

103^D CONGRESS
1ST SESSION

H. R. 472

To amend the Federal Aviation Act of 1958 for the purpose of enhancing competition among air carriers and protection of passengers of air carriers, and for other purposes.

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

A BILL

To amend the Federal Aviation Act of 1958 for the purpose of enhancing competition among air carriers and protection of passengers of air carriers, 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 and Passenger Protection Act of 1993”.

1 **TITLE I—AIRLINE COMPETITION**
2 **ENHANCEMENT**

3 **SEC. 101. ENHANCEMENT OF COMPETITION RELATING TO**
4 **CERTIFICATES.**

5 (a) IN GENERAL.—Section 401(h) of the Federal
6 Aviation Act of 1958 (49 U.S.C. 1371(h)) is amended to
7 read as follows:

8 “(h) TRANSFER OF CERTIFICATE.—

9 “(1) APPROVAL REQUIRED.—No air carrier
10 may transfer a certificate issued under this section
11 authorizing the carrier to engage in foreign air
12 transportation or any portion of such a certificate
13 unless the carrier has submitted to the Secretary an
14 application for approval of the transfer and the Sec-
15 retary has approved the transfer under this sub-
16 section.

17 “(2) OPPORTUNITY FOR COMPETING PROPOS-
18 ALS.—Not later than 180 days after the date of the
19 enactment of the Airline Competition Enhancement
20 and Passenger Protection Act of 1993, the Secretary
21 shall modify the rules promulgated under subsection
22 (p) to establish procedures for ensuring that, in any
23 case in which an air carrier has applied under this
24 subsection for approval of a transfer of a certificate
25 to another air carrier, all other air carriers inter-

1 ested in obtaining the certificate or any portion
2 thereof are provided an opportunity to submit, to the
3 carrier seeking to transfer the certificate and the
4 Secretary, proposals for obtaining the certificate or
5 portion.

6 “(3) APPROVAL IF NO COMPETING PROPOS-
7 ALS.—If no proposal to obtain a certificate or por-
8 tion thereof is submitted to the Secretary pursuant
9 to paragraph (2), the Secretary, subject to para-
10 graph (5), shall approve the proposed transfer of the
11 certificate for which approval was sought under
12 paragraph (1) if the Secretary determines that the
13 proposed transfer is consistent with the public
14 interest.

15 “(4) APPROVAL STANDARD IF COMPETING PRO-
16 POSALS.—If 1 or more proposals to obtain a certifi-
17 cate or portion thereof are submitted to the Sec-
18 retary pursuant to paragraph (2), the Secretary,
19 subject to paragraph (5), shall approve the proposed
20 transfer of the certificate for which approval was
21 sought under paragraph (1) or the proposal or pro-
22 posals submitted under paragraph (2) which the
23 Secretary determines are consistent with the public
24 interest and provide the maximum enhancement of
25 the public interest, unless the Secretary determines

1 that the proposed transfer or proposal or proposals,
2 as the case may be, do not include a purchase price
3 or other consideration that is fair. The Secretary
4 shall disapprove the proposed transfer and all such
5 proposals if the Secretary determines that none of
6 them would be consistent with the public interest.

7 “(5) SERVICE REQUIREMENT.—The Secretary
8 may not approve the transfer of a certificate to pro-
9 vide service on a route in foreign air transportation
10 issued to an air carrier under this section unless the
11 air carrier has provided the service for at least 1
12 year.

13 “(6) PUBLIC INTEREST FACTORS.—In making
14 a determination with respect to public interest under
15 paragraphs (3) and (4), the Secretary shall consider
16 as being in the public interest the following factors:

17 “(A) The factors listed in section 102 of
18 this Act.

19 “(B) The enhancement of the financial via-
20 bility of each of the air carriers involved in the
21 transfer.

22 “(C) The strengthening of smaller air car-
23 riers in order to enhance competition among air
24 carriers and inhibit concentration in the air car-
25 rier industry.

1 “(D) The enhancement of the trade posi-
2 tion of the United States in the international
3 air transportation market.

4 “(E) A commitment by the carrier trans-
5 ferring the certificate or portion thereof to use
6 the funds received from the transfer to provide
7 air transportation services in other markets.

8 “(F) The quality of service likely to be pro-
9 vided to passengers by the carrier to whom the
10 certificate would be transferred as dem-
11 onstrated by information submitted under title
12 XVII of this Act and part 234 of title 14 of the
13 Code of Federal Regulations.

14 “(7) PURCHASE PRICE FACTORS.—In making a
15 determination as to fairness of a purchase price or
16 other consideration under paragraph (4), the Sec-
17 retary shall consider the following factors (among
18 others):

19 “(A) The price paid or other consideration
20 provided to obtain the certificate by the air car-
21 rier seeking to transfer the certificate.

22 “(B) The period of time the air carrier has
23 used the certificate and the funds expended by
24 the air carrier for marketing and for capital im-

1 provements, facilities, and equipment in order
2 to use the certificate.

3 “(8) OPPORTUNITY TO MODIFY PROPOSALS.—If
4 the purchase price or other consideration included in
5 a proposal for transfer is determined not to be fair
6 under paragraph (4), the Secretary shall provide the
7 person submitting the proposal a reasonable oppor-
8 tunity to modify the proposal in order that a fair
9 price or other consideration may be offered. If, after
10 being provided the opportunity to modify the pro-
11 posal, the price or other consideration offered by the
12 person is still not determined by the Secretary to be
13 fair, the Secretary may approve in accordance with
14 paragraph (4) the proposed transfer for which ap-
15 proval was sought under paragraph (1) or any other
16 proposal or proposals for such transfer submitted
17 pursuant to paragraph (2).

18 “(9) EQUAL CONSIDERATION OF PROPOSALS TO
19 OBTAIN PORTIONS OF CERTIFICATES.—In consider-
20 ing proposals under this subsection, the Secretary
21 shall give the same consideration to proposals to ob-
22 tain only a portion of the routes covered by the cer-
23 tificate that the air carrier is seeking to transfer as
24 the Secretary gives to proposals to obtain all of such
25 routes.

1 “(10) DEADLINE FOR DECISION.—

2 “(A) GENERAL RULE.—The Secretary
3 shall make a decision to approve or disapprove
4 transfer of a certificate under this subsection
5 not later than the 90th day following the last
6 day of the period for submitting proposals for
7 obtaining the certificate established pursuant to
8 paragraph (2).

9 “(B) EXTENSION.—The Secretary may ex-
10 tend the 90-day period referred to in subpara-
11 graph (A) for an additional period not to exceed
12 60 days if the Secretary determines that such
13 extension would not have a significant adverse
14 effect on the financial viability on the carrier
15 seeking to transfer the certificate under para-
16 graph (1).”.

17 (b) SECRETARY DEFINED.—Section 101 of such Act
18 (49 U.S.C. App. 1301) is amended by redesignating para-
19 graphs (37), (38), (39), (40), and (41), and any references
20 thereto, as paragraphs (38), (39), (40), (41), and (42),
21 respectively, and by inserting after paragraph (36) the fol-
22 lowing new paragraph:

23 “(37) ‘Secretary’ means the Secretary of Transpor-
24 tation.”.

1 **SEC. 102. ENHANCEMENT OF COMPETITION RELATING TO**
2 **SLOTS.**

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

6 **“SEC. 420. ENHANCEMENT OF COMPETITION WITH RE-**
7 **SPECT TO SLOTS.**

8 “(a) APPROVAL OF TRANSFERS REQUIRED.—No air
9 carrier may transfer to any 1 person in any 1-year period
10 10 or more of the slots allocated at a high density airport,
11 unless the carrier has submitted to the Secretary an appli-
12 cation for approval of the transfer and the Secretary has
13 approved the transfer under this section.

14 “(b) OPPORTUNITY FOR COMPETING PROPOSALS.—
15 Not later than 180 days after the date of the enactment
16 of this section, the Secretary shall issue regulations estab-
17 lishing procedures for ensuring that all carriers and other
18 persons interested in obtaining slots the transfer of which
19 are subject to subsection (a) or any portion of such slots,
20 are provided an opportunity to submit, to the air carrier
21 seeking to transfer such slots and the Secretary, proposals
22 for obtaining such slots or portion of such slots.

23 “(c) APPROVAL IF NO COMPETING PROPOSALS.—If
24 no proposal to obtain slots or a portion of such slots is
25 submitted to the Secretary pursuant to subsection (b), the
26 Secretary, subject to subsection (h), shall immediately ap-

1 prove the proposed transfer of the slots for which approval
2 was sought under subsection (a).

3 “(d) APPROVAL STANDARD IF COMPETING PROPOS-
4 ALS.—If 1 or more proposals to obtain slots or a portion
5 of such slots are submitted to the Secretary pursuant to
6 subsection (b), the Secretary, subject to subsection (h),
7 shall approve the proposed transfer of slots for which ap-
8 proval was sought under subsection (a) or the proposal
9 or proposals submitted under subsection (b) which the
10 Secretary determines provide the maximum enhancement
11 of competition among air carriers, unless the Secretary de-
12 termines that the proposed transfer or proposal or propos-
13 als, as the case may be, do not include a purchase price
14 or other consideration that is fair.

15 “(e) PURCHASE PRICE FACTORS.—In making a de-
16 termination as to fairness of a purchase price or other con-
17 sideration under subsection (d), the Secretary shall con-
18 sider the following factors (among others):

19 “(1) The price paid or other consideration pro-
20 vided to obtain the slots by the air carrier seeking
21 to transfer the slots.

22 “(2) The period of time the air carrier has used
23 the slots and the funds expended by the air carrier
24 for marketing and for capital improvements, facili-
25 ties, and equipment in order to use the slots.

1 “(f) OPPORTUNITY TO MODIFY PROPOSALS.—If the
2 purchase price or other consideration included in a pro-
3 posal for transfer is determined not to be fair under sub-
4 section (d), the Secretary shall provide the person submit-
5 ting the proposal a reasonable opportunity to modify the
6 proposal in order that a fair price or other consideration
7 may be offered. If, after being provided the opportunity
8 to modify the proposal, the price or other consideration
9 offered by the person is still not determined by the Sec-
10 retary to be fair, the Secretary may approve in accordance
11 with subsection (d) the proposed transfer for which ap-
12 proval was sought under subsection (a) or any other pro-
13 posal or proposals for such transfer submitted pursuant
14 to subsection (b).

15 “(g) EQUAL CONSIDERATION OF PROPOSALS TO OB-
16 TAIN PORTIONS OF SLOTS.—In considering proposals
17 under this section, the Secretary shall give the same con-
18 sideration to proposals to obtain only a portion of the slots
19 that the air carrier is seeking to transfer as the Secretary
20 gives to proposals to obtain all such slots.

21 “(h) LIMITATION ON STATUTORY CONSTRUCTION.—
22 Nothing in this title shall be construed as limiting or oth-
23 erwise affecting any authority of the Secretary, the Ad-
24 ministrator, or the Attorney General to amend, modify,
25 revoke, or terminate the right of an air carrier to use or

1 have a slot or hold a certificate issued under section 401
2 of this Act.

3 “(i) DEFINITIONS.—As used in this section, the fol-
4 lowing definitions apply:

5 “(1) HIGH DENSITY AIRPORT.—The term ‘high
6 density airport’ means an airport at which the Ad-
7 ministrator limits the number of instrument flight
8 rule takeoffs and landings of aircraft.

9 “(2) SLOT.—The term ‘slot’ means a reserva-
10 tion for an instrument flight rule takeoff or landing
11 by an air carrier of an aircraft in air transpor-
12 tation.”.

13 **SEC. 103. REDUCTION OF UNITED STATES CITIZENSHIP**
14 **VOTING INTEREST OWNERSHIP REQUIRE-**
15 **MENT.**

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

19 **“SEC. 421. REDUCTION OF UNITED STATES CITIZENSHIP**
20 **VOTING INTEREST OWNERSHIP REQUIRE-**
21 **MENT.**

22 “(a) GENERAL RULE.—Notwithstanding the require-
23 ment of section 101(16) of this Act that at least 75 per-
24 cent of the stock of an air carrier be owned or controlled
25 by persons who are citizens of the United States or of one

1 of its possessions, a person who is not a citizen of the
2 United States may purchase stock of a corporation or as-
3 sociation which is, or owns or controls, an air carrier with-
4 out regard to whether or not such purchase would result
5 in the corporation or association failing to meet the stock
6 ownership and control requirement of section 101(16) if
7 the Secretary of Transportation finds—

8 “(1) with respect to nonvoting shares of stock,
9 that after the purchase no person who is not a citi-
10 zen of the United States would have the power to
11 exercise control over the air carrier;

12 “(2) with respect to voting shares of stock—

13 “(A) that the air service agreement be-
14 tween the United States and the foreign coun-
15 try of which the purchaser is a citizen is a pro-
16 competitive agreement which, at a minimum, al-
17 lows those air carriers designated by the United
18 States to provide air service from any point in
19 the United States to any significant air service
20 point in the foreign country;

21 “(B) that after the purchase, the presi-
22 dent, chairman of the board of directors, chief
23 operating officer, and two-thirds or more of the
24 board of directors of the corporation or associa-

1 tion which is, or owns or controls, the air car-
2 rier would be citizens of the United States;

3 “(C) that the laws and regulations of the
4 foreign country would permit a citizen of the
5 United States to acquire, under similar terms
6 and conditions, the same percentage of stock
7 (by vote or value) of a person who provides in
8 the foreign country transportation by aircraft of
9 person or property as a common carrier for
10 compensation as the percentage of ownership
11 which the person making the purchase would
12 have in the air carrier after the purchase;

13 “(D) that the purchaser is not a corpora-
14 tion or association of which 50 percent or more
15 of its stock (by vote or value) is owned or con-
16 trolled by a government of a foreign country;

17 “(E) that after the purchase, no person
18 who is not a citizen of the United States would
19 have the power to exercise control over the air
20 carrier;

21 “(F) that the purchase is consistent with
22 the national security interests of the United
23 States; and

24 “(G) that the purchase is otherwise in the
25 public interest.

1 “(b) MAXIMUM REDUCED PERCENTAGE.—The 75
2 percent stock ownership and control requirement of sec-
3 tion 101(16) of this Act may not be reduced to less than
4 51 percent of stock by vote or value under this section.

5 “(c) APPLICATION.—A person interested in purchas-
6 ing stock with respect to which subsection (a) applies must
7 submit an application with respect to such stock purchase
8 to the Secretary. The application must be in such form
9 and contain such information as the Secretary may re-
10 quire by regulation.”.

11 (b) DEFINITION OF CITIZEN OF THE UNITED
12 STATES.—Section 101(16)(c) of such Act (49 U.S.C. App.
13 1301(16)(c)) is amended—

14 (1) by striking “voting interest” and inserting
15 “stock (by vote or value)”; and

16 (2) by striking the period at the end and insert-
17 ing “and over which no person who is not a citizen
18 of the United States has the power to exercise con-
19 trol.”.

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

“Sec. 420. Enhancement of competition with respect to slots.

 “(a) Approval of transfers required.

 “(b) Opportunity for competing proposals.

- “(c) Approval if no competing proposals.
- “(d) Approval standard if competing proposals.
- “(e) Purchase price factors.
- “(f) Opportunity to modify proposals.
- “(g) Equal consideration of proposals to obtain portions of slots.
- “(h) Limitation on statutory construction.
- “(i) Definitions.

“Sec. 421. Reduction of U.S. citizenship voting interest ownership requirement.

- “(a) General rule.
- “(b) Maximum reduced percentage.
- “(c) Application.”.

1 **TITLE II—AIRLINE PASSENGER**
 2 **PROTECTION**

3 **SEC. 201. REQUIREMENTS RELATING TO BANKRUPTCY AND**
 4 **FREQUENT FLYER PROGRAMS.**

5 (a) IN GENERAL.—The Federal Aviation Act of 1958
 6 (49 U.S.C. App. 1301 et seq.) is amended by adding at
 7 the end the following new title:

8 **“TITLE XVII—AIRLINE**
 9 **PASSENGER PROTECTION**

10 **“SEC. 1701. BANKRUPTCY PROTECTION.**

11 “(a) INTERIM PROGRAM.—

12 “(1) IN GENERAL.—If an air carrier becomes a
 13 debtor in a case under title 11, United States Code,
 14 and is not providing air transportation of passengers
 15 between 2 points, covered air carriers providing air
 16 transportation of passengers between such points
 17 must provide, on a space available basis, such air
 18 transportation for persons holding airline tickets
 19 sold by the debtor air carrier or an agent thereof for
 20 such air transportation before the date on which

1 such case is commenced. Any such transportation
2 shall be provided at no additional charge.

3 “(2) LIMITATION ON APPLICABILITY.—This
4 subsection only requires the provision of air trans-
5 portation for passengers of an air carrier which be-
6 comes a debtor described in paragraph (1) before
7 the date of issuance of an order under subsection (d)
8 or the date of issuance of regulations under sub-
9 section (e), as the case may be.

10 “(b) DEVELOPMENT OF BANKRUPTCY TRANSPOR-
11 TATION PLANS.—

12 “(1) ORDER.—Not later than 60 days after the
13 date of the enactment of this title, the Secretary
14 shall issue an order authorizing covered air carriers
15 to develop a plan for providing air transportation for
16 any person who holds an airline ticket for provision
17 of such transportation by a covered air carrier who,
18 after the date of purchase of such ticket, becomes a
19 debtor in a case under title 11, United States Code.
20 In issuing such an order, the Secretary shall have
21 authority to grant an exemption with respect to
22 interstate air transportation, overseas air transpor-
23 tation, and foreign air transportation in accordance
24 with section 414.

1 “(2) DEADLINE FOR SUBMISSION.—A plan de-
2 veloped under paragraph (1) shall be submitted to
3 the Secretary for approval within 180 days after the
4 date of the enactment of this section.

5 “(c) TIME LIMIT AND BASIS FOR APPROVAL.—If a
6 plan is submitted to the Secretary in accordance with sub-
7 section (b), the Secretary shall approve or disapprove such
8 plan within 60 days after the date of such submission. If
9 the Secretary determines that such plan will provide (or
10 would provide if all covered air carriers participate in im-
11 plementation of such plan) satisfactory protection for all
12 persons who hold airline tickets described in subsection
13 (b), the Secretary shall approve such plan. Otherwise, the
14 Secretary shall disapprove such plan.

15 “(d) IMPLEMENTATION OF APPROVED PLANS.—If
16 the Secretary approves a plan under this section, the Sec-
17 retary shall issue an order requiring implementation of
18 such plan by the covered air carriers who submitted such
19 plan and any other covered air carriers. If there are any
20 covered air carriers who did not participate in development
21 of a plan approved under this section, such carriers shall
22 be treated under such order and plan in the same manner
23 as carriers who did participate in development of such
24 plan.

1 “(e) REGULATIONS.—If a plan described in sub-
2 section (a) is not submitted within 180 days after the date
3 of the enactment of this title, or if the Secretary dis-
4 approves a plan submitted in accordance with subsection
5 (b), or if the Secretary determines that a plan approved
6 under this section is not being implemented in a manner
7 which provides satisfactory protection for all persons who
8 hold airline tickets described in subsection (b), the Sec-
9 retary shall issue regulations requiring all covered air car-
10 riers to provide air transportation for persons who hold
11 such tickets. Such regulations must be issued within 90
12 days after the expiration of such 180-day period, the date
13 of disapproval of such plan, or the date of such determina-
14 tion, as the case may be.

15 **“SEC. 1702. FREQUENT FLYER PROGRAMS.**

16 “Not later than 180 days after the date of the enact-
17 ment of this title, the Secretary shall initiate a rulemaking
18 proceeding—

19 “(1) to consider methods of ensuring that each
20 air carrier makes enough seats available for persons
21 redeeming frequent flyer awards to meet anticipated
22 demand;

23 “(2) to consider requirements to ensure that
24 such air carrier gives members of its frequent flyer

1 program adequate notice of any material change in
2 such program; and

3 “(3) to consider whether or not frequent flyer
4 mileage obtained under a frequent flyer program of
5 a covered air carrier should be transferable to an-
6 other passenger who is a member of such program
7 as a means of reducing the anticompetitive effects of
8 such programs.

9 **“SEC. 1703. DEFINITIONS.**

10 “For the purposes of this title, the following defini-
11 tions apply:

12 “(1) AIRLINE TICKET.—The term ‘airline tick-
13 et’ means any written instrument that embodies a
14 contract of carriage between an air carrier and a
15 passenger thereof for air transportation.

16 “(2) COVERED AIR CARRIER.—The term ‘cov-
17 ered air carrier’ means an air carrier which, in the
18 most recent calendar year for which data is avail-
19 able, accounted for at least 1 percent of the sched-
20 uled passenger revenues derived from interstate and
21 overseas air transportation in such year.”.

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

“TITLE XVII—AIRLINE PASSENGER PROTECTION

“Sec. 1701. Bankruptcy protection.
“Sec. 1702. Frequent flyer programs.
“Sec. 1703. Definitions.”.

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