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Introduced: 3/24/69
Referred: Commerce

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 295

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to regulation of air carriers; and
7 providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 02.05.050(d)(3) is amended to read:

10 (3) he shall register his established base of operations with
11 the commission [DIRECTOR], on forms furnished by the commission
12 [DIRECTOR], by August 1, 1969 [1966], and may not thereafter change the
13 base of operations except upon proper application to the commission
14 [DIRECTOR] showing public convenience and necessity. The base of
15 operations of an air taxi operator is a primary place of business from
16 which the carrier conducts his operations. The finding by the com-
17 mission that the base of operations of an air taxi operator is at a
18 certain place is a finding of fact and is not subject to judicial re-
19 view. An air taxi operator may operate from more than one base of
20 operations only upon receipt of operating authority from the commission
21 after a finding that public convenience and necessity requires it.

22 * Sec. 2. AS 02.05.090 is amended by adding a new subsection to read:

23 (g) An air carrier shall notify the commission in writing of
24 the sale, lease or withdrawal from service of any aircraft registered
25 under this section. Registration of an aircraft is nontransferable
26 and is cancelled upon sale to another person or corporation.

27 * Sec. 3. AS 02.05.110 is repealed and re-enacted to read:

28 Sec. 02.05.110. TRANSFER. (a) Transfer of a certificate may
29 be granted at the discretion of the commission. Commission approval

1 is required in any of the following instances:

2 (1) transfer from one business entity to another business
3 entity, be it a sole proprietorship, partnership, corporation, joint
4 venture, or any other authorized form of doing business;

5 (2) merger;

6 (3) consolidation;

7 (4) acquisition by one or more persons of a controlling
8 interest in an air carrier firm, by purchase, by acquisition of stock,
9 or by any other means.

10 (b) Only those rights which are shown to have been in active and
11 regular use may be transferred. The transferor shall certify to the
12 commission that the authority contained in the certificate has been
13 in reasonably continuous and active use as to the territory or routes
14 authorized to be served, and as to the various services authorized to
15 be rendered by the carrier. The commission may require documentary
16 evidence in support of the certification. Dormant operating rights
17 of the transferor will not be transferred unless the commission finds
18 that the service is needed for the public convenience and necessity,
19 and that the transferee will provide such service.

20 (c) Applications for transfer shall not be granted until

21 (1) all unpaid claims for loss or damage arising out of
22 the carrier's operations have been paid or until such claims have been
23 secured by the transferor's insurance carrier, or by satisfactory bond,
24 or after settlement approved by the commission as satisfactory for the
25 protection of all claimants, and

26 (2) all monies due shippers or other parties entitled to
27 receive the same for shipments performed on a C.O.D. basis have been
28 paid.

29 * Sec. 4. AS 02.05.120 is repealed and re-enacted to read:

1 Sec. 02.05.120. DISCONTINUANCE OR ABANDONMENT OF CERTIFICATED
2 OPERATIONS, TEMPORARY SUSPENSION. (a) Except as otherwise provided
3 in this chapter no certificated carrier may abandon an operation or
4 part of an operation for which a certificate has been issued by the
5 commission unless upon the application of the carrier and if after
6 notice and opportunity for hearing, the commission finds that dis-
7 continuance or abandonment will not materially harm the public
8 interest. Any interested person may file with the commission a protest
9 or memorandum of opposition to or in support of discontinuance or
10 abandonment. The commission may authorize temporary suspension of an
11 operation or part of an operation.

12 (b) The commission may, at the request of a certificated carrier
13 suspend its certificate for a definite period of time but not to exceed
14 180 days.

15 (c) Upon suspension of a certificate it is unlawful for the
16 carrier to conduct any operation for which a certificate is required.

17 (d) The unauthorized failure for a period of six months to
18 conduct operations, to file a tariff, or to pay a required regulatory
19 fee, shall create a presumption that the certificate is abandoned and
20 the commission may institute proceedings to revoke the certificate.

21 (e) Upon complaint or upon its own motion, the commission may
22 re-investigate a previously authorized discontinuance, abandonment or
23 suspension of an operation of an air carrier. If, after providing
24 notice and an opportunity for a hearing, the commission finds that the
25 public convenience and necessity require the service to be resumed,
26 it may order the carrier to reinstate the operation.

27 • Sec. 5. AS 02.05.130 is repealed and re-enacted to read:

28 Sec. 02.05.130. ACCIDENT LIABILITY PROTECTION REQUIRED. (a)
29 No certificate may be issued to a person to operate as an air carrier

1 within the state and no certificated carrier may operate within the
2 state until and unless such person or carrier has procured and kept
3 in force reasonable security required by the commission for the pro-
4 tection of the public against damage and injury for which the carrier
5 may be liable by reason of its operation as an air carrier.

6 (b) In fixing the amount of necessary security for a certificated
7 carrier the commission shall give consideration to the character and
8 amount of traffic, the number of persons affected and the degree of
9 danger which the proposed operation involves.

10 (c) The commission may, at any time, refuse to accept or revoke
11 its acceptance of any security or form of security, if, in its judgment
12 such security does not comply with the regulations, or for any reason
13 fails to provide satisfactory or adequate protection for the public.
14 Refusal or revocation of acceptance of security shall not relieve the
15 carrier from compliance with this section.

16 * Sec. 6. AS 02.05 is amended by adding new sections to read:

17 Sec. 02.05.135. EVIDENCE OF PROTECTION: DEPOSIT OF INSURANCE
18 POLICY BOND OR OTHER SECURITY. (a) The protection required under
19 sec. 130 of this chapter shall be evidenced by deposit with the
20 commission, covering each aircraft used or to be used under its
21 certificate, either

22 (1) a policy of insurance issued by a company licensed to
23 write such insurance in the state and approved by the commission; or

24 (2) a bond of a surety company licensed to write surety
25 bonds in the state; or

26 (3) such other security as may be approved by the commission;
27 or

28 (4) such evidence of qualification of the carrier as a self-
29 insurer as may be approved by the commission.

1 (b) Endorsements for policies of insurance, surety bonds, certi-
2 ficates of insurance, applications to qualify as a self-insurer, or
3 for approval of other securities or agreements, and notices of can-
4 cellation must be in the form prescribed or approved by the commission.

5 (c) Certificates of insurance and surety bonds shall be issued in
6 the full and correct name of the individual, partnership, corporation
7 or other person to whom the certificate is, or is to be issued. In the
8 case of a partnership, all partners shall be named.

9 Sec. 02.05.136. DURATION OF PROTECTION; CANCELLATION OF INSURANCE,
10 BOND OR OTHER SECURITY. (a) The protection against liability required
11 by sec. 130 of this chapter shall be continued in effect during the
12 active life of the certificate.

13 (b) Policies of insurance, surety bonds and other forms of
14 security shall not be cancellable on less than 30 days written notice
15 to the commission and this shall be clearly stated in the policy or
16 endorsement.

17 (c) The 30 day notice shall be measured from the date upon which
18 the commission receives notice.

19 Sec. 02.05.137. FIDUCIARIES, INSURED AND PRINCIPAL. The term
20 "insured" and "principal" as used in certificates of insurance, surety
21 bonds, and notices of cancellation filed by or in behalf of air
22 carriers shall be construed to include not only the air carrier named
23 in the certificate, surety bond, or notice of cancellation, but also
24 the fiduciary of such air carrier. The coverage of fiduciaries herein
25 provided for shall attach at the moment of succession of such
26 fiduciaries.

27 * Sec. 7. AS 02.05.230 is repealed and re-enacted to read:

28 Sec. 02.05.230. VIOLATION A MISDEMEANOR. Any person (whether or
29 not a certificated carrier or an officer, agent, or employee of a

1 certificated carrier) who shall knowingly fail, omit, neglect or refuse
2 to comply with a provision of this chapter or a rule, regulation, order
3 of decision of the commission, or an order of the commission prescrib-
4 ing temporary rates in a rate proceeding, or a final order or decree of
5 a court, or who shall knowingly procure, aid, or abet any such viola-
6 tion, omission, failure, neglect, or refusal, shall be guilty of a
7 misdemeanor, and upon conviction, shall be sentenced to pay the costs
8 of prosecution and a fine of not more than \$500 for each offense.

9 * Sec. 8. AS 02.05 is amended by adding new sections to read:

10 Sec. 02.05.231. CIVIL PENALTIES FOR VIOLATION OR NONCOMPLIANCE.

11 In addition to all other penalties and remedies provided by law an
12 air carrier and each officer, director, agent, or employee of an air
13 carrier who violates (including failure to obey or comply with), or
14 who procures, aids, or abets, a violation by an air carrier of a
15 provision of this chapter, an order, decision, rule, or regulation of
16 the commission is subject to a civil penalty of not more than \$100
17 for each offense.

18 Sec. 02.05.232. EACH VIOLATION A SEPARATE OFFENSE. Each viola-
19 tion of the provisions of this chapter or of an order, decision, rule,
20 regulation of the commission by an air carrier or other person is a
21 separate and distinct offense, and in case of a continuing violation
22 each day's continuance is a separate and distinct offense.

23 Sec. 02.05.233. COMMISSION TO DETERMINE AND LEVY CIVIL PENALTY.
24 When the commission finds, after providing notice and an opportunity to
25 be heard, that an air carrier, its officers or agents or other person
26 has been in violation or procured, aided and abetted an air carrier in
27 a violation as defined in secs. 231 and 232 of this chapter, the
28 commission shall determine the extent and duration of the violation,
29 the circumstances under which it occurred and the amount of the civil

1 penalty, if any, to be levied. A levy of penalty shall be made by
2 written order of the commission.

3 Sec. 02.05.234. ACTIONS TO RECOVER PENALTIES AND FINES; DIS-
4 POSITION. (a) Actions to recover penalties or impose fines under this
5 chapter shall be brought by the attorney general in a court of competent
6 jurisdiction.

7 (b) All fines imposed and all penalties recovered under the
8 provisions of this chapter shall be paid to the commission and
9 deposited by it in the general fund of the state.

10 Sec. 02.05.235. PENALTIES, CUMULATIVE; NOT EXCLUSIVE. (a) All
11 penalties occurring under this chapter shall be cumulative and a suit
12 for the recovery of one penalty shall not be a bar to or affect the
13 recovery of any other penalty or be a bar to any criminal prosecution
14 and imposition of a fine against an air carrier or an officer,
15 director, agent or employee thereof or any other person.

16 (b) Neither a criminal prosecution nor an action to recover a
17 penalty as provided in this chapter is a bar to an enforcement proceed-
18 ing to require compliance, nor to any other remedy provided by this
19 chapter.

20 Sec. 02.05.236. JOINDER OF ACTIONS. Under the applicable court
21 rules, appeals from orders of the commission, applications for enforce-
22 ment of commission orders and actions for recovery of a penalty may be
23 joined. The court may in the interests of justice separate the
24 actions.

25 * Sec. 9. This Act takes effect on the day after its passage and
26 approval or on the day it becomes law without approval.
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