

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'04 JUN 30 P5:41

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SENATE
S. No. 457

Introduced by Senator S. R. Osmeña III

EXPLANATORY NOTE

In 1995, President Fidel V. Ramos signed Executive Order No. 219 liberalizing the country's domestic and international civil aviation policy. The domestic market, heretofore monopolized by a single airline was opened up to competition. New domestic carriers were authorized to provide additional flights. Lower prices resulted. Even so-called "missionary routes" proved to be financially viable.

Meanwhile, the liberalization of international airline services encouraged the entry of new international carriers and drove prices down for travelers and traders. It also provided greater access to the Philippine economy and contributed to a 120% rise in visitor arrivals from 1 million in 1992 to 2.2 million in 1997.

In the late 1990s, the financial difficulties of Philippine Airlines (PAL) led to apparent reversals in the country's aviation policies. The Civil Aeronautics Board (CAB) abrogated the RP-Taiwan Airline Service Agreement, contradicting the spirit of EO 219. The inconsistency between policy declaration and implementation led to foregone opportunities during the last quarter of 1999 which included some US\$17.6 million in estimated tourist spending by the Taiwanese, and some \$30 million of direct and indirect outputs by sectors that supply the tourism sector, including \$6.9 million in hotel revenues and \$4.4 million in entertainment industry revenues.

This bill seeks to strengthen the earlier initiatives towards the liberalization of the country's aviation policies through provisions which among other things, will

- a) expand the membership of the Civil Aeronautics Board (CAB) to allow representation from the Departments of Tourism, Trade and Industry, and of other sectors which are directly affected by the country's aviation policies; and
- b) introduce mechanisms that would reduce barriers to entry and promote competition in the airline industry, e.g. automatic entry program, experimental certificates, encouragement of charters, and anti-trust provisions.

In the absence of laws that would ensure a level playing field in the airline industry, the national interest has often been easily subordinated and held hostage to the interest of a single dominant carrier. This bill seeks to promote competitive markets to ensure that the interests of the economy as a whole will prevail over the narrow interests of a single solitary airline.

In view of the foregoing, early passage of this bill is earnestly requested.

S. Osmeña III
SERGIO OSMEÑA III
Senator

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S E N A T E

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AN ACT
TO ACCELERATE THE LIBERALIZATION OF CIVIL AVIATION IN ORDER TO
PROMOTE INVESTMENTS IN MANUFACTURING, AGRICULTURE, TRADE AND
TOURISM, AMENDING R.A. 776, OTHERWISE KNOWN AS THE CIVIL
AERONAUTICS ACT OF THE PHILIPPINES, AND FOR OTHER PURPOSES

Be it enacted by the Senate and the House of Representatives of the Republic of the Philippines in Congress assembled:

1 SECTION 1. **Title.** – This Act shall be known as the “Civil Aviation
2 Liberalization Act of 2004.”

3 SEC. 2. **Declaration of Policy** – Sec. 2 of RA 776 shall be amended by
4 adding at the end thereof the following new paragraph:

5 “IT SHAL BE THE POLICY OF THE STATE TO PROMOTE THE PUBLIC
6 INTEREST WITH RESPECT TO AIR TRANSPORTATION THROUGH THE
7 FOLLOWING OBJECTIVES:

8 A) THE PRIORITIZATION OF PASSENGER SAFETY IN AIR
9 COMMERCE THROUGH FULL AND THOROUGH EVALUATION OF
10 THE SECRETARY OF TRANSPORTATION ON THE SAFETY
11 IMPLICATIONS OF NEW AIR TRANSPORT SERVICES;

12 B) RELIANCE ON THE CAPABILITY OF COMPETITIVE MARKET
13 FORCES TO PROVIDE NEEDED AIR TRANSPORT SYSTEM;
14 ATTRACT CAPITAL, ALLOWING PROPERLY CAPITALIZED AND
15 WELL-MANAGED CARRIERS TO EARN REASONABLE PROFITS;

1 AND TO DETERMINE THE VARIETY, QUALITY AND PRICE OF AIR
2 TRANSPORTATION SERVICES IN THE COUNTRY;

3 C) THE DEVELOPMENT AND MAINTENANCE OF A SOUND
4 REGULATORY ENVIRONMENT WHICH IS RESPONSIVE TO THE
5 NEEDS OF THE PUBLIC AND IN WHICH DECISIONS ARE
6 REACHED PROMPTLY IN ORDER TO FACILITATE ADAPTION OF
7 THE AIR TRANSPORTATION SYSTEM TO THE PRESENT AND
8 FUTURE NEEDS OF THE ECONOMY ESPECIALLY DOMESTIC
9 AND FOREIGN TRADERS, TOURISTS, PHILIPPINE OVERSEAS
10 MIGRANT WORKERS, AND POSTAL SERVICES;

11 D) THE PREVENTION OF UNFAIR, DECEPTIVE, PREDATORY OR
12 ANTI-COMPETITIVE PRACTICES IN AIR TRANSPORTATION AND
13 THE AVOIDANCE OF A) UNREASONABLE INDUSTRY
14 CONCENTRATION, EXCESSIVE MARKET DOMINATION, AND
15 MONOPOLY POWER; AND B) OTHER CONDITIONS THAT WOULD
16 TEND TO ALLOW ONE OR MORE AIR CARRIERS TO
17 UNREASONABLY INCREASE PRICES, REDUCE SERVICES, OR
18 EXCLUDE COMPETITION IN AIR TRANSPORTATION; AND

19 E) THE ENCOURAGEMENT OF ENTRY INTO AIR TRANSPORT
20 MARKETS OF NEW AIR CARRIERS, THE ENCOURAGEMENT OF
21 ENTRY INTO ADDITIONAL AIR TRANSPORT MARKETS OF
22 EXISTING CARRIERS, AND THE CONTINUED STRENGTHENING
23 OF SMALL AIR CARRIERS SO AS TO ASSURE A MORE
24 EFFECTIVE, COMPETITIVE AIR TRANSPORT INDUSTRY.”

25 Chapter II

26 THE CIVIL AERONAUTICS BOARD

27 SEC. 3. Sec. 5 of RA 776 shall be amended to read as follows:

28 “SEC. 5. A. **Composition of the Board.** – The Civil Aeronautics
29 Board, HEREINAFTER REFERRED TO AS THE BOARD, shall be

1 composed of [the Secretary of Commerce and Industry as Chairman, the
2 Civil Aeronautics Administrator, the Commanding Officer of the Philippine
3 Air Force, and two other members to be appointed by the President of the
4 Philippines. They shall hold office at the pleasure of the President and
5 shall be entitled to per diem for each meeting actually attended by them
6 in such amount as may be fixed by the President. In case of absence or
7 incapacity of the Secretary of Commerce and Industry, the Civil
8 Aeronautics Administrator shall Act as Chairman.

9 In case the Undersecretary of Commerce and Industry and/or
10 Deputy Administrator act in the stead of the Secretary of Commerce and
11 Industry and/or Administrator, respectively, they shall hold office and be
12 entitled to per diem for each meeting actually attended by them in the
13 Civil Aeronautics Board. No member of the Board shall have any
14 pecuniary interest in, or own any stock or bond of, any civil aeronautics
15 enterprise] SEVEN (7) MEMBERS AS FOLLOWS:

16 A) THE SECRETARY OF TRANSPORTATION AND
17 COMMUNICATIONS AS EX-OFFICIO CHAIRPERSON;

18 B) THE SECRETARY OF TOURISM AS EX-OFFICIO VICE
19 CHAIRPERSON;

20 C) THE HEAD OF THE AIR TRANSPORTATION OFFICE
21 (ATO) AS EX-OFFICIO MEMBER;

22 D) AN UNDERSECRETARY OF THE DEPARTMENT OF
23 TRADE AND INDUSTRY AS EX-OFFICIO MEMBER;

24 E) AN UNDERSECRETARY OF THE DEPARTMENT OF
25 FOREIGN AFFAIRS AS EX-OFFICIO MEMBER; AND

26 F) TWO (2) MEMBERS FROM THE PRIVATE SECTOR WHO
27 SHALL BE APPOINTED BY THE PRESIDENT OF THE PHILIPPINES
28 FOR A TERM OF THREE (3) YEARS, ONE OF WHICH SHALL COME
29 FROM THE TOURISM INDUSTRY AND THE OTHER FROM THE

1 BUSINESS AND INVESTMENT SECTOR. AS LONG AS THE
2 POSITIONS OF NON EX-OFFICIO MEMBERSHIP POSITIONS ARE
3 NOT VACANT, NO PERSON SHALL BE APPOINTED TO THE
4 POSITIONS. SHOULD EITHER POSITION BECOME VACANT BY
5 REASON OF EXPIRATION OF TERM, RESIGNATION, INCAPACITY
6 OR REMOVAL FROM OFFICE FOR ANY OF THE CAUSES SPECIFIED
7 BY LAW, THE SUCCESSOR TO THE POSITIONS SHALL BE
8 APPOINTED TO A TERM OF THREE (3) YEARS. ANY PERSON WHO
9 HAS BEEN APPOINTED AS NON EX-OFFICIO MEMBER OF THE
10 BOARD MAY BE REAPPOINTED TO THE SAME POSITION BUT THE
11 TOTAL TERM OF SUCH REAPPOINTEE SHALL NOT EXCEED SIX (6)
12 YEARS.

13 AT LEAST ONE (1) MEMBER OF THE BOARD SHALL BE A
14 LAWYER.”

15 SEC. 4. Sec. 6. of RA 776 shall be amended to read as follows:

16 “SEC. 6. **Principal Office and Quorum.** – The Board shall
17 have its principal office in the [City of Manila] NATIONAL CAPITAL
18 REGION and may hold hearings on any proceedings at such time and
19 places within the Philippines as it may provide by order in writing. The
20 [Chairman] CHAIRPERSON OR VICE-CHAIRPERSON and [two] FOUR
21 (4) members of the Board shall constitute a quorum to transact business.
22 A majority vote of the members constituting a quorum shall be necessary
23 for a valid and enforceable decision or order by the Board. A tie vote shall
24 be referred to the President of the Philippines for decision.

25 THE BOAR SHALL MEET REGULARLY AT LEAST ONCE
26 A MONTH AND MAY HOLD SPECIAL MEETINGS TO CONSIDER
27 URGENT MATTERS UPON CALL OF ANY OF THE FOLLOWING:

28 (A) THE SECRETARY OF TRANSPORTATION AND
29 COMMUNICATIONS

1 (B) THE SECRETARY OF TOURISM; OR

2 (C) ANY THREE (3) BOARD MEMBERS.

3 INTERNAL RULES OF PROCEDURE IN THE CONDUCT OF
4 BOARD MEETINGS SHALL BE AS PRESCRIBED BY THE BOARD.

5 THE BOARD MAY DELEGATE ANY OF ITS POWERS TO ANY
6 MEMBER THEREOF OR THE EXECUTIVE DIRECTOR OF THE
7 BOARD ON VERY IMPORTANT MATTERS SPECIFIED IN THE
8 IMPLEMENTING RULES AND REGULATIONS (IRR) AND SUCH
9 DELEGATION CONTINUES IN FORCE DESPITE CHANGES IN THE
10 COMPOSITION OF THE BOARD. SUCH DELEGATION MAY BE
11 REVOKED, REVIVED OR MODIFIED BY RESOLUTION OF THE
12 BOARD, DESPITE CHANGES IN THE COMPOSITION OF THE BOARD,
13 ANY EXERCISE OF SUCH DELEGATED POWERS SHALL BE
14 REPORTED IN WRITING TO THE BOARD AT ITS NEXT REGULAR
15 MEETING AFTER SUCH EXERCISE.

16 IN VERY URGENT MATTERS TO BE SPECIFIED IN THE IRR,
17 THE BOARD MAY PASS A RESOLUTION BY ELECTRONIC MEANS
18 AND SUCH RESOLUTION SHALL BE DEEMED TO HAVE BEEN
19 PASSED AT A BOARD MEETING.”

20 SEC. 5. A new Section 22(A) shall be inserted under Chapter IV of RA
21 776 to read as follows:

22 “SEC. 22(A). **DETERMINATIONS FOR THE ISSUANCE OF**
23 **CERTIFICATES.** – IN ANY DETERMINATION AS TO WHETHER OR
24 NOT ANY APPLICANT IS FIT, WILLING AND ABLE TO PERFORM
25 PROPERLY THE AIR TRANSPORTATION SPECIFIED IN THE
26 APPLICATION FOR A CERTIFICATE, AND TO CONFORM TO THE
27 PROVISIONS OF THIS ACT, THE APPLICANT SHALL HAVE THE
28 BURDEN OF SHOWING THAT IT IS SO FIT, WILLING AND ABLE.

1 IN ANY DETERMINATION AS TO WHETHER THE AIR
2 TRANSPORTATION SPECIFIED IN ANY APPLICATION FOR A
3 CERTIFICATE IS OR IS NOT CONSISTENT WITH THE PUBLIC
4 CONVENIENCE AND NECESSITY, AN OPPONENT OF THE
5 APPLICATION SHALL HAVE THE BURDEN OF SHOWING THAT
6 SUCH AIR TRANSPORTATION IS NOT CONSISTENT WITH THE
7 PUBLIC CONVENIENCE AND NECESSITY.

8 TRANSPORTATION COVERED BY ANY APPLICATION FOR A
9 CERTIFICATE SHALL, FOR PURPOSES OF SUCH PARAGRAPHS BE
10 DEEMED TO BE CONSISTENT WITH THE PUBLIC CONVENIENCE
11 AND NECESSITY, UNLESS THE BOARD FINDS THAT BASED UPON
12 A PREPONDERANCE OF EVIDENCE, SUCH TRANSPORTATION IS
13 NOT CONSISTENT WITH THE PUBLIC CONVENIENCE AND
14 NECESSITY.”

15 Sec. 6. A new section 24(a) shall be inserted under Chapter IV of RA 776
16 to read as follows:

17 “SEC. 24 (A) **UNUSED AUTHORITY.** – IF AN AIR CARRIER IS
18 AUTHORIZED BY ITS PERMIT TO PROVIDE ROUND TRIP SERVICE
19 NONSTOP EACH WAY BETWEEN ANY TWO POINTS IN DOMESTIC
20 OR OVERSEAS AIR TRANSPORTATION AND IF SUCH AIR CARRIER
21 FAILS TO PROVIDE SUCH SERVICE PURSUANT TO PUBLISHED
22 FLIGHT SCHEDULES AT A MINIMUM OF FIVE ROUND TRIPS PER
23 WEEK FOR AT LEAST THIRTEEN WEEKS DURING ANY TWENTY-SIX
24 WEEK PERIOD (OTHER THAN SUCH A PERIOD DURING WHICH
25 SERVICE WAS INTERRUPTED BY A LABOR DISPUTE WHICH
26 LASTED MORE THAN SIX WEEKS) THE LAST DAY OF WHICH ENDS
27 ON OR AFTER THE DATE OF ENACTMENT OF THIS PARAGRAPH
28 AND IF SUCH SERVICE, AT A MINIMUM OF FIVE ROUND TRIPS PER
29 WEEK HAS BEEN PROVIDED BETWEEN SUCH POINTS FOR AT

1 LEAST THIRTEEN WEEKS DURING SUCH TWENTY-SIX WEEK
2 PERIOD, PURSUANT TO PUBLISHED FLIGHT SCHEDULES, BY NO
3 MORE THAN ONE OTHER AIR CARRIER, THEN THE BOARD SHALL
4 ISSUE A CERTIFICATE TO THE FIRST APPLICANT WHO, WITHIN
5 THIRTY DAYS AFTER THE LAST DAY OF SUCH TWENTY-SIX WEEK
6 PERIOD, SUBMITS AN APPLICATION WHICH CERTIFIES THAT ITS
7 AIRCRAFT SHALL MEET ALL REQUIREMENTS ESTABLISHED BY
8 THE SECRETARY OF TRANSPORTATION FOR THE CARRIAGE BY
9 AIRCRAFT OF PERSONS OR PROPERTY AS A COMMON CARRIER
10 FOR COMPENSATION OR HIRE OR THE CARRIAGE OF MAIL BY
11 AIRCRAFT IN COMMERCE AND THAT IT IS ABLE TO CONFORM TO
12 THE RULES, REGULATIONS, AND REQUIREMENTS OF THE BOARD
13 PROMULGATED PURSUANT TO THIS ACT.

14 "WITH RESPECT TO ANY APPLICATION SUBMITTED
15 PURSUANT TO THE PRECEDING PARAGRAPH, THE BOARD SHALL
16 ISSUE A FINAL ORDER GRANTING SUCH CERTIFICATE WITHIN
17 FIFTEEN DAYS OF THE DATE OF SUCH APPLICATION, UNLESS THE
18 BOARD FINDS THAT THE ISSUANCE OF SUCH CERTIFICATE IS
19 INCONSISTENT WITH THE PUBLIC CONVENIENCE AND
20 NECESSITY. PRIOR TO ISSUING SUCH FINAL ORDER, THE BOARD
21 SHALL AFFORD ADEQUATE NOTICE AND OPPORTUNITY FOR
22 INTERESTED PERSONS TO FILE APPROPRIATE WRITTEN
23 EVIDENCE AND ARGUMENT, BUT THE BOARD NEED NOT HOLD
24 ORAL EVIDENTIARY HEARINGS."

25 SEC. 7. A new SEC 24 (B) shall be inserted in Chapter IV of RA 776 to
26 read as follows:

27 "SEC. 24 (B). **AUTOMATIC ENTRY PROGRAM.** – A) AFTER THE
28 FIRST BUSINESS DAY OF EACH CALENDAR YEAR AND BEFORE
29 THE THIRTIETH DAY OF SUCH CALENDAR YEAR.

1 I) ANY AIR CARRIER WHICH HAS OPERATED DURING THE
2 PRECEDING CALENDAR YEAR IN ACCORDANCE WITH A
3 CERTIFICATE ISSUED BY THE BOARD UNDER THIS SECTION
4 WHICH HAS BEEN IN FORCE DURING SUCH ENTIRE PRECEDING
5 CALENDAR YEAR, AND HAS PROVIDED DOMESTIC AIR
6 TRANSPORTATION OF PERSONS DURING SUCH CALENDAR YEAR
7 AND

8 II) ANY DOMESTIC AIR CARRIER WHICH HAS A VALID CERTIFICATE
9 OR LICENSE ISSUED BY THE BOARD TO ENGAGE IN DOMESTIC
10 AIR TRANSPORTATION AND WHICH HAS OPERATED MORE THAN
11 ONE MILLION AVAILABLE SEAT-MILES IN DOMESTIC AIR
12 TRANSPORTATION IN THE PRECEDING CALENDAR YEAR.

13 MAY APPLY TO THE BOARD FOR A CERTIFICATE UNDER
14 THIS PARAGRAPH TO ENGAGE IN NONSTOP SERVICE BETWEEN
15 ANY ONE PAIR OF POINTS IN DOMESTIC OR OVERSEAS AIR
16 TRANSPORTATION IN ADDITION TO ANY PAIR OF POINTS
17 AUTHORIZED BY ANY EXISTING CERTIFICATE OR LICENSE HELD
18 BY SUCH AIR CARRIER OR DOMESTIC AIR CARRIER, EXCEPT
19 THAT NO AIR CARRIER MAY APPLY TO ENGAGE IN NONSTOP
20 SERVICE BETWEEN SUCH PAIR OF POINTS IF ANY AIR CARRIER
21 HAS FILED WRITTEN NOTICE TO THE BOARD PURSUANT TO
22 PARAGRAPH C OF THIS SECTION WITH RESPECT TO SUCH PAIR
23 OF POINTS. NOT LATER THAN THE SIXTIETH DAY AFTER THE
24 DATE ON WHICH THE BOARD RECEIVES AN APPLICATION FROM
25 AN APPLICANT UNDER THIS PARAGRAPH, THE BOARD SHALL
26 ISSUE A CERTIFICATE TO SUCH APPLICANT FOR THE NONSTOP
27 SERVICE SPECIFIED IN SUCH APPLICATION, UNLESS WITHIN
28 SUCH SIXTY-DAY PERIOD THE BOARD DETERMINES THAT THE
29 APPLICANT IS NOT FIT, WILLING AND ABLE TO PROVIDE SUCH

1 NONSTOP SERVICE AND TO CONFORM TO THE PROVISIONS OF
2 THIS ACT AND THE RULES, REGULATIONS AND REQUIREMENTS
3 OF THE BOARD ISSUED UNDER THIS ACT.

4 B) NOT LATER THAN THE ONE HUNDRED TWENTIETH DAY
5 OF EACH CALENDAR YEAR, ANY CARRIER WHICH SUBMITTED AN
6 APPLICATION TO THE BOARD IN ACCORDANCE WITH PARAGRAPH
7 (A) OF THIS SECTION IN SUCH CALENDAR YEAR AND

8 I) WHICH DID NOT RECEIVE A CERTIFICATE TO PROVIDE
9 SERVICE BETWEEN THE PAIR OF POINTS SET FORTH IN THE
10 APPLICATION BECAUSE OF A DETERMINATION BY THE BOARD
11 UNDER SUCH PARAGRAPH A; OR

12 II) WHICH RECEIVED A CERTIFICATE TO PROVIDE SERVICE BETWEEN
13 SUCH PAIR OF POINTS, BUT WAS NOT THE ONLY AIR CARRIER TO
14 RECEIVE A CERTIFICATE UNDER SUCH PARAGRAPH (A) DURING
15 SUCH CALENDAR YEAR TO PROVIDE NONSTOP SERVICE
16 BETWEEN SUCH PAIR OF POINTS.

17 MAY REAPPLY TO THE BOARD FOR A CERTIFICATE TO
18 ENGAGE IN NONSTOP SERVICE BETWEEN ANY ONE PAIR OF
19 POINTS IN DOMESTIC OR OVERSEAS AIR TRANSPORTATION
20 (OTHER THAN THE PAIR OF POINTS SPECIFIED IN THE FIRST
21 APPLICATION SUBMITTED TO THE BOARD BY SUCH AIR CARRIER
22 IN SUCH CALENDAR YEAR) IN ADDITION TO ANY PAIR OF POINTS
23 AUTHORIZED BY ANY EXISTING CERTIFICATE OR LICENSE HELD
24 BY SUCH AIR CARRIER EXCEPT THAT NO AIR CARRIER MAY
25 APPLY TO ENGAGE IN NONSTOP SERVICE BETWEEN SUCH PAIR
26 OF POINTS IF ANY AIR CARRIER HAS FILED WRITTEN NOTICE TO
27 THE BOARD PURSUANT TO PARAGRAPH C OF THIS SECTION WITH
28 RESPECT TO SUCH PAIR OF POINTS. NOT LATER THAN THE
29 SIXTIETH DAY AFTER THE DATE ON WHICH THE BOARD RECEIVES

1 AN APPLICATION UNDER THIS PARAGRAPH, THE BOARD SHALL
2 ISSUE A CERTIFICATE TO THE APPLICANT FOR SUCH NONSTOP
3 SERVICE, UNLESS WITHIN SUCH SIXTY-DAY PERIOD THE BOARD
4 MAKES A DETERMINATION WITH RESPECT TO THE ISSUANCE OF
5 SUCH CERTIFICATE IN ACCORDANCE WITH THE SECOND
6 SENTENCE OF PARAGRAPH A OF THIS SECTION. IF THE BOARD
7 ISSUES A CERTIFICATE TO AN APPLICANT UNDER THIS
8 PARAGRAPH, IT SHALL REVOKE ANY AUTHORITY IN ANY
9 CERTIFICATE WHICH WAS GRANTED TO SUCH APPLICANT IN THE
10 SAME CALENDAR YEAR UNDER PARAGRAPH A OF THIS SECTION.

11 C) (I) SUBJECT TO CLAUSE II OF THIS PARAGRAPH, ANY AIR
12 CARRIER WHICH IS AUTHORIZED PURSUANT TO PARAGRAPH (1)
13 OR (2) OF THIS SUBSECTION TO ENGAGE IN NONSTOP SERVICE
14 BETWEEN ANY PAIR OF POINTS IN DOMESTIC OR OVERSEAS AIR
15 TRANSPORTATION ON THE FIRST BUSINESS DAY OF EACH
16 CALENDAR YEAR, AND WHICH WANTS TO PRECLUDE ANY
17 OTHER AIR CARRIER FROM OBTAINING AUTHORITY UNDER
18 SUBPARAGRAPH A OR B OF THIS PARAGRAPH TO ENGAGE IN
19 NONSTOP SERVICE BETWEEN SUCH PAIR OF POINTS DURING
20 SUCH CALENDAR YEAR MAY, ON SUCH DAY, FILE WRITTEN
21 NOTICE TO THE BOARD WHICH SETS FORTH SUCH PAIR OF
22 POINTS. UPON RECEIPT OF ANY WRITTEN NOTICE UNDER THE
23 PRECEDING SENTENCE, THE BOARD SHALL MAKE SUCH NOTICE
24 AVAILABLE TO THE PUBLIC.

25 (II) NO AIR CARRIER MAY FILE A WRITTEN NOTICE UNDER
26 CLAUSE (I) OF THIS SUBPARAGRAPH DURING ANY CALENDAR
27 YEAR WITH RESPECT TO MORE THAN ONE PAIR OF POINTS IN
28 DOMESTIC OR OVERSEAS AIR TRANSPORTATION.

1 D) I. THE BOARD SHALL, ON AN EMERGENCY BASES, BY
2 RULE, MODIFY THE PROGRAM ESTABLISHED BY THIS SECTION, IF
3 THE BOARD FINDS THAT

4 (I) THE OPERATION OF SUCH PROGRAM IS CAUSING
5 SUBSTANTIAL HARM TO THE NATIONAL AIR TRANSPORTATION
6 SYSTEM, OR A SUBSTANTIAL REDUCTION IN AIR SERVICE TO
7 SMALL AND MEDIUM SIZED COMMUNITIES IN ANY REGION OF THE
8 COUNTRY;

9 (II) THE MODIFICATION PROPOSED BY THE BOARD IS REQUIRED BY
10 THE PUBLIC CONVENIENCE AND NECESSITY IN ORDER TO
11 ALLEVIATE SUCH HARM OR REDUCTION; AND

12 (III) SUCH HARM OR REDUCTION IDENTIFIED BY THE BOARD CANNOT
13 BE RECTIFIED BY ANY REASONABLY AVAILABLE MEANS OTHER
14 THAN THE MODIFICATION PROPOSED BY THE BOARD.

15 ANY EMERGENCY MODIFICATION PROPOSED BY THE
16 BOARD UNDER THIS PARAGRAPH SHALL MODIFY SUCH
17 PROGRAM ONLY TO THE MINIMUM EXTENT NECESSARY TO
18 RECTIFY THE HARM OR REDUCTION IDENTIFIED BY THE BOARD
19 ANY EMERGENCY MODIFICATION OF SUCH PROGRAM MAY BE
20 LIMITED TO ANY PAIR OF POINTS.

21 II. THE FINDINGS OF FACT BY THE BOARD IN ANY
22 PROCEEDING HELD PURSUANT TO THIS PARAGRAPH, IF
23 SUPPORTED BY SUBSTANTIAL EVIDENCE, SHALL BE
24 CONCLUSIVE. NO OBJECTION TO A MODIFICATION OF THE
25 PROGRAM PROPOSED BY THE BOARD UNDER THIS PARAGRAPH
26 SHALL BE CONSIDERED BY A COURT UNLESS SUCH OBJECTION
27 SHALL HAVE BEEN SUBMITTED TO THE BOARD, IF IT WAS NOT SO
28 SUBMITTED, UNLESS THERE WERE REASONABLE GROUNDS FOR
29 FAILURE TO DO SO.

1 E) THE BOARD SHALL CONDUCT A STUDY OF THE
2 PROCEDURE FOR CERTIFICATION OF AIR CARRIERS AND
3 DOMESTIC AIR CARRIERS SET FORTH IN SUBPARAGRAPHS A AND
4 B OF THIS PARAGRAPH TO EVALUATE.

5 I) WHETHER SUCH PROCEDURE IS CONSISTENT WITH THE
6 CRITERIA SET FORTH IN SECTION 102 OF THIS ACT, AND

7 II) THE RELATIVE EFFECTIVENESS OF SUCH PROCEDURE AS
8 COMPARED WITH OTHER PROCEDURES FOR CERTIFICATION SET
9 FORTH IN THIS ACT, INCLUDING BUT NOT LIMITED TO, THE
10 PROCEDURES SET FORTH IN PARAGRAPHS 5 AND 6 OF THIS
11 SUBSECTION AND IN SUBSECTION (P) OF THIS SECTION.

12 NOT LATER THAN DECEMBER 31, 2002, THE BOARD SHALL
13 COMPLETE SUCH STUDY AND REPORT THE RESULTS OF SUCH
14 STUDY TO CONGRESS.”

15 SEC. 8. A new Sec. 24 (C) shall be inserted in Chapter IV of RA 776 to
16 read as follows:

17 “SEC. 24 (C) **EXPERIMENTAL CERTIFICATES.** – THE BOARD
18 MAY GRANT AN APPLICATION UNDER SEC 21 OF THIS ACT
19 (WHETHER THE APPICATION BE FOR PERMANENT OR
20 TEMPORARY AUTHORITY) FOR ONLY A TEMPORARY PERIOD OF
21 TIME WHENEVER THE BOARD DETERMINES THAT A TEST PERIOD
22 IS DESIRABLE IN ORDER TO DETERMINE IF PROJECTED
23 SERVICES, EFFICIENCIES, METHODS, RATES, FARES, CHARGES
24 OR OTHER PROJECTED RESULTS WILL IN FACT MATERIALIZE AND
25 REMAIN FOR A SUSTAINED PERIOD OF TIME, OR TO ASSESS THE
26 IMPACT OF THE NEW SERVICES ON THE NATIONAL AIR ROUTE
27 STRUCTURE, OR OTHERWISE TO EVALUATE THE PROPOSED NEW
28 SERVICES. IN ANY CASE WHERE THE BOARD HAS ISSUED A
29 CERTIFICATE UNDER ANY ONE OF SUCH SUBSECTIONS ON THE

1 BASIS THAT THE AIR CARRIER HOLDING SUCH CERTIFICATE WILL
2 PROVIDE INNOVATIVE OR LOW-PRICED AIR TRANSPORTATION
3 UNDER SUCH CERTIFICATE, THE BOARD UPON PETITION OR ITS
4 OWN MOTION, MAY REVIEW THE PERFORMANCE OF SUCH AIR
5 CARRIER, AND MAY ALTER, AMEND, MODIFY, SUSPEND, OR
6 REVOKE SUCH CERTIFICATE OR AUTHORITY IN ACCORDANCE
7 WITH THE PROCEDURES PRESCRIBED IN THIS ACT, ON THE
8 GROUNDS THAT SUCH AIR CARRIER HAS NOT PROVIDED OR IS
9 NOT PROVIDING SUCH AIR TRANSPORTATION.”

10 SEC. 9. A new SEC. 24 (C) shall be inserted under Chapter IV of RA 776
11 to read as follows:

12 “SEC. 24 (C). **REMOVAL OF RESTRICTIONS.** – ON AND AFTER
13 THE ENACTMENT OF THIS ACT, THE BOARD SHALL NOT ATTACH A
14 CLOSED-DOOR RESTRICTION TO ANY CERTIFICATE ISSUED
15 UNDER THIS SECTION. ANY CLOSED-DOOR RESTRICTION
16 ATTACHED TO ANY CERTIFICATE ISSUED BEFORE SUCH A DATE
17 SHALL, ON AND AFTER SUCH DATE, HAVE NO FORCE OR EFFECT.
18 THIS SECTION SHALL NOT APPLY TO A CLOSED-DOOR
19 RESTRICTION IN EFFECT ON SUCH DATE WHICH RESULTED FROM
20 A SALE, EXCHANGE, OR TRANSFER BY ANY AIR CARRIER OF ITS
21 AUTHORITY TO PROVIDE AIR TRANSPORTATION TO ANOTHER AIR
22 CARRIER.

23 “UPON APPLICATION OF ANY AIR CARRIER SEEKING
24 REMOVAL OR MODIFICATION OF A TERM, CONDITION, OR
25 LIMITATION ATTACHED TO A CERTIFICATE ISSUED UNDER THIS
26 SECTION TO ENGAGE IN DOMESTIC, OVERSEAS OR FOREIGN AIR
27 TRANSPORTATION, THE BOARD SHALL, WITHIN SIXTY DAYS
28 AFTER THE FILING OF SUCH APPLICATION SET SUCH
29 APPLICATION FOR ORAL EVIDENTIARY HEARINGS ON THE

1 RECORD OR BEGIN TO CONSIDER SUCH APPLICATION UNDER
2 THE SIMPLIFIED PROCEDURES ESTABLISHED BY THE BOARD IN
3 REGULATIONS PURSUANT TO THIS ACT FOR PURPOSES OF
4 ELIMINATING OR MODIFYING ANY SUCH TERM, CONDITION OR
5 LIMITATION WHICH IT FINDS IS INCONSISTENT WITH THE
6 CRITERIA SET FORTH IN THIS ACT.

7 "FOR PURPOSES OF THIS SECTION, THE TERM "CLOSED-
8 DOOR RESTRICTION" MEANS ANY CONDITION ATTACHED TO A
9 CERTIFICATE TO PROVIDE DOMESTIC OR OVERSEAS AIR
10 TRANSPORTATION ISSUED TO ANY AIR CARRIER WHICH
11 PROHIBITS SUCH AIR CARRIER FROM PROVIDING LOCAL
12 PASSENGER SERVICE BETWEEN ANY PAIR OF POINTS WHERE IT
13 IS AUTHORIZED TO OPERATE PURSUANT TO SUCH CERTIFICATE."

14 SEC. 10. A new Sec. 24(D) shall be inserted under Chapter IV of RA 776
15 to read as follows:

16 "SEC. 24 D. **TERMINATION, REDUCTIONS, AND**
17 **SUSPENSIONS OF SERVICE.** – NO AIR CARRIER HOLDING A
18 CERTIFICATE ISSUED UNDER THIS ACT SHALL

19 A) TERMINATE OR SUSPEND ALL AIR TRANSPORTATION
20 WHICH IT IS PROVIDING TO A POINT UNDER SUCH CERTIFICATE;
21 OR

22 B) REDUCE ANY SUCH AIR TRANSPORTATION BELOW
23 THAT WHICH THE BOARD HAS DETERMINED TO BE ESSENTIAL AIR
24 TRANSPORTATION FOR SUCH POINT.

25 UNLESS SUCH AIR CARRIER FIRST GIVEN THE BOARD, ANY
26 COMMUNITY AFFECTED AND THE LOCAL GOVERNMENT OF THE
27 PROVINCE IN WHICH SUCH COMMUNITY IS LOCATED, AT LEAST 90
28 DAYS NOTICE OF ITS INTENT TO SO TERMINATE, SUSPEND, OR
29 REDUCE SUCH AIR TRANSPORTATION. THE BOARD MAY, BY

1 REGULATION OR OTHERWISE, AUTHORIZE SUCH TEMPORARY
2 SUSPENSION OF SERVICE AS MAY BE IN THE PUBLIC INTEREST.

3 "IF AN AIR CARRIER HOLDING A CERTIFICATE ISSUED
4 PURSUANT TO THIS ACT PROPOSES TO TERMINATE OR SUSPEND
5 NONSTOP OR SINGLE-PLANE AIR TRANSPORTATION BETWEEN
6 TWO POINTS BEING PROVIDED BY SUCH AIR CARRIER UNDER
7 SUCH CERTIFICATE, AND SUCH AIR CARRIER IS THE ONLY AIR
8 CARRIER WITH A CERTIFICATE TO PROVIDE NONSTOP OR
9 SINGLE-PLANE AIR TRANSPORTATION BETWEEN SUCH POINT, AT
10 LEAST SIXTY DAYS BEFORE SUCH PROPOSED TERMINATION OR
11 SUSPENSION, SUCH AIR CARRIER SHALL FILE WITH THE BOARD
12 AND SERVE UPON EACH COMMUNITY TO BE DIRECTLY AFFECTED
13 NOTICE OF SUCH TERMINATION OR SUSPENSION."

14 SEC. 11. A new Sec. 24 (E) shall be inserted under Chapter IV of RA 776
15 to read as follows:

16 "SEC. 24 (E). **CHARTER AIR CARRIERS.** – NO AIR CARRIER
17 PROVIDING AIR TRANSPORTATION UNDER A CERTIFICATE
18 ISSUED UNDER SECTION 21 OF THIS ACT SHALL COMMINGLE, ON
19 THE SAME FLIGHT, PASSENGERS BEING TRANSPORTED IN
20 DOMESTIC OR OVERSEAS CHARTER AIR TRANSPORTATION WITH
21 PASSENGERS BEING TRANSPORTED IN SCHEDULED DOMESTIC
22 OR OVERSEAS AIR TRANSPORTATION, EXCEPT THAT THIS
23 SECTION SHALL NOT APPLY TO THE CARRIAGE OF PASSENGERS
24 IN AIR TRANSPORTATION UNDER GROUP FARE TARIFFS.

25 "NO RULE, REGULATION OR ORDER ISSUED BY THE BOARD
26 SHALL RESTRICT THE MARKETABILITY, FLEXIBILITY,
27 ACCESSIBILITY OR VARIETY OF CHARTER TRIPS PROVIDED
28 UNDER A CERTIFICATE ISSUED UNDER SECTION 21 OF THIS ACT
29 EXCEPT TO THE EXTENT REQUIRED BY THE PUBLIC INTEREST,

1 AND SHALL IN NO EVENT BE MORE RESTRICTIVE THAN THOSE
2 REGULATIONS REGARDING CHARTER AIR TRANSPORTATION IN
3 EFFECT ON JANUARY 3, 1995.

4 "NO CERTIFICATE ISSUED UNDER THIS SECTION SHALL
5 PERMIT A CHARTER AIR CARRIER TO SELL OR TO OFFER FOR
6 SALE AN INCLUSIVE TOUR IN AIR TRANSPORTATION BY SELLING
7 OR OFFERING FOR SALE INDIVIDUAL TICKETS DIRECTLY TO
8 MEMBERS OF THE GENERAL PUBLIC, OR TO DO SO INDIRECTLY
9 BY CONTROLLING, BEING CONTROLLED BY, OR UNDER COMMON
10 CONTROL WITH A PERSON AUTHORIZED BY THE BOARD TO MAKE
11 SUCH SALES."

12 SEC. 12. A new Section 24 (F) shall be inserted under Chapter IV of RA
13 776 to read as follows:

14 "SEC. 24 (F) **PROHIBITED ACTS.** – IT SHALL BE UNLAWFUL

- 15 1) FOR TWO OR MORE AIR CARRIERS, OR FOR ANY AIR CARRIER
16 AND ANY OTHER COMMON CARRIER OR ANY PERSON
17 SUBSTANTIALLY ENGAGED IN THE BUSINESS OF AERONAUTICS,
18 TO CONSOLIDATE OR MERGE THEIR PROPERTIES, OR A
19 SUBSTANTIAL PORTION THEREOF, INTO ONE PERSON FOR
20 THE OWNERSHIP, MANAGEMENT OR OPERATION OF THE
21 PROPERTIES PREVIOUSLY IN SEPARATE OWNERSHIPS;
- 22 2) FOR ANY AIR CARRIER, ANY PERSON CONTROLLING AN AIR
23 CARRIER, ANY OTHER COMMON CARRIER OR ANY PERSON
24 SUBSTANTIALLY ENGAGED IN THE BUSINESS OF
25 AERONAUTICS, TO PURCHASE, LEASE OR CONTRACT TO
26 OPERATE ALL OR A SUBSTANTIAL PORTION OF THE
27 PROPERTIES OF ANY AIR CARRIER;
- 28 3) FOR ANY AIR CARRIER OR PERSON CONTROLLING AN AIR
29 CARRIER TO PURCHASE, LEASE OR CONTRACT TO OPERATE

1 ALL OR A SUBSTANTIAL PORTION OF THE PROPERTIES OF ANY
2 PERSON SUBSTANTIALLY ENGAGED IN THE BUSINESS OF
3 AERONAUTICS OTHERWISE THAN AS AN AIR CARRIER;

4 4) FOR ANY FOREIGN AIR CARRIER OR PERSON CONTROLLING A
5 FOREIGN AIR CARRIER TO ACQUIRE CONTROL IN ANY
6 MANNER WHATSOEVER OF ANY CITIZEN OF THE PHILIPPINES
7 SUBSTANTIALLY ENGAGED IN THE BUSINESS OF
8 AERONAUTICS;

9 5) FOR ANY AIR CARRIER OR PERSON CONTROLLING AN AIR
10 CARRIER, ANY OTHER COMMON CARRIER, OR ANY PERSON
11 SUBSTANTIALLY ENGAGED IN THE BUSINESS OF
12 AERONAUTICS TO ACQUIRE CONTROL OF ANY AIR CARRIER IN
13 ANY MANNER WHATSOEVER;

14 6) FOR ANY AIR CARRIER OR PERSON CONTROLLING A
15 CERTIFICATED AIR CARRIER TO ACQUIRE CONTROL IN ANY
16 MANNER WHATSOEVER, OF ANY PERSON SUBSTANTILLY
17 ENGAGED IN THE BUSINESS OF AERONAUTICS OTHER THAN
18 AS AN AIR CARRIER; OR

19 7) FOR ANY PERSON TO CONTINUE TO MAINTAIN ANY
20 RELATIONSHIP ESTABLISHED IN VIOLATION OF THE
21 FOREGOING PARAGRAPHS OF THIS SUBSECTION."

22 SEC. 13. Paragraph (A), Section 42 of RA 776 shall be amended to read
23 as follows:

24 "SEC. 42. **Specific Penalties.** – (A) Any person engaging in air
25 commerce without a permit issued by the board as provided in this Act
26 shall be punished by a fine [not exceeding five thousand pesos,] OF NOT
27 LESS THAN ONE MILLION PESOS (P1,000,000.00) NOR MORE THAN
28 FIVE MILLION PESOS (P5,000,000.00) or by imprisonment for [not more
29 than one year,] NOT LESS THAN ONE (1) YEAR NOR MORE THAN

1 FIVE (5) YEARS or both in the discretion of the court: *Provided*, That [a
2 person engaging in air commerce on the date of the approval of this Act
3 may continue so to engage until such time as the Board shall pass upon
4 an application for a permit for such service, which application must be
5 filed, as provided in Chapter IV of this Act, within one hundred and twenty
6 days after the approval of this Act] IN THE CASE OF ADMINISTRATIVE
7 FINES AS SPECIFIED IN THE IRR, THE SAME MAY BE IMPOSED BY
8 THE BOARD: *PROVIDED, FURTHER*, THAT A PERSON ENGAGING
9 IN AIR COMMERCE ON THE DATE OF THE APPROVAL OF THIS ACT
10 MAY CONTINUE SO TO ENGAGE UNTIL SUCH TIME AS THE BOARD
11 SHALL PASS UPON AN APPLICATION FOR A PERMIT FOR SUCH
12 SERVICE, WHICH APPLICATION MUST BE FILED WITHIN ONE
13 HUNDRED AND TWENTY (120) DAYS AFTER THE APPROVAL OF
14 THIS ACT.

15 "THE ADMINISTRATIVE FINES ABOVE STATED SHALL BE
16 PAID TO THE GOVERNMENT OF THE PHILIPPINES THROUGH THE
17 BOARD, AND FAILURE TO PAY THE FINE IN ANY CASE WITHIN THE
18 TIME SPECIFIED IN THE ORDER OR DECISION OF THE BOARD
19 SHALL BE A GROUND FOR THE SUSPENSION OF THE PERMIT OF
20 SUCH AIR CARRIER UNTIL PAYMENT SHALL BE MADE."

21 **SEC. 14. *Implementing Rules and Regulations.*** – The Department of
22 Transportation and Communications in consultation with the Department of
23 Tourism and the Department of Trade and Industry shall issue the necessary
24 rules and regulations to implement the provisions of this Act.

25 **SEC. 15. *Separability Clause.*** If any section or provision of this Act
26 shall be declared unconstitutional or invalid, the other sections or provisions
27 thereof shall continue in full force and effect

1 SEC. 16. **Repealing Clause.** - Laws, rules and regulations and other
2 issuances inconsistent with the provisions of this Act are deemed modified,
3 revoked or repealed accordingly.

4 SEC. 17. **Effectivity.** This law shall take effect fifteen (15) days after its
5 publication in at least two (2) national newspaper of general circulation.

6 Approved,