

HB

319

*Amended
Pg. 3*

CS FOR HOUSE BILL NO. 319(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/15/02

Referred: Judiciary

Sponsor(s): REPRESENTATIVES KOTT, Dyson

A BILL

FOR AN ACT ENTITLED

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

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

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 **PURPOSE OF SECTION 2.** It is the purpose of sec. 2 of this Act to establish the
7 responsibilities of persons who operate commercial recreational activities and persons who
8 participate in those recreational activities and to decrease uncertainty regarding the legal
9 responsibility for injuries that result from participation in commercial recreational activities.
10 It is also the purpose of sec. 2 of this Act to encourage the continued availability of businesses
11 that offer commercial recreational activities to the public.

12 * **Sec. 2.** AS 05 is amended by adding a new chapter to read:

13 **Chapter 50. Civil Liability for Commercial**
14 **Recreational Activities.**

1 **Sec. 05.50.010. Acceptance of inherent risks.** Participation in a commercial
2 recreational activity constitutes acceptance of the inherent risks of the commercial
3 recreational activity that are or should be apparent to an ordinarily prudent person.

4 **Sec. 05.50.020. Contributory negligence.** (a) A person who accepts an
5 inherent risk of a commercial recreational activity as described in AS 05.50.010 is
6 contributorily negligent to the extent that the inherent risk causes injury, death, or
7 property damage.

8 (b) In an action seeking to recover damages for injury or death to a person or
9 harm to property resulting from an inherent risk of a commercial recreational activity,
10 compensatory damages shall be reduced for contributory negligence as provided under
11 AS 09.17.060.

12 **Sec. 05.50.030. Responsibilities of participants.** A participant in a
13 commercial recreational activity has the responsibility to

14 (1) learn about and expressly accept the risks of the activities;

15 (2) act within the limits of the person's abilities and as allowed by the
16 person's health;

17 (3) heed all warnings regarding participation in the commercial
18 recreational activity;

19 (4) maintain control of the participant's person, a minor under the
20 control of the participant, and any equipment, devices, or animals the participant is
21 using or that are under the control of the participant;

22 (5) refrain from acting in a manner that may cause or contribute to
23 injury of the participant or another person.

24 **Sec. 05.50.040. Responsibilities of operators of commercial recreational**
25 **activities.** A person who operates a business that offers a commercial recreational
26 activity shall

27 (1) explain to a participant

28 (A) the fundamental inherent risks of the commercial
29 recreational activity; and

30 (B) the skills and equipment required to participate in the
31 commercial recreational activity that are not apparent to an inexperienced

Conceptual Amend #2

narrow scope

directly + actually participating in activity

1 participant;

2 (2) require that employees who are responsible for assisting
3 participants in the actual performance of a commercial recreational activity have
4 training in basic first aid and cardiopulmonary resuscitation and explain to those
5 employees how to use emergency medical services available in the area;

6 (3) maintain recreational equipment and facilities in good repair;

7 (4) provide trained and competent personnel; and

8 (5) act in a reasonably safe and competent manner.

9 **Sec. 05.50.050. Interaction with other laws.** This chapter does not affect the
10 immunity of an owner of unimproved land under AS 09.65.200 or of a ski area
11 operator under AS 05.45.

12 **Sec. 05.50.060. Effect of violations.** A person who operates a business that
13 offers a commercial recreational activity and who violates AS 05.50.040 is negligent
14 and civilly liable to the extent the violation causes injury to a person or damage to
15 property.

16 **Sec. 05.50.100. Definitions.** In this chapter,

17 (1) "commercial recreational activity" means a recreational activity for
18 which the participants pay compensation;

19 (2) "recreational activity" means an outdoor activity undertaken for the
20 purpose of exercise, education, relaxation, pleasure, sport, or as a hobby.

21 * **Sec. 3.** AS 09.65 is amended by adding a new section to read:

22 **Sec. 09.65.112. Civil liability for aircraft and watercraft guest passengers.**

23 (a) An owner or operator of an aircraft or watercraft is not liable for the civil damages
24 of a person being transported in the owner's or operator's aircraft or watercraft if the
25 owner or operator is not being compensated ^{or hired} for the transportation. In this subsection,
26 "compensated" means a substantial payment in money, services, or materials, but does
27 not include a token payment.

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

29 (1) for damages resulting from

30 (A) gross negligence or reckless or intentional misconduct;

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

Conceptual Amendment #1

1 watercraft who is a common carrier; or

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

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

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

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

16 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 **APPLICABILITY.** This Act applies to acts or omissions that occur on or after the
19 effective date of this Act.

20 * **Sec. 5.** This Act takes effect July 1, 2002.

ALASKA STATE LEGISLATURE

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Sponsor Statement

HB 319

One of Alaska's major attractions is outdoor adventure opportunities and the businesses that coordinate access to them. They are synonymous with Alaska lifestyles and visitor expectations, yet the associated liability insurance costs continue to be a tremendous obstacle for Alaska's businessmen and women that provide these commercial recreation opportunities.

HB 319 establishes the responsibilities of commercial recreation businesses and the responsibilities of persons who elect to participate in recreation activities. It addresses specific guidelines operators and participants must follow to minimize the possibility of accidents. Commercial businesses remain responsible for meeting safety standards and for providing trained and competent personnel, as outlined in Section 05.50.040.

However, HB 319 adds the presumption that a participant accepts the inherent risks of a commercial recreation activity and as such plays a part in damages resulting from that inherent risk. Likewise, a non-paying guest who is transported by a non-commercial aircraft or watercraft is considered to have assumed the same inherent risks as the commercial recreation user.

This legislation decreases uncertainties regarding the legal responsibilities for injuries and encourages the continued viability of responsible businesses that offer commercial recreational activities to the public. Existing legal uncertainties have resulted in high liability insurance costs. HB 319 helps avoid unfair and unreasonable claims that make it difficult to provide recreational and outdoor activities that Alaskans are so proud of.

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Sectional Analysis CS for HB 319

Section 1: Establishes the purpose of the bill, which is to decrease the legal uncertainties regarding liability for injuries that result from participation in commercial recreational activities.

As well, the purpose of this legislation is to encourage the continued availability of businesses that offer recreational activities to the public.

Section 2: Amends Title 5 – Amusements & Sports, by adding a new chapter entitled, “Civil Liability for Commercial Recreational Activities.”

1. This chapter establishes an acceptance of inherent risk on the part of the participants and responsibilities of the operators. Specifically,
 - a. **Acceptance of inherent risks.** Participation in a commercial recreational activity constitutes acceptance of the inherent risks.
 - b. **Contributory negligence.** A person who accepts the inherent risks of a commercial recreational activity is contributorily negligent to the extent that the inherent risk caused the injury or loss. An action to recover damages shall be reduced for contributory negligence as provided under *AS 09.17.060.
 - c. **Responsibilities of participants.** The participant is responsible to learn about and to expressly accept the risks of the activity and they must heed all relative warnings. They must act within the constraints of their health. The participant must heed all warnings regarding their The participant must maintain control of themselves, any minors under their control and any equipment or animals that the participant is using. The participant must not act in a fashion that could contribute to the injury of another participant.
 - d. **Responsibilities of operators of commercial recreational activities.** An operator must explain to the participants the fundamental inherent

risks of the commercial recreational activity and must explain the skills and equipment that are not apparent to a novice. The operator must ensure that employees that assist participants are trained in basic first aid and in CPR. The operator must maintain all equipment, provide trained and competent employees and act in a reasonably safe and competent manner.

- e. **Interaction with other laws.** This chapter doesn't affect the immunity of the ski area operator immunity or owner of unimproved land.
- f. **Effect of violations.** A commercial operator who breaches their responsibilities laid out in this chapter is negligent and liable to the extent that the breach caused injury or loss to a participant.

Section 3: Amends Title 9 by adding a new section entitled, "Civil liability for aircraft and watercraft guest passengers."

1. This chapter establishes that an owner or operator is not liable for civil damages of their guest except for damages resulting from:
 - a. gross negligence or reckless or intentional misconduct
 - b. an act or omission of a common carrier owner or operator
 - c. an act or omission that occurs while demonstrating an aircraft or watercraft to a prospective buyer
2. This new section also provides that if the owner or operator has insurance is not liable for damages that exceed their insurance coverage.
3. The owner or operator is not shielded by this chapter if they fail to provide notice to the guest that they are uninsured.

***09.17.060 Effect of contributory fault.** In an action based on fault seeking to recover damages for injury or death to a person or harm to property, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for the injury attributable to the claimant's contributory fault, but does not bar recover.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 319(L&C)
 (H) Publish Date: 3/15/02

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Recreational Activity Liability BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Kott
 Requester House Labor and Commerce Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 319.

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 Division: Alaska Court System
 Approved by: Stephanie Cole
 Agency: Alaska Court System

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Ed & Inge Crane

*5260 Lupin Place
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April 4, 2002

Representative Pete Kott
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Kott,

Thank you for your sponsorship of HB 319. Should it become law, it will resolve a range of dilemmas which confront most private pilots and/or aircraft owners in one way or another.

My aircraft (a PA 28-180) is modest with respect to market value, maintenance and operating costs, and capabilities. Nevertheless, it is a source of much enjoyment as well as an indulgence which my spouse and my circumstances can tolerate.

Over the years, a particular and recurring pleasure has been to treat friends and visitors to the awesomeness and beauty of parts of Southcentral Alaska that can be accessed by a simple and inexpensive flight. Because my lifestyle affords an association with younger people, even greater joys have accrued through the introduction of literally dozens of youngsters to general aviation.

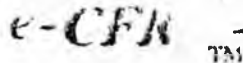
For the past few years, though, as I've had to more seriously contemplate the future for myself and my family, and as I've watched our society become increasingly litigious, those activities have been curtailed. Today, I fly either alone or with my wife only. Because of my record, I am one of those pilots still able to buy insurance (for about \$2,800 annually, and even at that cost it does not cover off-airport operations). However, my policy limits coverage to \$100,000 per passenger. From a practical standpoint, this creates elements of uncontrollable risk which I cannot tolerate. The passage of HB 319 will alleviate that situation in a dramatic way!

Very truly yours,

Ed Crane



Electronic Code of Federal Regulations

The logo for the Electronic Code of Federal Regulations, featuring the text "e-CFR" in a stylized font with a trademark symbol.

THIS DATA CURRENT AS OF THE FEDERAL REGISTER DATED APRIL 5, 2002

14 CFR - CHAPTER 1 - PART 61

[View Part](#)**~~§ 61.113 Private pilot privileges and limitations: Pilot in command.~~**

(a) Except as provided in paragraphs (b) through (g) of this section, no person who holds a private pilot certificate may act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire; nor may that person, for compensation or hire, act as pilot in command of an aircraft.

(b) A private pilot may, for compensation or hire, act as pilot in command of an aircraft in connection with any business or employment if:

- (1) The flight is only incidental to that business or employment; and
- (2) The aircraft does not carry passengers or property for compensation or hire.

(c) A private pilot may not pay less than the pro rata share of the operating expenses of a flight with passengers, provided the expenses involve only fuel, oil, airport expenditures, or rental fees.

(d) A private pilot may act as pilot in command of an aircraft used in a passenger-carrying airlift sponsored by a charitable organization described in paragraph (d)(7) of this section, and for which the passengers make a donation to the organization, when the following requirements are met:

(1) The sponsor of the airlift notifies the FAA Flight Standards District Office with jurisdiction over the area concerned at least 7 days before the event and furnishes --

(i) A signed letter from the sponsor that shows the name of the sponsor, the purpose of the charitable event, the date and time of the event, and the location of the event; and

(ii) A photocopy of each pilot in command's pilot certificate, medical certificate, and logbook entries that show the pilot is current in accordance with §§ 61.56 and 61.57 of this part and has logged at least 200 hours of flight time.

(2) The flight is conducted from a public airport that is adequate for the aircraft to be used, or from another airport that has been approved by the FAA for the operation.

(3) No acrobatic or formation flights are conducted.

Tony Knowles, Governor

Alaska

Department of Community and Economic Development

Division of Insurance

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February 2, 2001

The Honorable Andrew Halcro
House of Representatives
State Capitol, Room 414
Juneau, AK 99801-1182

Dear Representative Halcro:

Re: Aviation Insurance

Legislators, the Division of Insurance (Division) and the news media have all heard from Alaskan air carriers about the difficulty of obtaining affordable liability insurance for their operations. The loss of commercial aviation operations would have a significant negative impact on Alaska, both for the air carriers as well as the rural Alaskans who depend on them for transportation.

The Division has identified options that may improve the availability and affordability of this insurance coverage. The issues of availability and affordability are related yet distinct. Availability refers to the ability of a consumer to obtain insurance coverage. Affordability refers to the price of the coverage.

From discussions the Division has had with consumers and insurance producers, coverage continues to become less affordable. These discussions indicate that renewal premiums may be increasing at amounts up to 50 percent and in a few instances even higher. Some of this increase is due to poor loss experience. Some of it is due to a hardening of the soft insurance market.

Another factor related to the availability and affordability issues is the per seat limit of coverage that air carriers need or want to purchase. Alaska Statute 02.40.010 requires a minimum limit of \$150,000 per seat for bodily injury. Air carriers desiring to purchase higher limits may find availability and affordability problems in obtaining the desired coverage.

SAFETY

Aviation insurers have pointed to the need for more stringent safety in the aviation industry. On June 30, 1999, The National Institute for Occupation Safety and Health issued a report that states the occupation of air taxi pilot in rural Alaska is

more hazardous than that of lumberjack or crab fisherman. However, unlike the air taxi pilot, neither the lumberjack nor crab fisherman routinely places the lives of trusting passengers at risk in the performance of his job.

The aviation insurance availability and affordability problems are directly related to safety. Insurance premiums are driven by the cost of issuing a policy and paying any covered claims. Reducing the frequency or severity of claims has the greatest impact on reducing policy premiums.

Safety programs are an essential factor in reducing claims and, therefore, premiums. Air carriers who implement a comprehensive safety plan and are consistent in carrying out the safety plan should expect to see credits on their insurance policies as a result of these efforts. Use of flight simulator training, which is available in Anchorage, could be part of a safety plan. The air carriers association would be a possible source for additional information on safety programs.

If not adopted on a voluntary basis, safety plans could become a mandatory requirement for air carriers operating in Alaska. This would probably require legislation to implement and set up a statewide safety plan. Difficulties in implementing a mandatory plan include costs to monitor compliance with the plan, development of a safety plan that meets the variety of situations faced by air carriers in Alaska, and possible conflicts with FAA regulation. A mandatory plan could also be an additional burden for those air carriers which currently have an effective safety plan in place.

MARKETS CURRENTLY AVAILABLE IN ALASKA

Based on discussions with consumers and producers, the Division is aware of the following markets that are available in Alaska. Detailed information on these entities should be obtained from the producers or insurers themselves. However, they are listed here to show the various options that may be available now. The players in the market are always subject to change.

United States Aircraft Insurance Group (USAIG) is a group, or pool, of insurers that collectively provide aviation insurance on a worldwide basis. On its website at www.usau.com, USAIG states that its primary goal is "to provide a stable, reliable aviation insurance market by (1) insuring individuals and organizations whose safety standards and loss histories satisfy our underwriting requirements; and (2) charging premiums which are sufficient to support expected losses."

Associated Aviation Underwriters (AAU), the U.S. branch of British Aviation Insurance, is another pool of insurers writing limited business in Alaska, mainly corporate jets with commercial pilots, not owner flown.

London Aviation Underwriters and Houston Casualty Company write air taxi operations as well as other types of aviation risks.

AIG Aviation is non-renewing its book of business.

W Brown & Associates is not writing new business but is renewing its existing book of business.

ACE USA writes in Alaska on a limited basis.

AirSure Ltd. writes mainly large fleets.

Lloyds of London also write portions of some risks.

OPTIONS CURRENTLY AVAILABLE BUT NOT USED IN ALASKA

Pooling may be seen to be a solution to the availability and affordability issues. However, pooling does not necessarily improve the loss experience of the members of the pool. If members of a pooling arrangement have poor loss experience, the costs of insurance coverage may not become more affordable. The following four options are ways that air carriers could join together to purchase insurance coverage. They are listed in the order from easiest to most difficult to implement.

1. Risk Purchasing Group

A risk purchasing group is authorized under the federal Liability Risk Retention Act, 15 USC 3901-3906. Members of a risk purchasing group may be able to obtain better rates and customized forms because of the buying power available to a group that is not available to an individual purchaser. The risk purchasing group can also provide loss control services (e.g. safety programs) for its members. As mentioned above, this is an important feature needed to negotiate better rates. Purchasing groups have been used elsewhere by small airlines to lower costs by avoiding minimum premium charges.

The purpose of a risk purchasing group is to purchase liability insurance on a group basis for its members. The group members must have similar business activities and their risk exposure must be similar or related to one another. A group consisting of air carriers would appear to meet this test.

A risk purchasing group may be domiciled in any state. If it is not domiciled in Alaska, then it must register with the state under AS 21.89.090. Purchasing groups are subject to regulation under Title 21.

Guaranty association coverage is available if the purchasing group obtains coverage from an admitted insurer. Guaranty association coverage provides protection to policyholders if the insurer becomes insolvent and cannot pay outstanding claims.

A purchasing group may only provide liability coverage to its members, therefore hull coverage must still be procured individually.

2. State Based Joint Underwriting Association or Joint Reinsurance

A joint underwriting association (JUA) and joint reinsurance are combinations of insurers joining together to provide the capacity to write a specific type of risk. A JUA and joint reinsurance are distinguished by the way in which the insurers share the risk among themselves. The national pools mentioned above are organizations of this type. The difference between the national pools and a state pool is that only insurers writing in Alaska would combine together and only Alaska air carriers would be able to obtain coverage from the state pool. The premium would be based upon the experience of the JUA or the reinsurance pool.

JUA's and joint reinsurance are subject to rate regulation under AS 21.39.110. Since aviation insurance is exempt from AS 21.39, a JUA or joint reinsurance writing only aviation insurance would be exempt from AS 21.39.110. However, other sections of Title 21 would apply to these pools.

The disadvantage to a state based JUA is that there are few risks over which the exposure can be shared. The law of large numbers is difficult to achieve in the Alaska market. Guaranty association coverage would not be available for non-admitted insurers participating in a JUA or joint reinsurance.

3. Reciprocal Insurer

A reciprocal insurer is an unincorporated aggregation of subscribers operating individually and collectively through an attorney-in-fact to provide insurance among themselves. Ten or more persons may join together to form a reciprocal. The liability of each subscriber is individual, several and proportionate liability, not joint. Reciprocal insurers are authorized under AS 21.75.

A reciprocal insurer controls all aspects of the insurance coverage such as underwriting, rating, and claims handling. A reciprocal insurer is subject to regulation under Title 21. Guaranty association coverage is available to subscribers of a reciprocal.

The main disadvantage of a reciprocal is the start-up costs for establishing the reciprocal. The minimum capital and surplus requirements for an Alaska domestic reciprocal writing liability insurance are \$1,500,000. There is also a relatively small base from which potential members can be drawn.

Alaska Timber Insurance Exchange in Ketchikan is authorized as a reciprocal insurer under AS 21.75. They would be a good source of additional information on the operations of a reciprocal.

4. Risk Retention Group (RRG)

A risk retention group is a corporation or limited liability association formed under the federal Risk Retention Act, 15 USC 3901-3906. An RRG operates like an insurance company to provide liability insurance for the group. The primary

purpose and activity is to assume, or spread among the members, any or all of the liability exposure of the members. The group must consist of members whose business or activity exposure is similar or related to one another.

An RRG must be licensed or chartered and authorized as a liability insurance company in a state. If the RRG is licensed in another state, it must register with Alaska under AS 21.89.090. RRG's are subject to regulation under Title 21.

As with a reciprocal, the primary disadvantage of a risk retention group is the start-up costs. A domestic Alaskan RRG has minimum capital and surplus requirements of \$2,000,000. Other disadvantages are that an RRG may only provide liability coverage to its members, so hull coverage would need to be obtained individually. Also, guaranty association coverage is not available to an RRG.

~~OPTIONS REQUIRING NEW STATUTORY PROVISIONS~~

1. Assigned Risk Plans

An assigned risk plan is one method used to provide coverage in the residual market. (The residual market consists of persons or organizations who cannot get the insurance coverage they need from private insurance companies.) Alaska currently has two assigned risk plans, one for automobile insurance, the other for workers compensation insurance. ~~An assigned risk plan for aviation insurance~~ could be modeled after these plans as in AS 21.39.155. The auto assigned risk plan is also mentioned in AS 28.20.580.

Assigned risk plans are managed by an administrator representing insurers licensed in the state and writing the kind of insurance offered by the plan. Participation in the plan is mandatory with policies assigned to insurers based on their voluntary market share. The plan may use servicing carriers who handle claims and other policy related services. Some plans pool the losses among all participating insurers, other plans require the individual insurer to accept the profit or loss from its share of the assigned risk market.

Implementing an assigned risk plan could cause insurers to withdraw from the state since they may be required to bear additional assessments if the plan operates at a loss. If these assessments are larger than an insurer can bear, the cost can be passed on to their own policyholders, thereby increasing costs for the voluntary market.

2. Risk-Sharing Plans

Arkansas and New Hampshire both have statutes allowing the director to intervene in markets when a kind of insurance is not readily available. The director may direct insurers to prepare a plan to provide the necessary insurance coverage. If the plan submitted by the insurers is not acceptable, the director may develop his or her own plan.

A copy of the Arkansas statute may be found in the Arkansas Code sections 23-95-101 through 23-95-108. This statute may be accessed via the state website at www.state.ar.us.

The New Hampshire statute may be found under NHRSA 404-C. This statute may be accessed via the NH state website at <http://sudoc.nhsl.lib.nh.us/rsa>.

3. Market Assistance Plan

Maine has a statute that allows the director to establish a market assistance plan when a particular type of insurance is unavailable or unaffordable. The market assistance plan is a voluntary agreement between the division and the insurers that the insurers will write the insurance at an agreed upon rate for those persons that are unable to obtain the coverage.

The Maine statute is found in section 2325-A. Internet access is available at http://janus.state.me.us/legis/statutes/24_A/title24-Asec2325_A.html.

This program was successfully used a couple of years ago when day care liability was difficult to obtain. Additional information on the operation of this program would be available from Maine.

4. Joint Insurance Arrangement

A joint insurance arrangement (JIA) allows members of the JIA to pool contributions to either assume risks from losses to the participants on a group basis or purchase coverage for the participants on a group basis. JIA's are authorized under AS 21.76. JIA's are not subject to regulation by the Division, except for review of the cooperative agreement.

Formation of an aviation JIA would require a statute change since only municipalities, city and borough school districts and regional educational attendance areas may enter cooperative agreements. Guaranty association coverage is not available to members of a JIA.

ALTERNATIVE MARKETS

There are at least two sources of information for hard-to-place coverage. The National Underwriter publishes a supplement called "Agent/Broker Buyers Guide to Insurance Coverages." Rough Notes Company, Inc. publishes "The Insurance Marketplace." Both of these guides list markets by type of risk and each of these guides includes an aviation or aircraft section. However, most of these markets may be through wholesalers not licensed in Alaska or with nonadmitted unlisted insurers.

February 2, 2001

tax credit would overcome the underwriting judgment of the riskiness of the market.

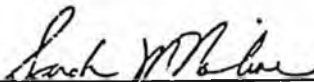
3. Subsidization

Many of the options described are likely to have more effect on availability of coverage rather than affordability. Even in a pooling arrangement, if claim costs are high, the insurance premiums will be high. If claim costs are high, some type of subsidization may be the only way to lower insurance premiums.

CONCLUSION

For any of the options outlined above to improve availability and affordability of aviation liability insurance, the aviation community will need to address safety issues and find ways to reduce the frequency and severity of losses. We have tried to identify various options that may assist air carriers to obtain the coverage they need. If you need additional information, or if you would like to discuss particular options further, we would be happy to discuss these with you.

Sincerely,



For Robert A. Lohr
Director