

CONSUMER PROTECTION IN THE AIRLINE INDUSTRY:

The United States and the European Union

by

Dr. Paul Stephen Dempsey

Tomlinson Professor of Law

Director, Institute of Air & Space Law

McGill University

Copyright © 2012 by the author

CAB Sunset

Of the estimated 209 CAB functions transferred to the United States Department of Transportation [USDOT] in 1985, several were directly concerned with consumer protection:

- 14 C.F.R. Part: 250, “Oversales;”
- 14 C.F.R. Part 252, “Smoking aboard aircraft;”
- 14 C.F.R. Part 253, “Notice of terms of contract of carriage;”
- 14 C.F.R. Part 374, “Implementation of the Consumer Credit Protection Act with respect to air carriers and foreign air carriers;”
- 14 C.F.R. Part 379, “Nondiscrimination in federally assisted programs of the Board—Effectuation of Title VI of the Civil Rights Act of 1964;”
- 14 C.F.R. Part 382, “Nondiscrimination on the basis of handicap;”
- 14 C.F.R. Part 254, “Domestic baggage liability;” and
- 14 C.F.R. Part 205, “Aircraft Accident Liability Insurance.”

The Politics of Consumer Protection



On several occasions, state and federal legislatures have stepped forward with proposed legislation to provide consumer protection against various forms of consumer abuse. The first Congressional bill was introduced in 1989. Mounting calls for legislation were opposed by the airline industry, which attempted to derail further legislative initiatives with its own Airline Customer Service Commitment of 1999. As US airlines incurred billions of dollars of losses, labor/management relations soured, and service declined. As airlines became more adept at disaggregating the fare from auxiliary services, stripping down the product to the short term rental of a seat and a seat belt, consumer dissatisfaction grew. Though USDOT staff had drafted regulatory remedies for consumer abuse, these proposals were bottled up until the Obama Administration. Finally, the USDOT promulgated more meaningful regulations in the 2010-2012 period.

FEDERAL PREEMPTION OF STATE REGULATION OF RATES, ROUTES AND SERVICES



The Airline Deregulation Act of 1978: “[A] state . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier. . . .”

However, the Airline Deregulation Act left untouched the general remedies savings clause in the Federal Aviation Act: “Nothing contained in this chapter shall in any way abridge or alter the remedies now existing at common law or by statute”

NAAG Guidelines

In 1987, the National Association of Attorneys General [NAAG] adopted detailed comprehensive guidelines for advertising and marketing practices in the airline industry. They required:

- restrictions on promotional fares be in legible type;
- round-trip purchase requirements be “clear and conspicuous” and include the round-trip price;
- any “sale” or “discount” fares actually represent “a true savings over regularly available air fares”;
- any advertised fare “be available in sufficient quantity so as to meet reasonably foreseeable demand,” so as to curtail the widespread airline industry practice of “bait and switch”; and
- restrictive changes in the frequent flyer programs be adopted prospectively only.



Morales v. Trans World Airlines



The US Supreme Court in *Morales v. Trans World Airlines* held that the NAAG guidelines were preempted by the Airline Deregulation Act.

The phrase “related to a price, route or service,” is to be given broad construction, as if it read “if it has a connection with or reference to.”

State law is “related to” rates, routes or services if it has a connection with them, but “some state actions may affect [airline rates, routes and services] in too tenuous, remote, or peripheral a manner” to have a preemptive effect.

Requiring that advertised fares be available to meet reasonably foreseeable demand “would have a significant impact upon the airlines’ ability to market their product, and hence a significant impact on the fares they charge.”

The court explicitly did not “address whether state regulation of the nonprice aspects of fare advertising (for example, state laws preventing obscene depictions) would similarly ‘relat[e] to’ rates.”

The court also insisted that its decision would not give the airlines “carte blanche to lie and deceive consumers; the USDOT retains the power to prohibit advertisements which in its opinion do not further competitive pricing.”

American Airlines v. Wolens



This was a class action suit against American Airlines under both an Illinois consumer fraud statute and a common law breach of contract claim on grounds that American unilaterally and retroactively imposed restrictions on redemption of frequent flyer mileage award travel (specifically, capacity controls and blackout dates).

The court found the statutory claim to be preempted by the Airline Deregulation Act, but did not read the preemption clause “to shelter airlines from suits alleging no violations of state-imposed obligations, but seeking recovery for the airline’s alleged breach of its own, self-imposed undertakings.”

The court found that “[m]arket efficiency requires effective means to enforce private agreements.”

Thus, a state consumer protection or anti-fraud statute or regulation is preempted by the federal Airline Deregulation Act; a state common law cause of action in tort or contract apparently is not.

UNFAIR AND DECEPTIVE PRACTICES

49 U.S.C. 41712

Upon a finding that the public interest so requires, the USDOT has broad power to prohibit unfair or deceptive practices or unfair methods of competition.

Federal regulations govern an array of consumer abuses, including false and misleading advertising, overbooking and denied boarding compensation, lost and damaged baggage, access for persons with disabilities, smoking aboard aircraft, gambling, code-sharing, and computer reservation system display bias.



FALSE AND MISLEADING ADVERTISING: Full Fare Quotation

Effective 2012, USDOT regulations prohibit and advertising or solicitation of air transportation, tour, or tour component unless the price quoted is the full price to be paid by the customer.

The consumer must be advised of the full price to be paid for air transportation, inclusive of all taxes, fees, and charges, at the first point he is presented with a price.

Carriers may list government-imposed or government-approved passenger charges (e.g., customs, immigration, agricultural inspection, ticket surcharges, international departure taxes, security, and passenger facility charges) separate from the advertised price, so long as the ad clearly revealed the nature and amount of the charges. The carrier may advise the consumer of separate charges within the total price in the fine print or on web page “pop ups” that are presented with the full fare. The disclosure must accurately distinguish between government taxes, fees, and charges and carrier-imposed fees (e.g., fuel surcharges). Such carrier charges must accurately reflect the actual costs thereof.

Carriers also may not include an “opt-out” provision for optional services. Instead, customers must affirmatively “opt-in” to purchase auxiliary services before a fee for such services is added to the total price for the transportation. Any additional fees for such services (e.g., charges for carry-on or checked luggage, seat selection, beverages, snacks, meals, or preferential seating) must be promptly and prominently disclosed on the carrier’s web site.

14 CFR 399.85.

FALSE AND MISLEADING ADVERTISING: Round-trip purchase requirements

DOT enforcement practices allow advertising of each-way fares conditioned on round-trip purchase, so long as seats at such prices were available in reasonable quantity, and the round-trip condition is prominently (i.e., the text print must be large enough to alert a reader of the actual fare), and proximately (i.e., the text must be located close to the fare) disclosed with the fare.

Carriers may not advertise an “each way” airfare available only with a round trip purchase requirement unless the requirement is clearly and conspicuously noted in the ad and is proximately and proximately stated to the each way amount.

So as to avoid “bait and switch” tactics, the USDOT considers it an unfair and deceptive practice for a carrier to offer an outbound each-way fare that is substantially higher than the return each-way fare.

Carriers may only advertise a “one way” airfare that is actually available without a round-trip purchase.

Spirit Annoys DOT With New Fee Charge For Costs Of New DOT Rule Draws Response

Political discourse frequently includes mention of the costs regulation imposes on business and their consumers. It's usually a vague concept, but Spirit Airlines has ticked off Transportation Secretary Ray LaHood by itemizing the estimated cost of new consumer protection rules recently imposed by the department. It's even calling the \$2/ticket surcharge the "Department of Transportation's unintended consequences" fee.

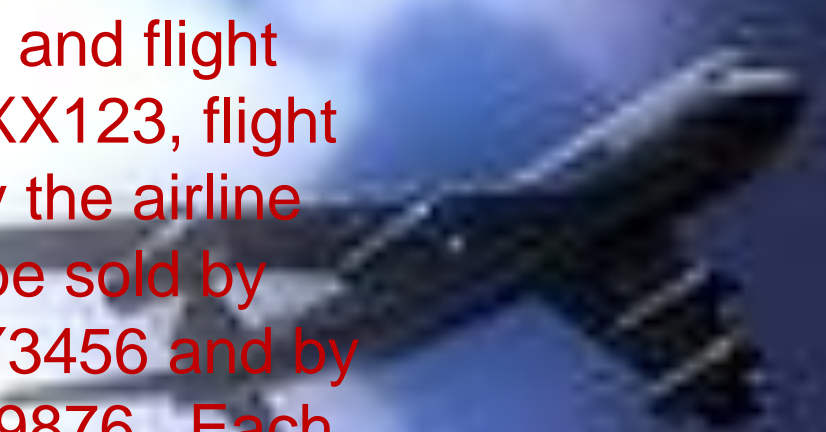
At issue is DOT's rule allowing passengers to change their minds within 24 hours of booking a flight without paying a penalty. But when seats held for passengers who change their minds can't be resold, planes will fly with fewer seats occupied, raising the per-passenger costs for the airlines. Spirit Airlines CEO Ben Baldanza tells USA Today, "People love the idea of not having to commit to a reservation, but this regulation, like most, imposes costs on consumers."

While other airlines may absorb the costs into their base fares, that would be very conspicuous for Spirit, which has fares as low as \$9. The company has staked out a position in the market which shifts as many optional costs as possible into a la carte fees to keep base fares low, even charging an added fee for carry-on bags.

LaHood isn't pleased with the cheeky itemization of the costs of his new rule. He tells the paper, "Rather than coming up with new and unnecessary fees to charge their customers, airlines should focus on providing fair and transparent service — that's what our common-sense rules are designed to ensure."

Code Sharing

The term "code" refers to the identifier used in flight schedule, generally the 2-character IATA carrier designator code and flight number. Thus, XX123, flight 123 operated by the airline XX, might also be sold by airline YY as YY3456 and by airline ZZ as ZZ9876. Each would (falsely) list the flight as its own.

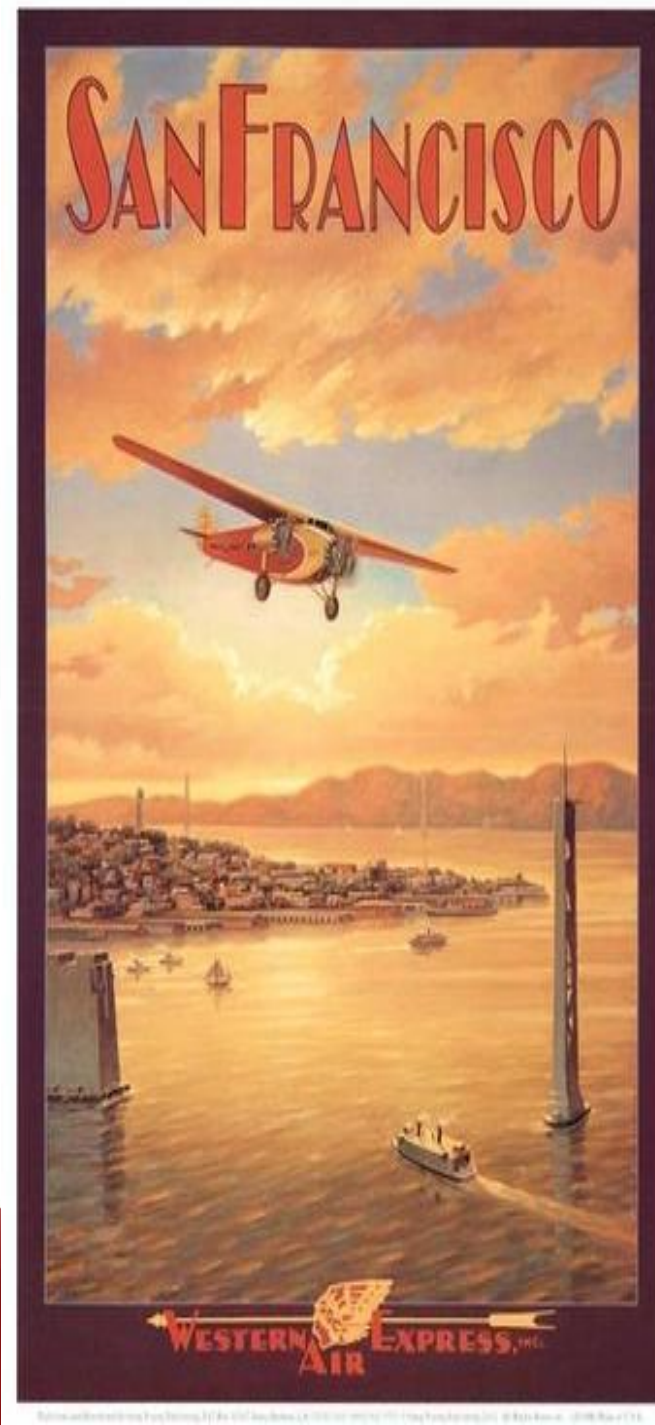


“Code sharing is unnecessary for, indeed irrelevant to, any legitimate purpose or actual service. Code sharing doesn't enable an airline to fly to any more places. It just enables the airline to mislead travellers into thinking that they fly to places they don't. I call that fraud.”



McGill

Edward Hasbrouck,
author of *"The Practical Nomad"*



Code Sharing

Professor Regas Doganis: "there can be little doubt that airline executives see alliances, especially when they involve code-sharing and capacity rationalisation, as a way of reducing or limiting competition."

Consumer Reports: code-sharing is a "predatory weapon."

Code sharing has been widely approved by USDOT in international aviation. Since 1999, air carriers and travel agents have been required to inform ticket purchasers of the true identity of the carrier actual providing the underlying service under code sharing or long-term wet leases. As an example, the rules provide a model written notification:

"Important Notice: Service between XYZ City and ABC City will be operated by Jane Doe Airlines d/b/a QRS Express."

14 CFR Part 257 (2003). 64 Fed. Reg. 12838 (Mar. 15, 1999).



CONSUMER CREDIT PROTECTION

Any violation of the following Acts of Congress is considered a violation of the Federal Aviation Act:

- the Consumer Credit Protection Act, incorporating the following legislation:
- the Truth in Lending Act, wherein exact finance charges must be divulged;
- the Fair Credit Reporting Act, establishing procedures for correcting and explaining billing errors;
- the Equal Credit Opportunity Act, making it illegal to discriminate;
- the Fair Debt Collection Practices Act, which limit third party collector abuses; and
- the Electronic Fund Transfer Act, which places controls on the electronic transfer of funds.



Compensation to Passengers Denied Boarding Involuntarily

In the 1960s, the U.S. Civil Aeronautics Board (CAB) adopted regulations addressing the practice of “overbooking”, whereby air carriers sell more than the number of available seats on a flight (oversales).

The U.S. Supreme Court has observed that overbooking is a “common industry practice, designed to ensure that each flight leaves with as few empty seats as possible”.

This practice was motivated, in part, by “no-shows”, or, in other words, the tendency of some travelers to book a reservation but not actually board the aircraft.

The regulations attempted to reduce the number of passengers involuntarily “bumped” (denied boarding) without interfering unduly with carrier marketing and sales practices.

These rules were amended by the CAB in 1978 and 1982, and by USDOT (the successor agency to the CAB), in 2008, and again in 2011.

Oversales Regulations

Apply to carriers operating in domestic and foreign air transport (if the segment originates in the United States) with aircraft having a capacity of 30 or more passengers. The rules have three essential features:

1. If a flight is oversold, the airline must first seek volunteers who are willing to relinquish their seats in exchange for whatever compensation the airline may offer (typically discounts on future ticket purchases or coupons for free flights).
2. If an insufficient number of passengers volunteer to surrender their seats, the airline must employ non-discriminatory means (written "boarding priority rules") to determine who will be involuntarily bumped.
3. An involuntarily bumped passenger may be eligible for denied boarding compensation depending on the price of the ticket and length of the delay. If the carrier can arrange alternative air transportation to get the passenger to his destination within one hour of the scheduled arrival time of the oversold flight, no compensation is required.



PAYMENTS REQUIRED FOR DENIED BOARDING COMPENSATION

Arrival Delay	Before August 23, 2011	After August 23, 2011
0-1 hours	No Compensation	No compensation
1-2 hours (domestic) 1-4 hours (international)	100% of one-way fare up to \$400	200% of one-way fare up to \$650
Over 2 hours (domestic) Over 4 hours (international)	200% of one-way fare up to \$800	400% of one-way fare up to \$1,300

INELIGIBILITY FOR DENIED BOARDING COMPENSATION

A passenger denied boarding involuntarily from an oversold flight is not eligible for denied boarding compensation if:

the passenger does not comply fully with the carrier's contract of carriage or tariff provisions regarding ticketing, reconfirmation, check in, and acceptability for transportation; thus, if the passenger arrives late, or is visibly intoxicated, he may be denied boarding and denied compensation as well.

the flight for which the passenger holds confirmed reserved space is unable to accommodate that passenger because of flight cancellation or substitution of equipment of lesser capacity when required by operational or safety reasons;

the passenger is offered accommodations or is seated in a section of the aircraft other than that specified on the ticket at no extra charge, except that a passenger seated in a section for which a lower fare is charged shall be entitled to an appropriate refund; or

the carrier arranges comparable air transportation at no extra cost to the passenger that is planned to arrive at the airport of the passenger's next stopover or, if none, at the airport of the final destination, not later than one hour after the planned arrival time of the passenger's original flight. However, passengers may decline alternative transportation provided by an air taxi or by other modes of transportation (e.g., taxi, bus, or train).



TARMAC DELAYS

On January 2, 1999, a Northwest Airlines was stranded at Detroit Metro Airport in a snow storm for more than seven hours. Food and water ran out. The lavatories began to overflow. All the while, passengers were forced to remain in their seats. The crew did little to keep the passengers informed of when the aircraft would move.

This was only one of several instances where passengers were effectively imprisoned on aircraft, unable to deplane despite lengthy delays and inadequate provisions.



TARMAC DELAY RULES

Regulations adopted in 2010 require U.S. and foreign air carriers to adopt contingency plans for lengthy tarmac delays at U.S. airports.

These plans must be coordinated with U.S. Customs and Border Protection and the Transportation Security Administration at large, medium and small hub airports, as well as airports to which their aircraft are regularly diverted.

Carriers may not permit an international flight to remain on the tarmac at a U.S. airport for more than four hours from the time the aircraft door is closed or passengers are no longer allowed to deplane. For domestic flights, the limit is three hours.

Two exceptions exist:

- Where the pilot in command determines that allowing a passenger to deplane would jeopardize safety or security (e.g., weather, air traffic control, or a requirement from a governmental agency); and
- Where air traffic control concludes that disembarkation would significantly disrupt airport operations.

Deplanement must be allowed even if the flight is diverted to an airport other than that originally scheduled.

Carriers must provide adequate food and potable water (a granola bar and bottle of water would suffice) not less than two hours after the aircraft leaves the gate on departure, or touches down after arrival.

Carriers must also provide operable lavatories, and adequate medical attention.

Once the aircraft returns to the gate to allow passengers to deplane, the clock stops. However, if the aircraft closes its doors and again returns to the tarmac, the clock begins running again.

Failure to comply with these requirements is deemed an unfair and deceptive practice under the law potentially subject to enforcement action. Large airlines can be subject to a maximum civil penalty of \$27,500 for each violation. Each day constitutes a separate violation.



Congressional Strengthening of Tarmac Delay Rules

In 2012, Congress passed a law adding additional requirements beyond those promulgated by USDOT. The statute requires that the delay contingency plans describe:

- how the carrier will provide food, potable water, restroom facilities, comfortable cabin temperatures, and access to medical treatment, and
- share facilities and gates in an emergency.

The statute also requires airports to file a contingency plan describing how they will

- provide for deplanement following excessive tarmac delays,
- provide for the sharing of facilities and gates during an emergency, and
- provide a sterile area for passengers that have not cleared customs and border protection.



CUSTOMER SERVICE PLANS

Scheduled U.S. and foreign airlines are required to adopt and implement a Customer Service Plan applicable to their scheduled flights from, to or within the United States. The Plan must address the following :

- Disclosure that the lowest fare offered by the carrier may be available elsewhere;
- Notification of known delays, cancellations and diversions;
- Delivery of baggage on time, and efforts to return delayed baggage within 24 hours, compensating passengers for reasonable expenses incurred because of delay, and reimbursing passengers for any baggage fees charged where the bag is lost;
- Permitting reservations to be held at the quoted price without payment, or (at the discretion of the carrier) canceled without penalty, for 24 hours from the time the reservation is made, provided the flight is more than one week prior to departure;
- Provision of prompt ticket refunds for credit card purchases, and refunds of cash and check purchases within 20 days, and refund fees charged for optional services not provided;
- Accommodation of passengers with disabilities;
- Satisfaction of passengers' essential needs during lengthy tarmac delays;
- Treatment of "bumped" passengers with fairness and consistency in the case of oversales;
- Disclosure of cancellation policies, frequent flyer rules, aircraft seating configuration, and lavatory availability on the carrier's website;
- Timely notification of changes in passenger travel itineraries; and
- Identification of services provided to mitigate inconvenience resulting from flight cancellations and misconnections (e.g., meals, telephone calls, hotel accommodations, and rerouting on later flights).

CONTRACTS OF CARRIAGE

All other issues of carrier liability to consumers are governed by “Conditions of Contract for Carriage.”

The passenger ticket or air waybill is a contract of carriage, which may incorporate by reference other binding provisions in its Tariffs so long as the ticket (or other travel documents) provides notice that it incorporates additional terms.

Such provisions may incorporate arbitrary unilateral terms governing such issues as delayed flights or missed connections. They may include legal limits on the carrier’s liability, the time periods within which passengers must file a claim, the right of a carrier to change any terms of the contract, and rules concerning reservations, check-in times, and the kinds of property the carrier refuses to carry. These provisions may also include the application of the Warsaw Convention’s provision for liability for personal injury, baggage liability, refusal to carry or failure to perform service including schedule changes, substitution of alternative carriers, aircraft and re-routing, restrictions on refunds, monetary penalties, or the circumstances under which the carrier may raise the price.

Although most carriers will make efforts to compensate passengers for meals and overnight accommodations, where necessary, technically airlines are not liable for delays or misconnections caused by mechanical problems or weather.

Air carriers operating “large” aircraft must give notice of the terms of their contracts of carriage. The ticket or other written instrument which embodies the contract of carriage may incorporate the contract terms by reference (i.e., without stating their full text), but each air carrier must provide free of charge by mail or other delivery service to passengers, upon their request, a copy of the full text of its terms. Airlines must make the full text of the provisions available at the carrier’s airport or ticket office, or by mail.

USDOT Restrictions on Air Carrier Contracts of Carriage

DOT has imposed rules upon air carrier contracts of carriage in only a few areas.

One is a prohibition against carrier limitation of a passenger's choice of forum. If a contract of carriage limits a passenger's freedom from bringing a claim in a court of his choice of competent jurisdiction ("including a court within the jurisdiction of the passenger's residence in the United States, provided that the carrier does business within that jurisdiction"), the carrier will be deemed to have committed a prohibited unfair and deceptive practice. Practically speaking, this applies only to U.S. carriers on domestic flights, as the venue provisions of the Warsaw or Montreal Conventions would govern international flights.

Another is a requirement that the carrier's contract of carriage includes a contingency plan for lengthy tarmac delays, and the carrier's customer service plan, and that its entire contract of carriage and updates thereto shall be posted on its Web site in an easily accessible format.

AIRLINE REPORTING AND NOTIFICATION REQUIREMENTS

In addition to Form 41 requirements regarding carrier operational data, the USDOT has imposed reporting requirements on carriers in several areas of consumer concern:

On-time performance—To dissuade airlines from publishing unrealistically short schedules, in 1987 the USDOT promulgated on-time performance reporting requirements. DOT regularly makes certain reported data public in its Air Travel Consumer Report, reporting for example, carrier on-time arrivals and departures. Flights are considered reportably “late” by USDOT only if they are delayed by more than 15 minutes, and the cause of delay is attributable to other than a mechanical or weather problem. USDOT regulations specify certain requirements for the advertising of such data.

Baggage handling performance—Airlines also report to USDOT the total number of mishandled baggage reports filed with the carrier on a monthly basis.

Overbooking and denied boarding—Airlines must report to USDOT the number of passengers “bumped” from flights originating in the United States on a quarterly basis.

Tarmac delays – airlines operating passenger flights with 30 or more seats must report to USDOT tarmac delays of three hours or longer at U.S. airports on a monthly basis, and retain certain information regarding tarmac delays for two years.

Flight Status Changes - airlines operating passenger flights with 30 or more seats must promptly notify passengers and the public of known flight status changes, such as diversion of aircraft, cancellation of flights, and delays of 30 minutes or more in their scheduled operation. The USDOT Enforcement Office considers flight changes more than seven days prior to departure to be “schedule changes”, for which “timely” (as soon as practicable) notice is required.

CARRIER LIABILITY FOR LOST AND DAMAGED BAGGAGE

On domestic flights, the maximum carrier liability is \$3,300 per person.

For international flights governed by the Warsaw Convention, the maximum is \$20 per kilogram of checked baggage (\$9.07 per pound), with a maximum of \$634.90 per bag.

Under the Montreal Convention of 1999, liability was raised to 1,000 Special Drawing Rights [SDRs], adjusted for inflation (today 1,131 SDRs, or approximately US\$1,750).

Excess valuation coverage may be purchased from the airline.



NONDISCRIMINATION

Air carriers may not discriminate in air transportation on grounds of race, color, or natural origin.

Air carriers may not recruit, advertise, hire, fire, upgrade, promote, demote, transfer, lay off, terminate employees, nor establish rates of pay or other forms of compensation or benefits, select for training or apprenticeship, use facilities, or otherwise treat employees discriminatorily on the basis of race, color or national origin.

Air carriers must provide reasonable access to the persons with disabilities. However, if a carrier reasonably believes that the person is not a qualified disabled person, the carrier may refuse transportation in the interest of air safety.

New aircraft of more than 30 seats be equipped with folding armrests on half the aisles, wide bodied aircraft must have lavatories accessible to the handicapped, and aircraft planes with 100 or more seats must have priority space for storing a wheelchair.

Wheelchairs, canes and crutches have priority for in-cabin and baggage compartment space over other passengers' baggage. But only able-bodied people capable of performing emergency evacuation functions can be seated in exit rows.

Airports are prohibited from discriminating against qualified handicapped people in terms of employment, access and utilization of airports. Structural changes in facilities are required, including making ticketing, baggage check-in and retrieval, boarding, drinking fountains, rest rooms, and telephones accessible to disabled passengers.

SMOKING

Smoking has been banned on all U.S. domestic flights. Federal law imposes a \$2,000 maximum penalty for tampering with a lavatory smoke alarm.

GAMBLING

Gambling aboard U.S. or foreign air carriers serving the United States is prohibited by statute. This places carriers serving the United States at a competitive disadvantage vis-à-vis international carriers flying abroad.

EU ADVERTISING RULES

In 2008, the EU adopted Regulation 1008/08 which provides for non-discriminatory and transparency in airline pricing.

The regulation applies to airlines, travel agents, tour operators, and other air fare sellers.

Air transport pricing may not discriminate between the place of residence or nationality of the passengers, or the place or establishment of the travel agent.

The final price quoted or advertised must include all applicable fares, charges, fees and taxes, though charges included in the total price may be identified separately.

Any supplemental charges for services must be communicated in a clear, transparent and unambiguous way and the beginning of the booking process, and may be imposed only on an “opt-in” basis.



EU Flight Cancellation Rules



Regulation 261/2004 provides compensation for travelers for delay, denied boarding and flight cancellations.

Where a flight is cancelled, the passenger must be offered a choice of reimbursement or re-routing.

Meals and communications must be provided to all passengers.

Where the passenger will depart the following day, overnight hotel accommodation and transportation must be offered.

Under certain circumstances, passengers are entitled to compensation of between €250 and €600.

The carrier has a defense for cancellations “caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

EU Flight Delay Regulations

Where a flight's departure is delayed by two hours for a flight of less than 1,500 km, three hours for all other intra-EU flights and extra-EU flights up to 3,500 km, or four hours for all other flights, the air carrier must offer meals and two telecommunications. Where departure will be on the following day, hotel accommodation and transport to hotel must be provided.

If the delay exceeds five hours, passengers are allowed the right to a refund of their ticket value including any segments not yet flown as well as any flown sector which no longer serves any purpose related to the passenger's original travel plans.

EU Denied Boarding Regulations

Airlines must call for volunteers before involuntary denied boarding. Compensation of volunteers is to be established by agreement between the airline and the volunteer. If there are insufficient volunteers, the airline must select passengers not to board for travel. If they are denied boarding against their will, the carrier must compensate them between €250 and €600 depending upon the distance of the flight, offer them ticket reimbursement or re-routing, and provide them with meals, hotel rooms and communications.

Note that Article 22 of the Montreal Convention limits recovery for delay to the carriage of persons for actual damages up to 4,150 Special Drawing Rights (SDRs), recovery for delay of baggage to 1,000 SDRs and recovery for delay of cargo to 17 SDRs per kilogram. These limits do not apply to delay of passengers or baggage if the carrier engaged in willful misconduct.