

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION STANDING COMMITTEE

April 8, 2003

1:34 p.m.

MEMBERS PRESENT

Senator John Cowdery, Chair
Senator Thomas Wagoner, Vice Chair
Senator Gene Therriault
Senator Georgianna Lincoln
Senator Donny Olson

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 140

"An Act relating to directional signs to places of public assembly."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 98

"An Act relating to civil liability for guest passengers on an aircraft or watercraft; and providing for an effective date."

MOVED CSSB 98(TRA) OUT OF COMMITTEE

PREVIOUS ACTION

SB 98 - No previous action to record.

WITNESS REGISTER

Senator Con Bunde
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 98

Ms. Marsha Davis
ERA Aviation

POSITION STATEMENT: Testified on SB 98

Mr. Tom George
Aircraft Owners & Pilots Association
PO Box 83750
Fairbanks, AK 99708

POSITION STATEMENT: Supports SB 98

Mr. Felix McGuire
President
Alaska Airmen's' Association
PO Box 241185
Anchorage, AK

POSITION STATEMENT: Supports SB 98

Mr. John George
Juneau, AK

POSITION STATEMENT: Testified on SB 98

ACTION NARRATIVE

TAPE 03-13, SIDE A

CHAIR JOHN COWDERY called the Senate Transportation Standing Committee meeting to order at 1:34 p.m. Senators Wagoner, Olson and Chair Cowdery were present. Senators Therriault and Lincoln arrived momentarily. He announced that the sponsor of SB 140 requested that it not be heard that day and that SB 98 was before the committee.

SB 98-LIABILITY: PLANE AND BOAT PASSENGERS

SENATOR CON BUNDE, sponsor of SB 98, told members the nickname of this bill is the "Good Neighbor Bill." Right now, boat and airplane owners cannot afford to be a good neighbor and offer to take a friend for a boat or plane ride because, if an unforeseeable accident occurs that does not involve negligence or illegal activities, the "good neighbor" could lose his or her estate. Some people have suggested that a guest could sign a waiver accepting some of the liability but, it is a proven legal fact that another person's interest cannot be suborned. A guest could sign away his right to sue but not his family's or employer's right to sue. The purpose of SB 98 is to clarify that the people who accept an opportunity to travel as a passenger on a non-commercial outing accept some of the inherent risks.

SENATOR BUNDE noted that common law recognizes that certain activities involve inherent risks and that participants should take some of the responsibility for injuries sustained while participating in those activities. He stressed that he is referring to an inherent risk that does not involve negligence, intentional misconduct or illegal activities. SB 98 will not absolve owners of their responsibility to maintain their

equipment in a safe and prudent manner. SB 98 only applies to privately owned planes and boats, not to commercial activities. In his opinion, SB 98 will discourage frivolous, expensive lawsuits and help contain rising insurance costs.

SENATOR BUNDE pointed out that SB 98 does provide that if an owner has insurance, the owner cannot be sued beyond the limits of that policy. If the owner does not obtain insurance, the owner must notify the passengers of that lack of insurance and that the passengers must assume some of the risk. He informed members that a proposed committee substitute (CS) was in members' packets. It contains an additional section that applies to the Alaska Boating Safety Act, which is necessary to clarify that SB 98 only applies to non-commercial aircraft and boats. He offered to answer questions.

CHAIR COWDERY then pointed out that this same issue was contemplated by the Thirteenth Legislature to address the lawsuit problem. He asked what would happen if a pilot in a privately owned airplane landed to assist someone in distress and was not able to inform that person of the liability issue.

SENATOR BUNDE said if the pilot has insurance, nothing is required. Unfortunately, the pilot would have to inform the passenger that he or she would have to assume some of the risk.

CHAIR COWDERY asked if Senator Bunde expects owners to use a standard form to inform passengers.

SENATOR BUNDE said he was unsure of that then stated:

As an individual, you might want to check with what you're comfortable with. I don't think the state necessarily should come up with a standard form. And, when you're talking about written, as I read - as this is - the [legislation] is proposed, verbal notification is adequate. If I might ask - use - an example that Senator Olson pointed out to me, he's out doing something in rural Alaska, somebody needs to get to town or the doctor, and he, as a non-commercial operator, could give them a ride to town. Without this legislation in effect, however, he puts his equipment and himself in great jeopardy even though he's just trying to be a Good Samaritan.

CHAIR COWDERY said he believes SB 98 is very much needed. He told members that he intended to put defibrillator machines on

every floor of the Capitol Building until he found out there could be a liability issue involved with their use.

SENATOR THERRIAULT referred to language on page 2, line 16-26, and asked if a person with insurance is only liable up to the policy limit.

SENATOR BUNDE said that is correct.

SENATOR THERRIAULT asked why a boat owner wouldn't just buy the cheapest policy with the lowest limits. He expressed concern that section encourages people to carry a minimum amount of insurance.

SENATOR BUNDE said that is what the situation is now, if one can even get insurance. It is very difficult to get and very expensive. He has learned from his past experience in commercial aviation that most people feel they are underinsured if they do not have at least \$1 million of coverage for each seat. The other option is to have no insurance at all.

SENATOR LINCOLN referred to language on page 2, line 10, and asked the difference between the terms "gross negligence" and "negligence."

SENATOR BUNDE explained that gross negligence, reckless or intentional misconduct are synonymous.

MS. KAREN McCARTHY, staff to Senator Bunde, added the bill drafter said that the terms "gross negligence, recklessness, or intentional misconduct" are commonly used in civil liability statutes in Alaska law and are commonly recognized by the courts.

SENATOR LINCOLN asked if there is any difference between negligence and gross negligence.

MS. MARSHA DAVIS, General Counsel for ERA Aviation, explained that negligence is a much lower standard. Innocent mistakes or simple negligence will be immune from liability under SB 98. Gross negligence is the next step up and will be excluded from immunity. The next levels are reckless or outrageous behavior and intentional misconduct. She said that Ms. McCarthy is correct in that gross negligence or reckless or intentional misconduct is the general standard [applied when considering] the liability of people who render assistance. She noted the

same phrase is used in AS 09.65.090, which is the Good Samaritan law.

1:47 p.m.

SENATOR LINCOLN asked Senator Bunde what the Alaska Boating Association meant by the sentence in its letter of support that reads:

Alaskans are involved in a high rate of boating accidents with personal injury and death to both operators and passengers - one of the results is high insurance rates.

She said that insurance rates and accidents do not correlate.

SENATOR BUNDE agreed that insurance coverage is not causing accidents, but the more claims filed, the higher the rates. Accordingly, the more accidents, the more claims filed.

SENATOR LINCOLN said if that statement is, in fact, true, the Legislature should look at the cause of the accidents.

SENATOR BUNDE recalled the Legislature worked on boating safety legislation last year because of the high number of accidents. Unfortunately, a lot of accidents involve alcohol. He pointed out a drunk person who has a boat accident would be charged with gross negligence and would not be absolved from liability.

CHAIR COWDERY commented that he is a boat owner and gives all of his passengers a card when they come on board that lists his safety rules and procedures.

SENATOR OLSON asked Senator Bunde to repeat what effect this bill will have on someone with no insurance.

SENATOR BUNDE explained that a person without insurance must notify the potential passenger of that fact and that the passenger is assuming some of the risks of participating in the activity and would not be able to recover should there be an accident.

SENATOR OLSON asked if there is any civil recourse for the passenger.

SENATOR BUNDE said there would be if the boat or plane owner were grossly negligent, reckless or involved in intentional misconduct.

SENATOR OLSON asked:

What happens if you have a problem and you - there's a personal injury with somebody outside the craft - coming in for a landing you overshoot and hit somebody on the side of the road or the side of the airport or if you're on a boat? I'm mainly looking at boats because up where I come from I can almost guarantee you that somebody out in Elim does not have any boat insurance on his boat.

SENATOR BUNDE maintained that SB 98 covers only passengers. Regarding Senator Therriault's earlier question, if a person has some liability insurance, that insurance would not only cover passengers but damage done to others. Therefore, the incentive to continue to have insurance coverage for those who can afford to remains because SB 98 does not cover all instances.

SENATOR LINCOLN asked SB 98 places a limit on what the passenger can collect if a private plane is landing and injures a passenger because of wind shear.

SENATOR BUNDE said the passenger would be limited to the amount of insurance coverage or, if the owner has no coverage, the passenger could not collect anything. However, the pilot is liable for anyone external to the aircraft or the boat that was injured. He said the likelihood of injury to the passenger is much higher.

CHAIR COWDERY called for public testimony.

MR. TOM GEORGE, representing the 4,000 Alaska members of the Aircraft Owners and Pilots Association, stated support for SB 98. He said it goes a long way toward clarifying and defining the responsibilities of pilots and owners of aircraft and their guests. SB 98 should increase the number of people who insure their aircraft because one of the insurance companies he spoke with estimated that as high as 80 to 90 percent of non-commercial operators in Alaska do not carry any insurance. Part of their rationale is this [guest liability issue] is a magnet to attract a lawsuit that will go way beyond the limits of the insurance. He said this is a well-intended effort to find a

reasonable balance to that problem. He urged members to support the legislation.

MR. FELIX McGUIRE, President of the Alaska Airmen's Association, stated wholehearted support for SB 98. He offered a minor clarification and asked that the phrase "minor contribution from the passenger" be changed to "minor compensation from the passenger" so that it is the same as FAA language.

MR. GEORGE noted the terminology was already corrected in the CS.

CHAIR COWDERY noted the committee was working on a work draft dated 4/02/03 and labeled version D.

MR. McGUIRE urged members to pass the bill.

SENATOR BUNDE pointed out the CS is intended to mirror what the FAA allows regarding the reimbursement paid by a passenger.

MS. DAVIS stated support for the CS because ERA Aviation is clearly a common carrier in the aircraft aviation industry. ERA owns a boat located in Seward that it uses for internal team building for employees and for occasional business entertainment. ERA does not operate the boat in common carriage. The original version of the bill purported to include such boats, as though ERA was operating the boat in common carriage. The CS clarifies that.

MS. DAVIS also suggested, in response to concerns expressed that SB 98 might encourage people to buy less insurance, incorporating the policy limits for automobiles in AS 28.20.440(b)(2). Those are very minimal and amount to \$50,000 for an individual, \$100,000 for more than one person and \$25,000 for property damage. Doing so would not require recreational users to have that insurance but, if they do not, that is the threshold at which they would advise the passenger they have limits below and need to assume the risk. She said the concern is that if a person has a limited amount of insurance, for example \$5,000 coverage, according to the way subsection (a) and (b) are written, the boat owner would not have to make any disclosure to the passenger. She said if the Senate wants to establish a reasonable benchmark for policy limits, it could use the minimal motor vehicle liability coverage.

SENATOR BUNDE said he would rather leave that to the discretion of the person who is purchasing the insurance because a minimum

tends to also become a maximum. He then said regarding Ms. Davis's previous statement about common carriers, a proposed amendment to address that concern was distributed to members. He said he has no objection to that amendment.

SENATOR WAGONER moved to adopt the amendment, which reads:

TO: CSSB 98(), Draft Version "D"

Page 2, line 12:

Delete "who is a common carrier"
Insert "if the aircraft or watercraft is being
operated as a common carrier"

CHAIR COWDERY noted without objection, the amendment was adopted.

MR. JOHN GEORGE told members he was representing himself and was there because Senator Bunde asked him to provide some background on aviation insurance. He said aviation insurance is much different than auto and homeowner's insurance. For example, a plane owner buys hull coverage and liability coverage for incidents that occur outside of the airplane and then buys seat liability to cover passengers. A plane owner could have a six-seat plane but buy seat liability coverage for only one passenger. That coverage can be purchased at different limits and is extremely expensive. Plane owners who opt not to purchase that insurance often do not carry passengers. He pointed out that many small boats, less than 16 feet, are automatically covered under homeowner policies. Personal umbrella policies also cover them. He said that a lot of aircraft insurance policies have exclusions. For example, one requirement for passenger liability coverage is that the plane land only on a paved airstrip so a pilot could not land on a gravel spit to fish with a passenger on board. SB 98 would allow plane owners a little more freedom.

SENATOR OLSON asked if Alaskans could expect lower insurance premiums if the bill is enacted.

MR. GEORGE said most people are not currently buying seat liability so it would probably cost the same. This legislation won't prevent accidents; it would protect one's uninsured family assets more than anything.

SENATOR WAGONER moved to adopt CSSB 98(TRA) [version D as amended].

CHAIR COWDERY announced without objection, the motion carried.

SENATOR WAGONER moved CSSB 98(TRA) from committee with the zero fiscal note and individual recommendations. There being no objection, the motion carried.

CHAIR COWDERY adjourned the meeting at 2:08 p.m.