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HOUSE BILL 2708

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State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Hurst, Conway, and Kirby

Read first time 01/16/08. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to requirements for airlines participating in the  
2 secondary market for points, miles, or other similar credits earned in  
3 frequent flier programs; and adding a new chapter to Title 19 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** The legislature finds that:

6            (1) In recent years, frequent flier programs have become a popular  
7 marketing tool used not only to attract airline customers and generate  
8 customer loyalty, but also to generate significant revenue for  
9 airlines;

10           (2) As frequent flier programs have grown in popularity, a  
11 secondary market for points, miles, or other similar credits earned by  
12 participating in frequent flier programs has also grown;

13           (3) This secondary market for points, miles, or other similar  
14 credits is independent from the original frequent flier loyalty  
15 programs and is not related to airline rates, routes, and services;

16           (4) Airlines have contributed to the growth of this secondary  
17 market by creating a business out of selling points, miles, or other  
18 similar credits to outside companies, such as credit card companies,

1 that in turn use the points, miles, or other similar credits to attract  
2 their own customers;

3 (5) As the secondary market for points, miles, or other similar  
4 credits has grown, however, airlines have increasingly attempted to  
5 unreasonably restrict, restrain, limit, or control the secondary market  
6 by prohibiting frequent flier program members from also participating  
7 in the secondary market;

8 (6) When unreasonable restrictions, restraints, limitations, or  
9 controls are placed on the secondary market for points, miles, or other  
10 similar credits, consumers in the state of Washington who participate  
11 in frequent flier programs are harmed; and

12 (7) Regulation of the secondary market for points, miles, or other  
13 similar credits earned through participation in frequent flier programs  
14 is necessary to ensure that consumers in the state of Washington can  
15 freely participate in the secondary market.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply  
17 throughout this chapter unless the context clearly requires otherwise.

18 (1) "Frequent flier program" means a program in which a consumer  
19 receives points, miles, or other similar credits in exchange for travel  
20 on a certain airline.

21 (2) "Secondary market" means the market in which the sale, barter,  
22 or exchange of points, miles, or other similar credits occurs between  
23 an airline and someone other than a frequent flier member or between a  
24 frequent flier member and someone other than the airline sponsoring the  
25 frequent flier program.

26 NEW SECTION. **Sec. 3.** (1) If an airline chooses to claim to own  
27 points, miles, or other similar credits sold, bartered, or exchanged on  
28 the secondary market, the airline shall comply with the requirements of  
29 subsections (2) and (3) of this section.

30 (2) The airline shall include a warning in the first twenty-five  
31 percent of the first page of any communication from the airline,  
32 including the airline's web site or newsletters, stating that the  
33 points, miles, or other similar credits that are sold, bartered, or  
34 exchanged on the secondary market are the property of the airline and  
35 that the airline may terminate a frequent flier program at any time and  
36 reserves the right to seize the points, miles, or other similar credits

1 without notice or compensation. The warning shall be in red font of  
2 not less than eighteen point and displayed on a background of  
3 distinctly contrasting color.

4 (3)(a) If the airline terminates its frequent flier program, the  
5 airline shall compensate holders two and one-half cents for each point,  
6 mile, or other similar credit of the airline's frequent flier program  
7 sold, bartered, or exchanged on the secondary market.

8 (b) The airline shall establish and maintain a separate reserve  
9 fund adequate to compensate holders of points, miles, or other similar  
10 credits of the airline's frequent flier program that were sold,  
11 bartered, or exchanged on the secondary market if the airline  
12 terminates its frequent flier program.

13 (c) The amount of the separate reserve fund shall be not less than  
14 two and one-half cents per point, mile, or other similar credit of the  
15 airline's frequent flier program that was sold, bartered, or exchanged  
16 on the secondary market.

17 (d) If the airline terminates the frequent flier program, the  
18 general assets of the airline shall be liable to consumers who bought,  
19 bartered, or exchanged the airline's points, miles, or other similar  
20 credits on the secondary market to the extent that the separate reserve  
21 fund is inadequate to compensate consumers.

22 NEW SECTION. **Sec. 4.** If an airline violates section 3 of this  
23 act, an individual may bring a civil action for damages as a result of  
24 the violation. If the individual prevails, the individual shall be  
25 allowed reasonable attorneys' fees and costs.

26 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act constitute  
27 a new chapter in Title 19 RCW.

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