

HB

271

Alaska State Legislature

HOUSE OF REPRESENTATIVES

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Labor & Commerce



State Capitol, Room
#414
Juneau, Alaska
99801-1182
(907) 465-4939
Fax (907) 465-2418

Labor & Commerce Sub-Committee

Aviation Insurance

Punitive Damage Statutory Limit

An integral part of dealing with the dilemma of unobtainable aviation insurance was addressing the issue of exorbitant court awards.

So Rep. Halcro went to the source: spoke with representatives of the insurance companies:

- the issues of pooling and industry enhancements in the way of safety initiatives are fine in their own right, but.....
- the only viable solution that would have a direct effect on insurance rates would need to involve some sort of tort reform.

Consensus of recent AK Air Carriers Conference that some sort of Tort Reform is the real solution.

In this regard, Work Draft #22-LS0741A Limits the amount of punitive damages that can be awarded in the event of an aviation accident.

The amounts shown are purely a starting point, being reflective of what is currently in statute under other limits:

A plausible solutions is limits not to exceed:
\$500K for with < 100 employees
\$1M for companies with > 100 employees

Intention: To provide a tangible limit to the liability incurred when writing policies in Alaska.

Factors:

- Jury awards have been steadily increasing in the past decade
- The liability assumed by insurers has been expanded by recent court decisions, which had an immediate, direct affect of increases for policy premiums



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Anchorage Daily News

State air carriers feel insurance pinch

COSTS: Rates have risen at least 20 percent in the past year.

The Associated Press

(Published: February 27, 2002)

Anchorage -- Alaska air carriers are being squeezed by rising insurance premiums and a dwindling number of companies willing to write policies.

Now only a handful of companies offer policies in Alaska.

Air carriers and insurance officials blame high accident rates and repair costs, a slumping stock market and the cost of doing business after the Sept. 11 terrorist attacks.

The bottom line is that increased costs will likely be passed on to passengers.

Rates for Alaska air carriers have increased from 20 percent to more than triple in the past year, depending on the number of company claims, said Mike Salazar, a Ketchikan-based agent with Acordia Northwest, an insurance brokerage firm in Seattle.

"Most air carriers with a clean record had a 20 percent increase," said Salazar, adding that those who had claims are seeing rates go up as high as 200 percent or more.

Mike Vanard, vice president of Seattle-based U.S. Aviation Underwriters Inc., said insurance that his company offers has risen 18 to 30 percent in the last year.

"Insurance is cyclical, it has big, sweeping curves. Right now we're at the opposite (high) end of that curve," Vanard said.

Orin Seybert, president of Peninsula Airways Inc., has been in the commercial airline business since 1956. The longtime Alaska aviator agreed the rates are cyclical.

"I look at insurance like a pendulum, it goes in cycles, every four to six years it goes up," Seybert said. "It's been edging up there and it is absolutely the highest I've seen it."

Seybert said insurance accounts for about 10 percent of his company's overall costs.

Vanard's company is one of about five or six companies willing to offer insurance in Alaska. A few years ago that number was at least a dozen, according to air carriers and insurance officials.

Nationwide, there also has been a decrease in the number of companies willing to insure air carriers.

Aviation insurance companies, who write both general aviation and commercial policies, have paid out as much as \$1.25 for every dollar taken in, but the company would still make money in investments during a healthy economy, said Thomas Turner, an aviation author and former insurance broker based in Cleveland, Tenn.

Until a few years ago underwriters could operate at a loss, turn around and take the money and invest it in the stock market and make a small fortune out of it," he said.

Air carriers see leap in insurance bills

By James MacPherson
Journal Reporter

Insurance premiums are skyrocketing for air carriers, and the number of companies willing to write policies in Alaska has dropped to just a handful in the past few years.

High accident rates and repair costs, a slumping stock market, lawsuits and the terrorists attacks of Sept. 11 are just some of the reasons for soaring insurance costs in Alaska and elsewhere, air carriers and insurance officials say.

The bottom line likely will be increased prices for airplane seats, as the costs will be

passed on to passengers.

Rates for Alaska air carriers have increased anywhere from 20 percent to more than triple in the past year, depending on the number of company claims, said Mike Salazar, a Ketchikan-based agent with Acordia Northwest, an insurance brokerage firm in Seattle.

"Most air carriers with a clean record had a 20 percent increase," said Salazar, adding that those who had claims are seeing rates go up as high as 200 percent or more.

Salazar is not unsympathetic to air carri-

ers. For nearly 30 years before selling aviation insurance, he owned Ketchikan Air Service Inc., a company he sold in 1998.

"Certainly my time in the industry helped me understand the problems on their side of the fence," Salazar said.

Mike Vanard, vice president of Seattle-based U.S. Aviation Underwriters Inc., said insurance his company offers generally has risen 18 to 30 percent in the last year.

"Insurance is cyclical, it has big, sweeping curves. Right now we're at the opposite (high) end of that curve," Vanard said.

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Economy helps push insurance rates up

Continued from Page 1

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Nationwide, there also has been a decrease in the amount of companies willing to insure air carriers.

When selling insurance, companies, whether aviation or otherwise, bet that they will not have to pay out a claim; those buying an insurance policy are betting they may have a claim, said Thomas Turner, an aviation author and former insurance broker based in Cleveland, Tenn.

In the case of aviation, both sides are losing, Turner said, as accidents are up and so are claim amounts.

That also has prompted many insurance underwriters to get out of the aviation business, Turner said.

Key to understanding aviation insurance industry is what is called "loss ratio," the amount of money paid out in claims versus what is taken in by the insurer, Turner said.

Aviation insurance companies, who write both general aviation and commercial policies, have paid out as much as \$1.25 for every dollar taken in, but the company would still make money — 30 percent or more — in investments during a healthy economy, Turner said.

"Until a few years ago underwriters could operate at a loss, turn around and take the money and invest it in the stock market and make a small fortune out of it," Turner said.

Seybert, who has operated in Alaska for 46 years, said he believes the economy more than claims is what drives insurance costs.

"Rates are not determined by losses as much as on the economy in general," Seybert said.

Simply buying aviation insurance is not the problem, but the amount of coverage offered to many carriers may not be sufficient to cover lawsuits, air carrier and insurance representatives say.

Many air carriers in the state are operating at minimum liability coverage levels, but not by choice.

"Some operators are at a \$250,000 per person limit, and in this day and age, that is unrealistic. The carrier is exposed," Seybert said.

Most carriers in Alaska, according to Salazar of Acordia Northwest, carry insurance liability minimums of between \$500,000 and \$1 million per aircraft passenger seat.

"Most attorneys will almost always try to breach that," Salazar said.

The threat of lawsuits scares underwriters, Turner said, and most insurance companies know they'll lose a jury trial. Out-of-court settlements are typical, he said.

"From a legal standpoint, pilot negligence is easy to prove, because almost all accidents do have some sort of pilot error," Turner said.

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Abstract: Focuses on the anticipated rate hikes for *aviation insurance* in the United States according to discussions at the 2000 meeting of the *Aviation Insurance Association* in Washington, D.C. Factors attributed to threats to the market's survival; Challenges in expanding the *insurance* market.

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AVIATION RATES SET TO TAKE OFF

WASHINGTON -- Commercial airlines and air frame manufacturers should prepare for dramatic *insurance* rate hikes later this year, says a top executive for a U.S. *aviation* underwriting group.

A leading underwriting executive in the London market agrees that the airline and *aviation* market cannot survive if claims continue to far outpace premium volume, as has been the case for most of the last decade.

And as underwriters try to push up rates, they will have to address several other market problems, including how to expand the market and replenish a depleted talent pool, said the executives during a session at the *Aviation Insurance Assn.*'s 24th Annual Educational Conference. The AIA held the conference in Washington earlier this month.

Opinions vary on whether the airline and *aviation* market is hardening, observed Daniel M. Izard, president and chief executive officer of Short Hills, N.J.-based Associated *Aviation* Underwriters, a consortium of U.S. underwriters.

Mr. Izard said that he hears from brokers that the market is too overcapitalized to turn, but he quickly pointed out that they have noticed a greater underwriting discipline among insurers.

"Most people recognize the time is at hand" for a market turn, Mr. Izard said.

Rates have been rising for the past six months, though the increases have not been sufficient, Mr. Izard said. Indeed, underwriters "didn't get the job done during the fourth quarter," he said.

But during spring renewals -- a far less busy renewal season for underwriters than the peak fall renewal season -- rate hikes continued, Mr. Izard said.

Rates increased 15% to 20% for those few airlines that renewed their hull and liability *insurance* this spring, he said. Manufacturers' *insurance* rates rose by single digits up to 9%, he said.

"Underwriters appear to have drawn a line in the sand," Mr. Izard said.

For the remainder of the year, he said he expects to see rate hikes "on every class of business" that AAU writes, largely due to the higher reinsurance rates that underwriters are facing.

By the time fall renewals come along, "30% to 40% increases are not going to be uncommon," he predicted.

"We have some very definite changes in rates coming," Mr. Izard warned.

Mr. Izard and London market underwriting executive Graham A. Nichols said a hardened market is critical to maintain the market's viability after nearly a decade of underwriting losses.

For example, premium volume for the London airline and *aviation insurance* market during the 1990s exceeded claims in only two calendar years, noted Mr. Nichols, citing figures produced by the London Processing Centre. The LPC is the paper and electronic-processing unit of the International Underwriting Assn. of London.

And in both years, 1995 and 1996, premiums exceeded claims only marginally. But during the first four years of the decade and in 1998, claims exceeded premiums by between 25% and 75%.

"I don't understand how a market can trade on that set of figures for that length of time," said Mr. Nichols, chief executive and chief underwriter for Westminster *Insurance Agencies Ltd.*, which underwrites on behalf of two French companies in the London market.

"It's a pretty dire scene," he said.

Pointing to the U.S. airline and *aviation* market's 120% combined ratio in 1999, Mr. Izard described the market as "extremely volatile" for investors.

There are probably some emotional reasons to invest in the market right now "but not too many good business reasons," he observed. "Nobody can make money on investment income when we have a level of returns like that."

Mr. Nichols noted that the market does not have a capacity problem. "Whether we can deal with pricing is another question," he said.

"We have a huge responsibility" to the marketplace, Mr. Izard told airline and *aviation* underwriters. "The only way it is going to work is if we make money using other people's money."

Mr. Nichols said that the market does not want a rating correction that is forced on policyholders and underwriters because of a capacity shortfall resulting from investors abandoning the market.

"We don't want to see that happen to our customers," he said.

The consolidation of airlines and air frame manufacturers over the years has compounded the premium volume problem for underwriters, Mr. Nichols noted. Combined risks do not generate as much premium volume for underwriters.

In addition, bigger risks have much greater ability to retain losses or manage them differently using other financial markets, Mr. Nichols said. Such risk financing decisions could pull even more premium out of the market, he said.

"The fact that's not happening now might say something about the price of our product," Mr. Nichols observed.

But in addition to raising rates, airline and *aviation* insurers should take several other steps to improve their underwriting results and their investors' returns, Mr. Izard said.

U.S. underwriters in particular need to expand their market reach globally, he said. European insurers have been better about looking for growth beyond their borders because of the small size of their local markets, he said.

"We have to get aggressive or get left behind," Mr. Izard maintained.

Just as important, he said, is that "we have to provide more than the traditional *insurance* products."

With the convergence of financial services, "people are looking for non-traditional services for financial products," he said.

Outdated technology is another customer service problem for the market, according to Mr. Izard.

"The Internet has changed the world -- has changed how we perceive the world," Mr. Izard observed.

"We have to back away from the traditional way" of dealing with customers, he said. Insurers have to enhance their product, "and the Internet is a big part of that."

But to take advantage of that opportunity, a much bigger investment in technology by insurers will be required, he said.

"Insurers need to catch up quickly" to the technology investments other industries already have made, he said.

At the same time, the airline and *aviation insurance* market faces some "severe problems" in attracting and keeping talent, Mr. Izard noted. "We need to find ways to lure people into the business."

For example, he said, the U.S. market lacks international expertise. "We're a very provincial country, but we need to think more globally."

Mr. Izard said that all of the issues the market faces have important implications. Unless those matters are addressed, airline and *aviation* insurers face becoming takeover targets or having a tough time raising capital, he said.



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By Dave Lenckus

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## Cost of Plane *Insurance* Skyrockets

LONDON, Sep 28, 2001 (AP Online via COMTEX) -- Airlines are being hit with huge increases to insure their planes after the terrorist attacks in the United States, a major *aviation insurance* company said Friday.

Goshawk *Insurance* Holdings, which insures aircraft around the world, said rates had soared as much as 10-fold since the Sept. 11 terror attacks when four airliners were destroyed in the United States.

Goshawk finance director Chris Fagan said the cost of insuring planes against war, terrorism and political risks was increasing before the American attacks. *Insurance* companies have begun reviewing *aviation insurance* policies to reduce heir risk after the American incidents, Fagan said.

The company denied the *insurance* industry was trying to profit from the recent attacks.

"Rates had started to go up anyway. We are reacting to the market," Fagan said.

Airlines around the world have cut services and dismissed staff as their business has plunged in the wake of the crisis. They are also struggling with increased security costs.

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**Alaska Aviation Accident Data Summary**  
**Alaska Interagency Aviation Safety Initiative**  
**NIOSH, Alaska Field Station**  
**April 25, 2000**

Prior to collation, these data were obtained from NTSB, FAA, Alaska Bureau of Vital Statistics, Alaska Office of the Medical Examiner, and the Alaska Department of Labor. All data for 1999 is preliminary.

- **Total aviation accidents in Alaska for the ten-year period of 1990-1999 = 1665, an average of one every other day**
  
- **Total aviation fatalities for 1990-1999 = 398, an average of one every 9 days**
  - ▶ There were 186 fatal crashes involving 194 aircraft during this time period with a total of 398 fatalities.
  - ▶ Of these 398 fatalities, 106 were occupational pilots, 86 were non-pilot occupational fatalities, and 206 were non-occupational fatalities.
  - ▶ The mean number of fatal crashes for this time period per year was 18.6, with an average of 2.1 fatalities per fatal crash, and an average of 39.8 fatalities per year.
  - ▶ 173 fatal crashes involved fixed wing aircraft, 14 involved helicopters (one crash involved both plane and helicopter, so adds to 187)
  - ▶ For 1990-1998, the most common first finding of the fatal crashes was loss of control in flight (28%), followed by in flight collision with terrain or water (28%), in flight encounter with weather (15%), and airframe/component/system failure/malfunction (5%). *(This section has not been updated for 1999 because data is not yet available.)*
  
- **Total serious injuries = 271 (1/90 through 10/99, most recent available data)**
  
- **Total minor injuries = 448 (1/90 through 10/99, most recent available data)**
  
- **Average of 11 pilot fatalities per year out of a commercial pilot workforce of 2600 = an annual pilot fatality rate of 420 per 100,000 pilots (or 0.4%).**
  - ▶ This is equivalent to a 30-year career fatality risk of 12% for commercial pilots in Alaska.
  - ▶ Compared to the average U.S. worker (with a 30-year career risk of 0.12), Alaska commercial pilots have a 100-fold increased risk of fatality.
  
- **Total of direct and indirect costs, and lost future wages based on 11 pilot fatalities per year are over \$18 million**

- **Total of direct and indirect costs, and lost future wages based on average of 9 non-pilot occupational deaths per year = yearly cost of \$9,279,000:**
- **Total of direct and indirect costs, and lost future wages based on average of 21 non-occupational deaths per year = yearly cost of \$26,355,000:**
- **Total combined costs of pilots, non-pilot occupational, and non-occupational fatalities = a total yearly cost of over \$53 million or over \$1.3 million per death.**

**Alaska Interagency Aviation Safety Initiative:**

- The 3-year interagency initiative involves the Federal Aviation Administration (FAA), the National Transportation Safety Board (NTSB), the National Weather Service (NWS), and the National Institute for Occupational Safety and Health (NIOSH). All four agencies share an interest in promoting aviation safety and preventing aircraft crashes. The initiative involves five elements:
  - Gather and analyze data
  - Bring together working groups
  - Work to develop communication and education tools
  - Evaluate effectiveness of and changes in flight safety practices
  - Evaluate progress and suggest additional improvements
- **Goal:** To reduce the number of occupational aviation-related fatalities in Alaska by 50 percent for the years 2000-2009 (compared to 1990-1999)
- **Objective:** To improve aviation data management and collaborative analysis capacity and optimize efforts by federal agencies (FAA, NTSB, NWS, NIOSH, and industry) to reduce aviation accidents in Alaska through partnerships.

**Contact Information:**

George A. Conway, MD, MPH; Jan C. Manwaring, MPH  
Alaska Field Station  
National Institute for Occupational Safety and Health (NIOSH)  
4230 University Drive, Suite # 310  
Anchorage, Alaska 99508  
Phone: 907-271-2382, Fax: 907-271-2390

Tony Knowles, Governor

*Alaska*

**Department of Community  
and Economic Development**

**Division of Insurance**

P.O. Box 110805, Juneau, AK 99811-0805

Telephone: (907) 465-2515 • Fax: (907) 465-3422 • Text Telephone: (907) 465-5437

Email: [Insurance@dced.state.ak.us](mailto:Insurance@dced.state.ak.us) • Website: [www.dced.state.ak.us/insurance/](http://www.dced.state.ak.us/insurance/)

February 2, 2001

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

Dear Representative Halcro:

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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.

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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](http://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 section of Title 21 would apply to these pools.

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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

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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.

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#### ~~OPTIONS REQUIRING NEW STATUTORY PROVISIONS~~

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##### 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](http://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.

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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](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.

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### 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 judgement of the riskiness of the market.

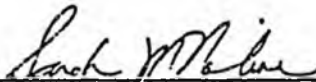
### 3. Subsidization

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

RAL/SMG/pb4958.doc

# ALASKA STATE LEGISLATURE

Representative Lisa Murkowski Chair  
Representative Andrew Halcro Vice-Chair  
Representative Pete Kott  
Representative Kevin Meyer  
Representative Norman Rokeberg  
Representative Harry Crawford  
Representative Joe Hayes



Alaska State Capitol  
Juneau, AK 99801-1182  
Telephone: (907) 465-4954  
Fax: (907) 465-2293  
Representative\_Lisa\_Murkowski@legis.state.ak.us

## HOUSE LABOR AND COMMERCE COMMITTEE

### MEMORANDUM

TO: Senator John Cowdery, Chair  
Senate Transportation Committee

FM: Representative Andrew Halcro, Vice-Chair *AH*  
House Labor & Commerce Committee

DATE: May 3, 2002

RE: Committee Hearing for CSHB 271(JUD)

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At your earliest convenience, could you please schedule CS HB 271(JUD), regarding limits on punitive damages from aviation accidents. If you have any questions, please don't hesitate to call me anytime at x4939.

# ALASKA STATE LEGISLATURE

Representative Lisa Murkowski Chair  
Representative Andrew Halcro Vice-Chair  
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## HOUSE LABOR AND COMMERCE COMMITTEE

### Sponsor Statement

#### CS HB 271(JUD)

**“An Act relating to recovery of punitive damages resulting from an aviation accident and providing for an effective date.”**

In the past few years, aviation insurance has skyrocketed leaving some air carriers in the state without adequate or affordable insurance coverage. The industry's biggest problem regarding insurance relates to liability. In 1998, \$24.68 million was paid out by insurance companies to cover aviation accidents in Alaska, while the industry only netted \$14.74 million in premiums. In order to save air operations in Alaska, the House Labor & Commerce Committee introduced House Bill 271.

Recent court cases have added to an increasing gap between outgoing payments and incoming premiums. Unfortunately, insurance companies have had to raise rates dramatically, creating monetary ceilings, which limit aviation carrier operations by high-cost premiums. Some air carrier businesses have downsized or quit the business altogether. Without adequate and affordable insurance, more companies may quit flying and cut-off an only source of transportation to many communities in Alaska.

HB 271 controls the high cost of premiums by limiting the threat of punitive damage awards and lengthy, expensive trials for punitive claims. In any liability case resulting in compensatory damages(loss of work, life, future wages. etc.), punitive damages are always used as a hammer to leverage higher damage awards.

If premiums continue to climb, most air carriers will be forced to close their doors. A loss of commercial aviation operations in Alaska could severely and negatively impact rural communities.

In some situations renewal premiums have been increasing at 50 percent per year. Alaska Statute requires a minimum limit of \$150,000 per seat for bodily injury. Most air carriers have increased liability insurance to \$500,000 or more a seat to limit bankruptcy award settlements. Affordable premiums or finding coverage is nearly impossible at those levels, hence the impetus for introducing HB 271.

HB 271 clearly limits in state statute punitive damage awards for airplane disasters. By introducing tort reform for air carrier insurance, the Labor & Commerce Committee hopes to lower insurance premiums or stabilize the current insurance market, guaranteeing future air travel for all Alaskans.

# ALASKA STATE LEGISLATURE

Representative Lisa Murkowski Chair  
Representative Andrew Halcro Vice-Chair  
Representative Pete Kott  
Representative Kevin Meyer  
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Representative Harry Crawford  
Representative Joe Hayes



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## HOUSE LABOR AND COMMERCE COMMITTEE

### Sectional Analysis

### CS HB 271(JUD)

**“An Act relating to recovery of punitive damages resulting from an aviation accident and providing for an effective date.”**

**\*Section 1.** Amends the statute AS 09.17.020(h) by adding a new number (1) to renumber and letter current statutes limiting punitive damage awards(drafter’s changes to existing statutes).

Adds a new number to AS 09.17.020(h) that being number (2). New limitations on punitive damages resulting from an aviation accident are added to current statute. Damages are limited by the size of an aircraft, which reflects current FAA size differentiation regulations.

**\*Section 2.** Amends the codified law relating to applicability. \*Section (1) is only applicable if an aviation accident occurred on or after the effective date.

**\*Section 3.** States that the effective date will be July 1, 2002.

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 271  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
Title An Act relating to recovery of punitive BRU Insurance (116)  
damages resulting from an aviation accident Component Insurance Operations  
Sponsor House Labor & Commerce  
Requester House Labor & Commerce Component No. 354

**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      | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| Travel                 |            |            |            |            |            |            |
| Contractual            |            |            |            |            |            |            |
| Supplies               |            |            |            |            |            |            |
| Equipment              |            |            |            |            |            |            |
| Land & Structures      |            |            |            |            |            |            |
| Grants & Claims        |            |            |            |            |            |            |
| Miscellaneous          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |  |  |  |  |  |  |
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| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

|                               |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

|                                    |            |            |            |            |            |            |
|------------------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts              |            |            |            |            |            |            |
| 1003 GF Match                      |            |            |            |            |            |            |
| 1004 GF                            |            |            |            |            |            |            |
| 1005 GF/Program Receipts           |            |            |            |            |            |            |
| 1037 GF/Mental Health              |            |            |            |            |            |            |
| 1156 GF Receipt Supported Services |            |            |            |            |            |            |
| <b>TOTAL</b>                       | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

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 |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

**ANALYSIS:** (Attach a separate page if necessary)

This bill has no fiscal impact on this component.

Prepared by: Robert A. Lohr, Director Phone 907-269-7900  
Division Insurance Date/Time 4/9/02 8:35 AM  
Approved by: Deborah B. Sedwick, Commissioner Date 4/9/2002  
Agency Department of Community & Economic Development

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 271  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An Act relating to recovery of punitive damages from an aviation accident BRU Risk Management  
 Component Risk Management  
 Sponsor House Labor and Commerce  
 Requester House Labor and Commerce Component No. 71

**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          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |  |  |  |  |  |  |
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| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

|                               |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

|                                         |            |            |            |            |            |            |
|-----------------------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts                   |            |            |            |            |            |            |
| 1003 GF Match                           |            |            |            |            |            |            |
| 1004 GF                                 |            |            |            |            |            |            |
| 1005 GF/Program Receipts                |            |            |            |            |            |            |
| 1037 GF/Mental Health                   |            |            |            |            |            |            |
| Other (Specify Type--Do not abbreviate) |            |            |            |            |            |            |
| <b>TOTAL</b>                            | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

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 |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

**ANALYSIS:** (Attach a separate page if necessary)

The state's insurance program for aviation liability exposures will not be affected by this bill.

Alaska statute 09.50.280 already exempts the state from punitive damages. The additional protections and limitations being provided in this legislation will have no effect on state agencies that own or operate aircraft or airports that might be interpreted by the courts as "owner or operator of an aviation business".

Therefore, there is no fiscal impact to the state.

Prepared by: J. Brad Thompson, Director Phone 465-5723  
 Division Risk Management Date/Time 4/4/02 4:08 PM  
 Approved by: Jim Duncan, Commissioner Date 4/4/2002  
 Agency Department of Administration



Tony Knowles, Governor

*Alaska* Department of Community  
and Economic Development

**Division of Insurance**

P.O. Box 110805, Juneau, AK 99811-0805

Telephone: (907) 465-2515 • Fax: (907) 465-3422 • Text Telephone: (907) 465-5437

Email: [Insurance@dced.state.ak.us](mailto:Insurance@dced.state.ak.us) • Website: [www.dced.state.ak.us/insurance/](http://www.dced.state.ak.us/insurance/)

April 26, 2002

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

Dear Representative Halcro:

Re: HB 271

Aviation insurance rates have been increasing for several years and the number of insurers offering coverage in Alaska is limited. While there are many reasons for this situation, one factor may be the uncertain exposure related to punitive damages judgments. If the costs of punitive damages are under represented in an insurer's rates, the changes in this bill may not be a major factor affecting aviation insurance rates. However, it may be a factor in an insurer's decision to offer coverage in Alaska. To the extent that this bill can provide certainty to the amount of exposure an insurer will have, it increases the incentive to keep insurers in the Alaska aviation insurance market.

Sincerely,

Robert A. Lohr  
Director

## Aircraft

| Calander Year           | Number of Companies | Direct Losses Incurred | Earned Premium |
|-------------------------|---------------------|------------------------|----------------|
| 1990                    | 47                  | \$13,304               | \$14,034       |
| 1991                    | 44                  | \$31,341               | \$14,929       |
| 1992                    | 42                  | \$5,976                | \$12,433       |
| 1993                    | 45                  | \$8,513                | \$14,465       |
| 1994                    | 45                  | \$9,797                | \$13,488       |
| 1995                    | 48                  | \$18,045               | \$19,790       |
| 1996                    | 47                  | \$19,868               | \$30,799       |
| 1997                    | 46                  | \$25,588               | \$26,195       |
| 1998                    | 39                  | \$31,455               | \$22,691       |
| 1999                    | 40                  | \$13,500               | \$20,263       |
| 2000                    | 40                  | \$31,455               | \$22,669       |
| 2001                    | xxx                 | xxx                    | xxx            |
| 2002                    | xxx                 | xxx                    | xxx            |
| Average Annual % Change | -1.20%              | 8.35%                  | 6.99%          |
| 1990 to 2000 % change   | -12.39%             | 141.67%                | 110.36%        |

\*Dollar amounts are in (\$000)

