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**Commerce & Labor Committee**

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**HB 2707**

**Brief Description:** Allowing consumers to participate in the secondary market for points, miles, or other similar credits earned in frequent flier programs.

**Sponsors:** Representatives Hurst, Conway and Kirby.

**Brief Summary of Bill**

- Prohibits airlines that engage in the secondary market from interfering, restricting, restraining, limiting, or controlling the right of consumers in the State of Washington to also participate in the secondary market.
- Makes a violation of this prohibition a violation of the state's Consumer Protection Act.

**Hearing Date:** 1/31/08

**Staff:** Alison Hellberg (786-7152).

**Background:**

From 1938 until 1978, the Federal Civil Aeronautics Board regulated all domestic air transport like a public utility, setting fares, routes, and schedules. The Airline Deregulation Act (ADA) was enacted in 1978 and contained a specific preemption clause stating that states 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. Since the passage of the ADA, Congress has not significantly increased regulation of the airline industry and has delegated most responsibility to the Federal Department of Transportation (DOT). The United States DOT currently has regulatory authority over deceptive trade practices in aviation.

The United States Supreme Court (Court) has considered the scope of preemption under the ADA in two cases.

In *Morales v. TWA*, the Court considered whether the ADA preempts the states from prohibiting allegedly deceptive airline fare advertisements through enforcement of their general consumer protection statutes. The Court held that the enforcement actions were preempted by the ADA

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because they had a connection to air fares, which affected the airlines' ability to set their fares. *Morales* indicated, however, that certain state actions would be allowed that were ". . .too tenuous, remote, or peripheral. . .to have pre-emptive effect."

*American Airlines, Inc. v. Wolens* dealt with the preemptive provision of the ADA's application to a suit brought by participants in an airline's frequent flier program. The airline's unilateral changes to the terms and conditions of the program were challenged. The Court held that the ADA's preemption bars state-imposed regulation of airlines, but allows for court enforcement of contract terms set by the airlines and consumers themselves. The Court noted that the ADA was meant to "maximize reliance on competitive market forces" so allowing for breach of contract claims would assist in achieving this goal.

Under the Consumer Protection Act (CPA), various business practices are declared unlawful. These practices include engaging in unfair methods of competition and unfair or deceptive acts or practices in the conduct of commerce. In addition to the acts declared unlawful by the CPA itself, other statutes elsewhere in the code declare violations of their provisions to be violations of the CPA. A party injured by a violation of the CPA may bring an action for damages. Recovery may include treble damages and reasonable attorneys' fees. In addition, the Attorney General may bring an action to restrain a person from violating the CPA.

**Summary of Bill:**

Airlines that engage in the secondary market are prohibited from interfering, restricting, restraining, limiting, or controlling the right of consumers in the State of Washington to also participate in the secondary market. The secondary market is defined as the market in which the sale, barter, or exchange of points, miles, or other similar credits occurs between an airline and someone other than a frequent flier program member or between a frequent flier program member and someone other than the airline sponsoring the frequent flier program.

A violation of this prohibition is a violation of the state's CPA.

**Rules Authority:** The bill does not address the rule-making powers of an agency.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.