes to achieve compliance  
14 with such subsection.

15 “(4) MAINTENANCE OF RECORDS.—Not later  
16 than 90 days after the date of the enactment of this  
17 section, the Secretary shall issue regulations requir-  
18 ing each vendor to maintain such information con-  
19 cerning its computer reservation system as the Sec-  
20 retary determines is necessary to enable the Sec-  
21 retary to determine whether or not the vendor is  
22 making progress toward achieving compliance, or is  
23 in compliance, with this section. Such regulations  
24 shall establish the form and substance of the infor-  
25 mation to be maintained.

1       “(e) MONITORING OF PARTICIPANT FEES.—Not  
2 later than June 30, 1993, and each March 31 thereafter,  
3 the Secretary shall transmit, to the Committee on Public  
4 Works and Transportation of the House of Representa-  
5 tives and the Committee on Commerce, Science, and  
6 Transportation of the Senate, a report on the participant  
7 fees charged by vendors during the preceding calendar  
8 year, including whether such fees represent an increase  
9 or decrease over the fees charged previously and whether,  
10 in the opinion of the Secretary, such fees are reasonable.

11       “(f) SPECIAL RULES FOR CERTAIN VIOLATIONS.—

12               “(1) APPLICABILITY.—The procedures and time  
13 limits set forth in this subsection shall apply to any  
14 complaint filed with the Secretary alleging a viola-  
15 tion of this section (including any regulation issued  
16 to carry out this section or otherwise relating to  
17 computer reservation systems).

18               “(2) DEADLINE FOR DECISION WITH RESPECT  
19 TO A COMPLAINT.—Not later than the 90th day fol-  
20 lowing the date of the filing of a complaint to which  
21 this subsection applies, the Secretary shall issue—

22                       “(A) on the basis of the information filed  
23 with respect to the complaint and any other in-  
24 formation available to the Secretary, an order  
25 which determines that there is not a material

1 issue of fact with respect to the complaint  
2 and—

3 “(i) which finds that the violation has  
4 not occurred and dismisses the complaint;  
5 or

6 “(ii) which finds, after compliance  
7 with the procedures of section 1002(c) of  
8 this Act, that the violation has occurred  
9 and sets out the remedies and penalties  
10 that the Secretary determines are appro-  
11 priate for the violation and the information  
12 forming the basis for such finding;

13 “(B) a consent order which sets out the  
14 remedies and penalties which the Secretary de-  
15 termines are appropriate and to which the al-  
16 leged violator has agreed; or

17 “(C) for a determination of whether or not  
18 the violation has occurred and appropriate rem-  
19 edies and penalties for the violation if the viola-  
20 tion has occurred, an order instituting a pro-  
21 ceeding which includes an oral hearing on the  
22 record before an administrative law judge in ac-  
23 cordance with section 554 of title 5, United  
24 States Code.

1           “(3) PARTIES TO AN ALJ PROCEEDING.—If the  
2 Secretary issues an order instituting a proceeding  
3 before an administrative law judge under this sub-  
4 section, both the Department of Transportation and  
5 the person filing the complaint shall be parties to  
6 the proceeding if they so elect, and the administra-  
7 tive law judge may designate additional parties to  
8 the proceeding.

9           “(4) POWER OF ALJ TO COMPEL PRODUCTION  
10 OF DOCUMENTS.—An administrative law judge to  
11 whom a complaint under this subsection is assigned  
12 may compel the production of documents and other  
13 information necessary to determine whether the vio-  
14 lation has or has not occurred.

15           “(5) DEADLINE FOR ALJ DECISION.—Not later  
16 than the 270th day following the date on which the  
17 Secretary issues an order instituting a proceeding  
18 before an administrative law judge under this sub-  
19 section, the judge shall issue an order—

20                   “(A) which finds that no violation has oc-  
21 curred and dismisses the complaint; or

22                   “(B) which finds that a violation has oc-  
23 curred and sets out the remedies and penalties  
24 that the administrative law judge determines  
25 are appropriate for such violation.

1           “(6) DEADLINE FOR FINAL ORDER.—Not later  
2           than the 90th day following the date of issuance an  
3           order by an administrative law judge under this sub-  
4           section, the Secretary shall issue a final order with  
5           respect to the complaint. If the Secretary does not  
6           issue the final order by the last day of such 90-day  
7           period, the order of the administrative law judge  
8           shall be deemed to be a final order of the Secretary.

9           “(g) TREATMENT OF CERTAIN REDUCED CRS SERV-  
10          ICES.—If any computer reservation system service being  
11          provided to a participant in such system for a participant  
12          fee is reduced without a corresponding reduction in the  
13          participant fee, the participant fee shall be treated, for  
14          purposes of this section, as being increased by the vendor.

15          “(h) REGULATIONS.—

16                 “(1) GENERAL AUTHORITY.—The Secretary  
17                 may issue regulations to carry out the objectives of  
18                 this section and such other regulations relating to  
19                 computer reservation systems as the Secretary deter-  
20                 mines appropriate. Such regulations shall not be in-  
21                 consistent with the provisions of this section.

22                 “(2) ENFORCEABILITY.—The enforceability of  
23                 this section shall not be affected by any delay or fail-  
24                 ure of the Secretary to issue regulations to carry out  
25                 the objectives of this section.

1       “(i) DEFINITIONS.—For purposes of this section, the  
2 following definitions apply:

3           “(1) COMPUTER RESERVATIONS SYSTEM.—The  
4 term ‘computer reservations system’ means—

5                   “(A) a computer system which is offered to  
6 subscribers for use in the United States and  
7 contains information on the schedules, fares,  
8 rules, or seat availability of 2 or more sepa-  
9 rately identified air carriers and provides sub-  
10 scribers with the ability to make reservations  
11 and to issue tickets; and

12                   “(B) a computer system which was subject  
13 to the provisions of part 255 of title 14 of the  
14 Code of Federal Regulations (relating to com-  
15 puter reservation systems) on June 1, 1991.

16           “(2) COMPUTER SYSTEM.—The term ‘computer  
17 system’ means a unit of one or more computers, and  
18 associated software, peripherals, terminals, and  
19 means of information transfer, capable of perform-  
20 ing information processing and transfer functions.

21           “(3) INTERNAL RESERVATION SYSTEM.—The  
22 term ‘internal reservation system’ means a computer  
23 system which contains information on airline sched-  
24 ules, fares, rules, or seat availability and is used by  
25 an air carrier to respond to inquiries made directly

1 to the carrier by members of the public concerning  
2 such information and to make reservations arising  
3 from such inquiries.

4 “(4) INTEGRATED DISPLAY.—The term ‘inte-  
5 grated display’ means a computerized display of in-  
6 formation which relates to air carrier schedules,  
7 fares, rules, or availability and is designed to include  
8 information pertaining to more than 1 separately  
9 identified air carrier. Such term excludes the display  
10 of data from the internal reservations system of an  
11 individual air carrier when provided in response to  
12 a request by a ticket agent relating to a specific  
13 transaction.

14 “(5) PARTICIPANT.—The term ‘participant’, as  
15 used with respect to a computer reservations system,  
16 means an air carrier which has its flight schedules,  
17 fares, or seat availability displayed through such  
18 system.

19 “(6) PARTICIPANT FEE.—The term ‘participant  
20 fee’ means any fee, charge, penalty, or thing of value  
21 contractually required to be furnished to a vendor by  
22 a participant for display of the flight schedules,  
23 fares, or seat availability of the participant through  
24 the computer reservation system of the vendor or for

1 other computer reservation system services provided  
2 to the participant.

3 “(7) PARTICIPANT TRANSACTION CAPABIL-  
4 ITY.—The term ‘participant transaction capability’  
5 means a service, product, function, or facility with  
6 respect to any computer reservation system which is  
7 provided by a vendor to any participant and which  
8 is capable of benefiting the air transportation busi-  
9 ness of such participant, including the quality, reli-  
10 ability, and security of communications provided by  
11 the vendor linking such vendor’s computer reserva-  
12 tion system to the computer system or data bases of  
13 any participant, the loading into the system of infor-  
14 mation on schedules, fares, rules, or seat availability,  
15 the booking or assignment of seats, the issuance of  
16 tickets or boarding passes, the retrieval of data from  
17 the system, or a means of determining the timeliness  
18 with which a participant will receive payment for air  
19 transportation sold through the system.

20 “(8) PROTOCOL.—The term ‘protocol’ means a  
21 set of rules or formats which govern the information  
22 transfer between and among computer reservation  
23 systems, participants, and subscribers.

24 “(9) SUBSCRIBER.—The term ‘subscriber’  
25 means a ticket agent which uses a computer reserva-

1       tion system in the sale and issuance of tickets for  
2       air transportation.

3               “(10) SUBSCRIBER CONTRACT.—The term ‘sub-  
4       subscriber contract’ means an agreement, and any  
5       amendment thereto, between a ticket agent and a  
6       vendor for the furnishing of computer reservations  
7       services to such subscriber.

8               “(11) SUBSCRIBER TRANSACTION CAPABIL-  
9       ITY.—The term ‘subscriber transaction capability’  
10      means any capability offered through a computer  
11      reservation system to a subscriber with respect to air  
12      transportation, including the capability of a ticket  
13      agent through a computer reservations system to  
14      view information on airline schedules, fares, rules,  
15      and seat availability or to book space, assign seats,  
16      or issue tickets or boarding passes for air transpor-  
17      tation to be provided by air carriers.

18              “(12) VENDOR.—The term ‘vendor’ means any  
19      person who owns, controls, or operates a computer  
20      reservations system.”.

21       (b) CONFORMING AMENDMENT TO TABLE OF CON-  
22      TENTS.—The table of contents contained in the first sec-  
23      tion of the Federal Aviation Act of 1958 is amended by  
24      adding at the end of the matter relating to title IV of such  
25      Act the following:

“Sec. 420. Computer reservations systems.

- “(a) Prohibitions against vendor discrimination.
- “(b) Subscriber contract restraints.
- “(c) Prohibition of subscriber modification of information.
- “(d) Reporting.
- “(e) Monitoring of participant fees.
- “(f) Special rules for certain nonfee violations.
- “(g) Treatment of certain reduced CRS services.
- “(h) Definitions.”.

1 **SEC. 3. RULEMAKING ON RANDOM TESTING FOR PROHIB-**  
2 **ITED DRUGS.**

3 Not later than 1 year after the date of the enactment  
4 of this Act, the Secretary of Transportation shall complete  
5 a rulemaking proceeding and issue a final decision on  
6 whether there should be a reduction in the annualized rate  
7 of random testing for prohibited drugs now required by  
8 the Secretary for personnel engaged in aviation activities.

9 **SEC. 4. CLARIFICATION OF PFC APPLICABILITY.**

10 Section 1113(e)(1) of the Federal Aviation Act of  
11 1958 (49 U.S.C. App. 1513(e)(1)) is amended by adding  
12 at the end thereof the following new sentence: “After the  
13 date of the enactment of this sentence, no public agency  
14 authority shall collect a fee authorized to be imposed  
15 under this subsection from a passenger enplaning at an  
16 airport if the passenger did not pay for the air transpor-  
17 tation which resulted in such enplanement, including any  
18 case in which the passenger obtained the ticket for the  
19 air transportation with a frequent flier award coupon  
20 without monetary payment.”.



HR 471 IH—2