

HB

161

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 161

Revision Date: _____ Dept. Affected: Department of Law
 Title: relating to civil liability for quest passengers BRU: Legal Services
on an aircraft or watercraft... Component: Operations
 Sponsor: Representative Bunde
 Requester: Representative Bunde COMPONENT SERIAL NO. 0093

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

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 or watercraft who is a common carrier; or (3) an act or omission of an owner or operator of an aircraft or watercraft that occurs while demonstrating an aircraft or watercraft to a prospective buyer.

The bill also provides that if an owner or operator has insurance that would compensate a claimant for civil damages awarded against the owner or operator, the owner or operator is not liable for civil damages that exceed the applicable insurance.

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.

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 2/28/95
 Date: 2/28/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 161

Revision Date _____
Title Aircraft/Watercraft Guest Passenger Law

Department Commerce and Economic Development
BRU Insurance
Component Operations

Sponsor Representatives Bunde Tooney
Requestor Representative Bunde

COMPONENT SERIAL NO. 354

Expenditures/Revenues	(Thousands of Dollars)					
	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	00	00	00	00	00	00

CAPITAL EXPENDITURES _____

CHANGE IN REVENUES _____

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	00	00	00	00	00	00

Estimate of any current year (FY 95) cost: \$ 00

POSITIONS	96	97	98	99	00	01
FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
No fiscal impact.

Prepared by	Joan Brown, Administrative Officer <i>[Signature]</i>	Phone: 465-2597
Division	Insurance	Date: 2/28/95
Approved by Commissioner	William L. Hensley <i>[Signature]</i>	Date: <i>[Signature]</i>
Agency	Commerce and Economic Development	

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CS FOR HOUSE BILL NO. 161(TRA)
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE TRANSPORTATION COMMITTEE

Offered:
 Referred:

Sponsors: REPRESENTATIVES BUNDE, Toobey

A BILL

FOR AN ACT ENTITLED

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

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

4 * Section 1. AS 09.65 is amended by adding a new section to read:

5 Sec. 09.65.112. CIVIL LIABILITY FOR AIRCRAFT AND WATERCRAFT
 6 GUEST PASSENGERS. (a) An owner or operator of an aircraft or watercraft is not
 7 liable for the civil damages of a person being transported in the owner's or operator's
 8 aircraft or watercraft if the owner or operator is not being compensated for the
 9 transportation. In this subsection, "compensated" means substantial payment in money,
 10 services, or materials, but does not include a token payment.

11 (b) This section does not apply to a civil action

12 (1) for damages resulting from

13 (A) negligence or reckless or intentional misconduct;

14 (B) an act or omission of an owner or operator of an aircraft or

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watercraft who is a common carrier; or

(C) an act or omission of an owner or operator of an aircraft or watercraft that occurs while demonstrating an aircraft or watercraft to a prospective buyer; or

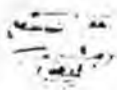
(2) described under (a) of this section if the owner or operator

(A) has insurance that would compensate the claimant for civil damages awarded against the owner or operator; an owner or operator who is insured as described in this paragraph is not liable for civil damages described in (a) of this section that exceed the applicable insurance; or

(B) does not have insurance that would compensate a person being transported as described under (a) of this section for civil damages awarded against the owner or operator and, before the person being transported enters the aircraft or watercraft, the owner or operator fails to provide notice to the person being transported that the owner or operator is uninsured as described in this subparagraph.

* Sec. 2. This Act applies to a cause of action that accrues on or after the effective date of this Act.

* Sec. 3. This Act takes effect July 1, 1995.



REPRESENTATIVE CON BUNDE
CHAIR HEALTH EDUCATION
SOCIAL SERVICES
CHAIR RULES

Alaska State Legislature
House of Representatives

DURING SESSION:
STATE CAPITOL, ROOM 108
UNEAU, ALASKA 99801-1182
(907) 465-4843

DURING INTERIM:
116 WEST 4th AVENUE
ANCHORAGE, ALASKA 99501-2133
(907) 258-8168

SPONSOR STATEMENT

HB 161

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

HB 161 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 161 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 behave in a grossly negligent manner will remain completely liable for accidents and injuries to guest passengers.

HB 161 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 161 is important to the many private boat and plane owners of Alaska. I urge your favorable consideration of this proposed legislation.

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 28, 1995

SUBJECT: Sectional Summary of HB 161

TO: Representative Con Bunde

FROM: Michael F Ford *M.F.*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Limits the civil liability of an owner or operator of an aircraft or watercraft, for injuries to a passenger when the owner or operator is not paid for the transportation. Provides that limited liability does not exist when gross negligence, or reckless or intentional misconduct occurs, when transportation is by common carrier, when a person is demonstrating an aircraft to a prospective buyer, or when the owner or operator has insurance.

Section 2. Applicability section.

Section 3. Effective date.

MFF:klb
95-106.klb



ALASKA AIRMEN'S ASSN., INC.

SERVING GENERAL AVIATION 40 YEARS (1951-1991)

U of A Aviation Complex
1515 East 13th Avenue Anchorage, Alaska 99501-4814
907) 272-1251 — 24 Hour Phone/Fax

March 2, 1995

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. 161 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!

FOR THE PRESIDENT

Mike Pannone, Past President

Via Facsimile: 465-3871

LYNDEN

March 1, 1995

LYNDEN INCORPORATED
120 W. Third Ave., Suite 150
Anchorage, Alaska 99501-1311
907/219-1150
Fax: (907) 279-6000

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

Re: House Bill No. 181; "An Act relating to civil liability for guest passengers on an aircraft or watercraft; and providing for an effective date."

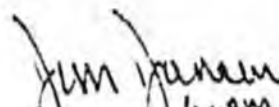
Dear Representative Bunde,

I would like to express my support of HB 161; 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


Jim Jansen by em
President

JJ:am

LETTER OF SUPPORT (LYNDEN TRANSPORT)

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.

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.

(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



Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510
Office: 540 "L" Street, Suite 206 • Anchorage, AK 99501
(907) 258-4040 • FAX (907) 276-7185

Position Paper Regarding HB 161 An Act Relating to Civil Liability for Aircraft and Watercraft Guest Passengers

TO: House Transportation Committee

Representative Gary Davis, Chair
Representative Masek, Vice Chair
Representatives Williams, James, Sanders, Brice and
MacLean

FROM: Debra C. Gravo, Executive Director
Alaska Action Trust

DATE: March 6, 1995

This bill gives owners and operators of aircraft and watercraft special privileges in the event a non-paying passenger is killed or injured because of the negligent operation of the aircraft or watercraft. This newly created special class of Alaskans would be able to escape any responsibility for their wrongful conduct under this bill. The only exceptions set forth in the bill apply to conduct that is deemed grossly negligent, reckless, or intentional, where the complained-of conduct was by a common carrier owner or operator, or where negligent conduct causes death or injury while the aircraft/watercraft is being demonstrated to a prospective buyer. A token payment by a passenger is inadequate to remove the immunity conveyed by the proposed statute.

This bill is bad public policy for a number of reasons:

A. It gives owners of aircraft and watercraft special privileges. This group of people will be treated differently than those of us who operate automobiles, motorcycles, snow machines, or other motorized or non-motorized vehicles. There is no precedent in Alaska or other places and precious little reason for this type of special interest legislation.

B. Passengers in boats and planes have no control over the conduct of the owners and operators. Passengers give up the right to expect safe operation by simply getting on board and are completely unable to protect themselves from negligent operation or faulty maintenance.

C. The skills involved in operating aircraft and watercraft

are not necessarily known to passengers in these vehicles. Passengers are unable to make intelligent choices about whom to ride with because their own inexperience or lack of training keeps them from fairly evaluating the qualifications of the operators with whom they travel. The bill puts these people and their families at peril. The public treasury, frequently used to support the injured and their survivors, is put at peril as well.

D. Responsible owners of aircraft and watercraft insure themselves for the very reason that they wish to provide a fund from which their passengers can collect in the event their carelessness causes death or injury. While this bill allows victims to recover from available insurance proceeds, there is no requirement that owners/operators of aircraft/watercraft be insured.

E. The bill discourages insurance carriers from paying reasonable claims by capping their exposure. This could easily be fixed by an amendment making it clear that a carrier that unreasonably fails to settle a claim within the limits of its policy shall be liable to satisfy the entirety of any judgment ultimately entered in the case.

F. As a practical matter, few people without insurance are sued by their non-paying passengers. This bill can only be seen as an effort to immunize an already privileged class of people.

G. Instead of promoting the safest possible operation of watercraft and aircraft in accordance with good public policy and the welfare of passengers in these vehicles, the bill immunizes negligent acts by this special class of people.

Alaskans will lose, and insurance companies will gain, if this bill becomes law. Just say "No" to HB 161.