

Original sponsor: Sumner

Offered: 5/23/80
Referred: To Rules

1 IN THE SENATE BY THE COMMERCE COMMITTEE

2 HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 60 (Commerce)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act continuing the existence of the Alaska Trans-
7 portation Commission; relating to responsibilities of
8 the Alaska Transportation Commission; and providing for
9 an effective date."

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

11 * Section 1. AS 44.66.010(a)(2) is amended to read:

12 (2) Alaska Transportation Commission (AS 42.07.011) --
13 June 30, 1983 [1979];

14 * Sec. 2. AS 02.05.010(4) is repealed and re-enacted to read:

15 (4) provide for fair and equitable competition through
16 qualified operators who are fit, willing, and able to serve the public
17 with safety, efficiency, and continuous service;

18 * Sec. 3. AS 02.05.010 is amended by adding a new subsection to read:

19 (b) Nothing in this chapter prevents the commission from taking
20 action necessary to maintain air service to rural communities under the
21 provisions of sec. 419 of the Federal Aviation Act of 1958 as amended by
22 P.L. 95-504.

23 * Sec. 4. AS 02.05 is amended by adding a new section to read:

24 Sec. 02.05.035. EXEMPT AIR CARRIERS. This chapter applies to all
25 air carriers except private carriers.

26 * Sec. 5. AS 02.05.040 is amended to read:

27 Sec. 02.05.040. CERTIFICATES REQUIRED. Subject to the provisions
28 of AS 02.05.050, a [NO] person may not engage in air commerce unless
29 there is in force a certificate issued by the commission finding that the

1 person is fit, willing, and able [AUTHORIZING THAT PERSON] to engage in
2 air commerce as a scheduled carrier, contract carrier, or air taxi
3 operator.

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

5 Sec. 02.05.044. CERTIFICATION AS FIT, WILLING, AND ABLE. (a) The
6 commission shall issue a certificate to a person to engage in air com-
7 merce as a scheduled carrier, contract carrier, or air taxi operator
8 under AS 02.05.050 if it determines that the person is fit, willing, and
9 able to engage in air commerce by providing that particular service.

10 (b) A person is fit, willing, and able to engage in air commerce
11 if the commission determines that the person has provided evidence
12 satisfactory to it that the person has

13 (1) the financial capability for the proposed service;

14 (2) shown that a physical base of operations and maintenance
15 capabilities will be available for the proposed service;

16 (3) financial management capabilities for the proposed ser-
17 vice;

18 (4) operational management capabilities for the proposed
19 service;

20 (5) shown that adequate equipment to provide and maintain the
21 proposed service will be available.

22 Sec. 02.05.046. INITIATION OF SERVICE. A person may initiate
23 service after

24 (1) the issuance of a certificate under AS 02.05.044;

25 (2) filing with the commission a copy of the federal certifi-
26 cation;

27 (3) meeting other requirements established by the commission
28 under AS 02.05.

29 * Sec. 7. AS 02.05.050(a) is amended to read:

1 (a) Scheduled carriers. Any person holding a certificate [OF
2 PUBLIC CONVENIENCE AND NECESSITY] issued under the provisions of this
3 chapter or issued before March 2, 1960, under federal statutory
4 authority authorizing intrastate air commerce inside the state,

5 (1) may engage in air commerce along the routes and between
6 the points covered by his certificate or any amendments as authorized
7 before March 2, 1960, or as may be authorized under the provisions of
8 this chapter, and may engage in air commerce along the routes and
9 between the points covered by an exemption, regulation, or order in
10 effect before March 2, 1960, or as issued under the provisions of this
11 chapter;

12 (2) may make charter trips and render other special services
13 between points on routes which he is authorized by his certificate to
14 serve; charter [. CHARTER] trips and other special services may be
15 rendered to or from any other point inside or outside the state if those
16 trips originate at or are destined to a point on a route the carrier is
17 authorized by its certificate to serve.

18 * Sec. 8. AS 02.05.050(d)(1) is amended to read:

19 (1) may, in accordance with his certificate, the limitations
20 established by this chapter and regulations of the commission, utilize
21 in all areas of the state [FROM WHICH HE IS AUTHORIZED TO OPERATE,] air-
22 craft having a maximum payload capacity of not more than 7,500 pounds
23 and a maximum seating configuration, exclusive of a pilot's seat, of 30
24 passengers determined under regulations of the Federal Aviation Adminis-
25 tration as of January 1, 1980, [A MAXIMUM CERTIFICATED TAKEOFF WEIGHT OF
26 12,500 POUNDS OR LESS EXCEPT AS AUTHORIZED ON CERTIFICATES IN EFFECT ON
27 SEPTEMBER 26, 1972] or as [OTHERWISE] authorized by the commission
28 following a finding by the commission that the public convenience
29 and necessity requires the use of larger aircraft;

1 * Sec. 9. AS 02.05.050(d)(5) is amended to read:

2 (5) shall establish and register with the commission, on
3 forms furnished by the commission, his base of operations; however, no
4 person may operate from more than one base of operations except upon
5 approval of the commission after a finding that the air taxi operator is
6 fit, willing, and able to provide the service [PUBLIC CONVENIENCE AND
7 NECESSITY REQUIRES IT] and a change in the base or bases of operations
8 may be made only upon approval of the commission.

9 * Sec. 10. AS 02.05.050(d) is amended by adding a new paragraph to read:

10 (6) may not be restricted to operation within an identified
11 area of the state.

12 * Sec. 11. AS 02.05.055 is amended to read:

13 Sec. 02.05.055. REQUIREMENTS [PUBLIC CONVENIENCE AND NECESSITY
14 REQUIRED] FOR OPERATION OF DIFFERENT TYPES OF AIRCRAFT. Before a certi-
15 ficated carrier [CONTRACT OR AIR TAXI OPERATOR] may operate a different
16 type of aircraft from that which he operated in Alaska during the period
17 of May 1, 1965, to May 1, 1966, there must be a finding by the com-
18 mission that the certificated carrier is fit, willing, and able under
19 AS 02.05.045 to provide the service [PUBLIC CONVENIENCE AND NECESSITY
20 REQUIRE IT].

21 * Sec. 12. AS 02.05.070(b) is amended to read:

22 (b) Upon the receipt of an application for a certificate, the
23 commission shall give notice (1) to the public by posting a notice of
24 the application in the office of the commission; and (2) to those per-
25 sons, and by such means as the commission determines by regulation. A
26 public hearing may [SHALL] be held on the application if the [APPLICANT,
27 OR A PERSON HAVING A SUBSTANTIAL INTEREST IN THE PROCEEDING, REQUESTS IT
28 WITHIN THE TIME PROVIDED BY REGULATION] commission determines under
29 regulations adopted by it that

1 (1) a person requesting a public hearing has a substantial
2 interest in the proceeding; and

3 (2) there are material issues of fact that require a hearing.

4 * Sec. 13. AS 02.05.070 is amended by adding a new subsection to read:

5 (d) The failure of the commission to deny authority to engage in
6 air commerce within (1) 60 days of a hearing held on a completed
7 application under this chapter; or (2) 120 days of the date of receipt
8 of a completed application, whichever is later, constitutes approval of
9 the application.

10 * Sec. 14. AS 02.05.080(a) is amended to read:

11 (a) Subject to the provisions of (d) of this section, the commis-
12 sion shall issue a certificate authorizing the applicant to engage in
13 air commerce as a scheduled or contract carrier or air taxi operator, or
14 authorizing the whole or any part of the operation covered by an
15 application for a certificate [, (1)] if the commission finds that the
16 applicant is fit, willing and able to engage in air commerce properly
17 and to comply with the provisions of this chapter and the [RULES,]
18 regulations [, AND REQUIREMENTS] of the commission [; AND (2) IF THE
19 COMMISSION FINDS THAT AIR COMMERCE AND THE PERFORMANCE OF IT BY THE
20 APPLICANT IN THE TYPE OF AIRCRAFT FOR WHICH A CERTIFICATE IS REQUESTED
21 UNDER (e) OF THIS SECTION IS REQUIRED BY THE PUBLIC CONVENIENCE AND
22 NECESSITY AND IS CONSISTENT WITH THE DECLARATION OF POLICY CONTAINED IN
23 AS 02.05.010].

24 * Sec. 15. AS 02.05.100(a) is amended to read:

25 (a) Upon a petition or accusation filed by any person or the
26 commission, and after notice and opportunity for hearing, the commission
27 by order [MAY ALTER, AMEND, OR MODIFY A CERTIFICATE, IN WHOLE OR IN
28 PART, IF THE PUBLIC CONVENIENCE AND NECESSITY REQUIRE IT AND] may
29 suspend or revoke a certificate, in whole or in part, for any of the

1 following reasons:

2 (1) intentional misrepresentation of a material fact in
3 obtaining the certificate;

4 (2) [VOLUNTARY] discontinuance of operations under circum-
5 stances that do not reasonably justify seasonal operations;

6 (3) intentional failure to comply with a provision of this
7 chapter or an order [, RULE,] or regulation issued under this chapter;

8 (4) intentional failure to comply with a term, condition or
9 limitation of the certificate.

10 * Sec. 16. AS 02.05.110(a) is amended to read:

11 Sec. 02.05.110. TRANSFER OR LEASE OF CERTIFICATES. (a) A certi-
12 ficate may be transferred or leased subject to the approval of the
13 commission, and under [SUCH] reasonable [RULES AND] regulations as the
14 commission may prescribe. Approval of a transfer or lease may be given
15 only upon a finding by the commission [, AFTER NOTICE AND OPPORTUNITY
16 FOR A HEARING,] that the transferee or lessee is fit, willing, and able
17 to assume the responsibilities of the certificate [TRANSFER OR LEASE
18 WILL BE CONSISTENT WITH THE PUBLIC INTEREST]. The application for
19 approval shall be made jointly by the transferor and transferee or
20 lessor and lessee.

21 * Sec. 17. AS 02.05.110(d) is amended to read:

22 (d) Regardless of the date of issuance of a certificate, a trans-
23 feree or lessee who wishes to operate aircraft of the type not operated
24 by the transferor or lessor must apply to the commission for a certifi-
25 cate [OF CONVENIENCE AND NECESSITY] under AS 02.05.070 and qualify as a
26 certified carrier with respect to operating that type of aircraft in air
27 commerce.

28 * Sec. 18. AS 02.05.110(e) is amended to read:

29 (e) Only those rights under a certificate which are shown to be in

1 active and regular use may be transferred. The transferor shall certify
2 to the commission that the authority contained in the certificate has
3 been in reasonable continuous and active use as to the territory or
4 routes authorized to be served, and as to the various services author-
5 ized to be rendered by the carrier. The commission may require docu-
6 mentary evidence in support of the certification of the transferor.
7 [DORMANT OPERATING RIGHTS OF THE TRANSFEROR MAY NOT BE TRANSFERRED
8 UNLESS THE COMMISSION FINDS THAT THE SERVICE IS NEEDED FOR THE PUBLIC
9 CONVENIENCE AND NECESSITY, AND THAT THE TRANSFEREE WILL PROVIDE THAT
10 SERVICE.]

11 * Sec. 19. AS 02.05.231 is amended to read:

12 Sec. 02.05.231. CIVIL PENALTIES FOR VIOLATION. The commission
13 may, after notice and opportunity for a hearing, levy a civil penalty of
14 not more than \$1,000 or an amount equal to revenue the person earned as
15 a result of the violation, whichever is greater, [\$150] for each offense
16 upon a person who violates or who procures, aids, or abets, a violation
17 by a certificated or uncertificated [AN] air carrier of a provision of
18 this chapter, or an order, decision, [RULE] or regulation of the commis-
19 sion. A levy of penalty shall be made by written order of the commis-
20 sion.

21 * Sec. 20. AS 02.05.250(8) is amended to read:

22 (8) "contract carrier" means an air carrier holding a certi-
23 ficate [OF PUBLIC CONVENIENCE AND NECESSITY] which authorizes it to pro-
24 vide, in accordance with written contracts for exclusive use of the
25 carrier's aircraft, air service of a continuing nature for a definite
26 and limited number of persons; a contract carrier's air service is
27 designed to meet the distinct air transportation needs of the indi-
28 vidual customer; a contract carrier does not represent to the public at
29 large expressly or by course of conduct that it furnishes transportation

1 for compensation, hire, or lease;

2 * Sec. 21. AS 02.05.250 is amended by adding a new paragraph to read:

3 (11) "private carrier" means a person other than a contract
4 carrier who provides transportation by aircraft but does not hold
5 himself out to the public expressly or by a course of action that he
6 furnishes air transportation for compensation or for hire.

7 * Sec. 22. AS 39.25.120 is amended by adding a new paragraph to read:

8 (12) the director, deputy director, staff legal counsel, and
9 hearing officers of the Alaska Transportation Commission.

10 * Sec. 23. AS 42.07.031 is amended to read:

11 Sec. 42.07.031. QUORUM. Two members of the commission constitute
12 a quorum for the transaction of business, for the performance of a duty,
13 or for the exercise of a power of the commission, except as provided in
14 AS 42.07.181(d).

15 * Sec. 24. AS 42.07.041 is amended by adding a new subsection to read:

16 (c) Members of the commission shall be qualified as follows:

17 (1) one member shall be a graduate of an accredited univers-
18 ity with a major or degree in economics and have experience in the
19 economics of public transportation;

20 (2) one member shall have substantial experience in trans-
21 portation and

22 (A) be a graduate of an accredited university with a
23 major or a degree in financial management or business administra-
24 tion; or

25 (B) have six years of experience in business or
26 financial affairs;

27 (3) one member shall have 10 years management experience in a
28 field of transportation.

29 * Sec. 25. AS 42.07.061 is amended to read:

1 Sec. 42.07.061. RESTRICTIONS. A [NO] commissioner, employee or
2 agent of the commission may not have an official or professional
3 relation or connection with, or hold stock or securities or have a
4 pecuniary interest in, any business or agency subject to regulation
5 under this chapter, AS 02.05, or AS 42.10. Membership in a cooperative
6 association is not a "pecuniary interest" within the meaning of this
7 section. If a commissioner or employee becomes the owner of such stocks
8 or securities or becomes pecuniarily interested in such a business or
9 agency otherwise than voluntarily, his office or employment shall become
10 vacant unless within a reasonable time he divests himself of the
11 ownership or interest. A commissioner may not, for two years after
12 leaving his position as a commissioner, act as a representative of a
13 business or agency in a matter before the commission.

14 * Sec. 26. AS 42.07.101 is repealed and re-enacted to read:

15 Sec. 42.07.101. EMPLOYMENT OF COMMISSION PERSONNEL. (a) The
16 commission may employ an executive director who shall have at least five
17 years of experience in public transportation management or regulation,
18 law, accounting, or an allied field. A member of the commission may act
19 as executive director for no longer than 90 days. The commission may
20 employ engineers, hearing officers, staff legal counsel, experts,
21 clerks, accountants, and other agents and assistants it considers
22 necessary. The executive director, his deputy, and staff legal counsel,
23 and hearing officers to the commission are in the partially exempt
24 service under AS 39.25.120. All other employees and agents of the
25 commission are in the classified service under AS 39.25.100.

26 (b) In addition to its staff of regular employees, the commission
27 may contract for and engage the services of consultants and experts the
28 commission considers necessary.

29 * Sec. 27. AS 42.07.121 is amended to read:

1 Sec. 42.07.121. GENERAL POWERS AND DUTIES. The commission [ALASKA
2 TRANSPORTATION COMMISSION] shall supervise and regulate transportation
3 in the state as provided in this chapter and in AS 02.05 and AS 42.10,
4 [AS 42.15 AND AS 42.25,] and may do all things, whether specifically
5 designated in this chapter or in AS 02.05 or AS 42.10, [AS 42.15 OR
6 AS 42.25, OR IN ADDITION THERETO,] which are necessary or convenient in
7 the exercise of this power and jurisdiction.

8 * Sec. 28. AS 42.07 is amended by adding a new section to read:

9 Sec. 42.07.126. EXEMPT TRANSPORTATION CARRIERS. Except as
10 provided in AS 42.07.136, the jurisdiction of the commission does not
11 extend to the regulation of ferry or bus transportation.

12 * Sec. 29. AS 42.07.131 is amended to read:

13 Sec. 42.07.131. AUTHORITY LIMITED BY FEDERAL LAW. The provisions
14 of this chapter and AS 02.05 and AS 42.10 [AND AS 42.15] apply to trans-
15 portation carriers engaged in foreign commerce and interstate commerce
16 to the extent permitted by the constitution and laws of the United
17 States.

18 * Sec. 30. AS 42.07 is amended by adding new sections to read:

19 Sec. 42.07.136. INFORMATION AND INSURANCE OR DEPOSIT OF SECURITY
20 ON EXEMPT CARRIERS. The commission shall require carriers exempted
21 under AS 42.07.126 and AS 42.10.020(5) to file information necessary to
22 carry out this chapter and to procure and maintain appropriate bodily
23 injury and property damage liability insurance and cargo insurance from
24 a company licensed to write insurance in the state or deposit security
25 for the limits of liability and upon the terms and conditions the com-
26 mission determines necessary for the reasonable protection of the public
27 against damage and injury for which the carrier may be liable by reason
28 of its operation. Evidence of the required insurance shall be filed
29 with the commission.

1 Sec. 42.07.171. ENFORCEMENT AUTHORITY. An enforcement officer
2 authorized and designated by the commission or by the Department of
3 Public Safety has the enforcement authority set out in this section to
4 enforce regulations and orders of the commission and to enforce the
5 statutes that the commission administers. The commission may authorize
6 the enforcement officer to

7 (1) require the operator of a surface or air vehicle which
8 may be subject to the authority of the commission to present documents
9 of vehicle registration, ownership, or other documents required by
10 regulation to be in the possession of the operator;

11 (2) stop a surface or air vehicle which may be subject to the
12 authority of the commission and request the right to inspect cargo
13 within the vehicle to determine whether the operation of the vehicle
14 violates a regulation or order of the commission or a statute which the
15 commission administers; if the operator of that vehicle refuses to
16 permit inspection of the vehicle or its cargo, the enforcement officer
17 may, by placing a seal on or around the cargo, prohibit the discharge of
18 the cargo except at a point of destination and in the presence of an
19 authorized enforcement officer of the commission;

20 (3) detain or remove from service a surface vehicle which may
21 be subject to the authority of the commission when it reasonably appears
22 to an enforcement officer of the commission that the continued operation
23 of the vehicle would jeopardize the public safety; if an enforcement
24 officer discovers a safety violation which in his opinion will not cause
25 an accident or breakdown, he may order the vehicle to proceed to a
26 designated repair area where the violation shall be corrected before the
27 vehicle departs the area;

28 (4) issue citations for a violation of a regulation, order,
29 or statute administered by the commission; and

1 (5) apply to a court for an appropriate order.

2 Sec. 42.07.181. STOP ORDERS. (a) The commission may, following a
3 hearing under its regulations, issue a stop order directed to a person
4 violating or aiding or abetting a violation of a regulation, order, or
5 statute administered by the commission.

6 (b) The commission may issue a stop order on its own motion before
7 a hearing if it finds that immediate and irreparable harm is likely to
8 occur to the public if the order is not issued. In addition, the
9 commission may issue a stop order on its own motion if it finds that the
10 party to whom the order is directed

11 (1) has failed to file required insurance or surety bonds;

12 (2) is no longer fit, willing and able to operate properly;

13 (3) is operating without an appropriate certificate or permit
14 allowing him to conduct the transportation in question; or

15 (4) is operating a surface vehicle in a manner that will
16 jeopardize the public safety if such an order is not issued.

17 (c) A stop order issued by the commission on its own motion and
18 without a hearing is effective for 10 days and the order shall provide
19 the respondent a hearing within 10 days. If requested by the respon-
20 dent, the hearing shall be held in the judicial district in which the
21 principal place of business of the respondent is located. If a hearing
22 has been provided within 10 days, the commission may extend the stop
23 order an additional 10 days in order that the commission may decide the
24 matter.

25 (d) A single commissioner may issue a stop order without a hearing
26 if he finds that a person engaging in surface transportation regulated
27 under AS 42.10 does so in a manner that jeopardizes the public safety if
28 a stop order is not issued. A stop order issued by a single commis-
29 sioner is effective for 48 hours or until a stop order is issued by the

1 commission under (c) of this section.

2 (e) A respondent subject to a stop order shall be given the oppor-
3 tunity to have the stop order rescinded because he has complied with its
4 requirements.

5 (f) If, after a hearing, the commission finds that a respondent
6 violated the stop order, the commission may fine that person not more
7 than \$1,000 for each day the violation of the stop order continues or an
8 amount equal to revenue that person earned as a result of violating the
9 stop order, whichever is greater.

10 (g) A person who refuses to allow an enforcement officer of the
11 commission to examine his vehicle or cargo within the vehicle upon
12 request under AS 42.07.171(2) and who is subsequently determined to have
13 been in violation of a regulation, order, or statute under the jurisdic-
14 tion of the commission may be fined \$1,000 a day for each day of the
15 violation or fined an amount equal to the gross revenue earned by the
16 violator in that particular operation, whichever is greater.

17 (h) In this section, "respondent" means a person against whom a
18 stop order or citation is directed.

19 Sec. 42.07.191. COMMISSION. In this chapter, "commission" means
20 the Alaska Transportation Commission.

21 * Sec. 31. AS 42.10.020 is amended by adding a new paragraph to read:

22 (5) motor vehicles under 14,000 pounds GVW operated as tow
23 trucks.

24 * Sec. 32. AS 42.10.394(a) is amended to read:

25 (a) In addition to any other civil penalties and remedies provided
26 by law, the commission may levy a civil penalty of not more than \$1,000
27 or an amount equal to revenue the person earned as a result of the
28 violation, whichever is greater, [\$150] for each offense upon a motor
29 carrier and each officer, director, agent, or employee of a motor

1 carrier who violates (including failure to obey or comply with), or who
2 procures, aids, or abets, a violation by a motor carrier of a provision
3 of this chapter, or an order, decision, [RULE,] or regulation of the
4 commission.

5 * Sec. 33. AS 02.05.010(2), (5), (7), AS 42.15 and AS 42.25 are repealed.

6 * Sec. 34. Notwithstanding the provisions of AS 42.07.041(c), enacted in
7 sec. 24 of this Act, the members of the Alaska Transportation Commission may
8 continue in office for the remainder of their terms.

9 * Sec. 35. This Act takes effect June 30, 1980.

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