

air carrier shall not be affected by the requirements of this section as to the employees covered by that agreement, so long as those provisions allow for the protections afforded by sections 3 and 13 of the Allegheny-Mohawk provisions.

“(b) DEFINITIONS.—In this section, the following definitions apply:

“(1) AIR CARRIER.—The term ‘air carrier’ means an air carrier that holds a certificate issued under chapter 411 of title 49, United States Code.

“(2) COVERED AIR CARRIER.—The term ‘covered air carrier’ means an air carrier that is involved in a covered transaction.

“(3) COVERED EMPLOYEE.—The term ‘covered employee’ means an employee who—

“(A) is not a temporary employee; and

“(B) is a member of a craft or class that is subject to the Railway Labor Act (45 U.S.C. 151 et seq.).

“(4) COVERED TRANSACTION.—The term ‘covered transaction’ means—

“(A) a transaction for the combination of multiple air carriers into a single air carrier; and which

“(B) involves the transfer of ownership or control of—

“(i) 50 percent or more of the equity securities (as defined in section 101 of title 11, United States Code) of an air carrier; or

“(ii) 50 percent or more (by value) of the assets of the air carrier.

“(c) APPLICATION.—This section shall not apply to any covered transaction involving a covered air carrier that took place before the date of enactment of this Act [Dec. 26, 2007].

“(d) EFFECTIVENESS OF PROVISION.—This section shall become effective on the date of enactment of this Act and shall continue in effect in fiscal years after fiscal year 2008.”

SUBCHAPTER III—WHISTLEBLOWER PROTECTION PROGRAM

§ 42121. Protection of employees providing air safety information

(a) DISCRIMINATION AGAINST AIRLINE EMPLOYEES.—No air carrier or contractor or subcontractor of an air carrier may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States;

(2) has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States;

(3) testified or is about to testify in such a proceeding; or

(4) assisted or participated or is about to assist or participate in such a proceeding.

(b) DEPARTMENT OF LABOR COMPLAINT PROCEDURE.—

(1) FILING AND NOTIFICATION.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 90 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint and the Administrator of the Federal Aviation Administration of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2) INVESTIGATION; PRELIMINARY ORDER.—

(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person named in the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary’s findings. If the Secretary of Labor concludes that there is a reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary’s findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B) REQUIREMENTS.—

(i) REQUIRED SHOWING BY COMPLAINANT.—The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) SHOWING BY EMPLOYER.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evi-

dence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) **CRITERIA FOR DETERMINATION BY SECRETARY.**—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) **PROHIBITION.**—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3) **FINAL ORDER.**—

(A) **DEADLINE FOR ISSUANCE; SETTLEMENT AGREEMENTS.**—Not later than 120 days after the date of conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(B) **REMEDY.**—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation to—

(i) take affirmative action to abate the violation;

(ii) reinstate the complainant to his or her former position together with the compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(iii) provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing the complaint upon which the order was issued.

(C) **FRIVOLOUS COMPLAINTS.**—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney's fee not exceeding \$1,000.

(4) **REVIEW.**—

(A) **APPEAL TO COURT OF APPEALS.**—Any person adversely affected or aggrieved by an order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the

violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary of Labor. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) **LIMITATION ON COLLATERAL ATTACK.**—An order of the Secretary of Labor with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(5) **ENFORCEMENT OF ORDER BY SECRETARY OF LABOR.**—Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(6) **ENFORCEMENT OF ORDER BY PARTIES.**—

(A) **COMMENCEMENT OF ACTION.**—A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) **ATTORNEY FEES.**—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) **MANDAMUS.**—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(d) **NONAPPLICABILITY TO DELIBERATE VIOLATIONS.**—Subsection (a) shall not apply with respect to an employee of an air carrier, contractor, or subcontractor who, acting without direction from such air carrier, contractor, or subcontractor (or such person's agent), deliberately causes a violation of any requirement relating to air carrier safety under this subtitle or any other law of the United States.

(e) **CONTRACTOR DEFINED.**—In this section, the term "contractor" means a company that performs safety-sensitive functions by contract for an air carrier.

(Added Pub. L. 106-181, title V, §519(a), Apr. 5, 2000, 114 Stat. 145.)

EFFECTIVE DATE

Subchapter applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as an Effective Date of 2000 Amendments note under section 106 of this title.

CHAPTER 423—PASSENGER AIR SERVICE IMPROVEMENTS

Sec.	
42301.	Emergency contingency plans.
42302.	Consumer complaints.
42303.	Use of insecticides in passenger aircraft.

FAMILY SEATING

Pub. L. 114-190, title II, §2309, July 15, 2016, 130 Stat. 648, provided that:

“(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act [July 15, 2016], the Secretary of Transportation shall review and, if appropriate, establish a policy directing all air carriers providing scheduled passenger interstate or intrastate air transportation to establish policies that enable a child, who is age 13 or under on the date an applicable flight is scheduled to occur, to be seated in a seat adjacent to the seat of an accompanying family member over the age of 13, to the maximum extent practicable and at no additional cost, except when assignment to an adjacent seat would require an upgrade to another cabin class or a seat with extra legroom or seat pitch for which additional payment is normally required.

“(b) **EFFECT ON AIRLINE BOARDING AND SEATING POLICIES.**—When considering any new policy under this section, the Secretary shall consider the traditional seating and boarding policies of air carriers providing scheduled passenger interstate or intrastate air transportation and whether those policies generally allow families to sit together.

“(c) **STATUTORY CONSTRUCTION.**—Notwithstanding the requirement in subsection (a), nothing in this section may be construed to allow the Secretary to impose a significant change in the overall seating or boarding policy of an air carrier providing scheduled passenger interstate or intrastate air transportation that has an open or flexible seating policy in place that generally allows adjacent family seating as described in subsection (a).”

ESTABLISHMENT OF ADVISORY COMMITTEE FOR AVIATION CONSUMER PROTECTION

Pub. L. 112-95, title IV, §411, Feb. 14, 2012, 126 Stat. 88, as amended by Pub. L. 114-55, title I, §102(i), Sept. 30, 2015, 129 Stat. 523; Pub. L. 114-141, title I, §102(g), Mar. 30, 2016, 130 Stat. 323; Pub. L. 114-190, title I, §1102(j), July 15, 2016, 130 Stat. 618; Pub. L. 115-63, title I, §102(i), Sept. 29, 2017, 131 Stat. 1170, provided that:

“(a) **IN GENERAL.**—The Secretary of Transportation shall establish an advisory committee for aviation consumer protection to advise the Secretary in carrying out activities relating to airline customer service improvements.

“(b) **MEMBERSHIP.**—The Secretary shall appoint the members of the advisory committee, which shall be comprised of one representative each of—

- “(1) air carriers;
- “(2) airport operators;
- “(3) State or local governments with expertise in consumer protection matters; and
- “(4) nonprofit public interest groups with expertise in consumer protection matters.

“(c) **VACANCIES.**—A vacancy in the advisory committee shall be filled in the manner in which the original appointment was made.

“(d) **TRAVEL EXPENSES.**—Members of the advisory committee shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

“(e) **CHAIRPERSON.**—The Secretary shall designate, from among the individuals appointed under subsection (b), an individual to serve as chairperson of the advisory committee.

“(f) **DUTIES.**—The duties of the advisory committee shall include—

- “(1) evaluating existing aviation consumer protection programs and providing recommendations for the improvement of such programs, if needed; and

“(2) providing recommendations for establishing additional aviation consumer protection programs, if needed.

“(g) **REPORT TO CONGRESS.**—Not later than February 1 of each of the first 2 calendar years beginning after the date of enactment of this Act [Feb. 14, 2012], the Secretary shall transmit to Congress a report containing—

“(1) the recommendations made by the advisory committee during the preceding calendar year; and

“(2) an explanation of how the Secretary has implemented each recommendation and, for each recommendation not implemented, the Secretary’s reason for not implementing the recommendation.

“(h) **TERMINATION.**—The advisory committee established under this section shall terminate on March 31, 2018.”

DISCLOSURE OF SEAT DIMENSIONS TO FACILITATE THE USE OF CHILD SAFETY SEATS ON AIRCRAFT

Pub. L. 112-95, title IV, §412, Feb. 14, 2012, 126 Stat. 89, provided that: “Not later than 1 year after the date of enactment of this Act [Feb. 14, 2012], the Administrator of the Federal Aviation Administration shall initiate a rulemaking to require each air carrier operating under part 121 of title 14, Code of Federal Regulations, to post on the Internet Web site of the air carrier the maximum dimensions of a child safety seat that can be used on each aircraft operated by the air carrier to enable passengers to determine which child safety seats can be used on those aircraft.”

§ 42301. Emergency contingency plans

(a) **SUBMISSION OF AIR CARRIER AND AIRPORT PLANS.**—Not later than 90 days after the date of enactment of this section, each of the following air carriers and airport operators shall submit to the Secretary of Transportation for review and approval an emergency contingency plan in accordance with the requirements of this section:

- (1) An air carrier providing covered air transportation at a commercial airport.
- (2) An operator of a commercial airport.
- (3) An operator of an airport used by an air carrier described in paragraph (1) for diversions.

(b) **AIR CARRIER PLANS.**—

(1) **PLANS FOR INDIVIDUAL AIRPORTS.**—An air carrier shall submit an emergency contingency plan under subsection (a) for—

- (A) each airport at which the carrier provides covered air transportation; and
- (B) each airport at which the carrier has flights for which the carrier has primary responsibility for inventory control.

(2) **CONTENTS.**—An emergency contingency plan submitted by an air carrier for an airport under subsection (a) shall contain a description of how the carrier will—

- (A) provide adequate food, potable water, restroom facilities, comfortable cabin temperatures, and access to medical treatment for passengers onboard an aircraft at the airport when the departure of a flight is delayed or the disembarkation of passengers is delayed;
- (B) share facilities and make gates available at the airport in an emergency; and
- (C) allow passengers to deplane following an excessive tarmac delay in accordance with paragraph (3).

(3) **DEPLANING FOLLOWING AN EXCESSIVE TARMAC DELAY.**—For purposes of paragraph