

Introduced: 2/8/83  
Referred: Labor and Commerce  
and Finance

1 IN THE SENATE

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2

SENATE BILL NO. 113

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to establishment of an Air Taxi and  
7 Air School Operators Indemnity Corporation of  
8 Alaska."

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

10 \* Section 1. AS 21 is amended by adding a new chapter to read:

11 CHAPTER 86. AIR TAXI AND AIR SCHOOL OPERATORS INSURANCE.

12

ARTICLE 1. PURPOSE.

13

14 Sec. 21.86.010. PURPOSE OF AS 21.86. It is the purpose of  
15 AS 21.86 to provide a means of furnishing air taxi and air school  
16 operators with adequate insurance against liability for negligence.

16

ARTICLE 2. AIR TAXI AND AIR SCHOOL OPERATORS

17

INDEMNITY CORPORATION OF ALASKA.

18

19 Sec. 21.86.020. CORPORATION CREATED. There is created the Air  
20 Taxi and Air School Operators Indemnity Corporation of Alaska which is  
21 a public corporation having a legal existence independent of and  
22 separate from the state. Obligations issued by the corporation do not  
23 constitute a debt, liability, or obligation of the state or a pledge  
24 of full faith and credit of the state.

24

25 Sec. 21.86.030. CORPORATION BOARD OF GOVERNORS. (a) The corpo-  
26 ration shall exercise its powers through a board of governors ap-  
27 pointed by the governor of the state. Members of the board of gover-  
28 nors shall be Alaska residents as follows:

28

29 (1) four air taxi operators licensed in the state and  
engaged in the operation of air taxi services in the state; no more

1 than two of the air taxi operators shall provide services or live in a  
2 municipality having a population of more than 100,000, and two of the  
3 air taxi operators must be indemnified against loss by reason of  
4 liability for an act or omission in the delivery of air taxi services  
5 by the Air Taxi and Air School Operators Indemnity Corporation of  
6 Alaska;

7 (2) four air school operators licensed in the state and  
8 engaged in the operation of an air school in the state; no more than  
9 two of the air school operators shall provide services or live in a  
10 municipality having a population of more than 100,000, and two of the  
11 air school operators must be indemnified against loss by reason of  
12 liability for an act or omission in the delivery of air school ser-  
13 vices by the Air Taxi and Air School Operators Indemnity Corporation  
14 of Alaska;

15 (3) two professionals from the insurance industry who are  
16 authorized or licensed to do business in the state;

17 (4) two persons who are not air taxi or air school opera-  
18 tors or financially interested in that type of operation or represen-  
19 tatives of the insurance industry.

20 (b) The term of office of each governor is three years. Upon  
21 the expiration of the term of a governor, the governor of the state  
22 shall appoint a successor who shall be from the same class described  
23 in (a) of this section as the governor whose term has expired.

24 (c) Upon a governor's early resignation, death or inability to  
25 serve, the governor of the state shall appoint a successor from the  
26 same class defined in (a) of this section as the terminating governor,  
27 who shall serve for the unexpired term.

28 (d) The director or the director's designee is not a voting  
29 member of the board of governors but shall be notified by the board of

1 and have the right to attend and participate in all meetings and  
2 proceedings of the board.

3 (e) Members of the board of governors receive compensation from  
4 the corporation and necessary travel expenses according to a policy  
5 approved by the director.

6 (f) No governor, officer, or employee or former governor, offi-  
7 cer, or employee of the corporation is liable for damages or other  
8 relief in any action by reason of actions or inactions as a governor,  
9 officer, or employee of the corporation, or by reason of the actions  
10 or inactions of the corporation, its board of governors, officers, or  
11 employees unless the person acts with actual knowledge that the person  
12 is acting outside the scope of the person's authority, or unless at  
13 the time the person was acting for a purpose which the person knew was  
14 not in the best interests of the corporation, or with respect to any  
15 criminal action the person had actual knowledge or should have known  
16 the action was unlawful. If a claim or action is brought against a  
17 person entitled to the protection of this subsection, the claim or  
18 action shall be defended by the state. If it is established that the  
19 person was acting with actual knowledge that the person was acting  
20 outside the scope of authority, or at the time was acting for a pur-  
21 pose which the person knew was not in the best interests of the corpo-  
22 ration, or with respect to a criminal action the person had actual  
23 knowledge or should have known the person's action was unlawful, then  
24 the person shall reimburse the state for the cost to the state of the  
25 person's defense.

26 Sec. 21.86.040. CORPORATION PLAN OF OPERATION. (a) The board  
27 of governors shall prepare and submit to the director for approval a  
28 plan of operation which provides for the fair and reasonable adminis-  
29 tration of the affairs of the corporation and the discharge of the

1 purposes for which it is created. The plan and any amendments to it  
2 become effective upon the director's approval. If the board of gover-  
3 ners fails to submit a plan of operation, or if at a subsequent time  
4 the board of governors fails to submit suitable amendments to the  
5 plan, the director shall, after notice and hearing, adopt a plan of  
6 operation or amendments that are necessary or advisable to carry out  
7 the provisions of this chapter. Adoption of the plan is not subject  
8 to the Administrative Procedure Act (AS 44.62).

9 (b) The plan of operation shall

10 (1) establish the procedures by which all the powers and  
11 duties of the corporation specified in AS 21.86.050 shall be per-  
12 formed;

13 (2) establish procedures for handling assets and discharg-  
14 ing liabilities of the corporation;

15 (3) establish regular times and places for meetings of the  
16 board of governors;

17 (4) establish procedures for records to be kept of all  
18 financial transactions of the corporation, its agents, and the board  
19 of governors;

20 (5) establish the procedures for awarding contracts to  
21 carry out the provisions of AS 21.86;

22 (6) establish the procedures for issuing contracts of  
23 insurance as provided in AS 21.86.050 and for the determination of  
24 rates;

25 (7) contain additional provisions necessary for the exe-  
26 cution of the powers and duties of the corporation.

27 Sec. 21.86.050. POWERS AND DUTIES OF THE CORPORATION. (a) The  
28 corporation shall

29 (1) in the form approved by the director, issue to all air

1 taxi and air school operators who are found to be acceptable risks  
2 under standards developed under (5) of this subsection, and who pay  
3 the premiums for it, a contract or contracts indemnifying air taxi and  
4 air school operators and their employees against loss by reason of  
5 liability for covered claims for an act or omission in the delivery of  
6 air taxi or air school services in this state, and agreeing to tender  
7 on behalf of the air taxi and air school operators and their employees  
8 a defense to a covered claim; the limits of liability for policies  
9 issued by the corporation shall be approved by the director; the  
10 contract shall cover the defense against but need not indemnify li-  
11 ability for punitive damages arising from a covered claim; at the  
12 option of the corporation, if approved by the director, and for an  
13 additional premium the contract may cover claims against the air taxi  
14 or air school operator that arise out of the services performed by the  
15 air taxi or air school operator for any period before the contract is  
16 issued, except that coverage will not be provided for a claim already  
17 filed or of which the air taxi or air school operator had or reason-  
18 ably should have had notice at the time the retroactive insurance was  
19 purchased;

20 (2) charge a premium for the protection provided by the  
21 contracts issued by the corporation which shall be determined by the  
22 board of governors in accordance with AS 21.86.090 and subject to the  
23 approval of the director;

24 (3) comply with or be subject to AS 21.06.090, 21.06.120,  
25 21.06.140, 21.06.160, 21.06.250; AS 21.09.180, 21.09.190, 21.09.200,  
26 21.09.250, 21.09.280; AS 21.12.020(b), (c), (d), and (e); and AS 21.-  
27 18.010 - 21.18.150; AS 21.21.010 - 21.21.600; AS 21.24.010 - 21.24.-  
28 130; and AS 21.36.010 - 21.36.350; and shall be exempt from participa-  
29 tion as a member insurer in the Alaska Insurance Guaranty Corporation;

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

8           (5) establish standards for the acceptability of risks; in  
9 establishing these standards the corporation may exclude an applicant  
10 for insurance based on individual risk selection factors, but may not  
11 exclude an applicant based only on the classification of the appli-  
12 cant.

13           (b) The corporation may

14           (1) employ or retain persons, individual or corporate, to  
15 discharge its obligations and pay reasonable compensation for these  
16 services; employees of the corporation are not considered state em-  
17 ployees;

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 insureds for other hazards custom-  
22 arily included in air taxi or air school operators insurance policies  
23 when there is a finding by the director that this coverage is not  
24 available to insureds of the Air Taxi and Air School Operators Indem-  
25 nity Corporation of Alaska in the private insurance market at a com-  
26 petitive price;

27           (4) borrow or advance funds necessary to carry out the  
28 purposes of the corporation;

29           (5) negotiate and become a party to those contracts as are

1 necessary to carry out the purposes of the corporation;

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

3 (7) provide risk management advice and services to hos-  
4 pitals;

5 (8) negotiate and become a party to contracts for manage-  
6 ment services for the corporation;

7 (9) perform all other acts necessary and proper to carry  
8 out the duties of the corporation;

9 (10) in a form approved by the director and for an addi-  
10 tional premium determined under AS 21.86.090, issue endorsements which  
11 provide indemnity for claims not yet reported which arise out of  
12 services rendered during a period of continuous coverage under the  
13 originally issued contract, to air taxi or air school operators who  
14 pay the premium for it and who are terminating their original covered  
15 claims contract with the corporation for a period of not less than one  
16 year.

17 Sec. 21.86.060. TERMINATION. (a) If at any time the corpora-  
18 tion posts written premiums for two consecutive years of less than 35  
19 percent of all premiums written in Alaska for air taxi or air school  
20 operators insurance or posts written premiums for one calendar year of  
21 less than 20 percent of all premiums written in Alaska for air taxi or  
22 air school operators insurance, the director may hold a public hearing  
23 in accordance with AS 21.06.180 - 21.06.230 to determine whether the  
24 business of the corporation should be terminated.

25 (b) Upon the effective date of an order of termination issued by  
26 the director under (a) and (d) of this section, the terms of the  
27 governors appointed under AS 21.86.030 expire, and the corporation,  
28 its governors, officers and employees are relieved of all further  
29 liabilities for all their obligations to the creditors and

1 policyholders of the corporation, and the business of the corporation  
2 shall be liquidated according to AS 21.78.

3 (c) At any time after termination of the corporation by the  
4 director, the director may, after public hearing held in accordance  
5 with AS 21.06.180 - 21.06.230 and (d) of this section, order reactiva-  
6 tion of the corporation if the director finds that air taxi or air  
7 school operators insurance is unavailable on the voluntary market.  
8 The business of the corporation shall commence operation upon appoint-  
9 ment by the governor of new governors to the board.

10 (d) In determining whether to terminate or reactivate the busi-  
11 ness of the corporation the director shall consider the following:

12 (1) the level of expected premiums and losses for continued  
13 operation;

14 (2) the requirement for state funds to support continued  
15 operation;

16 (3) the availability of alternative markets for coverage to  
17 a substantial majority of air taxi and air school operators in the  
18 state;

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

20 (5) the impact that the continued operation of the corpo-  
21 ration will have on rates charged for coverage by the corporation or  
22 by alternative markets; or

23 (6) the expected number of air taxi or air school operators  
24 who would participate if the operations were continued.

25 (e) If, after public hearing held in accordance with (a) and (c)  
26 of this section, the director determines that continuing the business  
27 of the corporation would result in substantial underwriting loss  
28 unless excessive premiums are charged to participating air taxi and  
29 air school operators, the director may order termination of the

1 corporation.

2 Sec. 21.86.070. PREMIUM TAX. (a) The corporation shall pay a  
3 premium tax in the amount of one and one-half percent of the total  
4 direct premium income received by the corporation during the year  
5 ending on the preceding December 31, after deducting the applicable  
6 cancellations, returned premium, the unabsorbed portion of any deposit  
7 premiums, all policy dividends, unabsorbed premiums refunded to  
8 policyholders, refunds, savings, savings coupons and other similar  
9 returns paid or credited to policyholders with respect to their poli-  
10 cies. The tax shall be paid to the director annually before April 1  
11 of each year.

12 (b) The corporation is exempt from taxation under this section  
13 for a period of five years starting from July 1, 1983.

14 Sec. 21.86.080. STATISTICS. The corporation shall collect,  
15 maintain and report information concerning claims against air taxi and  
16 air school operators which it insures. The information shall be on  
17 forms prescribed by the director, and shall be sufficient to enable a  
18 proper determination of losses for rate making and to identify causes  
19 and sources of loss for loss control. At least annually the corpo-  
20 ration shall report to the director the number and amount of claims  
21 filed, reserved, paid, settled and adjudicated during the year, the  
22 premiums paid to and the expenses incurred by the corporation during  
23 the year. This report shall be available to the public. The director  
24 may require that supplemental reports include the names of insured air  
25 taxi and air school operators and the claimants; however, no reports  
26 that become available to the public may include the names of air taxi  
27 or air school operators or claimants or information that will permit  
28 by inference the identity of specific air taxi or air school operators  
29 or claimants. All statistics including the supplemental reports shall

1 be made available to the Department of Transportation and Public  
2 Facilities.

3 Sec. 21.86.090. RATES. The rates and rating plans used by the  
4 corporation for the policies issued shall be determined by license  
5 category of air taxi or air school operators in accordance with all of  
6 the following:

7 (1) a minimum rate may be set for each category of air taxi  
8 or air school operator;

9 (2) rates may not be excessive; rates are excessive if,  
10 after a period of time and with respect to an amount of gross premium  
11 which is actuarially credible, the premiums exceed losses incurred by  
12 the corporation, including losses paid, reserves for covered claims  
13 reported and unpaid, reserves for covered claims incurred during the  
14 policy period and not reported, and reasonable expenses for the opera-  
15 tion of the corporation;

16 (3) rates shall not be inadequate; rates are inadequate if,  
17 based on available actuarial data, the premiums to be paid by the air  
18 taxi or air school operators are or may reasonably be expected to be  
19 insufficient to pay for losses incurred by the corporation, including  
20 covered claims paid, reserves for covered claims reported and unpaid,  
21 reserves for covered claims incurred during the policy period and not  
22 reported, and reasonable expenses for the operation of the corpo-  
23 ration;

24 (4) rates may not be unfairly discriminatory;

25 (5) rates shall be adjusted annually;

26 (6) rates for any policy year shall be calculated to in-  
27 clude the adjustment for actual experience of the corporation as  
28 developed for the preceding four policy years;

29 (7) in considering losses to be incurred, changes in the

1 law, national, regional or local trends in negligence awards, and  
2 other relevant factors may be considered;

3 (8) income from the investment of reserves shall be con-  
4 sidered;

5 (9) individual risk underwriting factors shall be con-  
6 sidered;

7 (10) amounts sufficient for repayment of loan obligations  
8 shall be considered;

9 (11) if the earned premiums of the corporation for any given  
10 year are less than the incurred claims, claim expense, underwriting  
11 expense, reserves for that year and provision for repayment of any  
12 loans, the corporation may, subject to the prior approval of the  
13 director, levy an assessment upon the insureds who held policies  
14 during that year; the assessment, that may be made in periodic in-  
15 stallments, shall be made within three years and may not exceed 150  
16 percent of the insured's premium for that year; the termination of any  
17 policy does not relieve the insured of contingent liability for the  
18 insured's proportionate share of the obligations to the corporation  
19 which accrued while the policy was in force;

20 (12) if the earned premiums of the corporation for any given  
21 year exceed its incurred claim expense, underwriting expense, reserves  
22 for that year and provision for repayment of any loan, the corporation  
23 may, subject to the prior approval of the director, apportion and pay  
24 or credit its insureds who held policies during that year; a payment  
25 or credit shall be proportionate to the insured's earned premium for  
26 that year;

27 (13) upon application by any person, the director may issue  
28 a certificate authorizing the corporation to extinguish all or a  
29 portion of an assessment levied, or that could be levied, under (11)

1 of this section for all insureds with policies in force when the  
2 certificate is issued, and to omit provisions levying an assessment  
3 under (11) of this section in all policies delivered or issued for  
4 delivery after the certificate is issued, if the director determines  
5 that there is a sound actuarial basis for the extinguishment; the  
6 director may at any time revoke the certificate; a policy in force at  
7 the time of revocation is not subject to the revocation of the certifi-  
8 cate for the remainder of the period for which the premium has been  
9 paid, but after revocation a policy may not be issued or renewed  
10 without providing for an assessment of the insured.

11 Sec. 21.86.100. PAYMENT OF PREMIUMS; CANCELLATION OF INSURANCE.

12 The corporation may provide for installment payment of premiums in  
13 which case each installment is due by the date specified. The corpo-  
14 ration may cancel any of its policies in the event of nonpayment of  
15 any premium or installment on a premium, or other charge, by mailing  
16 or delivering to the insured at the address shown on the policy and to  
17 the agency of the state issuing the insured's license written notice  
18 of cancellation. Cancellation is not effective until 30 days after  
19 the date notice is posted by the corporation.

20 Sec. 21.86.110. TRANSFER OF CORPORATE ASSETS AND LIABILITIES.

21 (a) The corporation may, subject to the prior approval of the direc-  
22 tor, transfer its assets and liabilities to a company that meets all  
23 of the following conditions:

24 (1) the company possesses a valid certificate of authority  
25 to transact casualty insurance business in the state; in evaluating  
26 the capital and surplus of the company for qualification for a certifi-  
27 cate of authority, the value of the assets and liabilities trans-  
28 ferred by the corporation may not be considered;

29 (2) the company pays to the corporation the full value of

1 any surplus in the corporation not represented by any unrepaid pro-  
2 ceeds of loans by the loan fund to the corporation;

3 (3) the company executes a complete reinsurance and hold  
4 harmless agreement in a form approved by the director covering all of  
5 the obligations of the corporation to its creditors and policyholders;  
6 and

7 (4) the company executes modifications of loan agreements  
8 with the loan fund by which the company agrees

9 (A) to assume the obligations;

10 (B) that, if at any time the company writes less than  
11 the premium levels provided in AS 21.86.060(a), the director may  
12 determine that the loan provisions shall be modified to provide a  
13 scheduled amortization repayment of the principal over a period  
14 not to exceed 10 years and at an interest rate of four points  
15 above the federal discount rate, as that rate is adjusted from  
16 time to time; and

17 (C) that the provision for repayment provided in  
18 AS 21.86.120(b)(1) shall be modified to provide for annual in-  
19 stallments of at least 25 percent of the excess of premium and  
20 investment income collected over the total of claims, reserves  
21 and expenses on the Alaska air taxi and air school operators book  
22 of business or 25 percent of the excess of premiums and invest-  
23 ment income collected over the total of claims, reserves and  
24 expenses on the corporation's total book of business, whichever  
25 is greater;

26 (5) the company meets such other requirements as the direc-  
27 tor may reasonably require to protect the interests of the state, the  
28 air taxi and air school operator insureds, the involved company, and  
29 the public;

1           (6) the company provides the board of governors with a  
2 written statement from the director that the company qualifies under  
3 (1) - (5) of this subsection.

4           (b) If and while the company to which the assets and liabilities  
5 of the corporation are transferred in the manner provided in (a) of  
6 this section continues to write premiums in excess of the levels  
7 provided in AS 21.86.060, it shall enjoy the benefit of the following  
8 provisions:

9           (1) the company is entitled to carry forward and offset  
10 against its premium tax obligation to the state the amount by which  
11 the aggregate claims paid on reinsurance assumed under (a)(3) of this  
12 section exceeds aggregate reserves on the same business established at  
13 the date of the reinsurance agreement; and

14           (2) the obligation to repay to the loan fund loans assumed  
15 by the company at the time of transfer of the assets and liabilities  
16 of the corporation need not be shown as a liability on the books of  
17 the corporation.

18                           ARTICLE 3. LOAN FUND.

19           Sec. 21.86.120. FUND ESTABLISHED. (a) There is in the Depart-  
20 ment of Commerce and Economic Development an air taxi and air school  
21 operators liability revolving loan fund to be administered by the  
22 director of insurance.

23           (b) Loans may be made from the fund to the corporation upon  
24 certification by the director that a loan is necessary and under the  
25 following circumstances:

26           (1) to provide surplus in respect to policyholders which  
27 may not exceed a total of \$3,000,000 outstanding at any time; these  
28 obligations shall be subordinated to all other obligations of the  
29 corporation; loans made under this paragraph shall be repaid to the

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

5 (2) if the director determines that the corporation is  
6 unable to procure reinsurance from a private casualty insurer or  
7 reinsurer for any liability incurred by contracts issued by it, addi-  
8 tional loans up to an aggregate of \$6,000,000 when taken together with  
9 loans made under (1) of this subsection to compensate for fluctuations  
10 in loss experience; loans made under this paragraph shall be in parity  
11 with all other obligations of the corporation except that they shall  
12 be subordinated to obligations of policyholders and claimants for  
13 indemnity of loss; these loans shall be repaid within five years at an  
14 annual interest rate of six percent.

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

17 (d) The director may sell at par value to the Department of  
18 Revenue the notes, security instruments and pledge agreements held by  
19 the Department of Commerce and Economic Development as security for  
20 loans made under this section. The Department of Revenue shall pur-  
21 chase all the notes offered until the current principal amount of the  
22 notes purchased and held by the Department of Revenue equals  
23 \$6,000,000.

24 ARTICLE 4. GENERAL PROVISIONS.

25 Sec. 21.86.900. DEFINITIONS. In AS 21.86.010 - 21.86.900

26 (1) "air school operator" means a person, partnership,  
27 association, corporation, or other business entity whether private or  
28 governmental that lawfully engages in giving air instruction;

29 (2) "air taxi operator" means an air carrier coming within

1 the classification of "Alaskan air taxi operators", as defined and  
2 established by Part 293 of the Economic Regulations of the federal  
3 Civil Aeronautics Board, Adopted on December 30, 1958, and made effec-  
4 tive on February 3, 1959;

5 (3) "continuous coverage" means one or more successive  
6 policy periods which is uninterrupted by cancellation or failure to  
7 renew for any reason;

8 (4) "corporation" means the Air Taxi and Air School Opera-  
9 tors Indemnity Corporation of Alaska;

10 (5) "covered claim" means

11 (A) a claim by an injured client or customer reported  
12 to the corporation during the period of continuous coverage by  
13 the corporation of the insured air taxi or air school operator  
14 for an act or omission in the delivery of air taxi or air school  
15 services; and

16 (B) additional claims as defined in the policy, with  
17 the prior approval of the director, and which are reported within  
18 specified periods after the expiration of the policy;

19 (6) "director" means the director of insurance, Department  
20 of Commerce and Economic Development;

21 (7) "governor" means a member of the board of governors of  
22 the Air Taxi and Air School Operators Indemnity Corporation of Alaska.

23 \* Sec. 2. APPOINTMENT OF FIRST BOARD OF GOVERNORS. The governor of the  
24 state shall designate the term of office for the members of the Board of  
25 Governors first appointed under this Act as follows:

26 (1) four governors shall serve three years;

27 (2) four governors shall serve two years; and

28 (3) four governors shall serve one year.