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1 IN THE SENATE

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2 SENATE BILL NO. 277

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to aviation insurance; and providing
7 for an effective date."

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

9 * Section 1. PURPOSE. The purpose of this Act is to provide a means of
10 furnishing aircraft owners and operators with adequate insurance against
11 liability and hull damage.

12 * Sec. 2. AS 21 is amended by adding a new chapter to read:

13 CHAPTER 86. AIRCRAFT OWNERS AND OPERATORS INSURANCE.

14 ARTICLE 1. AVIATION INDEMNITY CORPORATION OF ALASKA.

15 Sec. 21.86.010. CORPORATION ESTABLISHED. The Aviation Indemnity
16 Corporation of Alaska is established as a public corporation having a
17 legal existence independent of and separate from the state. Obliga-
18 tions issued by the corporation do not constitute a debt, liability, or
19 obligation of the state or a pledge of full faith and credit of the
20 state.

21 Sec. 21.86.020. CORPORATION BOARD OF DIRECTORS. (a) The corpor-
22 ation shall exercise its powers through a board of directors appointed
23 by the governor and confirmed by the legislature. The board consists
24 of the following residents of the state:

25 (1) one representative from an air carrier flying scheduled
26 routes, subject to Federal Aviation Administration regulations (14
27 C.F.R. Part 121);

28 (2) two representatives from operators certified by the
29 Alaska Transportation Commission as air taxi operators except that only

1 one may be operating a business based in a municipality having a popu-
2 lation of over 100,000 and both must be insured under this chapter when
3 insurance becomes available;

4 (3) two representatives of the general aviation community
5 who are not associated with a commercial aviation enterprise repre-
6 sented in (1) or (2) of this subsection;

7 (4) two representatives from the insurance industry;

8 (5) two members of the general public who have no financial
9 interest in the aviation or insurance businesses.

10 (b) The term of office of each director is three years.

11 (c) Upon the expiration of the term of a director, the governor
12 shall appoint a successor who shall be from the same class described in
13 (a) of this section as the director whose term has expired. In the
14 event of a director's resignation, death, or inability to serve, the
15 governor shall appoint a successor from the same class defined in (a)
16 of this section as the terminating director, who shall serve for the
17 unexpired term.

18 (d) The director of the division of insurance is not a voting
19 member of the board of but shall be notified by the board of, and have
20 the right to attend and participate in, all meetings and proceedings of
21 the board.

22 (e) Members of the board receive compensation from the corpora-
23 tion and necessary travel expenses according to a policy approved by
24 the director of the division of insurance.

25 (f) A director, officer, or employee or former director, officer,
26 or employee of the corporation is not liable for damages or other
27 relief in any action by reason of his actions or inactions as a direc-
28 tor, officer, or employee of the corporation; neither is he liable by
29 reason of the actions or inactions of the corporation, its board of

1 directors, officers, or employees unless he acts with actual knowledge
2 that he was acting outside the scope of his authority, or unless at the
3 time he was acting for a purpose which he knew was not in the best
4 interests of the corporation, or with respect to any criminal action he
5 had actual knowledge or should have known his action was unlawful. If a
6 claim or action is brought against a person entitled to the protection
7 of this subsection, the claim or action shall be defended by the state.
8 If it is established that the person was acting with actual knowledge
9 that he was acting outside the scope of his authority, or at the time
10 was acting for a purpose which he knew was not in the best interests of
11 the corporation, or with respect to any criminal action he had actual
12 knowledge or should have known his action was unlawful, then he shall
13 reimburse the state for the cost to the state of his defense.

14 Sec. 21.86.030. CORPORATION PLAN OF OPERATION. (a) Within 90
15 days after the first meeting of the board, the board shall prepare and
16 submit to the director of the division of insurance for approval a plan
17 of operation which provides for the fair and reasonable administration
18 of the affairs of the corporation and the discharge of the purposes for
19 which it is established. The plan and any amendments to it become
20 effective upon the approval of the director of the division of insur-
21 ance. If the board fails to submit a plan of operation, or if at a
22 subsequent time the board fails to submit suitable amendments to the
23 plan, the director of the division of insurance shall, after notice and
24 hearing, adopt a plan of operation or amendments which are necessary or
25 advisable to carry out the provisions of this chapter. Adoption of the
26 plan of operation is not subject to the Administrative Procedure Act
27 (AS 44.62).

28 (b) The plan of operation shall

29 (1) establish the procedures by which all the powers and

1 duties of the corporation specified in AS 21.86.040 shall be performed;

2 (2) establish procedures for handling assets and discharging
3 liabilities of the corporation;

4 (3) establish regular times and places for meetings of the
5 board;

6 (4) establish procedures for records to be kept of all
7 financial transactions of the corporation, its agents, and the board;

8 (5) establish the procedures for awarding contracts to carry
9 out the provisions of this chapter;

10 (6) establish the procedures for issuing contracts of insur-
11 ance, directly and through persons licensed under AS 21.27, as provided
12 in AS 21.86.040 and for the determination of rates; and

13 (7) contain additional provisions necessary for the execution
14 of the powers and duties of the corporation.

15 Sec. 21.86.040. POWERS AND DUTIES OF THE CORPORATION. (a) The
16 corporation shall

17 (1) establish standards for the acceptability of risks;

18 (2) in the form approved by the director of the division of
19 insurance, issue to all aircraft owners and operators who are found to
20 be acceptable risks under standards developed under (1) of this subsec-
21 tion, and who pay the premiums for it, a contract or contracts indemni-
22 fying them and their employees against loss by reason of liability for
23 covered claims for an act or omission in the operation of aircraft in
24 this state, and agreeing to tender on behalf of them and their employees
25 a defense to a covered claim in a civil action;

26 (3) charge a premium for the protection provided by the
27 contracts issued by the corporation which shall be determined by the
28 board in accordance with AS 21.86.100 and subject to the approval of
29 the director of the division of insurance;

1 (4) carry out the obligations of the contracts issued by the
2 corporation by defending all covered claims made against insured air-
3 craft owners and operators and by paying all liabilities which are
4 finally adjudicated against the insured owners or operators or which
5 may in the opinion of the corporation reasonably be expected to be
6 finally adjudicated against the owners or operators to the extent of
7 the contract obligation;

8 (5) collect, maintain, and report information concerning
9 claims against aircraft owners and operators which it insures; the
10 information shall be on forms prescribed by the director of the division
11 of insurance, and shall be sufficient to allow a determination of
12 losses for rate making and to identify causes and sources of loss for
13 loss control.

14 (b) The corporation may

15 (1) employ or retain persons to discharge its obligations
16 and pay reasonable compensation for these services; employees of the
17 corporation are not state employees;

18 (2) negotiate for and procure reinsurance from private
19 casualty insurers or reinsurers for any and all liability incurred by
20 contracts issued by it;

21 (3) provide coverage to aircraft owners and operators for
22 other hazards when there is a finding by the director of the division
23 of insurance that this coverage is otherwise unavailable by reason of
24 the operation of the corporation;

25 (4) borrow or advance money necessary to carry out the
26 purposes of the corporation;

27 (5) negotiate and become a party to those contracts as are
28 necessary to carry out the purposes of the corporation;

29 (6) sue or be sued in the name of the corporation;

1 (7) provide risk management advice and services to aircraft
2 owners and operators;

3 (8) negotiate and become a party to contracts for management
4 services for the corporation;

5 (9) perform all other acts necessary and proper to carry out
6 the duties of the corporation.

7 Sec. 21.86.050. ESTABLISHMENT OF RISK STANDARDS. When the cor-
8 poration establishes risk standards under AS 21.86.040(a)(1), the
9 corporation may exclude an applicant for insurance based on individual
10 risk selection factors, but may not exclude an applicant based only on
11 the classification of the applicant.

12 Sec. 21.86.060. LIMITS ON LIABILITY ON POLICIES. (a) The limits
13 of liability for policies issued by the corporation shall be approved
14 by the director of the division of insurance.

15 (b) An insurance contract shall cover the defense against but may
16 not indemnify liability for punitive damages arising from a covered
17 claim.

18 Sec. 21.86.070. REPORTING OF CLAIMS. (a) At least annually the
19 corporation shall report to the director of the division of insurance

20 (1) the number and amount of claims filed, reserved, paid,
21 settled, and adjudicated during the year;

22 (2) the amount of premiums paid to the corporation; and

23 (3) the expenses incurred by the corporation during the
24 year.

25 (b) A report filed under (a) of this section shall be available
26 to the public.

27 (c) The director of the division of insurance may require that
28 supplemental reports include the names of owners and operators and the
29 claimants. However, supplemental reports which become available to the

1 public may not include the names of owners, operators, or claimants,
2 and may not contain information that will permit by inference the
3 identity of specific owners, operators, or claimants.

4 (d) All statistics, including the supplemental reports, shall be
5 made available to the Alaska Transportation Commission.

6 Sec. 21.86.080. TERMINATION. (a) If, after public hearing held
7 in accordance with AS 21.06.180 - 21.06.230, the director of the
8 division of insurance determines that continuing the business of the
9 corporation would result in substantial underwriting loss unless
10 excessive premiums are charged to participating aircraft owners and
11 operators, he shall order termination of the corporation.

12 (b) Upon the effective date of an order of termination issued by
13 the director of the division of insurance under (a) of this section,
14 the terms of the directors appointed under AS 21.86.020 expire, and the
15 corporation, its directors, officers, and employees are relieved of all
16 further liabilities for all their obligations to the creditors and
17 policyholders of the corporation, and the business of the corporation
18 shall be liquidated according to AS 21.78.

19 (c) In the event of termination of the business of the corpora-
20 tion the director shall establish procedures for the run off of exist-
21 ing policies and claim liabilities. "Run off" means the processing of
22 claims after termination of business arising from insurance policies
23 written before termination.

24 (d) After termination of the corporation, the director of the
25 division of insurance, may, after a public hearing is held in accord-
26 ance with AS 21.06.180 - 21.06.230, order reactivation of the corpora-
27 tion if he finds that aircraft owners' or operators' liability or hull
28 insurance is unavailable, or not available at reasonable rates, on the
29 voluntary market, and the conditions leading to termination no longer

1 exist. The corporation shall recommence operation upon appointment by
2 the governor of the state of new directors to the board.

3 (e) In determining whether to terminate or reactivate the business
4 of the corporation, the director of the division of insurance shall
5 consider the following:

6 (1) the level of expected premiums and losses for continued
7 operation;

8 (2) the requirement for state money to support continued
9 operation;

10 (3) the availability of alternative markets for coverage to
11 a substantial majority of aircraft owners and operators in the state;

12 (4) the costs of continued operation of the corporation;

13 (5) the impact that the continued operation of the corpora-
14 tion will have on rates charged for coverage by the corporation or by
15 alternative markets; and

16 (6) the expected number of aircraft owners or operators who
17 would participate if the operations were continued.

18 Sec. 21.86.090. PREMIUM TAX. (a) The corporation shall pay a
19 premium tax in the amount of one and one-half percent of the total
20 direct premium income received by the corporation during the year
21 ending on the preceding December 31, after deducting the applicable
22 cancellations, returned premium, the unabsorbed portion of any deposit
23 premiums, all policy dividends, unabsorbed premiums refunded to policy-
24 holders, refunds, savings, savings coupons and other similar returns
25 paid or credited to policyholders with respect to their policies. The
26 tax shall be paid to the director annually before April 1 of each year.

27 (b) The corporation is exempt from taxation under this section
28 for a period of five years starting on the date of issuance of its
29 first insurance policy.

1 Sec. 21.86.100. RATES. The rates and rating plans used by the
2 corporation for the policies issued shall be determined by license
3 category of aircraft owners and operators in accordance with the
4 following:

5 (1) a minimum rate may be set for each category of aircraft
6 operation; categories of aircraft operation are defined as

7 (A) general aviation

8 (i) single engine; categorized by landing gear
9 used;

10 (ii) multi-engine; categorized by land or sea
11 operation;

12 (iii) helicopter;

13 (iv) other;

14 (B) commercial aviation (non-air transport)

15 (i) single engine; categorized by landing gear
16 used;

17 (ii) multi-engine; categorized by land or sea
18 operation

19 (iii) helicopter;

20 (iv) other;

21 (C) airlines transport aviation;

22 (2) rates may not be excessive; rates are excessive when a
23 reasonable amount of competition does not exist in an area in the
24 classification to which the rates apply and

25 (A) the rates will, in all probability, produce a
26 profit over a period of years that is unreasonably high in relation
27 to the risk of the business; or

28 (B) expenses are unreasonably high in relation to the
29 services rendered;

1 (3) rates may not be inadequate; rates are inadequate when
2 they are insufficient to meet the expenses of the corporation and the
3 expected losses of the corporation after discounting loss reserves for
4 investment income and

5 (A) the continuation of the rates would endanger the
6 solvency of the corporation; or

7 (B) continuation of the rates will destroy competition
8 or create a monopoly;

9 (4) rates may not be unfairly discriminatory;

10 (5) rates shall be reviewed annually and may be adjusted as
11 necessary after the review;

12 (6) rates for any policy year shall be calculated to include
13 the adjustment for actual experience of the corporation;

14 (7) in considering losses to be incurred, changes in the
15 law, national, regional or local trends in awards, and other relevant
16 factors may be considered;

17 (8) income from the investment of reserves may be considered;

18 (9) individual risk underwriting factors shall be considered;

19 (10) amounts sufficient for repayment of loan obligations
20 shall be considered.

21 Sec. 21.86.110. ASSESSMENTS ON INSUREDS. (a) If the earned
22 premiums of the corporation for any given year are less than the
23 incurred claims, claim expense, underwriting expense, reserves for that
24 year and provision for repayment of any loans, the corporation may,
25 subject to the prior approval of the director of the division of insur-
26 ance, levy an assessment upon the insureds who held policies during
27 that year. An assessment under this subsection

28 (1) may be made in periodic installments;

29 (2) shall be made within three years; and

1 (3) may not exceed 50 percent of an insured's premium for
2 that year.

3 (b) the termination of a policy does not relieve the insured of
4 contingent liability for his proportionate share of the obligations to
5 the corporation under an assessment which accrued while the policy was
6 in force.

7 (c) If the corporation develops a surplus of assets over all
8 liabilities, including the repayment of a loan provision, which is at
9 least equal to the minimum capital stock required of a new domestic
10 stock insurer authorized to transact like kinds of insurance, upon
11 application, the director of the division of insurance shall issue his
12 certificate authorizing the corporation to extinguish the assessment
13 provision under (a) of this section to all insureds with policies then
14 in force, and to omit provisions imposing the assessment under (a) of
15 this section in all policies delivered or issued for delivery for as
16 long as all the surplus remains unimpaired. If the surplus becomes
17 impaired, the director shall immediately revoke the certificate.
18 However, during the remainder of the period for which the premium has
19 been paid on a policy in force when a certificate is revoked, the
20 policy is not subject to the revocation of the assessment provision
21 under (a) of this section; after revocation, a policy may not be issued
22 or renewed without providing for an assessment of the insured under (a)
23 of this section.

24 Sec. 21.86.120. REFUNDS TO INSUREDS. If the earned premiums
25 of the corporation for a given year exceed its incurred claim expense,
26 underwriting expense, reserves for that year, and provision for repay-
27 ment of a loan, the corporation may, subject to the prior approval of
28 the director of the division of insurance, apportion and pay or credit
29 its insureds who held policies during that year. A payment or credit

1 under this section shall be proportionate to the insured's earned
2 premium for that year.

3 Sec. 21.86.130. PAYMENT OF PREMIUMS; CANCELLATION OF INSURANCE.

4 (a) The corporation may provide for installment payment of premiums in
5 which case each installment is due by the date specified.

6 (b) The corporation may cancel any of its policies in the event
7 of nonpayment of a premium or installment on a premium, or other charge,
8 by mailing or delivering to the insured written notice of cancellation
9 to the address shown on the policy. Cancellation is not effective
10 until 30 days after the date notice is posted by the corporation.

11 Sec. 21.86.140. SALE OF CORPORATION. (a) The corporation may,
12 subject to the prior approval of the director of the division of in-
13 surance and subject to terms and conditions that the director of the
14 division of insurance may require, be sold to a private corporation for
15 the purpose of continuing the business of insuring aircraft owners and
16 operators in the state.

17 (b) If the corporation is sold, any surplus of sale proceeds over
18 unrepaid loans from the loan fund to the corporation shall be paid into
19 the general fund of the state.

20 ARTICLE 2. LOAN FUND.

21 Sec. 21.86.200. FUND ESTABLISHED. (a) An aviation liability
22 revolving loan fund is established in the Department of Commerce and
23 Economic Development. The fund shall be administered by the director
24 of the division of insurance.

25 (b) Loans may be made from the fund to the corporation upon
26 certification by the director of the division of insurance that a loan
27 is necessary to provide surplus in respect to policyholders, but the
28 loans may not exceed a total of \$30,000,000 outstanding at any time.
29 These obligations shall be subordinated to all other obligations of the

1 corporation. Loans made under this subsection shall be repaid to the
2 fund in annual installments of at least 25 percent of the excess of
3 premiums earned over the total of claims, reserves, expenses, and
4 assessments made by the corporation, if any, and interest shall be paid
5 on the outstanding balance at a rate equal to seven percent a year.

6 (c) If a loan is made to the corporation from the fund, the
7 corporation shall issue a note to the fund as evidence of the loan.

8 (d) The director of the division of insurance may sell at par
9 value to the Department of Revenue the notes, security instruments and
10 pledge agreements held by the Department of Commerce and Economic
11 Development as security for loans made under this section. The Depart-
12 ment of Revenue shall purchase all the notes offered until the current
13 principal amount of the notes purchased and held by the Department of
14 Revenue equals \$30,000,000.

15 ARTICLE 3. GENERAL PROVISIONS.

16 Sec. 21.86.960. APPLICABILITY OF OTHER LAWS IN THIS TITLE. (a)
17 Except as specifically provided in this chapter, only the following
18 provisions of AS 21 apply to the corporation: AS 21.06.090, 21.06.120,
19 21.06.140, 21.06.160, 21.06.250; AS 21.09.180, 21.09.190, 21.09.200,
20 21.09.250, 21.09.280; AS 21.12.020(b), (c), (d), and (e); AS 21.18;
21 AS 21.21; AS 21.24; and AS 21.36.

22 (b) The corporation is exempt from participation as a member
23 insurer in the Alaska Insurance Guaranty Corporation.

24 Sec. 21.86.970. MEETINGS. The provisions of AS 44.62.310 do not
25 apply to meetings of the board.

26 Sec. 21.86.980. DEFINITIONS. In this chapter

27 (1) "board" means the Board of Directors of the Aviation
28 Indemnity Corporation;

29 (2) "continuous coverage" means one or more successive

1 policy periods which are uninterrupted by cancellation or failure to
2 renew for any reason;

3 (3) "corporation" means the Aviation Indemnity Corporation
4 of Alaska;

5 (4) "fund" means the aviation liability revolving loan fund.

6 * Sec. 3. The governor shall designate the terms of the members of the
7 Board of Directors of the Aviation Indemnity Corporation of Alaska first
8 appointed under AS 21.86.020. Of the nine members first appointed

9 (1) three shall serve a term of one year;

10 (2) three shall serve a term of two years;

11 (3) three shall serve a term of three years.

12 * Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-
13 070(c).

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