

Calendar No. 282

106TH CONGRESS }
1st Session }

SENATE

{ REPORT
106-162

AIRLINE CUSTOMER SERVICE
COMMITMENT ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 383



SEPTEMBER 22, 1999.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

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SEPTEMBER 22, 1999.—Ordered to be printed

Mr. LOTT (for Mr. McCAIN), from the Committee on Commerce,
Science, and Transportation, submitted the following

REPORT

[To accompany S. 383]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 383) “to establish a national policy of basic consumer fair treatment for airline passengers”, having considered the same, report favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of the Airline Customer Service Commitment Act is to ensure that the major airlines live up to their voluntary customer service commitments, as outlined in the June 17, 1999, Airline Customer Service Commitment.

BACKGROUND AND NEEDS

Statistics kept by the Department of Transportation (DOT) show that complaints about commercial air travel are on the rise in comparison to complaint levels in recent years. The Department estimates that for every complaint it receives against an airline, the airlines themselves receive anywhere from 100 to 400 complaints. The airlines are faced with the public perception and increasing anecdotal evidence that their service levels are on the decline.

Many factors potentially contribute to the increase in consumer dissatisfaction with the airlines. For instance, air carriers appear to struggle continually to lower their costs and maintain their profitability. Many steps that the airlines have taken to control costs directly impact a traveler’s experience. These steps include installing more seats on a given aircraft, thereby reducing the passenger’s

legroom, and reducing or eliminating the in-flight meal service. In addition, demand for air travel has increased tremendously over the last several years—planes are more crowded, with increasing load factors—placing strains on the carriers' ability to provide adequate services. The Committee also is aware that air travel delays and ground holds are on the rise due to inadequacies in airport and air traffic control infrastructure, thereby adding to the passengers' air travel experiences. Whatever the underlying causes, there has been a recent groundswell of passenger discontent with airline travel and service.

In many other industries, a company risks losing all of its customers due to its poor service. This principle does not always apply in the airline industry, however. Travelers who are dependent on a hub airport that is dominated by one carrier do not necessarily have the option of flying on another carrier that offers better service. Likewise, the barriers to entry in the airline industry are relatively high. Freedom of entry is usually another disciplining factor when it comes to poor service. The overall state of air travel and service has led to calls from the public for governmental intervention.

In response to the introduction of S. 383 and similar bills introduced in this Congress, the major airlines began to develop an industry-wide response in an attempt to address consumer dissatisfaction and forestall a legislative mandate in this area. On June 17, 1999, the Air Transport Association (ATA), which represents the major domestic airlines, unveiled a voluntary plan to improve customer service throughout the airline industry. [Insert 1.] Although many proponents of so-called passenger rights legislation felt that the airlines' plan was a step in the right direction, most believed that independent oversight was needed to ensure that the commitment was fulfilled. This is especially true because much of the ATA plan is perceived as something that the airlines should have been doing all along. The air carriers were given a short time frame to improve their services. After oversight of the changes, and if no improvement is made, the Committee will reconsider the need for legislation.

SUMMARY OF MAJOR PROVISIONS

As reported, S. 383 would direct the DOT Inspector General to report to Congress on the effectiveness of the airlines in living up to their Customer Service Commitment; direct the DOT to increase the airlines' financial responsibility to passengers for lost bags; significantly increase the civil penalties against airlines that violate aviation consumer protection laws; and direct the U.S. General Accounting Office to study the so-called hidden cities and back-to-back ticketing issue.

LEGISLATIVE HISTORY

On February 6, 1999, Senators Wyden, McCain, Snowe, and Bryan introduced S. 383, the Airline Passenger Fairness Act, which was referred to the Committee.

One other bill related to airline passenger protection has been introduced and referred to the Committee during the 106th Congress. That bill is S. 603, which was introduced by Senator Shelby.

The full Committee held a hearing on S. 383 on March 11, 1999. Witnesses at the hearing included the General Counsel of the Department of Transportation, two individuals who had negative air travel experiences, and representatives of the major airlines, travel agents and academia.

On June 23, 1999, the Committee met in open executive session to consider S. 383. Chairman McCain and Senators Hollings, Gorton, and Rockefeller offered an amendment in the nature of a substitute that would ensure that the airlines live up to their customer service commitments. The amendment was adopted by voice vote.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 9, 1999.

Hon. JOHN MCCAIN,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 383, the Airline Customer Service Commitment Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Victoria Heid Hall (for federal spending) and Hester Grippando (for federal revenues).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 383—Airline Customer Service Commitment Act

Summary

CBO estimates that implementing S. 383 would cost the federal government less than \$500,000 annually in fiscal years 2000 and 2001, assuming appropriation of the estimated amounts. In addition, CBO estimates that the bill would increase revenues by about \$500,000 annually, beginning in fiscal year 2000. Because enacting S. 383 would affect receipts, pay-as-you-go procedures would apply.

S. 383 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. S. 383 would impose new private-sector mandates on air carriers that provide scheduled passenger air transportation and are members of the Air Transport Association (ATA). CBO estimates that the cost of the mandates

would be well below the statutory threshold established in UMRA (\$100 million in 1996, adjusted annually for inflation).

Estimated cost to the Federal Government

Spending Subject to Appropriation.—S. 383 would require that each air carrier that has entered into the voluntary customer service agreement established by the ATA provide a copy of its customer service plan to the Secretary of Transportation. The bill would direct the Inspector General of the Department of Transportation (DOT) to monitor implementation of each air carrier’s customer service plan and to make interim and final reports to the Congress on that implementation. For the final report, the bill would require the Inspector General to evaluate each carrier’s plan and to analyze the carrier’s performance in implementing the plan. Based on information from DOT, CBO estimates that implementing this bill would cost the Inspector General’s office a total of \$500,000 over the fiscal years 2000 and 2001.

The bill also would direct the Secretary of Transportation to revise regulations to increase the liability limit on domestic baggage. According to DOT, other revisions to the rules on domestic baggage are already underway; therefore, implementing this provision would have no significant impact on DOT’s expenditures. Finally, S. 383 would require the General Accounting Office (GAO) to study and report on the potential effects on aviation consumers of a requirement that air carriers allow a ticketed passenger to use, without penalty, any portion of a multi-stop or round-trip ticket, regardless of whether any other portion is used. Based on information from GAO, CBO estimates that completing the study would cost less than \$200,000 over the next few years.

Revenues.—S. 383 would increase the civil penalty for violators of laws and regulations intended to protect commercial air transportation consumers from \$1,000 to \$2,500. Based on information from the Federal Aviation Administration, CBO estimates that this provision would increase revenues by about \$500,000 a year.

Pay-as-you-go considerations

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—											
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	
Changes in outlays												Not applicable
Changes in receipts	0	1	1	1	1	1	1	1	1	1	1	1

Estimated impact on State, local, and tribal governments

S. 383 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector

S. 383 would impose new private-sector mandates on air carriers that provide scheduled passenger air transportation and are members of the ATA. Those air carriers into a voluntary agreement on June 17, 1999, to improve customer service throughout the airline industry. The bill would require such air carriers to provide copies of the customer service plans created as a result of that agreement to the Secretary of Transportation. The bill also would require each air carrier to provide any information that the Inspector General may need to evaluate the implementation of its customer service plan. In addition, S. 383 would require the Secretary of Transportation to initiate a rulemaking proceeding to increase the liability limit on domestic baggage. Based on information from DOT and the ATA, CBO estimates that the total costs of those mandates would fall below the statutory threshold for private-sector mandates (\$100 million in 1996, adjusted annually for inflation).

Estimate prepared by: Federal costs: Victoria Heid Hall; Federal revenues: Hester Grippando; Impact on the private sector: Jean Wooster.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The passenger air carriers that are members of the Air Transport Association would be subject to the modest requirement of submitting their customer service plans to the Department of Transportation.

ECONOMIC IMPACT

Because airlines are already liable for lost or damaged baggage, the requirement for the Department of Transportation to increase the domestic baggage liability limit may result in a relatively modest additional economic impact upon airlines when they lose or damage their passengers' luggage. That impact would be equally balanced by the benefit to air travelers who would be able to recover more from airlines for losing or damaging checked baggage and the items contained therein. Furthermore, the increased liability limit may provide an incentive for airlines to take better care of their passengers' possessions and thereby have the effect of reducing the rate of lost or damaged baggage.

Increasing civil penalties for violations of laws, rules, and regulations intended to afford consumer protection to airline passengers would have a negative financial impact upon airlines who engage in such conduct. The increased penalties, however, may act as an incentive not to engage in such behavior and result in a benefit to consumers and airlines alike, and thereby increase the number of people flying.

PRIVACY

This legislation would not have any adverse impact on the personal privacy of the individuals affected.

PAPERWORK

The requirement for the airlines to submit their customer service plans to the DOT, and the requirement for the DOT to submit those plans to the congressional authorizing committees, would create an insubstantial amount of paperwork for the entities affected. The requirements for the DOT Inspector General to prepare two reports, and for the General Accounting Office (GAO) to prepare one report, for the congressional authorizing committees would result in a modest amount of additional paperwork for those offices. The requirement for the DOT to initiate a rulemaking to increase the domestic baggage liability limit would result in a modest amount of increased paperwork for the Federal government.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 cites the title of the bill as the “Airline Customer Service Commitment Act”.

Section 2. Airline customer service reports

Section 2 would require the member airlines of the Air Transport Association to submit their individual customer service plans to the DOT by September 15, 1999, in accordance with the Airline Customer Service Commitment. The DOT would be required in turn to transmit those plans to the congressional authorizing committees, upon receipt.

This section would also require the DOT Inspector General (IG) to monitor the activities of the Air Transport Association carriers and evaluate the extent to which they have fulfilled their commitments to the voluntary standards that they made on June 17, 1999. Specifically, the IG would evaluate whether the airlines’ individual plans are consistent with the overall Airline Customer Service Commitment, evaluate whether and how each airline lived up to its individual plan, and provide an analysis and comparison of the effectiveness of the plans in terms of compliance and in terms of providing valuable information to consumers. This provision is not intended to codify into law the airlines’ voluntary standards.

The IG would submit an interim report to congressional authorizing committees by June 15, 2000. A final report would be due by December 31, 2000, and would include any recommendations the IG may have with respect to improving the consumer protections already in law. The airlines would be required to provide the IG with information necessary to prepare these reports.

Section 3. Increased financial responsibility for lost baggage

Section 3 would require the DOT to initiate a rulemaking within 30 days of enactment of the bill to increase the domestic baggage liability limit above the current level of \$1,250.

Section 4. Increased penalty for violation of aviation consumer protection laws

Section 4 would increase to \$2,500 the maximum civil penalty that could be imposed on an air carrier for violation of laws, rules, or regulations that are intended to afford protection to airline consumers.

Section 5. Comptroller General investigation

Section 5 would require the GAO to study the potential effects on consumers of requiring air carriers to permit a ticketed passenger to use any portion of a ticket independent of any other portion of that ticket without penalty. In other words, the GAO study would examine the consequences of preventing the airlines from penalizing passengers who engage in the practices of back-to-back ticketing or hidden-city ticketing. The GAO should consult travel agents, consumer representatives, and other interested parties on this issue, in addition to the affected airlines. The study would be submitted to the congressional authorizing committees by June 15, 2000.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART IV. ENFORCEMENT AND PENALTIES

CHAPTER 463. PENALTIES

§ 46301. Civil penalties

(a) GENERAL PENALTY.—

(1) A person is liable to the United States Government for a civil penalty of not more than \$1,000 for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, chapter 413 (except sections 41307 and 41310(b)–(f)), chapter 415 (except sections 41502, 41505, and 41507–41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, chapter 441 (except section 44109), 44502(b) or (c), chapter 447 (except sections 44717 and 44719–44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)–(d)(1)(A) and (d)(1)(C)–(f), and 44908), or section 46302, 46303, or 47107(b) (including any assurance made under such section) of this title;

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies;

(C) any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title; or

(D) a regulation of the United States Postal Service under this part.

(2) A person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman) is liable to the Government for a civil penalty of not more than \$10,000 for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), section 44502(b) or (c), chapter 447 (except sections 44717–44723), or chapter 449 (except sections 44902, 44903(d), 44904, and 44907–44909) of this title; or

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(3) A civil penalty of not more than \$10,000 may be imposed for each violation under paragraph (1) of this subsection related to—

(A) the transportation of hazardous material; or

(B) the registration or recordation under chapter 441 of this title of an aircraft not used to provide air transportation.

(4) A separate violation occurs under this subsection for each day the violation (other than a violation of section 41715) continues or, if applicable, for each flight involving the violation (other than a violation of section 41715).

(5) PENALTY FOR DIVERSION OF AVIATION REVENUES.—The amount of a civil penalty assessed under this section for a violation of section 47107(b) of this title (or any assurance made under such section) or section 47133 of this title may be increased above the otherwise applicable maximum amount under this section to an amount not to exceed 3 times the amount of revenues that are used in violation of such section.

(6) Notwithstanding paragraph (1), the maximum civil penalty for violating section 41715 shall be \$5,000 instead of \$1,000.

(7) CONSUMER PROTECTION.—*For a violation of section 41310, 41712, any rule or regulation promulgated thereunder, or other any rule or regulation promulgated by the Secretary of Transportation that is intended to afford protection to commercial air transportation consumers, the maximum civil penalty prescribed by subsection (a) may not exceed \$2,500 for each violation.*

(b) SMOKE ALARM DEVICE PENALTY.—

(1) A passenger may not tamper with, disable, or destroy a smoke alarm device located in a lavatory on an aircraft providing air transportation or intrastate air transportation.

(2) An individual violating this subsection is liable to the Government for a civil penalty of not more than \$2,000.

(c) PROCEDURAL REQUIREMENTS.—

(1) The Secretary of Transportation may impose a civil penalty for the following violations only after notice and an opportunity for a hearing:

(A) a violation of subsection (b) of this section or chapter 411, chapter 413 (except sections 41307 and 41310(b)–(f)), chapter 415 (except sections 41502, 41505, and 41507–41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, or section 44909 of this title.

(B) a violation of a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(C) a violation of any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title.

(D) a violation under subsection (a)(1) of this section related to the transportation of hazardous material.

(2) The Secretary shall give written notice of the finding of a violation and the civil penalty under paragraph (1) of this subsection.

(d) ADMINISTRATIVE IMPOSITION OF PENALTIES.—

(1) In this subsection—

(A) “flight engineer” means an individual who holds a flight engineer certificate issued under part 63 of title 14, Code of Federal Regulations.

(B) “mechanic” means an individual who holds a mechanic certificate issued under part 65 of title 14, Code of Federal Regulations.

(C) “pilot” means an individual who holds a pilot certificate issued under part 61 of title 14, Code of Federal Regulations.

(D) “repairman” means an individual who holds a repairman certificate issued under part 65 of title 14, Code of Federal Regulations.

(2) The Administrator of the Federal Aviation Administration may impose a civil penalty for a violation of chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719–44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)–(d)(1)(A) and (d)(1)(C)–(f), 44908, and 44909), or section 46302, 46303, or 47107(b) (as further defined by the Secretary under section 47107(l) and including any assurance made under section 47107(b)) of this title or a regulation prescribed or order issued under any of those provisions. The Administrator shall give written notice of the finding of a violation and the penalty.

(3) In a civil action to collect a civil penalty imposed by the Administrator under this subsection, the issues of liability and the amount of the penalty may not be reexamined.

(4) Notwithstanding paragraph (2) of this subsection, the district courts of the United States have exclusive jurisdiction of a civil action involving a penalty the Administrator initiates if—

(A) the amount in controversy is more than \$50,000;

(B) the action is in rem or another action in rem based on the same violation has been brought;

(C) the action involves an aircraft subject to a lien that has been seized by the Government; or

(D) another action has been brought for an injunction based on the same violation.

(5)(A) The Administrator may issue an order imposing a penalty under this subsection against an individual acting as a pilot, flight engineer, mechanic, or repairman only after advising the individual of the charges or any reason the Administrator relied on for the proposed penalty and providing the individual an opportunity to answer the charges and be heard about why the order shall not be issued.

(B) An individual acting as a pilot, flight engineer, mechanic, or repairman may appeal an order imposing a penalty under this subsection to the National Transportation Safety Board. After notice and an opportunity for a hearing on the record, the Board shall affirm, modify, or reverse the order. The Board may modify a civil penalty imposed to a suspension or revocation of a certificate.

(C) When conducting a hearing under this paragraph, the Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(D) When an individual files an appeal with the Board under this paragraph, the order of the Administrator is stayed.

(6) An individual substantially affected by an order of the Board under paragraph (5) of this subsection, or the Administrator when the Administrator decides that an order of the Board under paragraph (5) will have a significant adverse impact on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(7)(A) The Administrator may impose a penalty on an individual (except an individual acting as a pilot, flight engineer, mechanic, or repairman) only after notice and an opportunity for a hearing on the record.

(B) In an appeal from a decision of an administrative law judge as the result of a hearing under subparagraph (A) of this paragraph, the Administrator shall consider only whether—

- (i) each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;
- (ii) each conclusion of law is made according to applicable law, precedent, and public policy; and
- (iii) the judge committed a prejudicial error that supports the appeal.

(C) Except for good cause, a civil action involving a penalty under this paragraph may not be initiated later than 2 years after the violation occurs.

(D) In the case of a violation of section 47107(b) of this title or any assurance made under such section—

- (i) a civil penalty shall not be assessed against an individual;
 - (ii) a civil penalty may be compromised as provided under subsection (f); and
 - (iii) judicial review of any order assessing a civil penalty may be obtained only pursuant to section 46110 of this title.
- (8) The maximum civil penalty the Administrator or Board may impose under this subsection is \$50,000.
- (9) This subsection applies only to a violation occurring after August 25, 1992.
- (e) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under subsection (a)(3) of this section related to transportation of hazardous material, the Secretary shall consider—
- (1) the nature, circumstances, extent, and gravity of the violation;
 - (2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and
 - (3) other matters that justice requires.
- (f) COMPROMISE AND SETOFF.—
- (1) (A) The Secretary may compromise the amount of a civil penalty imposed for violating—
 - (i) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except 44717 and 44719–44723), or chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)–(d)(1)(A) and (d)(1)(C)–(f), 44908, and 44909) of this title; or
 - (ii) a regulation prescribed or order issued under any provision to which clause (i) of this subparagraph applies.
 - (B) The Postal Service may compromise the amount of a civil penalty imposed under subsection (a)(1)(D) of this section.
 - (2) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.
- (g) JUDICIAL REVIEW.—An order of the Secretary imposing a civil penalty may be reviewed judicially only under section 46110 of this title.
- (h) NONAPPLICATION.—
- (1) This section does not apply to the following when performing official duties:
 - (A) a member of the armed forces of the United States.
 - (B) a civilian employee of the Department of Defense subject to the Uniform Code of Military Justice.
 - (2) The appropriate military authority is responsible for taking necessary disciplinary action and submitting to the Secretary (or the Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator) a timely report on action taken.