

## Airline Apps Not Subject to California's Online Privacy Protection Act

*A new federal ruling should help airlines avoid "a patchwork of different regulations around the country."*

BY BOB EGELKO, SAN FRANCISCO CHRONICLE / MAY 26, 2016

(TNS) -- A California law requiring online services to post their privacy policies for customers doesn't apply to an airline's data-gathering mobile app because federal law tightly restricts state regulation of airlines, a state appeals court ruled Wednesday.

The First District Court of Appeal in San Francisco said the state law can't be enforced because the federal Airline Deregulation Act, signed by President Jimmy Carter in 1978, prohibits states from enforcing any law "related to a price, route or service of an air carrier."

The ruling upholds a judge's dismissal of a 2012 lawsuit by Attorney General Kamala Harris against Delta Air Lines. The airline's Fly Delta mobile application, available since October 2010, allows passengers to buy tickets online and stores information the customer provides during the purchase, including name, residence, email address, credit card numbers and frequent-flyer account.

The suit accused the airline of violating California's Online Privacy Protection Act, which requires operators of commercial websites and other online services doing business in the state to post privacy policies that describe the information they collect and to identify others who may have access to the data.

The federal law doesn't forbid all regulation of airlines, which remain subject to state minimum-wage laws and other restrictions unrelated to services. But the appeals court said the terms of the law have been interpreted broadly — for example, the U.S. Supreme Court has ruled that states can't regulate airlines' advertising of their fares, or allow suits under state law alleging violations of their own frequent-flyer rules, because of the ultimate impact on airline prices and services.

Similarly, the California privacy law would require Delta to meet state standards rather than "the market forces currently dictating Delta's selection and design" of the mobile app, Justice Martin Jenkins said in the 3-0 ruling. If other states could enforce their own privacy laws, he said, the airline might have to use different versions of the software in each state, and might ultimately be unable to use a mobile application as a marketing mechanism, one of the services it provides.

Lawyers for Delta and Harris' office weren't immediately available for comment. Attorney Robert Span, who filed arguments for the Air Transport Association of America, said the ruling should help airlines avoid "a patchwork of different regulations around the country."