



HOUSE OF REPRESENTATIVES

House Bill No. **5399**

Introduced by REP. BEN P. EVARDONE
Lone District, Eastern Samar

EXPLANATORY NOTE

DOTC-DTI Administrative Order No. 1, Series of 2012 defines **overbooking** as the "practice of air carriers of selling confirmed reserved space beyond the actual seat capacity of the aircraft." (Sec. 2.13)

A careful reading of such definition shows that overbooking will:

1. violate the core mandate of passenger air carriers, which is to carry all passengers (especially paying passengers) to their respective destinations safely, as enshrined in their respective legislative franchises and Certificates of Public Convenience and Necessity (CPCN). Under current rules, no flight is allowed beyond an aircraft's seating capacity;
2. undermine contractual agreements between the passenger and the air carrier under the civil law on common carriers, particularly Article 1755, Civil Code, which provides: "A common carrier is **bound to carry the passengers** safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances". In contracts, the doctrine of mutuality of contracts demand that the contracting parties be both capable of performing their respective contractual obligations;
3. encourage a situation where the air carrier could unjustly enrich himself at the expense of the overbooked paying passenger "who is not flown";
4. create a negative impact on travel and tourism into and within the Philippines;

Yet, overbooking is a common practice in the Philippines.

In the January 21, 2015 House Committee on Transportation hearing, it was revealed that airlines are, as a common practice, allegedly allowed to overbook passengers by no more than 10% of the average of passengers who miss flights.¹ In the same hearing, a resource person alleged that an average of 4% of passengers miss their flights².

In 2011 alone, the Centre for Asia Pacific Aviation (CAPA), which named the top 10 carriers in the Philippines by capacity, or seats per week based on August 22-28, 2011

¹ http://www.manilatimes.net/breaking_news/cebu-pacific-exec-issues-public-apology-christmas-season-fiasco/

² http://www.manilatimes.net/breaking_news/cebu-pacific-exec-issues-public-apology-christmas-season-fiasco/

CAPA and Innovata data, revealed the total seating capacity in the Philippines to be around 753,000³ offered seat capacity already.

Given the foregoing facts and figures, the number of overbooked passengers, that is, those exposed to risk of not being flown despite payment of air fares and confirmed flight schedule provided, may be determined. Thus:

Assuming that the 753,000 offered seat capacity remains to date, and are all booked week on week, with an average of 4% passengers who miss their flights, this means that there would be at least 3,000 overbooked passengers per week or 156,000 annually, using the so-called 10% 'common practice' overbooking average.⁴

This bill prohibits the practice of overbooking to: 1. Ensure that the core mandate of air carriers to carry passengers is observed; 2. Ensure respect for contractual agreements; 3. Avoid unjust enrichment by air carriers; and 4. Forestall whatever negative impact overbooking may bring upon the Philippines, particularly on tourism. .

To give teeth to the prohibition, this bill provides for penalties primarily in the form of a fine to be imposed by the Civil Aeronautics Board (CAB) as follows:

First offense: P40,000 per overbooked passenger;
Second offense: P80,000 per overbooked passenger;
Third offense: P160,000 per overbooked passenger.

Second time offenders will be meted with a penalty of suspension of their respective Certificate of Public Convenience and Necessity (CPCN). Third time offenders may be penalized with revocation of such CPCN and their respective legislative franchises.

Of the fines collected, fifty percent (50%) shall be given to the overbooked passenger, which shall be deemed as liquidated and exemplary damages at the same time.

On this score, the immediate passage of this bill is earnestly sought.


BEN P. EVARDONE

³<http://www.sunstar.com.ph/pampanga/business/2011/08/26/ceb-offers-largest-seat-capacity-175554>. Cebu Pacific offered 258,120 seats, with its fleet of 100 percent brand-new 8 ATR 72-500, 10 Airbus A319 and 15 Airbus A320 aircraft. Capa reported the following seat capacity offered by other airlines: Philippine Airlines (220,302), Airphil Express (103,102), Zest Air (77,232), Cathay Pacific Airways (29,170), Asiana Airlines (17,624), Korean Air Lines (12,996), Singapore Airlines (12,600), SEAir (11,436), and Delta Air Lines (10,478).

⁴ **Formula:** 753,000 x 4% x 10% = total number of overbooked passengers per week (x 52 week/year) = total of overbooked passengers per annum.

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1 AN ACT
2 PROHIBITING THE PRACTICE OF OVERBOOKING PASSENGERS TO, FROM
3 AND WITHIN THE PHILIPPINES, PROVIDING PENALTIES THEREFOR, AND
4 FOR OTHER PURPOSES
5

6 *Be it enacted by the Senate and the House of Representatives of the Philippines in Congress*
7 *assembled:*
8

9 Section 1. It is the policy of the State to prohibit the practice of overbooking
10 passengers travelling to, from, and within the Philippines by air carriers and their agents.
11

12 Section 2. No air carrier or its agent shall be allowed to overbook any flight to, from,
13 and within the Philippines at any time. Overbooking committed by an agent of the air carrier
14 shall be deemed an overbooking of the air carrier itself.
15

16 For purposes of this Act, “overbooking” refers to the practice of air carriers and their
17 agents of selling confirmed reserved space beyond the actual seat capacity of the aircraft,⁵
18 whether the flight is cancelled or proceeds to its specific destination.
19

20 “Confirmed reserved space or seat” means a seat on a specific date and on a specific
21 flight and class of service of a carrier, which has been requested by a passenger, and which
22 the carrier or its agent has verified, by appropriate notation on the ticket, as being reserved for
23 the accommodation of a passenger.⁶
24

25 Section 3. *Penalty for violation.* — Without prejudice to the enforceable rights of a
26 passenger arising from existing international agreements, conventions, treaties, laws, rules

⁵ See. Section 2.13, DOTC-DTI Joint Administrative Order No. 1, Series of 2012

⁶ See. Section 2.6, DOTC-DTI Joint Administrative Order No. 1, Series of 2012

1 and regulations observed within the Republic of the Philippines and valid contracts, air
2 carriers found to have violated Section 2 hereof shall be penalized by the Civil Aeronotics
3 Board (CAB) after due notice and hearing pursuant to existing rules and regulations, as
4 follows:

- 5 a.) **First Offense** — fine of P40,000 per overbooked passenger;
- 6 b.) **Second Offense** —fine of P80,000 per overbooked passenger;
- 7 c.) **Third Offense** – fine of P160,000 per overbooked passenger;

8
9 PROVIDED that, violation of Section 2 hereof for the second time shall be a ground
10 for suspension of the Certificate of Public Convenience and Necessity (CPCN) of such
11 concerned air carrier; provided further that, violation of Section 2 hereof for the third time
12 shall be a ground for revocation of the Certificate of Public Convenience and Necessity of
13 such concerned air carrier and its legislative franchise.

14
15 An air carrier shall be deemed to have violated Section 2 hereof for the second or
16 third time, as the case may be, only upon final and executory order or resolution by the Civil
17 Aeronautics Board finding such air carrier in violation of Section 2 hereof for the first time or
18 second time, as the case may be.

19
20 Overbooking in a specific flight route shall be construed as a single violation of
21 Section 2 hereof regardless of the number of passengers affected therein.

22
23 **Section 4. Disposition of Proceeds; Compromise Agreement.** — The Civil
24 Aeronautics Board shall pay to each overbooked passenger fifty percent (50%) of the fine
25 collected in accordance with Section 3 hereof which amount shall be deemed liquidated and
26 exemplary damages at the same time.

27
28 Any compromise agreement between the Civil Aeronautics Board (CAB) and the air
29 carrier concerned shall be void.

30
31 **Section 5. Separability Clause.** — Whenever any item or provision in this Act is
32 declared unconstitutional, in whole or in part, such item or provision not affected thereby
33 shall remain in force.

1 **Section 6. Repealing Clause.**— All laws, executive orders or issuances, rules and
2 regulations or any part thereof which are inconsistent herewith are hereby modified, repealed
3 or amended accordingly.

4

5 **Section 7. Effectivity Clause.** — This Act shall take effect on the day following its
6 publication in at least two (2) national newspapers of general circulation.

7

8 *Approved*