

“(1) if the same collective bargaining agent represents the combining crafts or classes at each of the covered air carriers, that collective bargaining agent’s internal policies regarding integration, if any, will not be affected by and will supersede the requirements of this section; and

“(2) the requirements of any collective bargaining agreement that may be applicable to the terms of integration involving covered employees of a covered 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 unfavor-

able 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 evidence, 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 per-

forms 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.
42304.	Widespread disruptions.

AMENDMENTS

2018—Pub. L. 115-254, div. B, title IV, §428(b), Oct. 5, 2018, 132 Stat. 3341, added item 42304.

ADVISORY COMMITTEE ON AIR AMBULANCE AND PATIENT BILLING

Pub. L. 115-254, div. B, title IV, §418, Oct. 5, 2018, 132 Stat. 3334, provided that:

“(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act [Oct. 5, 2018], the Secretary of Transportation, in consultation with the Secretary of Health and Human Services, shall establish an advisory committee for the purpose of reviewing options to improve the disclosure of charges and fees for air medical services, better inform consumers of insurance options for such services, and protect consumers from balance billing.

“(b) COMPOSITION OF THE ADVISORY COMMITTEE.—The advisory committee shall be composed of the following members:

“(1) The Secretary of Transportation, or the Secretary’s designee.

“(2) The Secretary of Health and Human Services, or the Secretary’s designee.

“(3) One representative, to be appointed by the Secretary of Transportation, of each of the following:

“(A) Each relevant Federal agency, as determined by the Secretary of Transportation.

“(B) State insurance regulators[.]

“(C) Health insurance providers.

“(D) Patient advocacy groups.

“(E) Consumer advocacy groups.

“(F) Physician[s] specializing in emergency, trauma, cardiac, or stroke.

“(4) Three representatives, to be appointed by the Secretary of Transportation, to represent the various segments of the air ambulance industry.

“(5) Additional three representatives not covered under paragraphs (1) through (4), as determined necessary and appropriate by the Secretary.

“(c) CONSULTATION.—The advisory committee shall, as appropriate, consult with relevant experts and stakeholders not captured in [subsection] (b) while conducting its review.

“(d) RECOMMENDATIONS.—The advisory committee shall make recommendations with respect to disclosure of charges and fees for air ambulance services and insurance coverage, consumer protection and enforcement authorities of both the Department of Transportation and State authorities, and the prevention of balance billing to consumers. The recommendations shall address, at a minimum—

“(1) the costs, benefits, practicability, and impact on all stakeholders of clearly distinguishing between charges for air transportation services and charges for non-air transportation services in bills and invoices, including the costs, benefits, and practicability of—

“(A) developing cost-allocation methodologies to separate charges for air transportation services from charges for non-air transportation services; and

“(B) formats for bills and invoices that clearly distinguish between charges for air transportation services and charges for non-air transportation services;

“(2) options, best practices, and identified standards to prevent instances of balance billing such as improving network and contract negotiation, dispute resolution between health insurance and air medical service providers, and explanation of insurance coverage and subscription programs to consumers;

“(3) steps that can be taken by State legislatures, State insurance regulators, State attorneys general, and other State officials as appropriate, consistent with current legal authorities regarding consumer protection;

“(4) recommendations made by the Comptroller General study, GAO-17-637, including what additional data from air ambulance providers and other sources should be collected by the Department of Transportation to improve its understanding of the air ambulance market and oversight of the air ambulance industry for the purposes of pursuing action related to unfair or deceptive practices or unfair methods of competition, which may include—

“(A) cost data;

“(B) standard charges and payments received per transport;

“(C) whether the provider is part of a hospital-sponsored program, municipality-sponsored program, hospital-independent partnership (hybrid) program, or independent program;

“(D) number of transports per base and helicopter;

“(E) market shares of air ambulance providers inclusive of any parent or holding companies;

“(F) any data indicating the extent of competition among air ambulance providers on the basis of price and service;

“(G) prices assessed to consumers and insurers for air transportation and any non-transportation services provided by air ambulance providers; and

“(H) financial performance of air ambulance providers;

“(5) definitions of all applicable terms that are not defined in statute or regulations; and

“(6) other matters as determined necessary or appropriate.

“(e) REPORT.—Not later than 180 days after the date of the first meeting of the advisory committee, the advisory committee shall submit to the Secretary of Transportation, the Secretary of Health and Human Services, and the appropriate committees of Congress [Committee on Commerce, Science, and Transportation of the Senate and Committee on Transportation and Infrastructure of the House of Representatives] a report containing the recommendations made under subsection (d).

“(f) RULEMAKING.—Upon receipt of the report under subsection (e), the Secretary of Transportation shall consider the recommendations of the advisory committee and issue regulations or other guidance as deemed necessary—

“(1) to require air ambulance providers to regularly report data to the Department of Transportation;

“(2) to increase transparency related to Department of Transportation actions related to consumer complaints; and

“(3) to provide other consumer protections for customers of air ambulance providers.

“(g) ELIMINATION OF ADVISORY COUNCIL ON TRANSPORTATION STATISTICS.—The Advisory Council on Transportation Statistics shall terminate on the date of enactment of this Act [Oct. 5, 2018].”

REFUNDS FOR OTHER FEES THAT ARE NOT HONORED BY A COVERED AIR CARRIER

Pub. L. 115-254, div. B, title IV, §421, Oct. 5, 2018, 132 Stat. 3337, provided that: “Not later than 1 year after