

Original sponsor: Rules Committee
by Request of the Governor

Offered: 4/8/69
Referred: Rules

HCS

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 CS FOR 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, 1966, and may not thereafter change the base
13 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 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 AS 02.05.110 is repealed and re-enacted to read: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 or lease of a certificate
29 will be granted upon the **approval** of the commission. The commission may

1 approve a transfer or lease only upon a finding, after notice and
2 opportunity for hearing, that the transfer or lease will be consistent
3 with the public interest. Commission approval is required in any of
4 the following instances:

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

8 (2) merger;

9 (3) consolidation;

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

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

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

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

29 (2) all monies due shippers or other parties entitled to

1 receive the same for shipments performed on a C.O.D. basis have been
2 paid.

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 AS 02.05.120 is repealed and re-enacted to read:

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

15 (b) The commission may, at the request of a certificated carrier
16 suspend its certificate for a definite period of time but not to exceed
17 180 days.

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

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

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

1 * Sec. 5. AS 02.05.130 is repealed and re-enacted to read:

2 Sec. 02.05.130. ACCIDENT LIABILITY PROTECTION REQUIRED. (a)
3 No certificate may be issued to a person to operate as an air carrier
4 within the state and no certificated carrier may operate within the
5 state until and unless such person or carrier has procured and kept
6 in force reasonable security required by the commission for the pro-
7 tection of the public against damage and injury for which the carrier
8 may be liable by reason of its operation as an air carrier.

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

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

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

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

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

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

29 (3) such other security as may be approved by the commission;

1 or

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

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

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

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

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

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

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

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

2 Sec. 02.05.230. VIOLATION A MISDEMEANOR. Any person (whether or
3 not a certificated carrier or an officer, agent, or employee of a
4 certificated carrier) who shall knowingly fail, omit, neglect or refuse
5 to comply with a provision of this chapter or a rule, regulation, order
6 or decision of the commission, or an order of the commission prescrib-
7 ing temporary rates in a rate proceeding, or a final order or decree of
8 a court, or who shall knowingly procure, aid, or abet any such viola-
9 tion, omission, failure, neglect, or refusal, shall be guilty of a
10 misdemeanor, and upon conviction, shall be sentenced to pay the costs
11 of prosecution and a fine of not more than \$500 for each offense.

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

13 Sec. 02.05.231. CIVIL PENALTIES FOR VIOLATION OR NONCOMPLIANCE.
14 In addition to all other penalties and remedies provided by law an
15 air carrier and each officer, director, agent, or employee of an air
16 carrier who violates (including failure to obey or comply with), or
17 who procures, aids, or abets, a violation by an air carrier of a
18 provision of this chapter, an order, decision, rule, or regulation of
19 the commission is subject to a civil penalty of not more than \$100
20 for each offense.

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

26 SEC. 02.05.233. COMMISSION TO DETERMINE AND LEVY CIVIL PENALTY.
27 When the commission finds, after providing notice and an opportunity to
28 be heard, that an air carrier, its officers or agents or other person
29 has been in violation or procured, aided and abetted an air carrier in

1 a violation as defined in secs. 231 and 232 of this chapter, the
2 commission shall determine the extent and duration of the violation,
3 the circumstances under which it occurred and the amount of the civil
4 penalty, if any, to be levied. A levy of penalty shall be made by
5 written order of the commission.

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

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

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

19 (b) Neither a criminal prosecution nor an action to recover a
20 penalty as provided in this chapter is a bar to an enforcement pro-
21 ceeding to require compliance, nor to any other remedy provided by this
22 chapter.

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

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