

Original sponsor: Sumner

Offered: 6/5/80

1 IN THE SENATE

BY THE 2d FREE CONFERENCE COMMITTEE

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FREE CONFERENCE CS FOR SENATE BILL NO. 60

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

ELEVENTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act continuing the existence of the Alaska Transportation Commission; relating to responsibilities of the Alaska Transportation Commission; and providing for an effective date."

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

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

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(2) Alaska Transportation Commission (AS 42.07.011) --

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June 30, 1983 [1979];

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 AS 02.05.010(4) is repealed and re-enacted to read:

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(4) provide for fair and equitable competition through qualified operators who are fit, willing, and able to serve the public with

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safe, efficient, and continuous air service;

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

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(b) Nothing in this chapter prevents the commission from taking

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action necessary to maintain air service to rural communities under the provisions of sec. 419 of the Federal Aviation Act of 1958 as amended by P.L. 95-504.

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* Sec. 4. AS 02.05.050(a) is amended to read:

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(a) Scheduled carriers. Any person holding a certificate as an

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air scheduled carrier [OF PUBLIC CONVENIENCE AND NECESSITY] issued under the provisions of this chapter [OR ISSUED BEFORE MARCH 2, 1960, UNDER FEDERAL STATUTORY AUTHORITY AUTHORIZING INTRASTATE AIR COMMERCE INSIDE THE STATE,]

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(1) may engage in air commerce along the routes and between

1 the points covered by his certificate or any amendments [AS AUTHORIZED
2 BEFORE MARCH 2, 1960, OR AS MAY BE] authorized under the provisions of
3 this chapter, and may engage in air commerce along the routes and
4 between the points covered by an exemption, regulation, or order [IN
5 EFFECT BEFORE MARCH 2, 1960, OR AS] issued under the provisions of this
6 chapter;

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

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

14 (1) may, in accordance with his certificate, the limitations
15 established by this chapter and regulations of the commission, utilize
16 in all areas of the state [FROM WHICH HE IS AUTHORIZED TO OPERATE,] air-
17 craft having a maximum payload capacity of not more than 7,500 pounds
18 or a maximum seating configuration, exclusive of a pilot's seat, of not
19 more than 30 passengers as determined under regulations of the Federal
20 Aviation Administration as of January 1, 1980, [MAXIMUM CERTIFICATED
21 TAKEOFF WEIGHT OF 12,500 POUNDS OR LESS EXCEPT AS AUTHORIZED ON CERTIFI-
22 GATES IN EFFECT ON SEPTEMBER 26, 1972] or as [OTHERWISE] authorized by
23 the commission;

24 * Sec. 6. AS 02.05.050(d)(5) is amended to read:

25 (5) shall establish and register with the commission, on
26 forms furnished by the commission, his base of operations; however, no
27 air taxi operator [PERSON] may operate from more than one base of opera-
28 tions except upon approval of the commission after a finding that the
29 air taxi operator is fit, willing, and able to provide the additional

1 service [PUBLIC CONVENIENCE AND NECESSITY REQUIRES IT AND A CHANGE IN
2 THE BASE OR BASES OF OPERATIONS MAY BE MADE ONLY UPON APPROVAL OF THE
3 COMMISSION].

4 * Sec. 7. AS 02.05.050(d) is amended by adding a new paragraph to read:

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

7 * Sec. 8. AS 02.05.055 is amended to read:

8 Sec. 02.05.055. REQUIREMENTS [PUBLIC CONVENIENCE AND NECESSITY
9 REQUIRED] FOR OPERATION OF DIFFERENT TYPES OF AIRCRAFT. Before a certi-
10 ficated carrier [CONTRACT OR AIR TAXI OPERATOR] may operate a different
11 type of aircraft from that authorized by his certificate or which he
12 operated in Alaska during the period of May 1, 1978 [1965], to May 1,
13 1980 [1966], there must be a finding by the commission that public
14 convenience and necessity require it.

15 * Sec. 9. AS 02.05.070(b) is amended to read:

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

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

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

27 * Sec. 10. AS 02.05.070 is amended by adding a new subsection to read:

28 (d) The failure of the commission to deny authority to engage in
29 air commerce within (1) 60 days from a hearing held on a completed

1 application under this chapter; or (2) 120 days from the date of receipt
2 of a completed application, whichever is later, constitutes approval of
3 the application.

4 * Sec. 11. AS 02.05.080(a) is amended to read:

5 (a) Subject to the provisions of (d) of this section, the commis-
6 sion shall issue a certificate authorizing the applicant to engage in
7 air commerce as a scheduled or contract carrier or air taxi operator, or
8 authorizing the whole or any part of the operation covered by an
9 application for a certificate,

10 (1) if the commission finds that

11 (A) the applicant is fit, willing and able to engage in
12 air commerce properly and to comply with the provisions of this
13 chapter and the [RULES,] regulations [, AND REQUIREMENTS] of the
14 commission; and

15 (B) the proposed service is not contrary to the public
16 interest; and

17 (2) as to aircraft having a maximum payload capacity in ex-
18 cess of 7,500 pounds or a maximum seating configuration, exclusive of
19 the pilot's seat, in excess of 30 passengers, if the commission also
20 finds that air commerce and the performance of it by the applicant in
21 the type of aircraft for which a certificate is requested under (e) of
22 this section is required by the public convenience and necessity and is
23 consistent with the declaration of policy contained in AS 02.05.010.

24 * Sec. 12. AS 02.05.080 is amended by adding new subsections to read:

25 (f) A person is fit, willing, and able to engage in air commerce
26 if the commission finds that

27 (1) the proposed service is economically feasible and the
28 applicant has the financial capability to provide it;

29 (2) a physical base of operations and maintenance capabili-

1 ties will be available for the proposed service;

2 (3) the applicant has financial management capabilities for
3 the proposed service;

4 (4) the applicant has operational management capabilities for
5 the proposed service; and

6 (5) the applicant has adequate equipment to provide and
7 maintain the proposed service.

8 (g) In a hearing on the issuance of a certificate under AS 02.05.-
9 070, the burden of showing that the proposed service is contrary to the
10 public interest is on a person who opposes the issuance of the cer-
11 tificate on the grounds that the proposed service is contrary to the
12 public interest.

13 * Sec. 13. AS 02.05.100(a) is amended to read:

14 (a) Upon a petition or accusation filed by any person or the
15 commission, and after notice and opportunity for hearing, the commission
16 by order may alter, amend, or modify a certificate, in whole or in part,
17 [IF THE PUBLIC CONVENIENCE AND NECESSITY REQUIRE IT] and may suspend or
18 revoke a certificate, in whole or in part, for any of the following
19 reasons:

20 (1) intentional misrepresentation of a material fact in
21 obtaining the certificate;

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

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

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

28 * Sec. 14. AS 02.05.110(a) is amended to read:

29 Sec. 02.05.110. TRANSFER OR LEASE OF CERTIFICATES. (a) A certi-

1 ficate may be transferred or leased subject to the approval of the
2 commission, and under [SUCH] reasonable [RULES AND] regulations as the
3 commission may prescribe. Approval of a transfer or lease may be given
4 only upon a finding by the commission, after notice and opportunity for
5 a hearing as provided in AS 02.05.070(b) and (d), that the transferee
6 or lessee is fit, willing, and able to assume the responsibilities of
7 the certificate [TRANSFER OR LEASE WILL BE CONSISTENT WITH THE PUBLIC
8 INTEREST]. The application for approval shall be made jointly by the
9 transferor and transferee or lessor and lessee.

10 * Sec. 15. AS 02.05.110(e) is amended to read:

11 (e) Only those rights under a certificate which are shown to be in
12 active and regular use may be transferred. The transferor shall certify
13 to the commission that the authority contained in the certificate has
14 been in reasonable continuous and active use as to the territory or
15 routes authorized to be served, and as to the various services author-
16 ized to be rendered by the carrier. The commission may require docu-
17 mentary evidence in support of the certification of the transferor.
18 [DORMANT OPERATING RIGHTS OF THE TRANSFEROR MAY NOT BE TRANSFERRED
19 UNLESS THE COMMISSION FINDS THAT THE SERVICE IS NEEDED FOR THE PUBLIC
20 CONVENIENCE AND NECESSITY, AND THAT THE TRANSFEREE WILL PROVIDE THAT
21 SERVICE.]

22 * Sec. 16. AS 02.05.231 is amended to read:

23 Sec. 02.05.231. CIVIL PENALTIES FOR VIOLATION. The commission
24 may, after notice and opportunity for a hearing, levy a civil penalty of
25 not more than \$1,000 or an amount equal to revenue the person earned as
26 a result of the violation, whichever is greater, [\$150] for each offense
27 upon a person who violates or who procures, aids, or abets, a violation
28 by a certificated or uncertificated [AN] air carrier of a provision of
29 this chapter, or an order, decision, [RULE] or regulation of the commis-

1 sion. A levy of penalty shall be made by written order of the commis-
2 sion.

3 * Sec. 17. AS 02.05.250(8) is amended to read:

4 (8) "contract carrier" means an air carrier holding a certi-
5 ficate [OF PUBLIC CONVENIENCE AND NECESSITY] which authorizes it to pro-
6 vide, in accordance with written contracts for exclusive use of the
7 carrier's aircraft, air service of a continuing nature for a definite
8 and limited number of persons; a contract carrier's air service is
9 designed to meet the distinct air transportation needs of the indi-
10 vidual customer; a contract carrier does not represent to the public at
11 large expressly or by course of conduct that it furnishes transportation
12 for compensation, hire, or lease;

13 * Sec. 18. AS 39.25.120 is amended by adding a new paragraph to read:

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

16 * Sec. 19. AS 42.07.031 is amended to read:

17 Sec. 42.07.031. QUORUM. Two members of the commission constitute
18 a quorum for the transaction of business, for the performance of a duty,
19 or for the exercise of a power of the commission, except as provided in
20 AS 42.07.181(d).

21 * Sec. 20. AS 42.07.041 is amended by adding a new subsection to read:

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

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

26 (2) one member shall have substantial experience in trans-
27 portation and

28 (A) be a graduate of an accredited university with a
29 major or a degree in financial management or business administra-

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tion; or

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

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

* Sec. 21. AS 42.07.061 is amended to read:

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

* Sec. 22. AS 42.07.101 is repealed and re-enacted to read:

Sec. 42.07.101. EMPLOYMENT OF COMMISSION PERSONNEL. (a) The commission may employ an executive director who shall have at least five years of experience in public transportation management or regulation, law, accounting, or an allied field. A member of the commission may act as executive director for no longer than 90 days. The commission may employ engineers, hearing officers, staff legal counsel, experts, clerks, accountants, and other agents and assistants it considers necessary. The executive director, his deputy, and staff legal counsel, and hearing officers to the commission are in the partially exempt

1 service under AS 39.25.120. All other employees and agents of the
2 commission are in the classified service under AS 39.25.100.

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

6 * Sec. 23. AS 42.07.121 is amended to read:

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

14 * Sec. 24. AS 42.07 is amended by adding a new section to read:

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

18 * Sec. 25. AS 42.07.131 is amended to read:

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

24 * Sec. 26. AS 42.07 is amended by adding new sections to read:

25 Sec. 42.07.136. INFORMATION AND INSURANCE OR DEPOSIT OF SECURITY
26 ON EXEMPT CARRIERS. The commission shall require carriers exempted
27 under AS 42.07.126 and AS 42.10.020(5) to file information necessary to
28 carry out this chapter and to procure and maintain appropriate bodily
29 injury and property damage liability insurance and cargo insurance from

1 a company licensed to write insurance in the state or deposit security
2 for the limits of liability and upon the terms and conditions the com-
3 mission determines necessary for the reasonable protection of the public
4 against damage and injury for which the carrier may be liable by reason
5 of its operation. Evidence of the required insurance shall be filed
6 with the commission.

7 Sec. 42.07.171. ENFORCEMENT AUTHORITY. An enforcement officer
8 authorized and designated by the commission or by the Department of
9 Public Safety has the enforcement authority set out in this section to
10 enforce regulations and orders of the commission and to enforce the
11 statutes that the commission administers. The commission may authorize
12 the enforcement officer to

13 (1) require the operator of a surface or air vehicle which
14 may be subject to the authority of the commission to present documents
15 of vehicle registration, ownership, or other documents required by
16 regulation to be in the possession of the operator;

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

26 (3) detain or remove from service a surface vehicle which may
27 be subject to the authority of the commission when it reasonably appears
28 to an enforcement officer of the commission that the continued operation
29 of the vehicle would jeopardize the public safety; if an enforcement

1 officer discovers a safety violation which in his opinion will not cause
2 an accident or breakdown, he may order the vehicle to proceed to a
3 designated repair area where the violation shall be corrected before the
4 vehicle departs the area;

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

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

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

12 (b) The commission may issue a stop order on its own motion before
13 a hearing if it finds that immediate and irreparable harm is likely to
14 occur to the public if the order is not issued. In addition, the com-
15 mission may issue a stop order on its own motion if it finds that the
16 party to whom the order is directed

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

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

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

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

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

1 matter.

2 (d) A single commissioner may issue a stop order without a hearing
3 if he finds that a person engaging in surface transportation regulated
4 under AS 42.10 does so in a manner that jeopardizes the public safety if
5 a stop order is not issued. A stop order issued by a single commis-
6 sioner is effective for 48 hours or until a stop order is issued by the
7 commission under (c) of this section.

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

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

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

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

25 Sec. 42.07.191. COMMISSION. In this chapter, "commission" means
26 the Alaska Transportation Commission.

27 * Sec. 27. AS 42.10.020 is amended by adding a new paragraph to read:

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

1 * Sec. 28. AS 42.10.394(a) is amended to read:

2 (a) In addition to any other civil penalties and remedies provided
3 by law, the commission may levy a civil penalty of not more than \$1,000
4 or an amount equal to revenue the person earned as a result of the
5 violation, whichever is greater, [\$150] for each offense upon a motor
6 carrier and each officer, director, agent, or employee of a motor
7 carrier who violates (including failure to obey or comply with), or who
8 procures, aids, or abets, a violation by a motor carrier of a provision
9 of this chapter, or an order, decision, [RULE,] or regulation of the
10 commission.

11 * Sec. 29. AS 02.05.010(a)(2), (5), (7), 02.05.110(d); AS 42.15; and
12 AS 42.25 are repealed.

13 * Sec. 30. Notwithstanding the provisions of AS 42.07.041(c), enacted in
14 sec. 20 of this Act, the members of the Alaska Transportation Commission may
15 continue in office for the remainder of their terms.

16 * Sec. 31. Sections 4, 6, 8, and 10 - 14 of this Act take effect
17 January 1, 1981.

18 * Sec. 32. Sections 1 - 3, 5, 7, 9, and 15 - 32 of this Act take effect
19 June 30, 1980.

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