

117TH CONGRESS
2D SESSION

H. R. 8698

To eliminate the exemption of air carriers from the authority of the Federal Trade Commission and to prohibit certain unfair and deceptive acts and practices relating to air carrier delays, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 9, 2022

Ms. SCHAKOWSKY (for herself and Mr. CICILLINE) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To eliminate the exemption of air carriers from the authority of the Federal Trade Commission and to prohibit certain unfair and deceptive acts and practices relating to air carrier delays, 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 “Ensuring Friendly
5 Skies for Passengers Act”.

1 **SEC. 2. ELIMINATION OF EXEMPTION OF AIR CARRIERS**
2 **FROM AUTHORITY OF FTC.**

3 Section 5(a)(2) of the Federal Trade Commission Act
4 (15 U.S.C. 45(a)(2)) is amended by striking “air carriers
5 and foreign air carriers subject to the Federal Aviation
6 Act of 1958,”.

7 **SEC. 3. UNFAIR AND DECEPTIVE ACTS AND PRACTICES RE-**
8 **LATING TO AIR CARRIER DELAYS.**

9 It shall be unlawful for an air carrier or foreign air
10 carrier, with respect to passenger air transportation, to—

11 (1) sell a ticket for air transportation on a
12 flight of the air carrier or foreign air carrier if the
13 air carrier or foreign air carrier knows or should
14 know, at the time when the ticket is sold, that the
15 air carrier or foreign air carrier will not have suffi-
16 cient staff to provide the ticketed air transportation;

17 (2) cancel a flight during the 4-hour period pre-
18 ceding the scheduled departure time if the air car-
19 rier or foreign air carrier knew or should have
20 known, 48 hours or more before the scheduled de-
21 parture time, that the air carrier or foreign air car-
22 rier would not have sufficient staff to provide the
23 ticketed air transportation; or

24 (3) delay a domestic flight for more than 4
25 hours beyond the scheduled departure time or an
26 international flight for more than 6 hours beyond

1 the scheduled departure time if the air carrier or
2 foreign air carrier knew or should have known, 48
3 hours or more before the scheduled departure time,
4 that the air carrier or foreign air carrier would not
5 have sufficient staff to provide an on-time departure.

6 **SEC. 4. ENFORCEMENT BY FTC.**

7 (a) IN GENERAL.—A violation of this Act or a regula-
8 tion promulgated under this Act shall be treated as a vio-
9 lation of a rule defining an unfair or deceptive act or prac-
10 tice under section 18(a)(1)(B) of the Federal Trade Com-
11 mission Act (15 U.S.C. 57a(a)(1)(B)). The Commission
12 shall enforce this Act and the regulations promulgated
13 under this Act in the same manner, by the same means,
14 and with the same jurisdiction, powers, and duties as
15 though all applicable terms and provisions of the Federal
16 Trade Commission Act (15 U.S.C. 41 et seq.), as amended
17 by section 1, were incorporated into and made a part of
18 this Act.

19 (b) PRIVILEGES AND IMMUNITIES.—Any person who
20 violates this Act or a regulation promulgated under this
21 Act shall be subject to the penalties and entitled to the
22 privileges and immunities provided in the Federal Trade
23 Commission Act (15 U.S.C. 41 et seq.).

1 (c) AUTHORITY PRESERVED.—Nothing in this Act
2 may be construed to limit the authority of the Commission
3 under any other provision of law.

4 **SEC. 5. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

5 (a) IN GENERAL.—Notwithstanding any other provi-
6 sion of law, in any case in which the attorney general or
7 chief consumer protection officer of a State has reason to
8 believe that an interest of the residents of such State has
9 been, may be, or is adversely affected by a violation of
10 this Act or a regulation promulgated under this Act, such
11 attorney general or chief consumer protection officer may
12 bring a civil action in the name of such State, or as *parens*
13 *patriae* on behalf of the residents of such State, in an ap-
14 propriate district court of the United States to—

15 (1) enjoin such violation;

16 (2) enforce compliance with this Act or such
17 regulation;

18 (3) obtain damages, restitution, or other com-
19 pensation on behalf of the residents of such State;
20 or

21 (4) obtain reasonable attorneys' fees and other
22 litigation costs reasonably incurred.

23 (b) RIGHTS OF COMMISSION.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), the attorney general or chief consumer

1 protection officer of a State shall notify the Commis-
2 sion in writing prior to initiating a civil action under
3 subsection (a). Such notification shall include a copy
4 of the complaint to be filed to initiate such action.
5 Upon receiving such notification, the Commission
6 may intervene in such action as a matter of right.

7 (2) FEASIBILITY.—If the notification required
8 by paragraph (1) is not feasible, the attorney gen-
9 eral or chief consumer protection officer shall notify
10 the Commission immediately after initiating the civil
11 action.

12 (c) ACTIONS BY COMMISSION.—In any case in which
13 a civil action is instituted by or on behalf of the Commis-
14 sion for violation of this Act or a regulation promulgated
15 under this Act, no attorney general or chief consumer pro-
16 tection officer of a State may, during the pendency of such
17 action, institute a civil action against any defendant
18 named in the complaint in the action instituted by or on
19 behalf of the Commission for a violation of this Act or
20 a regulation promulgated under this Act that is alleged
21 in such complaint, if such complaint alleges such violation
22 affected the residents of such State or individuals nation-
23 wide. If a civil action is instituted by or on behalf of the
24 Commission for a violation of this Act or a regulation pro-
25 mulgated under this Act that affects the interests of the

1 residents of a State, the attorney general or chief con-
2 sumer protection officer of such State may intervene in
3 such action as a matter of right.

4 (d) **RULE OF CONSTRUCTION.**—Nothing in this sec-
5 tion may be construed to prevent the attorney general or
6 chief consumer protection officer of a State from exer-
7 cising the powers conferred on such attorney general or
8 chief consumer protection officer to conduct investiga-
9 tions, to administer oaths or affirmations, or to compel
10 the attendance of witnesses or the production of documen-
11 tary or other evidence.

12 **SEC. 6. RULEMAKING.**

13 The Commission may promulgate regulations under
14 section 553 of title 5, United States Code, to implement
15 this Act.

16 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

17 There is authorized to be appropriated to the Com-
18 mission \$20,000,000 for fiscal year 2023 to carry out this
19 Act, and such amount is authorized to remain available
20 until September 30, 2031.

21 **SEC. 8. DEFINITIONS.**

22 In this Act:

23 (1) **AIR CARRIER AND RELATED DEFINI-**
24 **TIONS.**—The terms “air carrier”, “air transpor-

25 tation”, and “foreign air carrier” have the meanings

1 given such terms in section 40102(a) of title 49,
2 United States Code.

3 (2) COMMISSION.—The term “Commission”
4 means the Federal Trade Commission.

5 (3) STATE.—The term “State” means each
6 State of the United States, the District of Columbia,
7 and each commonwealth, territory, or possession of
8 the United States.

○