HB
126

COMMITTEE REPORT

SENATE

FURTHER:

Date: ______________________

Mr. President:

The Committee on ______________________ has had ______________________

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for ______________________ [ ] same title [ ] new title

and recommends ______________________

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ______________________ Committee

MEMBERS SIGNING
DO PASS

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MEMBERS HAVING
OTHER RECOMMENDATIONS:

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CHAIRMAN

TELEGRAM

ALASCOM, INC.
PHONE: 586-6442
JUNEAU, AK 99802

1983 JUN 20 PM 12 04

02006 ANCHORAGE AK 30 06-20 952A ADT

PMS ATTN PAULA SCAVERA/BILL MELLOW

ROOM 103 CAPITOL BLDG **1891**

JUNEAU AK

WE ARE AWARE THAT YOUR WORKING ON A REDRAFT OF HB126.

ALTHOUGH THERE ARE SOME IMPROVEMENTS, THE BILL IS STILL

UNCONSTITUTIONAL. STRONGLY URGE A NO VOTE.

SANDRA SAVILLE, WENDELL KAY, BILL BITTNER

MSG 83-00025958 PRTY 1 06/20/83 10:57:12 ORIG: LA05 IN= 0001 OUT= 0029
FROM: SHIRLEE ANC LIO TO: POMS JUNEAU INFO
TARGET: LJHL SUBJ: POM

TO: SENATOR RAY
ATTN: PAULA SCAVERA AND BILL MELLOW

FROM: MIKE SCHNEIDER, 880 "N" STREET, SUITE 202, ANCHORAGE 99501
(RES: SRA BOX 1020, 99502) H 345-7227 W 277-4551

THANKS FOR PROMPT RESPONSE TO MY REQUEST FOR WORKING DRAFT OF SCS FOR HB 126. THE BILL IN THIS FORM IS STILL CLEARLY UNCONSTITUTIONAL AND HAS BEEN HELD SO EVEN WHEN LEGISLATIVE INTENT TO PROMOTE HOSPITALITY IS EXPRESSED IN THE LAW OR ASSUMED BY THE COURT. EVERY PERSON IN SOCIETY HAS A DUTY TO CONDUCT THEMSELVES REASONABLY EVEN WHEN THEY ACT UPON REQUEST AND WITHOUT COMPENSATION. THIS BILL WOULD MAKE PRIVATE PILOTS A UNIQUELY PRIVILEGED GROUP; NO STATE SINCE 1939 HAS CREATED SUCH A CLASS.

****

LAW OFFICES
KELLY & LUCE
A PROFESSIONAL CORPORATION
1015 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 279-9571

BERNARD P. KELLY
L. AMES LUCE
GREGORY J. GREBE

June 2, 1983

Senator Patrick Rodey
State Senate
Juneau, AK 99801

Dear Senator Rodey:

I am enclosing a package of materials which was generated by Michael Schneider to the House Judiciary Committee on House Bill 126 (the Aircraft Guest Statute). The thesis of these documents is to show that this passenger bill would be unconstitutional.

We believe that there are other reasons for defeating this bill. It is like MICA where there may be unaffordable insurance coverage. I am sure it can be established that the insurance is too high because writing individual coverage for certain types of risks is something the insurance industry doesn't like to do and therefore they charge inordinant premiums for such situations. I think a better solution can be found than taking away people's rights. If the guest passenger statute were passed, there are many situations, such as people who pay for part of the gas for the airplane ride or who make a business arrangement of some kind with the pilot, such as a salesman and accountant or lawyer and client, etc., which situations avoid the guest statute. Private pilots who want the legislation are seeking a liability picture where they don't have to pay for any insurance. Yet, to my way of thinking, this is a trap for the pilot because the guest statute might be avoided on one of the basis outlined above or the statute might be held unconstitutional. Pilots in those situations would be lulled into a false sense of security and as a result could lose their personal assets.

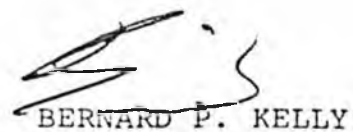
In the meantime, the victims, widows and survivors of deceased passengers in aircrafts may have to be demeaned by going on welfare or public assistance. This legislation treats them as an underprivileged class as compared to victims in other types of vehicular accidents, such as boats and cars.

We would like to be kept apprised regarding a hearing on this bill. I will arrange to either be personally present or have a knowledgeable fellow attorney come down to argue against this legislation.

Thank you for any information you can provide us on hearings, time tables and the like.

Very truly yours,

KELLY, LUCE & GREBE



BERNARD P. KELLY

BPK/llm

Enclosures

Mestas & Schneider, P.C.

DENNIS M. MESTAS
MICHAEL J. SCHNEIDER

[illegible] 'N' STREET, SUITE [illegible]
ANCHORAGE, ALASKA [illegible]

AREA CODE [illegible]
277-[illegible]

April 14, 1983

Joseph Brewer
Staff Counsel
House Judiciary Committee
Pouch V
Juneau, AK 99811

Re: House Bill 126 (Aircraft Guest Statute)

Dear Joe:

As I mentioned in our phone conversation the other day, the above bill makes it necessary for a passenger in a private aircraft to prove the pilot was grossly negligent or intoxicated before that passenger can maintain a successful claim for personal injury or death. This bill would appear to be terrible public policy as passengers are rarely, if ever, in a position to assess the risks of any given flight in any given aircraft. Indeed, the control of critical decisions regarding weather, terrain, and performance capabilities of the aircraft is always in of the hands of the pilot no matter what the passenger's opinion on the matter might be.

Legislation of this type has been held unconstitutional in a number of states. The first group of cases that I will refer to deal specifically with airplane guest statutes:

1. Messmer v. Ker, 524 P.2d 536 (Idaho 1974), airplane guest statute held unconstitutional.
2. Longnecker v. Noordyk Mooney, Inc., 232 N.W.2d 654 (Mich. 1975), exception for guest passenger requiring proof of gross negligence or wilful and wanton misconduct is unconstitutional.
3. Lightenburger v. Gordon, 510 P.2d 865 (Nev. 1973).

Identical constitutional and public policy issues are raised by automobile guest statutes. Automobile guest statutes have been consistently held unconstitutional by recent cases:

1. Brown v. Merlo, 506 P.2d 212 (1973), plaintiff-guest was injured when host's Jeep crossed centerline of highway and collided with embankment on

opposite side of road; court held classification which car guest statute created between those allowed and those denied recovery for injuries due to negligence does not have a substantial and rational relationship to statute's purpose of protecting hospitality of host driver and preventing collusive lawsuits and therefore, as applied to negligently-injured guest, the guest statute violates equal protection guarantees of California and United States Constitutions; judgment for defendant reversed.

2. Newman v. Coleman, 524 P.2d 541 (Idaho 1974).

3. Manistee Bank & Trust Co. v. McGowan, 232 N.W.2d 636 (Mich. 1975), to deny guest's recompense for negligently-inflicted injury, death, or loss cannot be justified as reasonable means to promote hospitality, foster gratitude, prevent collusion, perjury or fraud, reduce insurance premiums, or protect generous drivers from vexacious litigation by ungrateful guests or conniving hitchhikers.

4. Stanfill v. Powers, 243 N.W.2d 24 (1976), auto guest statute violative of equal protection clause of Michigan Constitution.

5. Lakonen v. 8th Judicial District Court, 538 P.2d 574 (Nev. 1975), Nevada's automobile guest statute unconstitutional as denying equal protection of the laws.

6. McGeehan v. Bunch, 540 P.2d 238 (N.M. 1975), classifications created by guest statutes, as between those who are denied and those who are permitted recovery for negligently-inflicted injuries, do not bear substantial and rational relation to statute's purpose of protecting hospitality of host driver and preventing collusive lawsuits; statute is unconstitutional and void as denial of equal protection of law.

7. Johnson v. Hassett, 217 N.W.2d 771 (N.D. 1974).

8. Primes v. Tyler, 331 N.E.2d 723 (Ohio 1975).

9. Nehring v. Russell, 582 P.2d 68 (Wyo. 1978), an action arising out of injuries sustained by plaintiff while riding as passenger in vehicle driven by defendant, court held that Wyoming's guest statute violates state constitution which requires "uniform operation of laws;" reasons for prohibition imposed upon guest from suing host to promote hospitality and gratuity and to prevent possible collusion were no longer viable, as party to be protected by guest statute today is insure, not host and judicial system is well armed with numerous implements for prevention and detecton of fraud.

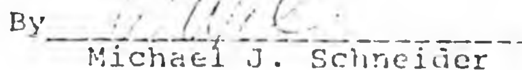
I hope the above convince you, as they have convinced me, that House Bill 126 suffers from irreparable State and Federal Constitutional infirmity. As a former president of the Alaska Academy of Trial Lawyers and the present Chairman of the Alaska Action Trust, I can assure you and the members of the House Judiciary Committee that the plaintiff's trial bar in this State is much opposed to this legislation. More

importantly, this legislation promotes the interests of a very limited group of people to the detriment of the public in general.

Thanks very much for your time and consideration of my thoughts with regard to this bill.

Sincerely,

MESTAS & SCHNEIDER, P.C.



By ____________________
Michael J. Schneider

MJS:nh

P.S. What wonders arrive in the mail!! Since dictating this, I received (and have enclosed) a comprehensive treatment of the guest statute issue by an independent research group. Hope it helps.

THE RESEARCH GROUP

[illegible]

April [illegible], 198[illegible]

Michael J. Schneider, Esquire
880 North Street, Suite 202
Anchorage, Alaska 99501

Dear Mr. Schneider:

As you may know, The Research Group is a firm of 65 specialized attorneys which provides lawyers across the nation with professional legal support in the areas of legal research, writing, and analysis.

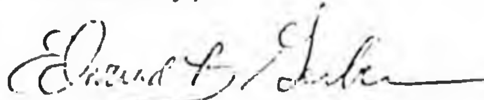
In addition, and of more immediate concern to the Alaska Trial Lawyer's Association, we have broad experience in preparing national and state surveys and other major studies. For example, we researched and wrote a seven volume study for The Commerce Department evaluating the status of American products liability law.

We are often commissioned to draft independent, objective studies of selected legal areas which our clients utilize in presentations to legislative and other governing bodies. Most recently, we conducted a national comparative study of various components of Indiana tort law for the Indiana Trial Lawyers Association.

The benefits to your organization of utilizing our attorneys for such studies are the economies of our service and the persuasive weight which attends an independent study performed by a nationally recognized firm which specializes in legal research and analysis. To aid you in evaluating the potential usefulness of our "major study" work product, I am enclosing an excerpt from a recently completed study.

We would be happy to discuss with you ways in which we can be of assistance to your organization. Please contact me directly (toll-free 800-446-1870) should you desire further information relative to our services or to receive a cost estimate for a specific project.

Sincerely,



Edward B. Gerber
Vice President

EBG/ntt
Enclosure

The Research Group

2421 Ivy Road, P.O. Box 7187, Charlottesville, Virginia 22906
Telephone Toll Free 800/446-1870, Virginia Attorneys call collect 804/977-5690

PREFACE BY THE RESEARCH GROUP, INC.*

The Research Group was commissioned by the Indiana Trial Lawyers Association to undertake a national, comparative study of various components of Indiana tort law. It was the highest priority of both parties that the study reflect a thorough, independent and objective analysis of the pertinent legal authority. Accordingly, this report accurately states the present status of American jurisprudence concerning the selected areas of inquiry but takes no stance nor makes any judgments as to the propriety or impropriety of the Indiana position.

*The Research Group is a private corporation of 65 specialized attorneys located in Charlottesville, Virginia. It is recognized as the nation's leading firm in providing private practitioners, corporate counsel, and attorneys in government with legal analysis, research and writing.

THE RESEARCH GROUP
POST OFFICE BOX 7187
CHARLOTTESVILLE, VIRGINIA 22906
TOLL-FREE (800) 446-1870

GUEST STATUTES

I. Introduction

Single and multi-vehicle automobile accidents long have been a familiar sight on American highways. In most cases, a person injured in an automobile accident can sue the person who caused the accident and thereby recover money damages for medical, property, and other expenses incurred because of the accident. Hence, in most states, an automobile passenger can sue the driver of his vehicle and recover damages for any injury caused by the driver's negligence.[1] In Indiana and five other states, however, special laws prohibit such suits if the passenger was a non-paying guest[2] of the driver, unless the driver's conduct was so outrageous as to evidence more than a simple lack of care.[3] These laws typically are referred to as "guest statues" or "guest rules."[4]

The divergence of viewpoint in this area essentially reflects a fundamental disagreement as to whether the burdens placed on automobile passengers by guest laws are outweighed by the policies guest laws are believed to promote. This disagreement began shortly after guest laws were first created in the 1920s and continues today.[5] The dispute as to the social desirability of guest laws is particularly reflected in the large number of states which have repealed

or judicially invalidated guest laws approved in earlier years.[6]

The following discussion examines in more detail the present status of automobile guest laws in the United States. As a starting point, guest laws are viewed nationally from a historical perspective and the policies which guest laws were designed to promote are identified. Against this background, the operation of the Indiana guest statute is considered and an attempt to invalidate the statute is briefly discussed. Guest laws then are viewed solely from a midwestern perspective. Finally, a listing is provided of the current status of guest laws in all 50 states.

II. Commentary

A. The Development of Guest Laws In The United States

By the mid-1920s the automobile began to have a considerable impact on American society.[7] Automobile accident cases began to clog court calendars and more and more drivers purchased automobile liability insurance.[8] Insurance companies complained of being presented with a large number of fradulent claims in which a host driver falsely confessed to "negligence so as to permit . . . [the driver's] guest--presumably a friend or relative--to collect from the host's insurance company."[9] Some authorities also felt that

drivers, threatened by the possibility of lawsuits instituted by ungrateful guest passengers, might refrain from offering rides to others, particularly hitchhikers. As one commentator has noted:[10]

> The justification [for guest laws] most frequently espoused in one form or another has been the notion of protecting the hospitable driver from suits by an ungrateful guest. The economic conditions of the 1930's gave particular force to the hospitality rationale for the guest statutes. The Depression is credited with causing a substantial increase in the number of hitchhikers on America's highways. It was feared that these strangers would take advantage of generous but unsuspecting motorists, and thus offend society's sense of justice and hospitality.

State legislatures, stimulated by "persistent and effective lobbying on the part of liabiity insurance companies,"[11] responded to these problems by enacting guest statutes. The legislatures believed that, by precluding guest suits for injuries caused by a driver's ordinary negligence, passenger-driver insurance collusion could be avoided and the protection of driver hospitality insured.[12]

In 1927, Connecticut and Iowa enacted the first automobile guest statutes.[13] By 1939 guest statutes had been enacted in 29 states.[14] In addition, three states created guest laws through judicial decisions.[15] Accordingly, 32 states have enforced guest laws at some time.

Since their appearance in the 1920s and 1930s, "guest

statutes have been subject to some praise but a great deal more criticism." Proponents of guest laws traditionally have argued that the social importance of promoting driver hospitality and preventing collusive lawsuits outweighs the burden placed on guest passengers by the statutes' prohibition against passenger-driver suits. Early critics countered by questioning whether guest laws were constitutional. Pointing out that guest laws treat guest passengers different from other automobile victims, these critics contended that guest laws "denie[d] to guests in motor vehicles the equal protection of the laws."[18]

The United States Supreme Court in 1929, however, rejected this contention in a case arising under the Connecticut statute.[19] Notwithstanding this validation, the Connecticut legislature repealed the Connecticut guest statute in 1937.[20] The Kentucky Court of Appeals in 1932 also invalidated the Kentucky guest statute, finding that the statute violated the Kentucky constitution.[21] More than 20 years passed, however, before another court or legislature invalidated a guest law.[22]

In the late 1960s and the early 1970s, courts and legislatures in an increasing number of states began to reexamine the constitutionality and the social desirability of guest laws. Opponents of the laws questioned whether

guest laws truly operated to promote driver hospitality. These critics denied that the presence or absence of a guest law actually influenced most drivers' decisions to offer rides to passengers.[23] They also argued that widespread social changes which had occurred since the 1930s--particularly the significantly greater number of drivers carrying automobile liability insurance in the 1970s than the 1930s--eliminated any possibility of "rider ingratitude."[24]

The guest law critics also questioned whether the laws could be justified on grounds that they prevented passengers and drivers from colluding against insurance companies. Even if some fraudulent claims were inevitable, these critics found it unreasonable to prohibit all guest suits merely because of the possibility of fraudulent collusion in some cases.[25]

Finding the foregoing arguments persuasive, the California Supreme Court in 1973 held the California guest statute to be unconstitutional, finding that the statute's discrimination against guest passengers could not be justified on grounds that the statute promoted driver hospitality and prevented collusive lawsuits.[26] Following the California Supreme Court's lead, 12 other state supreme courts struck down their guest laws on constitutional grounds.[27]

In addition to these court decisions, eight state legislatures between 1969 and 1979 repealed their guest statutes on policy or constitutional grounds.[28] Four state legislatures, declining to repeal their guest statutes outright, effectively repealed their guest laws by enacting amendments which substantially narrowed the statutes' scope.

Notwithstanding the abrogation or repeal of guest statutes in many states in the 1970s, the courts in other states rejected constitutional challenges to guest statutes.[30] These courts generally found that the promotion of hospitality and prevention of collusion rationales[31] provided sufficient justification to uphold the guest/non-guest classification created by guest statutes.[32] Although upholding the statutes on constitutional grounds, the opinions of some of these courts, however, reflect the beliefs of individual justices that guest statutes are no longer socially desirable and should be repealed.[33]

As of November 1982, five states--Alabama, Arkansas, Delaware, Indiana, and Utah--retain guest statutes in force substantially as enacted.[34] In addition, one state--Georgia--retains a judicially created guest law.[35] Four states--Illinois, Nebraska, Texas, and Virginia--retain guest statutes which have been effectively repealed through amendment.[36]

B. The Indiana Guest Statute

Originally enacted in 1929, the Indiana guest statute is quite similar to the guest statutes enacted by a number of other states.[37] The statute provides that a motor vehicle owner or operator is not liable for the ". . . injuries to or death of a guest, while being transported without payment therefor . . . unless such injuries or death are caused by the wanton or wilful misconduct of such operator . . . [or] owner . . . ."[38] Hence, where an accident is caused by the ordinary negligence of the host driver, the driver cannot be held liable to an injured passenger if the passenger was a non-paying guest of the driver.

The payment requirement has caused some confusion.[39] Where a passenger is invited or permitted to ride with a driver primarily for social rather than business purposes, the passenger may be deemed a guest even though he has contributed to gas expenses or otherwise has made some incidental form of "payment" to the driver. The ultimate test is the motive of the driver in inviting or permitting the passenger to ride. If the driver's motive was social companionship, the passenger will usually be considered a guest despite an incidental payment. Conversely, if the driver expects to obtain some material gain from the passenger's presence, the passenger usually will not be con-

sidered to be a guest.[40]

Once a passenger's status as a guest has been established, recovery is denied unless the driver's injury-causing conduct amounted to "wanton or wilful misconduct." Wilful misconduct primarily encompasses situations where a court finds that the driver "intentionally performed the dangerously injurious act or that he had a design to cause the injury."[41] Wanton misconduct refers to situations where a driver consciously operates his vehicle with a reckless indifference to the safety of his guests.[42] Where a court concludes that a driver's conduct amounted to either wanton or wilful misconduct, an injured guest is permitted to bring suit against the driver.

The Indiana guest statute has been challenged as being unconstitutional in that the statute creates two classifications of passengers--guest and non-guests--who are treated differently with respect to the right to recover from host drivers. In Sidle v. Majors,[43] however, the Indiana Supreme Court upheld the constitutionality of the statute.[44] The court reasoned that the Indiana legislature had enacted the statute to promote driver hospitality, to prevent collusion against insurance companies, and to prevent the escalation of liability insurance premiums by insurance companies forced to pay out excessive verdicts to

guest passengers.[45] The accomplishment of these policies, the court concluded, tended to justify the different treatment accorded guests and non-guests by the statute.

Reviewing the Indiana Supreme Court's decision in Sidle v. Majors, the Seventh Circuit Court of Appeals flatly disagreed that the Indiana guest statute accomplished any of the goals identified by the Indiana court.[46] The Seventh Circuit accordingly indicated its belief that the Indiana guest statute violated the federal equal protection clause. Notwithstanding this conclusion, however, the Seventh Circuit concluded that it was bound to affirm the Indiana Supreme Court's decision upholding the statute pursuant to federal procedural rules.[47] The United States Supreme Court declined to review the Seventh Circuit's decision.[48] Accordingly, drivers in Indiana continue to enjoy the protection afforded by the Indiana guest statute.

C. The Present Status of Guest Laws In the Midwestern States

Eight of the 11 midwestern states--Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Ohio, and Wisconsin--have enforced guest laws at some time.[49] Minnesota, Missouri, and Tennessee have never created guest laws.[50]

Indiana is the only midwestern state which currently retains a guest law substantially as originally enacted. Illinois, in a 1971 amendment, modified its guest statute so

that the statute now applies only to hitchhikers.[51] All other Illinois guest passengers are entitled to bring suit against their host for ordinary negligence.

In direct contrast to Indiana, the state supreme courts of the remaining midwestern states which once enforced guest laws have all held these laws to be unconstitutional.[52] These courts have concluded that the guest/non-guest classification created by their respective guest statutes violates state and federal equal protection of the laws guarantees. Applying the traditional equal protection analysis, these courts generally found that the prohibition of guest passenger suits did not suitably further the stated objective of guest statutes, i.e., promoting driver hospitality and preventing collusive lawsuits.

Commenting on the promotion of hospitality rationale, the Michigan Supreme Court has flatly rejected any notion that the presence or absence of a guest statute would affect a driver's decision to offer a ride to another:[53]

> In point of fact, the presence or absence of a guest statute does not affect the decision of friends and relatives to ride together in an automobile. Drivers may hesitate to pick up hitchhikers, but not because of potential liability for negligence, ordinary or gross. Friends and relatives offer, seek, accept, or decline rides with each other for reasons quite apart from the ability to recover for negligently inflicted injury, death or loss. It is only after the fortuitous

> event of an accident that the existence of the statute becomes known to most people. The absence of a guest passenger statute would not chill hospitality or group transportation any more or less than its existence promotes such activity.

Other courts have pointed to the widespread availability of automobile liability insurance as puncturing the promotion of hospitality rationale:[54]

> We . . . reject the thesis that a guest passenger's lawsuit against his host constitutes the epitome of ingratitude and as such ought to be condemned. . . .This argument is not persuasive because widespread liability insurance has largely eliminated any notion of "ingratitude" that may once have adhered to a guest's suit against his host and also because the deprivation of a guest's redress for negligence cannot rationally be justified by a desire to promote hospitality. . . .
>
> . . . . .
>
> . . . The overwhelming majority of the automobile drivers in Kansas today have liability insurance. Furthermore the modern trend is to make mandatory insurance coverage for all owners of motor vehicles. This is one of the basic concepts of no fault legislation which has been enacted or is being considered in practically every state in the nation today. Hence it is clear to us that the "hospitality" argument first advanced in 1930, has no validity under the facts of life as they exist today.

The courts typically rejected the prevention of collusion rationale on grounds of the unreasonableness inherent in barring <u>all</u> guest claims merely because of the

possibility that some might be fraudulent:[55]

> We further hold that the "collusion prevention" justification does not provide a sufficient basis for the statute's wholesale elimination of all automobile guests' causes of action for negligently inflicted injuries. The theory behind the "collusion" argument appears to be that the driver who gives a free ride to a passenger does so because of a close relationship with his guest; because of the presumed closeness of this relationship, the driver may falsely admit liability so that his guest may collect from the driver's insurance company. To combat this risk of potential fraud, the guest statute eliminates all causes of action in negligence for automobile guests. We believe that it is unreasonable to eliminate causes of action of an entire class of persons simply because some undefined portion of the designated class may file fraudulent lawsuits.

As the foregoing discussion indicates, the number of guest laws existing in the midwestern states has declined dramatically in the last 12 years. Indeed, Indiana at present stands alone among the midwestern states in prohibiting ordinary negligence suits by all guest passengers against host drivers.

III. Conclusion

No state has enacted a guest statute or created a guest law since 1939.[56] Although more than one-half of the states enforced guest laws at one time, only Indiana and five other states at present prohibit all ordinary negli-

tionality of the statute to be "fairly debatable" and thereupon deferred to the legislature in accordance with Delaware principles of judicial restraint).

4. Indiana - Ind. Code Ann. § 9-3-3-1 (Burns 1973) [1929]; Sidle v. Majors, 264 Ind. 206, 341 N.E.2d 763, aff'd, 536 F.2d 1156 (7th Cir.), cert. denied, 429 U.S. 945 (1976) (the Indiana Supreme Court upheld the constitutionality of the statute; the Seventh Circuit Court of Appeals indicated its belief that the statute was unconstitutional but was constrained to affirm the Indiana Supreme Court's decision pursuant to principles of federal procedural law).

5. Utah - Utah Code Ann. § 41-9-1 (Supp. 1981) [1935]; Critchley v. Vance, 575 P.2d 187 (Utah 1978) (upholding statute against constitutional attack; Justice Wilkins and Justice Maughan dissented, finding the statute to be unconstitutional; Justice Wilkins also suggested that the statute had been impliedly repealed by Utah's no fault legislation, 575 P.2d at 189, Wilkins, J., and Maughan, J., dissenting).

B. States Retaining Judicial Guest Rule (1)

Georgia — Epps v. Parrish, 26 Ga. App. [illegible], 106 S.E. 297 ([illegible]) (creating Georgia guest rule by decision); Bickford v. Nolen, 240 Ga. 255, 240 S.E.2d 24 (1977) (upholding guest rule against constitutional attack; Justice Hall in dissent conceded that the rule was constitutional but urged that it be overruled on public policy grounds, 240 S.E.2d at 28, Hall, J., dissenting).

In 1980 the Georgia Legislature passed a bill abolishing the Georgia guest rule. See S.B. 557, 1980 Ga. Legislature. As one commentator has reported, however, the Georgia governor vetoed the bill: "It is encouraging to note that in the session just past, the Georgia legislature enacted a bill that would have abolished Georgia's guest rule. . . . It is unfortunate that Governor Busbee vetoed this legislation on April 9, 1980. The reason given for the veto was that the governor thought that in this time of energy shortage, legislation should not be enacted that would in any way discourage drivers from sharing their automobiles with others." Comment, "Treatment of Guest Passengers: Georgia Maintains Its Minority

Rule," 31 Mercer L. Rev. 1061, 1068-69 (1980) (footnote omitted).

C. States Retaining Modified Guest Statutes (4)

1. Illinois - Ill. Ann. Stat. ch. 95 1/2, § 10-201 (Smith-Hurd 1980) [1935] (restricted to hitchhikers by a 1971 amendment).

2. Nebraska - Neb. Rev. Stat. § 39-6, 191 Supp. 1981) [1931] (amended in 1981 to restrict statute's application to certain relatives of the driver).

3. Texas - Tex. Rev. Civ. Stat. Ann. art. 6701b (Vernon 1977) [1931] (amended in 1973 to restrict statute's application to certain relatives of the driver).

4. Virginia - Va. Code Ann. § 8-646.1 (1957) [1938] (amended in 1974 to permit guest passengers a cause of action for ordinary negligence).

D. States in Which Guest Statutes Have Been Repealed by the Legislature (9)

1. Colorado - Colo. Rev. Stat. § 42-9-101 (1973) [1931] (repealed in 1975).

2. Connecticut - 1927 Conn. Pub. Acts 4404 (1927) [1927] (repealed in 1937).

3. Florida - Fla. Stat. Ann. § 320.59 (West 1968) [1937] (repealed in 1972).

4. Massachusetts - Mass. Gen. Law Ann. ch. 231, § 85 L (West Supp. 1981) (overruling guest rule created by the court in Massaletti v. Fitzroy, 228 Mass. 487, 118 N.E. 168 (1917)).

5. Montana - Mont. Code Ann. § 32-1113 (1961) [1931] (repealed in 1975).

6. Oregon - Or. Rev. Stat. § 30.115 (1979) [1921] (repealed in 1961 with respect to automobile passengers).

7. South Dakota - S.D. Codified Laws Ann. § 32-34-1 (1976) [1933] (repealed in 1978).

8. Vermont - Vt. Stat. Ann. tit. 23, § 1491 (1967) [1929] (repealed in 1969).

9. Washington - Wash. Rev. Code Ann. § 46.08.080 (1970) [1933] (repealed in 1974).

E. States Judicially Abolishing Guest Statute or Rule (12)

1. California - Cal. Veh. Code § 17158 (West 1971) [1929] (declared unconstitutional in Brown v. Merlo, 8 Cal. 3d 855, 506 P.2d 212 (1973). In order to harmonize the statute with the Brown decision, the legislature in a 1973 amendment made the statute inapplicable to guests).

2. Idaho - Idaho Code § 49-1401 (1980) [1931] (declared unconstitutional in Thompson v. Hagan, 96

Idaho 19, 523 P.2d 1365 (1974)).

3\. Iowa – Iowa Code Ann. § 321.494 (West Supp. 1979) [1927] (declared unconstitutional in Bierkamp v. Rogers, 293 N.W.2d 577 (Iowa 1980)).

4\. Kansas – Kan. Stat. Ann. § 8-122b (1975) [1931] (declared unconstitutional in Henry v. Bauder, 213 Kan. 751, 518 P.2d 362 (1974) and repealed to conform with Henry decision in 1974).

5\. Kentucky – 1930 Ky. Acts ch. 85 [1930] (declared unconstitutional in Ludwig v. Johnson, 243 Ky. 533, 49 S.W.2d 347 (1932)).

6\. Michigan – Mich. Comp. Laws Ann. § 257.401 (1977) [1929] (guest passenger exception declared unconstitutional in Manistee Bank & Trust Co. v. McGowan, 394 Mich. 655, 232 N.W.2d 636 (1975)).

7\. Nevada – Nev. Rev. Stat. § 41.180 (1977) [1933] (declared unconstitutional in Laakonen v. Eighth Judicial District Court, 91 Nev. 506, 538 P.2d 574 (1975), and repealed in 1977 to conform to Laakonen decision).

8\. New Mexico – N.M. Stat. Ann. § 64-24-1 (1953) [1935] (declared unconstitutional in McGeehan v. Bunch, 88 N.M. 308, 540 P.2d 238 (1975), omitted from current code).

9. North Dakota - N.D. Cent. Code § 39-15 (1980) [1931] (declared unconstitutional in Johnson v. Hassett, 217 N.W.2d 771 (N.D. 1974), and repealed in 1979).

10. Ohio - Ohio Rev. Code Ann. § 4515.02 (Page 1973) [1933] (declared unconstitutional in Primes v. Tyler, 43 Ohio St. 2d 195, 331 N.E.2d 723 (1975)).

11. South Carolina - S.C. Code Ann. § 15-1-290 (Law. Co-op. 1976) (declared unconstitutional in Ramey v. Ramey, 273 S.C. 680, 258 S.E.2d 883, cert. denied, 444 U.S. 1078 (1979)).

12. Wisconsin - McConville v. State Farm Mutual Automobile Insurance Co., 15 Wis. 2d 374, 113 N.W.2d 14 (1962) (overruled Wisconsin guest rule created by the court's decision in O'Shea v. Lavoy, 175 Wis. 456, 185 N.W. 521 (1921)).

13. Wyoming - Wyo. Stat. § 31-5-1116 (1977) (declared unconstitutional in Nehring v. Russel, 585 P.2d 67 (Wyo. 1978)).

F. States Which Have Never Enacted or Judicially Created a Guest Law

1. Alaska
2. Arizona
3. Hawaii
4. Louisiana
5. Maine
6. Maryland
7. Minnesota
8. Mississippi
9. Missouri
10. New Hampshire
11. New Jersey
12. New York
13. North Carolina
14. Oklahoma
15. Pennsylvania
16. Rhode Island
17. Tennessee
18. West Virginia

FOOTNOTES

[1]These states "follow the common law and treat an automobile passenger like any other plaintiff, i.e., the driver is responsible for his ordinary negligence that causes an injury to the passenger." Note, "Treatment of Guest Passengers: Georgia Maintains Its Minority Rule," 31 Mercer L. Rev. 1061, 1062 (1980).

[2]Although payment by a passenger is not always conclusive on the issue of his status as a guest, virtually all jurisdictions agree that a paying passenger is not a guest as a general rule. 5 Blashfield Automobile Law and Practice § 212.10 at 130-32 (3d ed. 1966).

[3]This standard varies from state to state but all guest law states require some form of aggravated misconduct greater than ordinary negligence as a prequisite to a host driver's liability. Compare Epps v. Parrish, 26 Ga. App. 399, 106 S.E. 297 (1921) (guest can recover only when host is guilty of gross negligence), with Ala. Code § 32-1-2 (1975) (guest can recover only when the host is guilty of willful or wanton misconduct).

[4]In the majority of states having guest laws, the laws were created by legislative enactment. Courts in a few states, however, in the absence of a guest statute, have created "guest rules" by judicial decision. See, e.g., Epps v. Parrish, supra, 106 S.E. 297.

[5]See infra text accompanying notes 18-25.

[6]See infra text accompanying notes 26-29.

[7]One commentator described this impact as follows:

> A few years ago there were none. Now they are everywhere; moving in every direction, quicker almost than sight, myriads in number, rushing, crashing, killing. What is more, they have evidently come to stay. Their uses are too strong to admit of any contemplation of doing without them. . . . The menace from negligence in their use has constantly increased.

Allen, "Why Do Courts Coddle Automobile Indmenity Companies?" 61 Am. L. Rev. 77, 77 (1927).

[8]See Note, "Alabama's Automobile Guest Statute: The Edsel Lives!" 33 Ala. L. Rev. 143, 145 (1981).

[9]Brown v. Merlo, 8 Cal. 3d 855, 506 P.2d 212, 218 (1973). See "Report of the Casualty Committee," 2 Ins. Counsel J. 15 (1935).

[10]Note, "The Present Status of Automobile Guest Statutes," 59 Cornell L. Rev. 659, 664 (1974) (footnotes omitted). See Dobbs v. Sugioka, 117 Colo. 218, 185 P.2d 784, 785 (1947) (stating that guest statutes were enacted to protect drivers from "'hitchhikers' and 'bums' who sought to make profit out of soft-hearted and unfortunate motorists").

[11]W. Prosser, Handbook of Law of Torts § 34 at 187 (4th ed. 1971).

[12]Although other rationales have been suggested, see infra, text accompanying note 45, the promotion of hospitality and the prevention of collusion are most frequently identified as the policies guest laws were designed to promote. See Note, supra, 59 Cornell L. Rev. at 663-65; Brown v. Merlo, supra, 506 P.2d at 218.

[13]See 1927 Conn. Pub. Acts 4404, ch. 308, §§ 1-2 (1927) [repealed in 1937]; 1927 Iowa Acts 112, ch. 119, § 1 (1927).

[14]See Note, supra, 33 Ala. L. Rev. at 143 n.4; Note, supra, 31 Mercer L. Rev. at 1061 n.1.

[15]Georgia, Wisconsin and Massachusetts have at some time enforced guest laws created by judicial decision.

[16]Note, supra, 59 Cornell L. Rev. at 660.

[17]See, e.g., Crawford v. Foster, 110 Cal. App. 81, 293 P. 841 (1930); Weber, "Guest Statutes," 11 U. Cin. L. Rev. 24 (1937).

[18]Silver v. Silver, 108 Conn. 371, 143 A. 240, 242 (1928), aff'd, 280 U.S. 117 (1929).

[19]Silver. Silver, 280 U.S. 117 (1929). The Court found that the statute had been enacted to eliminate the

"vexatious litigation" generated by automobile guest cases and found this goal to be "a permissible legislative object." Id. at 122. Hence the Court rejected the equal protection challenge. The Court did not address the distinction between paying and non-paying passengers, however, but rather decided the case on the distinction "between gratuitous passengers in automobiles and those in other classes of vehicles." Id. at 123. Subsequent courts, declaring guest statutes unconstitutional, would distinguish Silver on this basis:

> Over 40 years ago, in Silver v. Silver (1929) 280 U.S. 117, 50 S.Ct. 57, 74 L.Ed. 221, the United States Supreme Court did uphold the constitutionality of a Connecticut automobile guest statute in the face of an equal protection challenge. In Silver, however, the plaintiff had attacked the statute solely on the ground that the distinction drawn between automobile guests and guests in other conveyances was impermissible; in rejecting this argument, the Supreme Court did not consider the reasonableness of the two additional statutory distinctions--between "guests" and paying passengers and between different categories of automobile guests--which are attacked in the instant case.

Brown v. Merlo, supra, 506 P.2d at 217-18 n.4.

[20]See ch. 308, §§ 1-2 [1927] Conn. Acts 4404 (repealed 1937).

[21]Ludwig v. Johnson, 243 Ky. 534, 49 S.W.2d 347 (1932). The court found that, by eliminating recovery for injuries to automobile guests caused by driver negligence, the Kentucky guest statute violated a Kentucky Constitution provision which prohibited the legislature from enacting laws which would deprive an injured person of all remedies.

[22]In 1962, Wisconsin became the third state to invalidate a guest law when the Wisconsin Supreme Court overruled

the judicially created Wisconsin guest rule. See McConville v. State Farm Mutual Automobile Insurance Co., 15 Wis. 2d 374, 113 N.W.2d 14 (1962). The court found the guest rule to be "no longer consistent with sound policy." 113 N.W.2d at 19.

[23]See, e.g., Mainistee Bank of Trust Co. v. McGowan, 394 Mich. 655, 232 N.W.2d 636 (1975), Brown v. Merlo, supra, 506 P.2d 212.

[24]See, e.g., Laakonen v. Eighth Judicial District Court, 91 Nev. 506, 538 P.2d 574 (1975); Brown v. Merlo, supra, 506 P.2d 212.

[25]See, e.g., Brown v. Merlo, supra, 506 P.2d 212. Commentator criticizing guest laws on these and other grounds included Lascher, "Hard Laws Make Bad Cases--Lots of Them (The California Guest Statute), 9 Santa Clara L. Rev. 1 (1968); Vetri, "The Case for Repeal of the Oregon Guest Passenger Legislation," 13 Willamette L.J. 53 (1976); Note, supra, 33 Ala. L. Rev. 143, Note, supra, 31 Mercer L. Rev. 1061. See also Prosser, supra, § 34 at 187 (Dean Prosser, commenting on guest laws, stated: "If this is good social policy, it at least appears under a novel front").

[26]Brown v. Merlo, supra, 506 P.2d 212.

[27]See infra pp. 18-20.

[28]Vermont, in 1969 became the second state (after Connecticut in 1937) to repeal its guest statute. See No. 194, § 1, 1969 Vt. Laws Adj. Sess. 70 (effective 1970). Six other state legislatures--Florida (1972), Washington (1974), Colorado (1975), Montana (1975), Oregon (1977), and South Dakota (1978)--repealed their guests statutes on their own initiative. Three state legislatures--Kansas (1974), Nevada (1977), and North Dakota (1979)--repealed their guest statutes subsequent to state supreme court rulings declaring the statutes unconstitutional.

[29]Illinois restricted the application of the Illinois guest statute to hitchhikers. See infra note 51 and accompanying text. Texas and Nebraska restricted the application of their statutes to certain relative of the driver. See infra p. 17. Virginia amended its statute to permit guest passengers to maintain a cause of action for ordinary negligence.

[30]The Supreme Courts of Alabama, Arkansas, Delaware, Indiana and Utah all upheld the constitutionality of their state guest statutes. <u>See infra</u> pp. 14-15. The Supreme Court of Georgia upheld the constitutionality of the Georgia guest rule. <u>See infra</u> p. 16.

[31]The Indiana Supreme Court also identified an additional rationale which it considered to support the constitutionality of the Indiana guest statute. <u>See infra</u> note 45 and accompanying text.

[32]<u>See</u>, <u>e.g.</u>, <u>Davis v. Cox</u>, 268 Ark. 78, 593 S.W.2d 180 (1980).

[33]<u>See</u>, <u>e.g.</u>, <u>Beasley v. Bozeman</u>, 294 Ala. 288, 315 So. 2d 570 (1975). In <u>Beasley</u>, the court upheld the constitutionality of the Alabama guest statute. In a concurring opinion, however, Justice Jones states:

> My initial compulsion was to strike down the guest statute as bad law. While I have not changed my mind about the quality of the Act, I have concluded there is no legal basis on which this Court could hold the statute invalid.
>
> . . .
>
> . . . The legislative process, through elective representatives, with all of its faults, and its tendency to be unduly influenced by pressure groups, is the best method yet derived by man for the enactment of laws expressive of the public policy of its people. (I would add parenthetically: My faith in this process further leads me to believe that a legislature sensitive to the will of the people it represents will now exercise its prerogative to repeal this inherently bad law.)

315 So. 2d at 571 (Jones, J., concurring specially).

[34]<u>See infra</u> pp. 14-15.

[35]See Bickford v. Nolen, 240 Ga. 255, 240 S.E.2d 24 (1977) (upholding Georgia guest rule against constitutional attack). See generally Note, "Treatment of Guest Passengers: Georgia Maintains Its Minority Rule," 31 Mercer L. Rev. 1061 (1980).

[36]See, supra, note 29.

[37]Ind. Rev. Stat. ch. 201, § 1 (1929) currently codified at Ind. Code Ann. § 9-3-3-1 (Burns 1980). The Indiana guest statute is essentially identical to the statute enacted by Alabama.

[38]The full text of the statute provides:

> Guest of owner or operator--Right to damages.--The owner, operator, or person responsible for the operation of a motor vehicle shall not be liable for loss or damage arising from injuries to or death of a guest, while being transported without payment therefor, in or upon such motor vehicle, resulting from the operation thereof, unless such injuries or death are caused by the wanton or wilful misconduct of such operator, owner, or person responsible for the operation of such motor vehicle. [Acts 1929, ch. 201, § 1, p. 679; 1937, ch. 259, § 1, p. 1229.]

Ind. Code Ann. § 9-3-3-1.

[39]As one authority has stated, commenting on guest statutes:

> There is perhaps no other group of statutes which have filled the courts with appeals on so many knotty little problems involving petty and otherwise entirely inconsequential points of law. There is first of all the question of who is a "guest." What is the effect of sharing expenses, or of the guest

> buying a tank of gasoline? Of an indirect, prospective, or merely remotely potential, benefit to the host in the form of some business interest or hope in having the guest take the ride?

Prosser, supra, § 34 at 187.

[40]Liberty Mutual Insurance Co. v. Stitzle, 220 Ind. 180, 41 N.E.2d 133 (1942), is the leading Indiana case on when an automobile passenger qualifies as a guest within the meaning of the Indiana statute. 41 N.E.2d at 135-36. See also Allison v. Ely, 241 Ind. 248, 170 N.E.2d 371 (1960); Rainey v. Zink, 394 N.E.2d 238 (Ind. Ct. App. 1979).

[41]Note, "The Indiana Guest Statute," 34 Ind. L.J. 338, 346 n.39 (19__). See Trent v. Rodgers, 123 Ind. App. 139, 104 N.E.2d 759 (1952).

[42]For more complete statement of the "wanton or wilful misconduct" standard see Tutterrow v. Brookshire, 152 Ind. App. 471, 284 N.E.2d 87 (1972).

[43]264 Ind. 206, 341 N.E.2d 763 (1975).

[44]The court found that the guest statute did not violate Ind. Const. art. 1, § 12 (entitling every person injured to a remedy by due course of law), Ind. Const. art. 1, § 23 (the Indiana equal protection provision), or the equal protection clause of the fourteenth amendment to the United States Constitution.

[45]The court referred to the third rationale as the "benevolent thumb syndrome:"

> We perceive a third and to us a very likely legislative policy behind our guest statute, one which has not, to our knowledge, been previously suggested in any of the litigated cases and which, for want of a better designation, could be called protection against the "benevolent thumb syndrome." This policy recognizes the value to our society of liability insurance to protect against the inequity of

damages inflicted by otherwise financially irresponsible motor vehicle owners and operators. This policy also recognizes that the cost of such insurance is unalterably determined by the loss experience of the companies providing such insurance, that such insurance is optional with the owners and operators and is purchased by them, not for the benefit of the victims of the negligence but rather for their own personal benefit and at their expense. The policy also recognizes the "Robin Hood" proclivity of juries. The tendency to take from the rich and give to the needy is as American as applie pie; but unfettered, it may logically be expected to lead to the escalation of liability insurance premiums to the level where the majority of users would be either unable or unwilling to pay them. . . .

. . . . .

. . . It is, therefore, not unreasonable to credit the Legislature with recognizing that when a guest sues his host, the jury can and will most likely assume that the real defendant is an insurance company and will relax the standard of proof traditional in negligence actions and renders biased judgments in favor of plaintiffs. The guest statute may, therefore, logically be a legislative endeavor to promote financial responsibility for damages caused by the negligent operation of motor vehicles by protecting liability insurance companies from the human propensities of juries to weigh their "benevolent thumb" along with the evidence of the defendant's negligence.

341 N.E.2d at 771-71.

[46]The Seventh Circuit agreed with the California Supreme Court that the promotion of hospitality and prevention of collusion rationales did not justify the guest statute classification scheme. Sidle v. Majors, 536 F.2d 1156, 1157-58 (7th Cir. 1976). The Seventh Circuit also rejected the "benevolent thumb" rationale:

> One further reason the Indiana Supreme Court advanced in favor of the constitutionality of the guest statute was that otherwise there might be an escalation of automobile liability insurance premiums. But when the Guest Act was enacted in Connecticut in 1927, there was no reduction in automobile premiums, nor was there an increase in the premiums when that statute was repealed ten years later. Note, 42 U.Cinn.L.Rev. 709, 721 (1972). Defendant has not demonstrated that our invalidation of this statute would increase premiums for such insurance.

Id. at 1158 (footnote omitted).

[47]Id. at 1160.

[48]Sidle v. Majors, 429 U.S. 945 (1976) (denying cetiorari). Justice Brennan and Justice Marshall dissented frm the denial of certiorari on grounds that the numerous state court decisions declaring guest statutes unconstitutional indicated that the constitutionality of such statutes should be re-examined. Id. at 945 (Brennan, J., dissenting from denial of certiorari).

[49]See infra pp. 15-20. For purposes of this presentation, "Midwestern" states include the following: Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin.

[50]See Note, supra, 31 Mercer L. Rev. at 1064-70.

[51]See Ill. Ann. Stat. ch. 95 1/2, § 10-201 (Smith-Hurd Supp. 1982).

[52] See infra pp. 18-20.

[53] Manistee Bank & Trust Co. v. McGowan, 394 Mich. 655, 232 N.W.2d 636, 644-45 (1975).

[54] Henry v. Bauder, 213 Kan. 751, 518 P.2d 362, 369-70 (1975). See also Primm v. Taylor, 43 Ohio St. 2d 195, 331 N.E.2d 723 (1975).

[55] Henry v. Bauder, supra, 518 P.2d at 370. See also Bierkamp v. Rogers, 293 N.W.2d 577 (Iowa 1980) (guest classification both overinclusive and underinclusive for purpose of preventing collusion).

[56] See Manistee Bank & Trust Co. v. McGowan, supra, 232 N.W.2d at 638.

[57] The bracketed date indicates the date of enactment.

STATE OF ALASKA
FISCAL NOTE

Revision Date ____________, 1983

I. REQUEST
Bill/Resolution No.: HB 126
Title: "...liability of aircraft owners..."
Sponsor: Repr. Hurlburt
Requestor: House Labor & Commerce

II. FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: General Govt.
BRU, Program or Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director — Phone: 465-3672
Division: Administrative Services Division — Date: April 13, 1983

Approved by Commissioner: Norman C. Gorsuch, Attorney General — Date: April 13, 1983
Department: Department of Law

Distribution:
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- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

HB 126
Fiscal Note
Analysis

The liability of aircraft owners or operators for personal injury or death to guest passengers and the limitation thereof, is a matter between private parties. Such matters, unless they involve social concerns for which the state has provided some form of statutory protection, generally do not involve the Department of Law. Consequently, no fiscal impact will occur to the department's operations.

DRAFT
COMMITTEE LETTER OF INTENT
ON
CS FOR SENTATE BILL 228 (JUDICIARY)

In the Legislature of the State of Alaska
13th Legislature - 1st Session

The purpose of Senate Bill 228 is to extend to the Metlakatla Indian Community the benefits of two ongoing state revenue sharing programs, the Municipal Assistance Fund, AS 43.20.016, and the Municipal Tax Resource Equalization Program, AS 28.88.010 et seq. Under existing state law, the Metlakatla Indian Community is not eligible to participate in these programs because it is not technically a state-law "municipality." Senate Bill 228 applies only to the Metlakatla Indian Community and does not affect the legal status or rights of any Indian Reorganization Act entities, traditional councils or village or regional corporations organized under the Alaska Native Claims Settlement Act.

The Committee believes that in fairness the Metlakatla Indian Community must be distinguished from other Native organizations in Alaska with respect to state revenue sharing. The Metlakatla Indian Community has a legal status in Alaska that is absolutely unique. Because the Metlakatla Indian Community elected to forgo the benefits of the Alaska Native Claims Settlement Act, the reservation status of the Annette Islands Reserve was preserved. Metlakatla was the only reserve in Alaska to make this choice. Thus section 19 of the Alaska Native Claims Settlement Act extinguishes all previously existing federal Indian reserves in Alaska

but specifically excepts the Annette Islands Reserve. As a federal Indian reservation, located on federal trust land, the Community cannot incorporate under state law.

It is true that the Metlakatla Indian Community is eligible for various federal assistance programs made available to tribes throughout the United States. However, the Metlakatla Indian Community enjoys no special advantage vis-a-vis other Alaska Native groups in this regard. Section 2(c) of the Alaska Native Claims Settlement Act provides that the Act does not diminish the responsibility of the federal government to Alaska Natives and Alaska Native groups. The various federal statutes extending benefits to Indian tribes have therefore been amended to provide that the term "tribe" includes the traditional councils, the Indian Reorganization Act entities, and the village and regional corporations located in Alaska. These entities, as well as the Metlakatla Indian Community, therefore receive federal aid under the Indian Self-Determination Act and other federal programs. Unfortunately, this federal aid for Indian entities throughout the United States has substantially eroded. According to the Bureau of Indian Affairs, the federal cutbacks in Indian programs under the Reagan administration have averaged 45%. The Metlakatla Indian Community must now look to other sources for funding.

With respect to state aid, the Metlakatla Indian Community is at a special disadvantage compared to non-Native and predominately Native communities in Alaska. The Metlakatla Indian Community provides substantial governmental services for the approximately

1300 persons who reside on the Annette Islands Reserve, including both members and non-members of the Community. Its governmental expenses are commensurate with these responsibilities, averaging approximately $1.7 million per year. But because the Metlakatla Indian Community is chartered under federal, not state, law, it is not eligible for the state revenue sharing benefits that are extended to other Alaska communities. In contrast, the other Native communities in Alaska, at least those of a size comparable to Metlakatla, are incorporated under state law and the Alaskans resident there enjoy the indirect benefits of state revenue sharing. For example, the City of Hydaburg is organized as a first class city and is eligibile to receive state revenue sharing. At the same time, this predominately Native community also receives substantial federal benefits, under the Indian Self-Determination Act and other programs, because of the presence there of the Haida Corporation, an ANCSA village corporation, and the Haida Cooperative Association, an Indian Reorganization Act entity set up pursuant to section 16 of the Indian Reorganization Act. The Metlakatla Indian Community is eligible to receive the federal but not the state benefits. Senate Bill 228 will eliminate this disparity of treatment between state citizens by extending the state revenue sharing benefits that other Alaska communities now enjoy to the Metlakatla Indian Community.

At the Committee hearing, concern was expressed that the phrase "local government," referring both to state law municipalities and to the Metlakatla Indian Community, was unnecessarily

broad. The Committee has discussed this matter with legislative counsel and recommends that this language be eliminated and that the phrase "municipality and federal Indian reserve tribe" be used to refer to the legal entities eligible for revenue sharing under these two state programs. The existing definition section, clarifying that the "federal Indian reserve tribe" refers only to Metlakatla, should be retained.

JUD MEETING

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

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June 20, 1983

Honorable Bill Ray
Chairman, Senate Judiciary

re; Senate CS for HB 126 am

Dear Senator Ray:

At your request I conferred with Kay Wallis, legislative aid to Representative Hurlbert concerning the intent of HB 126 am. Ms. Wallis stated that it is a common, culturally accepted practice in Alaska, especially in roadless interior areas, for persons to hitchhike on aircraft returning from charter flights. Unlike the automobile driver who can simply stare straight ahead and drive pass the highway hitchhiker, a charter pilot is confronted and addressed verbally by the hitchhiker who seeks a lift in the direction of the return flight. The uncertainty of Alaska weather and the possibility of an extended wait make it especially difficult for pilots to refuse to extend the courtesy requested. Ms. Wallis stated that dispice this compulsion pilots are reluctant to pick up hitchhikers because of the likelihood that they will be sued in the event that an accident occurs. This bill would lessen the likelihood of a lawsuit and would accordingly encourage hospitality by aircraft operators. Enclosed is a rough draft committee substitute which identifies the legislative intent of this bill.

As I mentioned at the hearing June 17, there is a judicial hostility to guest statutes. Most state courts have struck such statutes down on equal protection grounds where the legislative intent, as here, is to encourage hospitality. This most often occurs where it is hypothesized that this was a legislative intent. Here, the committee substitute expressly recognizes this as the purpose of the legislation and sets out the unique Alaskan situation justifying such legislation.

Note the change in definition of guest as one who rides at his request. This restricts "guest" to those persons who initiate a request for a ride. Thus, where for example, the guest is a personal friend of the pilot and rides at the pilot's invitation, this bill would be inapplicable.

Guest statutes encourage litigation and surely, this one would do so too. This bill too stands the chance of being struck down by the Court for constitutional reasons however, this committee substitute greatly reduces this possibility. The larger question remaining is whether this is desirable legislation, a matter which the judiciary recognizes is the perogative of the legislature.

Sincerely Yours,

Norman C. Gorsuch
Attorney General

By: Bill Mellow
William G. Mellow
Assistant Attorney General

STATE OF ALASKA
FISCAL NOTE

Revision Date ____________, 1983

I. REQUEST
Bill/Resolution No.: HB 126
Title: "...liability of aircraft owners..."
Sponsor: Repr. Hurlburt
Requestor: House Labor & Commerce

II. FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: General Govt.
BRU, Program of Subprogram(s) Affected:
Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: April 13, 1983

Approved by Commissioner: Norman C. Gorsuch, Attorney General [signed: Richard I. Pegues / for]
Date: April 13, 1983
Department: Department of Law

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HB 126
Fiscal Note
Analysis

The liability of aircraft owners or operators for personal injury or death to guest passengers and the limitation thereof, is a matter between private parties. Such matters, unless they involve social concerns for which the state has provided some form of statutory protection, generally do not involve the Department of Law. Consequently, no fiscal impact will occur to the department's operations.