

107TH CONGRESS
1ST SESSION

S. 199

To amend title 49, United States Code, to authorize the Secretary of Transportation to oversee the competitive activities of air carriers following a concentration in the airline industry, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 29, 2001

Mr. REID introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 49, United States Code, to authorize the Secretary of Transportation to oversee the competitive activities of air carriers following a concentration in the airline industry, 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 Preservation Act of 2001”.

1 **SEC. 2. OVERSIGHT OF AIR CARRIER PRICING.**

2 (a) IN GENERAL.—Chapter 415 of title 49, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 **“§ 41512. Oversight of air carrier pricing**

6 “(a) EFFECTIVE DATE.—

7 “(1) IN GENERAL.—This section shall take ef-
8 fect immediately upon a determination by the Sec-
9 retary of Transportation that 3 or fewer air carriers
10 account for 70 percent or more of the scheduled rev-
11 enue passenger miles in interstate air transportation
12 as a result of—

13 “(A) the consolidation or merger of the
14 properties (or a substantial portion of the prop-
15 erties) of 2 or more of the 7 air carriers that
16 account for the highest number of scheduled
17 revenue passenger miles in interstate air trans-
18 portation into a single entity that owns or oper-
19 ates the properties previously in separate own-
20 ership; or

21 “(B) the acquisition (by purchase, lease, or
22 contract to operate) of the properties (or a sub-
23 stantial portion of the properties) of 1 or more
24 of the 7 air carriers described in subparagraph
25 (A) by another of such carriers.

1 “(2) USE OF DATA.—For the purpose of deter-
2 mining the number of scheduled revenue passenger
3 miles under paragraph (1), the Secretary shall use
4 data from the latest year for which complete data is
5 available.

6 “(3) DETERMINATION OF AIR CARRIER CON-
7 CENTRATION.—In making a determination under
8 paragraph (1), the Secretary shall attribute to an air
9 carrier those scheduled revenue passenger miles in
10 interstate air transportation of the air carrier that
11 is consolidated, merged, or acquired that are associ-
12 ated with routes adopted by the remaining carrier.

13 “(b) FARES OF AIR CARRIERS.—

14 “(1) IN GENERAL.—On the initiative of the
15 Secretary or on a complaint filed with the Secretary,
16 the Secretary may undertake an investigation to de-
17 termine whether an air carrier is charging a fare or
18 an average fare for interstate air transportation on
19 a route that is unreasonably high.

20 “(2) CONSIDERATIONS.—In determining wheth-
21 er a fare or an average fare of an air carrier for
22 interstate air transportation on a route is unreason-
23 ably high, the Secretary shall consider, among other
24 factors, whether—

1 “(A) the fare or average fare is higher
2 than the fare or average fare charged by the
3 carrier on other routes in interstate air trans-
4 portation of comparable distances;

5 “(B) the fare or average fare has increased
6 by a significant amount in excess of any in-
7 crease in the cost to operate flights on the
8 route; and

9 “(C) the range of fares specified on the
10 route or the carrier’s entire fare system offers
11 a reasonable balance and a fair allocation of
12 costs between passengers who are primarily
13 price sensitive and passengers who are pri-
14 marily time sensitive.

15 “(3) ACTIONS IN RESPONSE TO UNREASONABLE
16 FARES.—If the Secretary determines that an air car-
17 rier is charging a fare or an average fare for inter-
18 state air transportation on a route that is unreason-
19 ably high, the Secretary, after providing the carrier
20 an opportunity for a hearing, may order the
21 carrier—

22 “(A) to reduce the fare;

23 “(B) to offer the reduced fare for a spe-
24 cific number of seats on the route; and

1 “(C) to offer rebates to individuals who
2 have been charged the fare.

3 “(4) PERIOD OF EFFECTIVENESS OF ORDER.—
4 An order issued by the Secretary under this sub-
5 section shall remain in effect for a period to be de-
6 termined by the Secretary.

7 “(c) ACTIONS OF DOMINANT AIR CARRIERS IN RE-
8 SPONSE TO NEW ENTRANTS.—If, with respect to a route
9 in interstate air transportation to or from a hub airport,
10 a dominant air carrier at the airport—

11 “(1) institutes or changes its fares for air
12 transportation on the route in a manner that results
13 in fares that are lower than or comparable to the
14 fares offered by a new entrant air carrier for such
15 air transportation; and

16 “(2) increases the passenger capacity at which
17 such fares are offered on the route to a level which
18 is—

19 “(A) 2 or more times the capacity pre-
20 viously offered by the carrier at such fares on
21 the route; and

22 “(B) 2 or more times the total capacity of-
23 fered by the new entrant air carrier on the
24 route, the dominant air carrier, in the 2-year
25 period beginning on the date that such fares

1 and additional capacity are instituted, shall con-
2 tinue to offer such fares with respect to not less
3 than 80 percent of the highest number of seats
4 per week for which the dominant air carrier has
5 offered the fares.

6 “(d) ENSURING COMPETITION AT HUB AIRPORTS.—

7 “(1) IN GENERAL.—On the initiative of the
8 Secretary or on a complaint filed with the Secretary,
9 the Secretary may undertake an investigation to de-
10 termine whether a dominant air carrier at a hub air-
11 port is charging higher than average fares at the
12 airport.

13 “(2) HIGHER THAN AVERAGE FARES.—For
14 purposes of paragraph (1), the Secretary may deter-
15 mine that a dominant air carrier is charging higher
16 than average fares at a hub airport if the carrier is
17 charging, with respect to 20 percent or more of its
18 routes in interstate air transportation that begin or
19 end at the airport, an average fare that is at least
20 5 percent higher than the average fare being
21 charged by all air carriers on routes in interstate air
22 transportation of comparable distances and density,
23 after adjustments for costs that are carrier or air-
24 port specific, such as passenger facility charges or
25 employee compensation.

1 “(3) ACTIONS IN RESPONSE TO UNFAIR COM-
 2 PETITION.—If the Secretary determines under para-
 3 graph (1) that a dominant air carrier is charging
 4 higher than average fares at a hub airport, the Sec-
 5 retary, after providing the carrier an opportunity for
 6 a hearing, may order the carrier to take actions to
 7 increase opportunities for competition at the hub
 8 airport, including—

9 “(A) requiring the carrier to make gates,
 10 slots, and other airport facilities available to
 11 other air carriers on reasonable and competitive
 12 terms;

13 “(B) requiring adjustments in the commis-
 14 sions paid by the carrier to travel agents;

15 “(C) requiring adjustments in the carrier’s
 16 frequent flyer program; and

17 “(D) requiring adjustments in the carrier’s
 18 corporate discount arrangements and com-
 19 parable corporate arrangements.

20 “(e) DEFINITIONS.—In this section, the following
 21 definitions apply:

22 “(1) DOMINANT AIR CARRIER.—The term ‘dom-
 23 inant air carrier’, with respect to a hub airport,
 24 means an air carrier that accounts for more than 50
 25 percent of the total annual boardings at the airport

1 in the preceding 2-year period or a shorter period
 2 specified in paragraph (3).

3 “(2) HUB AIRPORT.—The term ‘hub airport’
 4 means an airport that each year has at least .25
 5 percent of the total annual boardings in the United
 6 States.

7 “(3) INTERSTATE AIR TRANSPORTATION.—The
 8 term ‘interstate air transportation’ includes intra-
 9 state air transportation.

10 “(4) NEW ENTRANT AIR CARRIER.—The term
 11 ‘new entrant air carrier’, with respect to a hub air-
 12 port, means an air carrier that accounts for less
 13 than 5 percent of the total annual boardings at the
 14 airport in the preceding 2-year period or in a shorter
 15 period specified by the Secretary if the carrier has
 16 operated at the airport less than 2 years.”.

17 (b) CONFORMING AMENDMENT.—The analysis for
 18 such chapter is amended by adding at the end the fol-
 19 lowing:

“41512. Oversight of air carrier pricing.”.

