

**HOUSE CS FOR CS FOR SENATE BILL NO. 191(RLS)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Offered: 5/11/02

Referred: Today's Calendar

Sponsor(s): SENATORS TAYLOR, Austerman, Cowdery, Olson, Leman

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to civil liability for commercial recreational activities and for guest**  
2 **passengers on an aircraft or watercraft, to recovery of punitive damages resulting from**  
3 **an aviation accident, and to insurance pooling by air carriers; and providing for an**  
4 **effective date."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
7 to read:

8 PURPOSE OF SECTION 2. It is the purpose of sec. 2 of this Act to establish the  
9 responsibilities of persons who operate commercial recreational activities and persons who  
10 participate in those recreational activities and to decrease uncertainty regarding the legal  
11 responsibility for injuries that result from participation in commercial recreational activities.  
12 It is also the purpose of sec. 2 of this Act to encourage the continued availability of businesses  
13 that offer commercial recreational activities to the public.

14 \* **Sec. 2.** AS 05 is amended by adding a new chapter to read:

**Chapter 50. Civil Liability for Commercial  
Recreational Activities.**

**Sec. 05.50.010. Acceptance of inherent risks.** Participation in a commercial recreational activity constitutes acceptance of the inherent risks of the commercial recreational activity that are or should be apparent to an ordinarily prudent person.

**Sec. 05.50.020. Contributory negligence.** (a) A person who accepts an inherent risk of a commercial recreational activity as described in AS 05.50.010 is contributorily negligent to the extent that the inherent risk causes injury, death, or property damage.

(b) In an action seeking to recover damages for injury or death to a person or harm to property resulting from an inherent risk of a commercial recreational activity, compensatory damages shall be reduced for contributory negligence as provided under AS 09.17.060.

**Sec. 05.50.030. Responsibilities of participants.** A participant in a commercial recreational activity has the responsibility to

- (1) learn about and expressly accept the risks of the activities;
- (2) act within the limits of the person's abilities and as allowed by the person's health;
- (3) heed all warnings regarding participation in the commercial recreational activity;
- (4) maintain control of the participant's person, a minor under the control of the participant, and any equipment, devices, or animals the participant is using or that are under the control of the participant;
- (5) refrain from acting in a manner that may cause or contribute to injury of the participant or another person.

**Sec. 05.50.040. Responsibilities of operators of commercial recreational activities.** A person who operates a business that offers a commercial recreational activity shall

- (1) explain to a participant
  - (A) the fundamental inherent risks of the commercial recreational activity; and

1 (B) the skills and equipment required to participate in the  
2 commercial recreational activity that are not apparent to an inexperienced  
3 participant;

4 (2) require that employees who are directly responsible for assisting  
5 participants in the field in the actual performance of a commercial recreational activity  
6 have training in basic first aid and cardiopulmonary resuscitation and explain to those  
7 employees how to use emergency medical services available in the area;

8 (3) maintain recreational equipment and facilities in good repair;

9 (4) provide trained and competent personnel; and

10 (5) act in a reasonably safe and competent manner.

11 **Sec. 05.50.050. Interaction with other laws.** This chapter does not affect the  
12 immunity of an owner of unimproved land under AS 09.65.200 or of a ski area  
13 operator under AS 05.45.

14 **Sec. 05.50.060. Effect of violations.** A person who operates a business that  
15 offers a commercial recreational activity and who violates AS 05.50.040 is negligent  
16 and civilly liable to the extent the violation causes injury to a person or damage to  
17 property.

18 **Sec. 05.50.100. Definitions.** In this chapter,

19 (1) "commercial recreational activity" means a recreational activity for  
20 which the participants pay compensation;

21 (2) "recreational activity" means an outdoor activity undertaken for the  
22 purpose of exercise, education, relaxation, pleasure, sport, or as a hobby.

23 \* **Sec. 3.** AS 09.17.020(h) is amended to read:

24 (h) Notwithstanding any other provision of law, in an action against

25 (1) an employer to recover damages for an unlawful employment  
26 practice prohibited by AS 18.80.220, the amount of punitive damages awarded by the  
27 court or jury may not exceed

28 (A) [(1)] \$200,000 if the employer has **fewer** [LESS] than 100  
29 employees in this state;

30 (B) [(2)] \$300,000 if the employer has 100 or more but **fewer**  
31 [LESS] than 200 employees in this state;

1                    **(C)** [(3)] \$400,000 if the employer has 200 or more but **fewer**  
 2                    [LESS] than 500 employees in this state; and

3                    **(D)** [(4)] \$500,000 if the employer has 500 or more employees  
 4                    in this state; **and**

5                    **(2) an owner or operator of an aviation business to recover**  
 6                    **damages resulting from an aviation accident, the amount of punitive damages**  
 7                    **awarded by the court or jury may not exceed (A) \$300,000 if the aircraft has a**  
 8                    **passenger seat configuration of 20 or fewer seats, excluding each crewmember**  
 9                    **seat, or a maximum payload capacity of less than 6,000 pounds; (B) \$400,000 if**  
 10                    **the aircraft has a passenger seat configuration of more than 20 seats but fewer**  
 11                    **than 30 seats, excluding each crewmember seat, or a maximum payload capacity**  
 12                    **of 6,000 or more pounds but less than 7,500 pounds; and (C) \$500,000 if the**  
 13                    **aircraft has a passenger seat configuration of 30 or more seats, excluding each**  
 14                    **crewmember seat, or a maximum payload capacity of 7,500 or more pounds; in**  
 15                    **this paragraph, "aviation accident" means an accident occurring during the**  
 16                    **operation of an aircraft, and "maximum payload capacity" has the meaning**  
 17                    **given in 14 C.F.R. 119.3.**

18 \* **Sec. 4.** AS 09.65 is amended by adding a new section to read:

19                    **Sec. 09.65.112. Civil liability for aircraft and watercraft guest passengers.**

20                    (a) An owner or operator of an aircraft or watercraft is not liable for the civil damages  
 21                    of a person being transported in the owner's or operator's aircraft or watercraft if the  
 22                    owner or operator is not for hire or being compensated for the transportation. In this  
 23                    subsection, "compensated" means a substantial payment in money, services, or  
 24                    materials, but does not include a token payment.

25                    (b) This section does not apply to a civil action

26                    (1) for damages resulting from

27                    (A) gross negligence or reckless or intentional misconduct;

28                    (B) an act or omission of an owner or operator of an aircraft or  
 29                    watercraft who is a common carrier; or

30                    (C) an act or omission of an owner or operator of an aircraft or  
 31                    watercraft that occurs while demonstrating an aircraft or watercraft to a

1 prospective buyer; or

2 (2) described under (a) of this section if the owner or operator

3 (A) has insurance that would compensate the claimant for civil  
4 damages awarded against the owner or operator; an owner or operator who is  
5 insured as described in this subparagraph is not liable for civil damages  
6 described in (a) of this section that exceed the applicable insurance; or

7 (B) does not have insurance that would compensate a person  
8 being transported as described under (a) of this section for civil damages  
9 awarded against the owner or operator and, before the person being transported  
10 enters the aircraft or watercraft, the owner or operator fails to provide notice to  
11 the person being transported that the owner or operator is uninsured as  
12 described in this subparagraph.

13 \* **Sec. 5.** AS 21 is amended by adding a new chapter to read:

14 **Chapter 77. Joint Aviation Insurance Arrangements.**

15 **Sec. 21.77.010. Authority to establish joint aviation insurance**  
16 **arrangements.** (a) Air carriers may enter into cooperative agreements with each  
17 other for the purpose of establishing, operating, or participating in joint aviation  
18 insurance arrangements through which the participating members agree to pool  
19 contributions in order to either assume risks from losses to the participants on a group  
20 basis or purchase coverage for the participants on a group basis.

21 (b) A joint aviation insurance arrangement

22 (1) may be for any kind of insurance defined by this title except for  
23 health insurance, life insurance, and title insurance; and

24 (2) shall be considered an alternative or supplement to any other policy  
25 or contract of insurance authorized or required by law, including insurance under  
26 AS 21.75.

27 (c) For purposes of AS 23.30.075, a joint aviation insurance arrangement is  
28 considered to be an association duly authorized to transact workers' compensation  
29 insurance in the state.

30 **Sec. 21.77.020. Regulation by division of insurance, notice, and annual**  
31 **report.** (a) A joint aviation insurance arrangement may not be considered insurance

1 for the purpose of any other law of the state and is not subject to regulations adopted  
2 by the director.

3 (b) Before an air carrier signs a cooperative agreement, the joint aviation  
4 insurance arrangement shall notify the air carrier in writing that the joint aviation  
5 insurance arrangement is not licensed in this state, is not subject to this state's  
6 supervision, and, in the event of the insolvency of the joint aviation insurance  
7 arrangement, losses will not be covered under AS 21.80 (Alaska Insurance Guaranty  
8 Association Act).

9 (c) By October 1 of each year, the administrator of a joint aviation insurance  
10 arrangement shall prepare and deliver to the Legislative Budget and Audit Committee  
11 and the director a report showing the true and correct financial condition of the joint  
12 aviation insurance arrangement. The report must

13 (1) be attested to by the administrator and the board of directors;

14 (2) include an analysis, certified by a member of the American  
15 Academy of Actuaries, of the sufficiency of the loss reserves; and

16 (3) be certified by a certified public accountant.

17 **Sec. 21.77.030. General provisions of cooperative agreements.** (a) A  
18 cooperative agreement must provide for the proper operation of the joint aviation  
19 insurance arrangement and include provisions for

20 (1) administration of the arrangement by a board of directors,  
21 specifying the number of members of the board and other requirements necessary for  
22 the proper functioning of the board;

23 (2) appointment of an administrator and other persons as necessary for  
24 the proper functioning of the arrangement;

25 (3) organization of the arrangement, including a roster of participating  
26 members and the names of the members of the board of directors;

27 (4) procedures to establish and promote an aggressive risk  
28 management program among the members of the arrangement, including procedures  
29 for identifying and reducing the risks that can be reduced through implementing better  
30 safety technologies and improved work techniques and procedures;

31 (5) enforcing the collection of contributions or payments in default

1 from members of the arrangement;

2 (6) the addition of new members to the arrangement or the withdrawal  
3 of members from the arrangement;

4 (7) the method of apportioning costs and disposition of excess  
5 contributions;

6 (8) transmission of financial statements and audit reports of the  
7 arrangement to participating members;

8 (9) terminating the arrangement and disposing of its assets; and

9 (10) establishing and administering a joint aviation insurance fund.

10 (b) A cooperative agreement may

11 (1) authorize the board of directors to enter into contracts for services  
12 necessary to perform the functions of a joint aviation insurance arrangement; a person  
13 contracting to perform functions under this paragraph is subject to the licensing  
14 requirements of this title;

15 (2) delegate to the board of directors, or authorize delegation by the  
16 board to another person or group, the power to compromise, arbitrate, or otherwise  
17 settle claims on behalf of the arrangement;

18 (3) authorize the board of directors to adopt rules not inconsistent with  
19 law for the fair and equitable administration of the joint aviation insurance  
20 arrangement and the joint aviation insurance fund.

21 (c) The board of directors shall file a copy of the cooperative agreement with  
22 the director at least 60 days before the effective date of the agreement. The agreement  
23 shall be available for public inspection.

24 **Sec. 21.77.040. Financial provisions of agreements.** (a) A joint aviation  
25 insurance arrangement formed in accordance with the provisions of this chapter shall

26 (1) have and maintain a surplus no less than an amount equal to the  
27 total of the capital and one-half of the surplus that would be required of a domestic  
28 stock insurer writing the same lines as the joint aviation insurance arrangement; or

29 (2) post a bond for an amount equal to the capital that would be  
30 required of a domestic stock insurer writing the same lines of insurance as the joint  
31 aviation insurance arrangement and maintain a surplus of \$500,000 in admitted assets

1 or a surplus sufficient to operate the joint aviation insurance arrangement for one year,  
2 whichever is greater.

3 (b) A cooperative agreement must include a provision requiring an annual  
4 determination by a casualty actuary who is a member of the American Academy of  
5 Actuaries that procedures for establishing reserves for losses of the joint aviation  
6 insurance arrangement are actuarially sound.

7 (c) A joint aviation insurance arrangement shall be subject to an annual  
8 independent audit. The audit shall be conducted in accordance with generally  
9 accepted auditing standards and must include a review of the actuarial assumptions  
10 used for establishing the reserves under (b) of this section. The audit report must  
11 include certification from a casualty actuary who is a member of the American  
12 Academy of Actuaries that the actuarial assumptions continue to be sound and the  
13 level of the reserves is adequate.

14 (d) A cooperative agreement may authorize the board of directors to purchase  
15 excess or catastrophic insurance on behalf of the joint aviation insurance arrangement.  
16 The cost of the insurance shall be apportioned in the manner specified in the joint  
17 aviation insurance agreement. The board may purchase insurance under this  
18 subsection only from an insurer authorized to do business in the state, except  
19 insurance under this subsection may be purchased from a risk-sharing pool established  
20 by a national association of similar entities if the risk-sharing pool meets the  
21 qualifications for an unauthorized insurer under AS 21.34.040(b) and (d) and  
22 21.34.220 and has capital and policyholders surplus in an amount at least as great as  
23 would be required if the association were a domestic multiple line insurer. An  
24 arrangement may purchase insurance under this subsection for property and liability  
25 risks from unauthorized insurers allowed for use by licensed Alaska surplus lines  
26 brokers.

27 **Sec. 21.77.050. Joint aviation insurance fund.** (a) A joint aviation  
28 insurance arrangement shall establish a joint aviation insurance fund. The fund  
29 consists of money

30 (1) contributed by members of the joint aviation insurance  
31 arrangement through budgetary appropriations or transfers from a self-insurance

1 reserve;

2 (2) contributed by officers and employees of members of the joint  
3 aviation insurance arrangement under an employee benefit plan; and

4 (3) collected by the joint aviation insurance arrangement through  
5 subrogation of a claim paid from the fund to a member of the arrangement.

6 (b) An expenditure may be made from a joint aviation insurance fund only to

7 (1) pay claims, losses, or benefits, including interest on claims, losses,  
8 or benefits, and the administrative and adjustment expenses incurred in connection  
9 with claims, losses, or benefits, involving the types of protection for which the fund  
10 provides coverage as specified in the joint aviation insurance agreement; and

11 (2) purchase insurance coverage for members of a joint aviation  
12 insurance arrangement on a group basis.

13 (c) The administrator shall keep the fund separate from other funds of a  
14 member of a joint aviation insurance arrangement.

15 (d) For each type of protection offered by the joint aviation insurance  
16 arrangement, the method of accounting must show the order, source, date, and amount  
17 of each payment from the fund.

18 (e) Within 150 days of the end of the fiscal year, the administrator shall  
19 furnish a detailed report of the operation and condition of the fund to the board of  
20 directors and the director.

21 (f) Money held by a fund as reserves and money not needed for daily  
22 operations may be invested by the board of directors.

23 (g) A fund may not be terminated unless the administrator certifies that an  
24 amount of money sufficient to pay accrued and contingent expenditures has been  
25 placed in a fully collateralized escrow account.

26 **Sec. 21.77.250. Definitions.** In this chapter,

27 (1) "adjustment expenses" means expenses for investigative,  
28 processing, legal, actuarial, arbitration, and settlement services incurred in the  
29 adjustment of losses, claims, or benefits;

30 (2) "administrator" means a person or group appointed by the board of  
31 directors to administer a joint aviation insurance arrangement or a joint aviation

1 insurance fund;

2 (3) "board" or "board of directors" means the board of directors  
3 provided for in a cooperative agreement;

4 (4) "cooperative agreement" means a written agreement entered into  
5 by two or more air carriers described in AS 21.77.010 for the purpose of establishing,  
6 operating, or participating in a joint aviation insurance arrangement;

7 (5) "fund" or "joint aviation insurance fund" means a fund established  
8 under AS 21.77.050;

9 (6) "joint aviation insurance arrangement" means a joint aviation  
10 insurance arrangement authorized under AS 21.77.010.

11 \* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to  
12 read:

13 APPLICABILITY. Sections 1 - 4 of this Act apply to acts or omissions that occur on  
14 or after the effective date of this Act.

15 \* **Sec. 7.** This Act takes effect July 1, 2002.