

**HB**

**360**



House of Representatives

**SPONSOR STATEMENT**

HB 360

“An Act relating to civil liability for guest passengers on an aircraft or watercraft; and providing for an effective date.”

HB 360 will guard boat owners and pilots from liability in cases where simple negligence results in accidental injury to non-paying passengers.

Many places in Alaska are only accessible by air or water. When boat owners and private pilots are accompanied by friends or acquaintances on trips, the owner of the craft assumes much of the liability. If Alaskans want to continue to enjoy the recreational opportunities that are available the risks should be shared by all. HB 360 gives guest passengers on a boat or private aircraft a share of the risk involved in their travel. However, private pilots and boat owners who engage in behavior that is considered grossly negligent remain completely liable for accidents and injuries to guest passengers.

HB 360 will affect only those who are traveling together for their mutual benefit. It will not affect those who are traveling by common carrier and paying for their transportation.

HB 360 is important to the many private boat and plane owners of Alaska. I urge your favorable consideration of this proposed legislation.

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 360

Revision Date: 3/21/94  
Title: Aircraft/Watercraft guest passenger law  
Sponsor: Rep. Bunde  
Requestor: Rep. Bunde

Department Affected: Commerce and Economic Development  
BRU: Division of Insurance  
Component: \_\_\_\_\_  
COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ( )	0	0	0	0	0	0
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FUND SOURCE

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimate of current year (FY 94) cost: \$ 0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Wendy Mulder, Commissioner's office  
Division: DCED

Phone: 465-2500  
Date: \_\_\_\_\_

Approved by Commissioner: Paul Fuhs  
Agency: Commerce and Economic Development

Date: 3-21-94

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 360

ANALYSIS CONTINUATION:

This bill amends AS 09.65 to provide that an owner or operator of an aircraft or watercraft is not liable for civil damages of a person being transported in the owner's or operator's aircraft or watercraft if the owner or operator is not being compensated for the transportation.

This exemption from liability would not apply to a civil action for damages resulting from:

- (1) gross negligence or reckless or intentional misconduct;
- (2) an act or omission of an owner or operator of an aircraft who is a common carrier; or
- (3) an act or omission of an owner or operator of an aircraft that occurs while demonstrating an aircraft to a prospective buyer.

Because transportation on state aircraft or watercraft is for official business only, there will not be a fiscal impact for the state, either in the form of a savings or added cost. The department does note, however, that the bill will have the effect of exempting owners and operators of sport fishing charter watercraft from civil liability for damages suffered by passengers transported free of charge. For example, gratis fishing charters are frequently offered as part of promotional programs and donated as prizes in fish derbies and charity raffles.

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 360

Revision Date: 3/21/94  
Title: Aircraft/Watercraft guest passenger law  
Sponsor: Rep. Bunde  
Requestor: Rep. Bunde

Department Affected: Commerce and Economic Development  
BRU: Division of Insurance  
Component: \_\_\_\_\_  
COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ( )	0	0	0	0	0	0
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FUND SOURCE

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) cost: \$ 0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Wendy Mulder, Commissioner's office  
Division: DCED

Phone: 465-2500  
Date: \_\_\_\_\_

Approved by Commissioner: Paul Fuhs  
Agency: Commerce and Economic Development

Date: 3-21-94

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 360

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Because transportation on state aircraft or watercraft is for official business only, there will not be a fiscal impact for the state, either in the form of a savings or added cost. The department does note, however, that the bill will have the effect of exempting owners and operators of sport fishing charter watercraft from civil liability for damages suffered by passengers transported free of charge. For example, gratis fishing charters are frequently offered as part of promotional programs and donated as prizes in fish derbies and charity raffles.

FISCAL NOTE

*Figueres*

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 360

Revision Date: March 23, 1994  
Title: "...relating to civil liability for guest passengers on an aircraft or watercraft..."  
Sponsor: Representative Bunde  
Requestor: House Labor and Commerce

Department Affected: Department of Law  
BRU: Legal Services  
Component: Operations  
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)  
Please see the attached analysis.

*Richard I. Peques*  
Prepared by: Richard I. Peques, Director Phone: 465-3672  
Division: Administrative Services Division Date: March 23, 1994  
*R. I. Peques / FOR*  
Approved by Commissioner: Bruce M. Botelho, Attorney General  
Agency: Department of Law Date: March 23, 1994

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 360

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(b) The felonious conduct was a substantial factor contributing to the injury or death.

(2) To establish the defense described in this section, the defendant must prove beyond a reasonable doubt the fact that the person damaged was engaged in conduct that would constitute aggravated murder, murder or a Class A or a Class B felony.

(3) Nothing in this section affects any right of action under 42 U.S.C. §1983. (1987 c.774 §10)

**30.090 Appointment of administrator of estate of wrongdoer.** If no probate of the estate of the wrongdoer has been instituted within 60 days from the death of the wrongdoer, the court, upon motion of the injured person, or of the personal representatives of one meeting death, as stated in ORS 30.080, shall appoint an administrator of the estate of the wrongdoer.

**30.100 Substitution of personal representative as party defendant.** In the event of the death of a wrongdoer, as designated in ORS 30.080, while an action is pending, the court, upon motion of the plaintiff, shall cause to be substituted as defendant the personal representative of the wrongdoer, and the action shall continue against such personal representative.

#### ACTIONS BY GUEST PASSENGERS

30.110 (Repealed by 1961 c.578 §1 (30.115 enacted in lieu of 30.110 and 30.120))

**30.115 Aircraft and watercraft guest passengers; definitions.** No person transported by the owner or operator of an aircraft or a watercraft as a guest without payment for such transportation, shall have a cause of action for damages against the owner or operator for injury, death or loss, in case of accident, unless the accident was intentional on the part of the owner or operator or caused by the gross negligence or intoxication of the owner or operator. As used in this section:

(1) "Payment" means a substantial benefit in a material or business sense conferred upon the owner or operator of the conveyance and which is a substantial motivating factor for the transportation, and it does not include a mere gratuity or social amenity.

(2) "Gross negligence" refers to negligence which is materially greater than the mere absence of reasonable care under the circumstances, and which is characterized by conscious indifference to or reckless disregard of the rights of others. (1961 c.578 §2 (30.115 enacted in lieu of 30.110 and 30.120); 1979 c.866 §7)

30.120 (Repealed by 1961 c.578 §1 (30.115 enacted in lieu of 30.110 and 30.120))

**30.130 Public carriers by aircraft and prospective aircraft purchasers.** ORS 30.115 shall not relieve a public carrier by aircraft, or any owner or operator of aircraft while the same is being demonstrated to a prospective purchaser, of responsibility for any injuries sustained by a passenger.

#### ACTIONS ON CERTAIN CONSTRUCTION AGREEMENTS

**30.140 Effect of indemnification provision in construction agreement.** (1) Any provision in a construction agreement which requires a person to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property caused or contributed to by the negligence of the indemnitee in the design or by the sole negligence of the indemnitee in the inspection of the work that is the subject of the construction agreement is enforceable only if the indemnitee secures or maintains insurance covering such risks for the protection of the indemnitor. In no event shall the indemnification obligation under such provisions be greater than the limits of the insurance secured by the indemnitee.

(2) Notwithstanding subsection (1) of this section, any provision in a construction agreement which requires a person or that person's surety or insurer to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property caused by the sole negligence of the indemnitee is void.

(3) As used in this section, "construction agreement" means any written agreement for the construction, alteration, repair, improvement or maintenance of any building, highway, road excavation or other structure, project, development or improvement attached to real estate including moving, demolition or tunneling in connection therewith. No provision of this section shall be construed to apply to a "railroad" as defined in ORS 763.010. (1973 c.570 §§1, 2; 1987 c.774 §25)

#### ACTIONS FOR DEFAMATION

**30.150 Liability of radio or television station personnel for defamation.** (1) The owner, licensee or operator of a radio or television broadcasting station, and the agents or employees of the owner, licensee or operator, shall not be liable for any damages for any defamatory statement published or uttered in a radio or television broadcast, by one other than the owner, licensee or operator, or agent or employee thereof, unless it is alleged and proved by the complaining party that the owner, licensee, operator, agent or employee failed to exercise due care

1993-3-51

Via Facsimile: 465-3871



March 21, 1994

1020 W. Third Ave., Suite 150  
Anchorage, Alaska 99501 1901  
(907) 274 7501  
Fax: (907) 279-8890

Representative Con Bunde  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Alaska 99801

**Re: House Bill No. 360; "An Act relating to civil liability for guest passengers on an aircraft or watercraft; and providing for an effective date."**

Dear Representative Bunde,

I would like to express my support of HB 360; whereby an owner or operator of an aircraft or boat is not liable for the civil damages of a person being transported in the owner's or operator's aircraft or boat, if the owner or operator is not being compensated for the transportation.

It is extremely unfortunate that many people are deprived of the enjoyment of access to much of Alaska because of the liability concerns in being a passenger in a private aircraft. Hopefully, this bill will make it possible for people like myself who own an aircraft and boat, to be able to provide access to much of Alaska that is only accessible by aircraft and boat, without the burden and current liabilities.

Very truly yours,

LYNDEN INCORPORATED

A handwritten signature in cursive script that reads 'Jim Jansen'.

Jim Jansen  
President

JJ:am

cc: Rep. Bill Hudson, Chairman/Labor & Commerce



ALASKA AIRMEN'S ASSN., INC.

SERVING GENERAL AVIATION 40 YEARS (1951-1991)

U of A Aviation Complex  
1515 East 15th Avenue Anchorage, Alaska 99501-4814

(907) 272-1251 — 24 Hour Phone/Fax



January 20, 1994

The Honorable Con Bunde  
Capitol Room 112  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Bunde;

I have discussed House Bill No. 360 with the Board of Directors and wish to advise you that this organization is in complete support of the Bill. If we can provide further assistance in getting this Bill into law, please advise me or any member of the Board.

We would like to further state that we appreciate your interest and action on the behalf of the aviation community.

THANKS!

Sincerely,

Mike Pannone, President

### 3.14 GROSS NEGLIGENCE DEFINED

I will now define gross negligence for you. A person was grossly negligent if: (1) that person's act or failure to act created an unreasonable risk of harm to another; and (2) if either that person had knowledge of facts that would disclose to a reasonable person that the act or failure to act involved a high degree of probability that the harm would occur, or the person knew that the act or failure to act involved a high degree of probability that the harm would occur.

#### Use Note

This instruction must be used with instruction 3.13.

#### Comment

Gross negligence is a concept little used in modern common law. Although many jurisdictions impose a gross negligence standard in bailment cases, for example, the Alaska Supreme Court has adopted the ordinary negligence standard. See Industries Inc. v. Foss Launch & Tug Co., 560 P.2d 393 (Alaska 1977).

The definition used in this instruction was derived from Leavitt v. Gillespie, 443 P.2d 61, 65 (Alaska 1968). See also Instruction 3.03C.

## 3.03A NEGLIGENCE DEFINED

I will now define negligence for you. Negligence is the failure to use reasonable care. Reasonable care is that amount of care that a reasonably prudent person would use under similar circumstances. Negligence may consist of doing something which a reasonably prudent person would not do, or it may consist of failing to do something which a reasonably prudent person would do. A reasonably prudent person is not the exceptionally cautious or skillful individual, but a person of reasonable and ordinary carefulness.

In this case, you must decide whether (plaintiff), (name), (defendant), (name), (both plaintiff and defendant) used reasonable care under the circumstances.

Use Note

Except as indicated in this use note, this instruction is to be given in all cases where the negligence of a party is an issue.

The Supreme Court has approved use of a sudden emergency instruction in cases where the trial court finds one or more of the parties faced such an emergency. Wilson v. Sibert, 535 P.2d 1034, 1037 (Alaska 1975); Beaumaster v. Crandall, 576 P.2d 988 (Alaska 1978). See Instruction 3.05.

The Supreme Court has approved use of a negligence per se instruction in cases where the trial court finds it appropriate. Ferrell v. Baxter, 484 P.2d 250 (Alaska 1971). See Instruction 3.04.

The Alaska Supreme Court has not decided the extent to which, if at all, this instruction is appropriate in cases involving a minor's negligence. See comments and use notes to Instruction 3.03B.