

AMENDED IN SENATE FEBRUARY 13, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1407

Introduced by Assembly Member Lieu

February 23, 2007

~~An act to amend Section 830.7 of the Penal Code, relating to powers of arrest.~~ *An act to add Article 8 (commencing with Section 340) to Chapter 4 of Division 1 of the Business and Professions Code, and to add Article 2 (commencing with Section 5515) to Chapter 9 of Division 2 of the Public Utilities Code, relating to commercial airlines.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1407, as amended, Lieu. ~~Powers of arrest.~~ *Airline passenger rights.*

The existing Consumer Affairs Act establishes a Division of Consumer Services in the Department of Consumer Affairs, that is charged, among other things, with receiving complaints from consumers concerning certain matter.

This bill would establish the Office of the Airline Consumer Advocate within the division with the functions, powers, and duties to: (1) assist consumers in resolving problems with air carriers, as defined, (2) identify areas in which consumers have problems in dealings with air carriers, (3) propose solutions, including administrative changes to practices and procedures of an air carrier or airport, as defined, (4) preserve and promote the rights of consumers of the services of air carriers and airports, (5) promote open and direct communications between consumers and air carriers and airports, and (6) initiate, investigate, attempt to resolve, and if necessary, refer to the Attorney General, any matters or complaints received pursuant to the bill's

provisions. The department would be required to annually report to the Legislature on certain activities of the office.

Existing law requires the Public Utilities Commission to require every commercial air operator, as defined, to procure, and continue in effect, adequate protection against liability for personal bodily injuries and property damage as a result of an accident, that may be imposed by law upon the operator and upon any person using, operating, or renting an aircraft, as defined, with the permission of the operator.

This bill would require that whenever passengers have boarded an aircraft, as defined, and departure of the aircraft from the airport, as defined, is delayed by more than one hour, or more than one hour has passed following landing of the aircraft and passengers have not disembarked from the aircraft, that the air carrier, as defined, provide passengers, as needed, with (1) electrical service that is sufficient to provide the passengers with fresh air and light, (2) waste removal service in order to service the holding tanks for onboard restrooms, and (3) adequate food and drinking water and other refreshment.

This bill would require air carriers to: (1) establish procedures for responding to passenger complaints, (2) notify passengers of delays, diversions, or cancellations, (3) establish procedures for returning passengers to a terminal gate when departure is delayed by more than one hour, (4) provide for the essential needs of passengers during air- or ground-based delays of longer than one hour, (5) provide for the needs of disabled, elderly, and special needs passengers by establishing procedures for assisting with the moving and retrieving of baggage, and the moving of passengers from one area of the airport to another, (6) publish and update monthly on the air carrier's Internet Web site, a list of chronically delayed flights, as defined, and certain runway incursions, as defined, (7) compensate passengers who are unable to make a scheduled flight for which they have a reservation because the flight is overbooked or passengers who are unable to make a connecting flight because their earlier flight was delayed due to flight cancellations or postponements of over 12 hours, by refunding 150 % of the passenger's ticket price, (8) maintain a passenger review committee, (9) make lowest-fare information, schedules and itineraries, cancellation policies, and frequent flyer program requirements, available in an easily accessed location, updated in real-time, (10) ensure that baggage is handled without delay or damage, and if lost or misplaced, notify the customer of baggage status within 12 hours and provide compensation equal to the current market value of lost or damaged baggage and its

contents, (11) require that these requirements are implemented by any code-share partners of the air carrier. The bill would require the Office of the Airline Consumer Advocate to initiate, investigate, attempt to resolve, and if necessary, refer to the Attorney General, any matters or complaints received pursuant to these requirements.

Existing law prohibits unfair competition, as defined, and provides various remedies, including civil penalties, restitution, and injunctive relief in an action brought pursuant to the unfair competition law.

This bill would authorize the bringing of an action, pursuant to the unfair competition law, for a violation of the requirements of the bill and would provide that in an action brought by the Attorney General, a district attorney, or other governmental representative in the name of the people, the air carrier would have the burden of proof to establish compliance with the bill's requirements.

~~Existing law provides that certain persons are not peace officers but may exercise certain powers of arrest of a peace officer during the course and within the scope of their employment, if they receive specified training.~~

~~This bill would include within those provisions, persons regularly employed by the fire department of the City of Redondo Beach, who are designated as harbor patrol officers, harbor patrol sergeants, or deputy harbor patrol masters and authorized by local ordinance to enforce laws related to the preservation of peace in or about the properties owned, controlled, operated, or administered by any department of the City of Redondo Beach and authorized by a memorandum of understanding with the Chief of Police of the City of Redondo Beach permitting the exercise of that authority.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 8 (commencing with Section 340) is added
2 to Chapter 4 of Division 1 of the Business and Professions Code,
3 to read:

4
5 Article 8. Office of the Airline Consumer Advocate

6
7 340. There is in the division the Office of the Airline Consumer
8 Advocate. The director shall designate one or more employees of

1 *the department to serve in the office, under the supervision and*
 2 *control of the chief of the division.*

3 341. *As used in this article, the following terms have the*
 4 *following meanings:*

5 (a) *“Air carrier” means an air carrier providing transportation*
 6 *of passengers by aircraft as a common carrier certificated by the*
 7 *Secretary of Transportation under Section 41102 of, or operating*
 8 *under an exemption granted by the Secretary of Transportation*
 9 *pursuant to Section 41101 of, Title 49 of the United States Code.*

10 (b) *“Aircraft” means an aircraft as defined in Section 40102*
 11 *of Title 49 of the United States Code.*

12 (c) *“Airport” means an air carrier airport as defined in Section*
 13 *47102 of Title 49 of the United States Code.*

14 342. (a) *The Office of the Airline Consumer Advocate shall*
 15 *have the following functions, powers, and duties:*

16 (1) *Assist consumers in resolving problems with air carriers.*

17 (2) *Identify areas in which consumers have problems in dealings*
 18 *with air carriers.*

19 (3) *Propose solutions, including administrative changes to*
 20 *practices and procedures, of an air carrier or airport.*

21 (4) *Preserve and promote the rights of consumers of the services*
 22 *of air carriers and airports.*

23 (5) *Promote open and direct communications between*
 24 *consumers and air carriers and airports.*

25 (6) *Initiate, investigate, attempt to resolve, and if necessary,*
 26 *refer to the Attorney General, any matters or complaints received*
 27 *pursuant to this article that relate to a violation of a passenger*
 28 *right pursuant to Article 2 (commencing with Section 5515) of*
 29 *Chapter 9 of Division 2 of the Public Utilities Code.*

30 (b) *Any complaint made by a consumer to the department*
 31 *relative to an aircraft, air carrier, or airport shall be filed with*
 32 *the office. The office may, on behalf of the department and in*
 33 *cooperation with other staff of the department, conduct an*
 34 *investigation and request, in writing, the production of documents*
 35 *and records as part of its investigation. Trade secrets and*
 36 *proprietary business information contained in the documents or*
 37 *records received by the office or department pursuant to a written*
 38 *request or a subpoena are confidential. If the person from whom*
 39 *the request was made fails to produce the documents or records*
 40 *within 30 days after the date of the request, the department may*

1 issue and serve subpoenas to compel the production of the
2 documents and records. If a person refuses to comply with a
3 subpoena issued pursuant to this section, the department may
4 petition a court of competent jurisdiction to enforce the subpoena
5 and may request sanctions. If the court finds no reasonable grounds
6 existed for the failure to produce, or the failure to bring a motion
7 for protective order, the court may impose civil sanctions to
8 compensate the department for its expenses and to deter
9 noncompliance with investigatory requests and subpoenas. If after
10 completion of an investigation, the office determines that a
11 violation of Article 2 (commencing with Section 5515) of Chapter
12 9 of Division 2 of the Public Utilities Code has likely occurred,
13 the office shall attempt to resolve the matter by settlement, that
14 may include a monetary settlement, to cover the ordinary costs
15 and expenses incurred by the department. If no settlement is
16 achieved, the matter shall be referred to the Attorney General for
17 further proceedings, including, if necessary, legal action.

18 (c) Any records, documents, papers, maps, books, tapes,
19 photographs, files, sound recordings, or other business material,
20 regardless of form or characteristics, obtained by the department
21 pursuant to subpoena shall be confidential. At the conclusion of
22 an investigation, any matter determined by the department, the
23 Attorney General, or by a federal or state court, to be a trade
24 secret or proprietary confidential business information held by
25 either the department or the Attorney General pursuant to the
26 investigation shall be considered confidential. A trade secret or
27 proprietary confidential business information may be used in any
28 administrative or judicial proceeding as long as the confidential
29 or proprietary nature of the material is maintained.

30 (d) The annual report prepared by the director pursuant to
31 Section 312 shall include a summary of the activities of the Office
32 of the Airline Consumer Advocate. The report shall contain a full
33 and substantive analysis, in addition to statistical information,
34 and shall include the following:

35 (1) Identification of all initiatives of the office taken to improve
36 airline services.

37 (2) A summary of the most serious problems encountered by
38 consumers, including a description of those problems.

39 (3) For each item described in paragraphs (1) and (2) upon
40 which the office has acted, the status and results of the actions

1 taken, and for each item not acted upon, the reasons why no action
2 was taken.

3 (4) Recommendations for legislative or administrative proposals
4 to resolve problems encountered by consumers involving aircraft,
5 air carriers, or airports.

6 (5) Any other information the office or the department may deem
7 advisable.

8 SEC. 2. Article 2 (commencing with Section 5515) is added to
9 Chapter 9 of Division 2 of the Public Utilities Code, to read:

10

11 Article 2. Airline Passenger Rights

12

13 5515. As used in this article, the following terms have the
14 following meanings:

15 (a) "Air carrier" means an air carrier providing transportation
16 of passengers by aircraft as a common carrier certificated by the
17 Secretary of Transportation under Section 41102 of, or operating
18 under an exemption granted by the Secretary of Transportation
19 pursuant to Section 41101 of, Title 49 of the United States Code.

20 (b) "Aircraft" means an aircraft as defined in Section 40102
21 of Title 49 of the United States Code.

22 (c) "Airport" means an air carrier airport as defined in Section
23 47102 of Title 49 of the United States Code.

24 5516. An air carrier shall, whenever passengers have boarded
25 an aircraft and departure of the aircraft from the airport is delayed
26 by more than one hour; or more than one hour has passed
27 following landing of the aircraft and passengers have not
28 disembarked from the aircraft, provide passengers, as needed,
29 with all of the following:

30 (a) Electrical service that is sufficient to provide the passengers
31 with fresh air and light.

32 (b) Waste removal service in order to service the holding tanks
33 for onboard restrooms.

34 (c) Adequate food and drinking water and other refreshment.

35 5517. An air carrier shall do all the following:

36 (a) Establish procedures to respond to each passenger complaint
37 within 24 hours, with appropriate resolution of the complaint
38 within two weeks.

39 (b) Notify passengers within 10 minutes of a delay, diversion,
40 or cancellation using available airport overhead announcement,

1 aircraft onboard announcement, and posting on airport television
2 monitors.

3 (c) Establish procedures for returning passengers to a terminal
4 gate when passengers have boarded an aircraft and departure of
5 the aircraft from the airport is delayed by more than one hour.

6 (d) Provide for the essential needs of passengers during air- or
7 ground-based delays of longer than one hour, including food,
8 water, sanitary facilities, and access to medical attention.

9 (e) Provide for the needs of disabled, elderly, and special needs
10 passengers by establishing procedures for assisting with the moving
11 and retrieving of baggage, and the moving of passengers from one
12 area of the airport to another at all times by airline personnel.

13 (f) (1) Publish and update monthly on the air carrier's Internet
14 Web site, a list of chronically delayed flights. For purposes of this
15 subdivision, "chronically delayed flights" means those flights
16 delayed by 30 minutes or more, at least 40 percent of the time,
17 during a single month.

18 (2) Publish and update monthly on the air carrier's Internet
19 Web site, a list of all runway incursions involving the air carrier
20 in the prior six months. For purposes of this subdivision, "runway
21 incursions" means any occurrence at an airport involving the
22 incorrect presence of an aircraft, vehicle, or person on the
23 protected area of a surface designated for the landing and take
24 off of aircraft.

25 (g) Compensate passengers who are unable to make a scheduled
26 flight for which they have a reservation because the flight is
27 overbooked or passengers who are unable to make a connecting
28 flight because their earlier flight was delayed due to flight
29 cancellations or postponements of over 12 hours, by refunding
30 150 percent of the passenger's ticket price.

31 (h) Establish and maintain a passenger review committee,
32 composed of airline passengers and other consumers, with the
33 authority to review and investigate passenger complaints.

34 (i) Make lowest-fare information, schedules and itineraries,
35 cancellation policies, and frequent flyer program requirements,
36 available in an easily accessed location, updated in real-time.

37 (j) Ensure that baggage is handled without delay or damage.
38 If baggage is lost or misplaced, the air carrier shall notify the
39 customer of the status of the passenger's baggage within 12 hours

1 and provide compensation equal to the current market value of
2 lost or damaged baggage and its contents.

3 (k) Require that the requirements of this section are implemented
4 by any code-share partners of the air carrier, including
5 international partners.

6 5518. An air carrier shall provide clear and conspicuous notice
7 regarding passenger or consumer complaint contact information
8 by providing forms and causing signs to be posted in an airport
9 at all service desks and other appropriate areas, as necessary,
10 that contain information in a form and manner that the Office of
11 the Airline Consumer Advocate shall prescribe, that includes the
12 following:

13 (a) A telephone number and the mailing address for the office,
14 and the Aviation Consumer Protection Division and Office of
15 Aviation Enforcement and Proceedings in the Aviation Consumer
16 Protection Division of the United States Department of
17 Transportation.

18 (b) An explanation of the rights of airline passengers.

19 (c) Basic information on the Office of the Airline Consumer
20 Advocate.

21 5519. (a) An action for violation of this article may be brought
22 pursuant to Chapter 5 (commencing with Section 17200) of Part
23 2 of Division 7 of the Business and Professions Code.

24 (b) In any civil action brought in the name of the people by the
25 Attorney General, a district attorney, or other governmental
26 representative pursuant to Section 17204 or 17204.5 of the
27 Business and Professions Code, the air carrier shall have the
28 burden of proof with respect to establishing compliance with the
29 provisions of Section 5516 or 5517.

30 SEC. 3. The provisions of this act are severable. If any
31 provision of this act or its application is held invalid, that invalidity
32 shall not affect other provisions or applications that can be given
33 effect without the invalid provision or application.

34 SECTION 1. ~~Section 830.7 of the Penal Code is amended to~~
35 ~~read:~~

36 ~~830.7. The following persons are not peace officers but may~~
37 ~~exercise the powers of arrest of a peace officer as specified in~~
38 ~~Section 836 during the course and within the scope of their~~
39 ~~employment, if they successfully complete a course in the exercise~~
40 ~~of those powers pursuant to Section 832:~~

- 1 ~~(a) Persons designated by a cemetery authority pursuant to~~
2 ~~Section 8325 of the Health and Safety Code.~~
- 3 ~~(b) Persons regularly employed as security officers for~~
4 ~~independent institutions of higher education, recognized under~~
5 ~~subdivision (b) of Section 66010 of the Education Code, if the~~
6 ~~institution has concluded a memorandum of understanding,~~
7 ~~permitting the exercise of that authority, with the sheriff or the~~
8 ~~chief of police within whose jurisdiction the institution lies.~~
- 9 ~~(c) Persons regularly employed as security officers for health~~
10 ~~facilities, as defined in Section 1250 of the Health and Safety Code,~~
11 ~~that are owned and operated by cities, counties, and cities and~~
12 ~~counties, if the facility has concluded a memorandum of~~
13 ~~understanding, permitting the exercise of that authority, with the~~
14 ~~sheriff or the chief of police within whose jurisdiction the facility~~
15 ~~lies.~~
- 16 ~~(d) Employees or classes of employees of the California~~
17 ~~Department of Forestry and Fire Protection designated by the~~
18 ~~Director of Forestry and Fire Protection, provided that the primary~~
19 ~~duty of the employee shall be the enforcement of the law as that~~
20 ~~duty is set forth in Section 4156 of the Public Resources Code.~~
- 21 ~~(e) Persons regularly employed as inspectors, supervisors, or~~
22 ~~security officers for transit districts, as defined in Section 99213~~
23 ~~of the Public Utilities Code, if the district has concluded a~~
24 ~~memorandum of understanding permitting the exercise of that~~
25 ~~authority, with, as applicable, the sheriff, the chief of police, or~~
26 ~~the Department of the California Highway Patrol within whose~~
27 ~~jurisdiction the district lies. For the purposes of this subdivision,~~
28 ~~the exercise of peace officer authority may include the authority~~
29 ~~to remove a vehicle from a railroad right-of-way as set forth in~~
30 ~~Section 22656 of the Vehicle Code.~~
- 31 ~~(f) Nonpeace officers regularly employed as county parole~~
32 ~~officers pursuant to Section 3089.~~
- 33 ~~(g) Persons appointed by the Executive Director of the California~~
34 ~~Science Center pursuant to Section 4108 of the Food and~~
35 ~~Agricultural Code.~~
- 36 ~~(h) Persons regularly employed as investigators by the~~
37 ~~Department of Transportation for the City of Los Angeles and~~
38 ~~designated by local ordinance as public officers, to the extent~~
39 ~~necessary to enforce laws related to public transportation, and~~
40 ~~authorized by a memorandum of understanding with the chief of~~

1 police, permitting the exercise of that authority. For the purposes
2 of this subdivision, “investigator” means an employee defined in
3 Section 53075.61 of the Government Code authorized by local
4 ordinance to enforce laws related to public transportation.
5 Transportation investigators authorized by this section shall not
6 be deemed “peace officers” for purposes of Sections 241 and 243.

7 (i) Persons regularly employed by any department of the City
8 of Los Angeles who are designated as security officers and
9 authorized by local ordinance to enforce laws related to the
10 preservation of peace in or about the properties owned, controlled,
11 operated, or administered by any department of the City of Los
12 Angeles and authorized by a memorandum of understanding with
13 the Chief of Police of the City of Los Angeles permitting the
14 exercise of that authority. Security officers authorized pursuant to
15 this subdivision shall not be deemed peace officers for purposes
16 of Sections 241 and 243.

17 (j) Persons regularly employed by the fire department of the
18 City of Redondo Beach who are designated as harbor patrol
19 officers, harbor patrol sergeants, or deputy harbor patrol masters
20 and authorized by local ordinance to enforce laws related to the
21 preservation of peace in or about the properties owned, controlled,
22 operated, or administered by any department of the City of
23 Redondo Beach and authorized by a memorandum of understanding
24 with the Chief of Police of the City of Redondo Beach permitting
25 the exercise of that authority. Harbor patrol officers, harbor patrol
26 sergeants, or deputy harbor patrol masters authorized pursuant to
27 this subdivision shall not be deemed peace officers for purposes
28 of Sections 241 and 243.

29 (k) Illegal dumping enforcement officers, to the extent necessary
30 to enforce laws related to illegal waste dumping, or littering, and
31 authorized by a memorandum of understanding with, as applicable,
32 the sheriff or chief of police within whose jurisdiction the person
33 is employed, permitting the exercise of that authority. An “illegal
34 dumping enforcement officer” is defined, for purposes of this
35 section, as a person regularly employed by a city, county, or city
36 and county, whose duties include illegal dumping enforcement
37 and is designated by local ordinance as a public officer. No person
38 may be appointed as an illegal dumping enforcement officer if that

- 1 ~~person is disqualified pursuant to the criteria set forth in Section~~
- 2 ~~1029 of the Government Code.~~

O