

**SB**

**301**

# ALASKA STATE SENATE



Session:  
State Capitol  
Juneau, Alaska 99801-1182  
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Fairbanks, Alaska 99701  
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Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## **Senate Bill 301 Sponsor Statement**

**“An Act relating to granting certain defendants an absolute right to change venue in civil actions; setting venue for civil actions based on employment at the employer’s principal place of business; allowing multiple defendants to control venue by agreement; amending Rule 3, Alaska Rules of Civil Procedure.”**

Senate Bill 301 re-establishes a necessary degree of state-wide consistency with respect to the incidence and size of judgments handed down in civil actions. Towards this end, the Bill provides that defendants in civil cases may elect a change of venue to a district in the state where the defendant lives or a district where the defendant’s principal place of business, or corporate office, is located.

Currently in the state of Alaska there are large disparities in the size of jury awards handed down for similar conduct thereby creating an inconsistency and, in fact, an inequity in the application of damages. What’s more, this irregularity is clearly a function of geography rather than fact-sets.

Simply put, this is an issue of consistency and fairness. The Bill does not seek to absolve businesses and employers of responsibility or to comment on what damages might be awarded for a particular action. Instead, it merely seeks to ensure that those damages are similarly awarded no matter where the action took place.

Defendants and plaintiffs, alike, possess the same reasonable expectation that the civil court process will result in a fair and just outcome. However, substantial dissimilarities in jury awards in some areas of the state suggest that this may not be the case today.

Senate Bill 301 intends to solve this growing concern by re-establishing a level playing field. Allowing the defendant an alternative with respect to venue does not, in any way, guarantee a favorable outcome. Nor is it intended to. It simply promotes consistency from one judgment to the next, *ceteris paribus*.

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB301-Courts-2-21-06  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Change of Venue in Civil Cases RDU Alaska Court System  
 Component Trial Courts  
 Sponsor Senator Seekins Component No. \_\_\_\_\_  
 Requester \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**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 (FY2006) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 Senate Bill 301 grants defendants in civil cases the right to change venue in certain cases. Although this bill will likely result in the movement of cases from some court locations to others, and although this will likely result in a corresponding movement of court resources, the court system does not anticipate a need for additional funds should the legislature pass SB 301.

Prepared by: Doug Wooliver, Administrative Attorney Phone 463-4750  
 Division Alaska Court System Date/Time 2-21-06 @ 10:45  
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 2/21/2006  
 Agency Alaska Court System

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB301-Law-T&WC-2-21-  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title "An Act relating to granting certain defendants an RDU CIVIL  
absolute right to change venue in civil actions;..." Component Torts and Workers' Compensation  
 Sponsor Senator Seekins  
 Requester Senate Judiciary Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**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 (FY2006) cost: 0.0  
 Mark this box (X) if funding for this bill is Included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill amends current law by granting a defendant the right to request a change of venue in civil actions under certain conditions. Under current law, the Superior Court has discretion to grant or deny requests for venue changes.

Passage of this legislation might have a fiscal impact on the Department of Law, but it is anticipated that there would be equal offsetting savings, and that overall the fiscal impact would net to zero.

Prepared by: Kathryn Daughhete, Director Phone 465-3673  
 Division Administrative Services Division Date/Time 2/21/06 2:56 PM  
 Approved by: Kathryn Daughhete for David Márquez, Attorney General Date 2/21/2006  
 Agency Department of Law



**Property Casualty Insurers Association of America**

Shaping the Future of American Insurance

February 21, 2006

Sen. Ralph Seekins  
Chairman, Senate Judiciary Committee  
State Capitol, Room 125  
Juneau, AK 99801-1182

Dear Senator Seekins:

On behalf of the Property Casualty Insurers of America (PCI), I write to express our support for proposed SB 301, allowing the right of change of venue for defendants and plaintiffs in civil actions in the State of Alaska.

PCI is an organization of more than 1,000 member insurance companies who write 40.7 percent of the nation's property/casualty insurance, 50.8 percent of the U.S. automobile insurance market, 39.6 percent of the homeowners market, 33.5 percent of the commercial property and liability market, and 41.6 percent of the private workers compensation market.

Among our member companies' primary duties as insurers is to defend policyholders in civil actions brought by plaintiffs. We do this every day, with in-house attorneys and outside counsel, in all 50 states. And in every state, we seek what every defendant seeks in court: access to justice – fair, swift and efficient.

We believe SB 301 promotes access to fair, swift and efficient justice for defendants and plaintiffs alike in the Alaska court system, by allowing defendants a right already granted to plaintiffs – the right to a change of venue for purposes of ensuring a fair and speedy civil trial. Here are some reasons why we support this legislation:

**Prevents “gaming the system.”** The current statute limiting the right of change of venue in most cases only to plaintiffs is unfair and open to being “gamed” and abused by plaintiffs. Some seek a “home court advantage” in a remote community of the state that may have a bias against a defendant from outside the immediate jurisdiction. This tends to force early settlements that do not accurately reflect the value of a case – and that in turn increases claims costs...and the cost of insurance overall.

**Reduces defense costs, helps manage the cost of insurance.** Cases in more remote areas of the state are often more costly to defend and are subject to delays in smaller court venues. Removing the “home court advantage” threat will reduce filing of marginal lawsuits and encourage fairer settlements.

- more -

Sen. Ralph Seekins  
February 21, 2006  
Page Two

**Promotes equal access to a jury of peers.** In the case of a commercial insurance issue, that may mean a business entity doing business in Anchorage would seek an Anchorage trial to settle a dispute. But it also might mean a Native corporation defending against a lawsuit could seek a change of venue to a more remote jurisdiction closer a native Alaskan community. This right exists today – but belongs, for all practical purposes, exclusively to plaintiffs.

**Mirrors federal law on removal jurisdiction.** In the federal system, removal jurisdiction allows out-of-state defendants to remove cases to a more neutral forum. This bill provides an analogous right in the state system, with the same purpose, to assure that defendants are not required to try cases in a forum where there is a possibility of bias.

**Court authority, remedies retained in proposed HB 301.** No party is left without a remedy where there is evidence of knowledge of the parties or events that would lead to an unfair trial. This bill does not override the court's traditional authority to supervise venue in such cases. But today, such change of venue motions based on the particularized facts of the case are hard to prove and rarely granted. This bill addresses issues of more generalized bias.

For these reasons, PCI supports SB 301 and urge this committee to give the bill a favorable recommendation.

Please do not hesitate to call or write if I can provide further information.

Regards,

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# ANGSTMAN LAW OFFICE

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February 1, 2001

Alaska Claims Service  
ATTN: Jim Wyckoff  
PO Box 871169  
Wasilla, AK 99687

Re: Nelson Lliaban  
Elizabeth Fermoyle  
Mary Brenneman  
Oscar Sam  
Alice Sam  
Abe Friendly

Dear Mr. Wyckoff,

As you are aware, I represent Nelson Lliaban, Elizabeth Fermoyle, Mary Brenneman, Oscar Sam, Alice Sam, and Abe Friendly. This letter states the demand of all of the above except Mary Brennemen.<sup>1</sup>

These claims result from a Frontier airplane crash that occurred on Frontier Flight #522 on \_\_\_\_\_ day, October 22, 2000. Your client may not wish to term the a "crash," as the landing occurred at a runway, but my clients definitely feel that it was a crash landing. The plane lost control immediately before, during and/or after touchdown, skidded horribly, sheared off 3 1/2 of its four props on the right and some of the props on the left, and eventually came to rest 80 or 100 feet off the edge of the runway, nose in the dirt. The incident was terrifying, and many aboard felt they were about to be torn apart and die. There will be no question in a Bethel jury's mind that this was a crash landing, and a serious one.

All of my clients have physical injuries resulting from the crash. However, having reached an expeditious settlement with your client previously in at least one other case, I am hopeful that

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<sup>1</sup> Mary Erenneman's physical injuries are serious and ongoing to the extent that she is receiving care in Oregon. I will not be able to present Ms. Brenneman's demand until the extent and prognosis of her physical injuries becomes more clear. But as to the others, the physical and emotional injuries have plateaued to the point that they are ready and willing to settle their claims.

the instant claims are ones about which your client and I can discuss settlement fairly quickly. To that end, I have provided statements written by my clients describing their emotional and physical injuries. I will not belabor the point made in those statements, as the passengers speak about the crash and its aftermath far more eloquently than I could.

The crash apparently resulted from pilot error. The passengers claim that the plane was coming in way too fast, in windy conditions with low visibility. As your client is aware, the standard of liability for incidents such as this are essentially strict liability. As the Alaska Supreme Court has often repeated, "air crashes do not normally occur absent negligence, even in inclement weather." Widmyer v. Southeast Skyways, Inc., 584 P.2d 1, 14 (Alaska 1978). "Airline passengers are completely at the mercy of the carrier and are entitled to assume that the highest degree of care is being taken for their safety." Id. Moreover, a common carrier airline cannot escape liability for a crash attributable to an independent contractor's pilot error. Alaska Airlines, Inc. v. Sweat, 568 P.2d 916, 925-26 (Alaska 1977).

So liability will be clear. As to damages, each of the five claimants presents a slightly different picture. All have physical injuries and significant emotional distress claims.<sup>2</sup> As the attached statements verify, each has a different take on what happened, what physical injuries were suffered, and how the terror of the crash affect their lives. However, these are being presented together in order to facilitate a universal settlement figure (exclusive of Mary Brennemen), used to compensate each passenger.

#### 1. Elizabeth Fermoye.

Ms. Fermoye suffered through the event with "the most terrifying and feeling that we were going crash with a big explosion and impact either onto the ground or into some building and explosion on impact." After the plane came to rest, "one of the passengers help (sic) me tight and told me to 'let it all out.' I started crying and screaming into his arm. I was terrified and in a state of shock." For the next few hours, "I would start crying -- I was filled with anxious feelings and I was still so terrified."

Physically, one week after crash, Elizabeth had "excruciating pain all along my lower back just over my buttocks" and a "bruise on leg." Also, "my back was in constant pain especially my left side till December."

Emotionally, the trauma persisted. "Whenever I talked to people I know I tell them what happened and I would start crying." As you are aware, to western Alaskan villagers, flying bush planes is an everyday part of life. Yet to Elizabeth, climbing into another plane forced her to relive the incident in a morbid and awful way. "I did meditations and prayed that's how I got on a

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<sup>2</sup> Fortunately, none have a substantial lost income claim, with the exception of Nelson Lliaban and Alice Sam, discussed below. But each are willing to forego their lost income claims to settle the balance of their damages claims.

plane. But I was still terrified."

## 2. Abe Friendly.

Like Elizabeth Fermoye, Abe Friendly has "not yet recovered, physically or emotionally." Abe describes, in even more vivid detail, the terror of this crash landing. His description is gripping:

A fraction of a second later, the whole aircraft began to shake. The shaking became extremely violent and had it not been for the seatbelt, I would have been thrown out of my seat. At that point, I thought... "This is it! This is it!" I thought that that moment was the last in my life. The shaking was so violent that I expected to see the aircraft torn to pieces and to see debris thrown about. I expected the aircraft to tumble over on-end. I shut my eyes, not wanting to witness what I believed to be the last moments of my life, seeing my limbs dismembered, pieces of the aircraft flung at my head, and other passengers being torn apart. As I squeezed my eyes closed, other passengers were screaming.

Like Elizabeth, Abe was "very shaken up." He did not even notice the cold of the evening and that his jacket was unzipped. He "had tears occasionally coming out my eyes." The accident was even more traumatic to Abe considering that years earlier, his own mother had been killed in a plane crash.

Displaying classic severe post traumatic stress symptomology, Abe reports, "I found that wasn't thinking right. . . . The remainder of the week was a shambles. I was trying my best to get about business, but I was upset. There were times when I would find myself seemingly unable to perform the simplest of tasks. I was not myself." Abe relates, as examples, losing his wallet, oversleeping, and missing his rent payment.

Abe has not completely recovered from his physical injuries "I still occasionally have pain in my lower back." But more significant is the emotional trauma he is left with:

Every time I get on a plane, the crash comes back in vivid detail. Every time I'm on a flight and feel the landing, I expect the worst; . . . I thought my life was ending on Flight 522. I was trapped in a plane that was crashing. I thought I was about to be dismembered, and believed I and the other passengers would be torn apart in the aircraft. I thought I was about to die. My life following the crash was in chaos. My ability to perform my work has been compromised because of my fear of flying. I have had difficulty conducting my personal affairs in a coherent fashion; I have been forgetful, inattentive, drifting emotionally, trouble sleeping, tormented by nightmares.

### 3. Nelson Lliaban.

Like the others, Nelson Lliaban has been severely traumatized by the crash. From the moment Nelson "looked up toward the cockpit and noticed that the nose of the plane was turning to the right, [and he] saw the pilot trying to turn the plane to the left with the stick," Nelson knew he was about to have a near-death experience.

In the last moments of the crash, as "the nose went down and hit the ground," Nelson began

thinking of my two children, Brenden who is five and Christian who is two years old. I thought of them growing up without a father, all I could see is their faces smiling at me, not knowing if I was going to ever see them again.

But it was not until Nelson left the plane, when he "saw the nose of the plane in the ground and the propellers bent backwards, one of them had broke completely off, that [ ] it hit me that we could have died, and then I started to cry." As is common with trauma survivors, Nelson replayed "the plane crash went over and over in my mind, thinking of the worst outcome." Returning home, "all that day I cried, happy to see my kids."

For entire week following the crash, Nelson was totally unable to attend work. Nelson is a school teacher at the Yupiit School District in Akiak. However, for the week following the accident, he could not rouse himself to face the children. He could not force himself to care, either, classic symptoms of the type of post-traumatic depression that sends veterans and catastrophe survivors into a spiral of depression and petulance: "I missed a week of work not caring if I lost my job."

Perhaps more distressing, Nelson has become withdrawn, emotionally fragile, morose and depressed since the accident. "Since the crash I am thankful that I am alive, but also wake up thinking will this be the day." Nelson shares the other passengers' near inability to board a plane since this crash: "I'm terrified of flying, knowing that I don't have control over anything that might happen during the flight, I've been on four flights since then, I have such severe panic attacks I have to restrain myself mentally."

### 4. Oscar Sam.

Oscar and Alice are true bush elders. As with the others, they experienced great distress both during, after, and ever since the crash. Not fluent in English, I had the Sams describe their feelings and experiences to me, sometimes using a translator, and put those thoughts down in affidavit form, which they read and signed.

From where 67-yr old Oscar was sitting in the plane (on the right), he looked out his window and was horrified to see "the prop blades being ripped off, and I was terrified that they

would come through the window and kill me and my wife." Understandably, after deplaning, he and his wife "huddled and cried with other passengers."

Physically, Oscar has suffered since the accident. He is a classic "eggshell skull plaintiff," as he came into the incident with an already-damaged back. However, the back had not been ~~by~~ bothering him until the crash. In Oscar's words, "it had been feeling fine before this crash. After the crash, my back hurt me much worse. I cannot even pick up a honeybucket unless it is less than half full."

Perhaps most important to Oscar is his lost ability to engage in subsistence activities. His back pain makes it, in Oscar's words, "it harder or impossible for me to do subsistence activities." And, considering that, since I retired, subsistence activities are a main focus in my life," Oscar's lost enjoyment of life claim is significant. Moreover the lost food itself (salmon, moose, caribou) is of significant value, and estimating his life expectancy at 7 to 10 more years, our economist has opined that the economic loss alone of the subsistence foods is over \$10,000.

Emotionally, Oscar though a proud elder, still suffers, though perhaps more silently than his wife or others might. It is not in his way to complain loudly or cry. Still, he avers to "terrified of flying in small planes after this. Since the accident, my wife and I travel by hovercraft or by snowmachine."

#### 5. Alice Sam.

60-yr old Alice suffered in the same sort of ways. She remembers herself "screaming" during impact. After deplaning, Alice recalls being "in shock. I felt numb all over, and as I waited with the other passengers, the terror of the experience really hit me. I was very upset."

At the hospital, Alice became even more terrified as she felt her own body in a state of ~~controlled~~ stress. She felt her "heart racing very fast, and that frightened me. My blood pressure was high." But beginning the next day, Alice's

back started hurting, and it got worse and worse. My back was so knotted up in the upper part, that there were spasms and very painful cramps that hit me. It was terrible. I had to have my son-in-law, Robert, push the knots out every day. The pain spread around the front of me to my shoulders. The pain also spread up the back of my neck to the back of my head, and caused headaches, and caused me to feel nauseous and sickly. I could not sleep at nights, from the pain and flashbacks.

The pain was so bad that she had to quit her job at the clinic.

As verified in her affidavit, this amounts to a modest lost income claim. But she, and the other passengers, are willing at this time to forego this factor to settle in good faith the other elements of her damages claims. Like Oscar, Alice absolutely refuses to get on a plane since this

crash. When she and Oscar came to my office, they had to take the hovercraft to get to Bethel from Akiachuck.

### Demand

Each claim in this case is significant. Physically, each claimant's pain and suffering has been grievous. The pain in these passengers' necks, backs and legs persists, and is exacerbated by activity. All have lost significant enjoyment of life, and some have been prevented, by pain, from performing certain activities altogether.

But the primary component of damages in this case is emotional damages. Out here in the bush where flying planes is a practical reality, plane crashes are taken very, very seriously. They are feared and loathed. Victims are known to experience drastically reduced mobility and are forced to forego countless excursions that are routine part to friends and family. The anxiety, panic, and macabre images that these crash victims will feel sitting in a plane, if they are ever able to re-enter one, will be indelible. The accumulated hours that they cannot sleep at night, or minutes spend lost in memory, rather than attending to a task at hand -- innumerable.

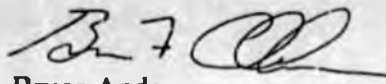
As you may be aware, Bethel is a town whose juries are used to awarding a lot of money for pain and suffering. For example, moved by subjective complaints of pain that allegedly disrupted their lives, a Bethel jury recently awarded five ladies \$75,000 each following an accident where a cab driver tapped the ladies' vehicle at under 5 mph; none of the ladies sought or received any medical treatment whatsoever, had no lost income, and were not claiming emotional distress. See, Gloria Anvil, et. al.

Myron Angstman is a pilot himself, and has been successfully litigating airplane crashes for 22 years. He estimates that a Bethel jury would award six figures each to these passengers for the emotional distress damages alone. However, in the interest of compromise and early settlement, five passengers listed above would be willing to settle all claims for \$75,000 each.

The power of the statements of these passengers will not be lost on either your client or a Bethel jury. States Nelson Lliaban: "every airline has a responsibility to every person getting on their planes to get them to and from their destinations without cause for fear of alarm. I didn't ask for this extra baggage, and I never asked for this to happen. All I know is that I'll never be the same." Or, Abe Friendly's conclusion: "It will be extremely difficult for me, if possible at all, to forgive Frontier Airlines for what it has done to me."

My clients' offer will remain open for 21 days.

Very truly yours,



Bruce Anders

Attorney At Law

Encls.

## STATEMENT

DATE: 10/22/2000

TIME: 1353 Local

LOCATION: Bethel, Alaska Rnwy 36

INCIDENT: Mechanical Malfunction

PIC: F. David Bertrand

ATP# 2144087

SIC: Brian Parish

COMM# 569691750

AIRCRAFT: N575D BE1900D

WEATHER: VFR, RNWY DRY, Wind 310/15 G25

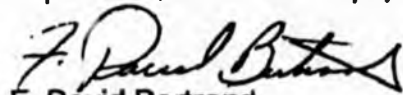
INJURIES: None (17 PAX)

DAMAGE: Nose Gear, Props, and Pressure Vessel/Exterior (Right Side)

On the above date and time, I Frederick David Bertrand (PIC) attempted to exit runway 36 at either taxiway "G" or "D" after the landing rollout. Because of the strong winds, it was necessary to engage the power steering to assist with the left turn, a normal procedure used.

As I engaged the power steering, which was armed by the First Officer at my request, the aircraft executed an immediate right turn of approximately 45 degrees. Both the First Officer and myself attempted to counter-respond the event with full left rudder and maximum left braking. All attempts were unsuccessful, causing us to exit the runway, collapsing the nose gear, and sheering the props.

Evacuation of all passengers was immediate and safely done. All passengers were asked if anyone was injured and all passengers responded that they were fine and that nobody was hurt. The passengers were routed away from the aircraft in a group to wait for airport emergency units to arrive. Approximately 12 to 15 minutes elapsed before the first units arrived. A State Trooper and an airport unit, but no fire equipment arrived on the scene.



F. David Bertrand

Date 10-22-2000 Time 1353 Local

Location: Bethel / Runy 36

Pic: F. David Bertrand  
ATP 2144057

Sic: Brian Parish

Comm 520691750

Type of Accident: Runway Excursion

On the above date and time, I, Brian Parish acting as sic on NB750, was part of a runway excursion in Bethel, AK. After a normal crosswind landing and roll-out, I was instructed to arm the power steering. After Mr. Bertrand engaged the power steering, the aircraft made an uncommanded turn to the right. All of my attempts to reverse the situation were ineffective. After coming to a stop off the runway, I evacuated the cabin through the main door.

# SUPPLEMENT

RE: 1900D ACCIDENT NS75D

DATE: 10-22-2000

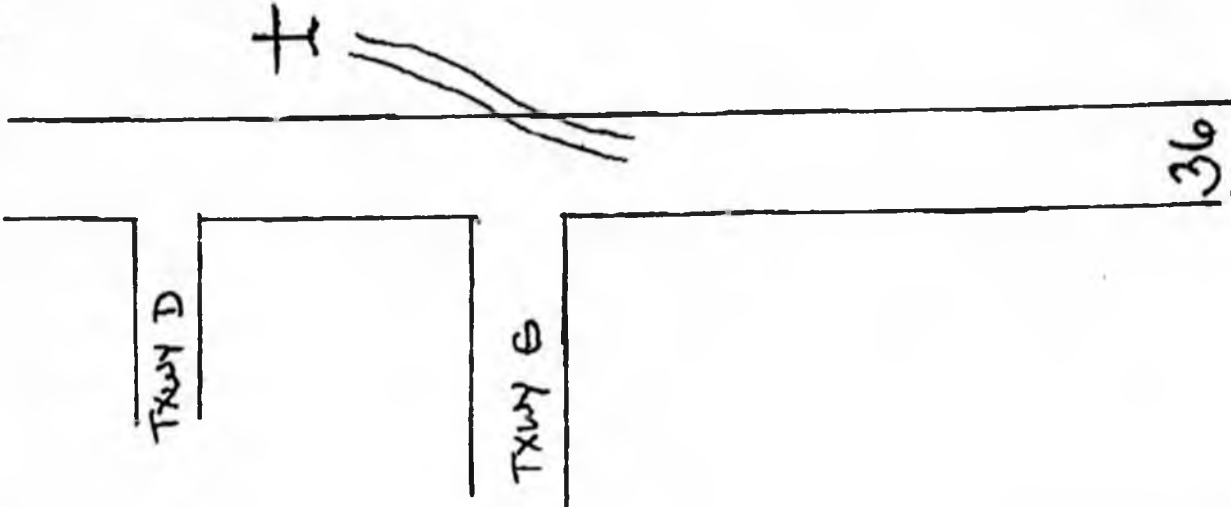
PILOT: F. DAVID BERTRAND

SIC: BRIAN PARISH

LOCATION: BETHEL

E  
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5  
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*F. David Bertrand*

W  
←

Manifest #

80160



Load Computations	
From	Crew Weight
To	Pax Weight
	Cargo Weight
	BOW + Seats
	Fuel Weight
	Total Weight
From	Crew Weight
To	Pax Weight
	Cargo Weight
	BOW + Seats
	Fuel Weight
	Total Weight
From	Crew Weight
To	Pax Weight
	Cargo Weight
	BOW + Seats
	Fuel Weight
	Total Weight
From	Crew Weight
To	Pax Weight
	Cargo Weight
	BOW + Seats
	Fuel Weight
	Total Weight

Aircraft: 25		Station: A-M		Route: A-M = Pat		
Date: 11-22-00		Flight No: 392		ROUTING		
Pilot: Bertrand Weight		Log No: 87508		Remarks:		
Copilot: Parrish Weight		Manifest Prepared By: Jared				
Ticket Status-Remarks One Way - OW Roundtrip 1M - 1R Roundtrip 2nd - 2R	Ticket # or Airway Bill # Record Full Number	Passenger Name or Consignee	Pax Weight	Bags/Freight/Mail Pcs Weight	FROM	TO
2A 1 OW	276115	Blauberger, Michael	183	8 184	Mz	Det
2C 2 OW	276131	Mohrman, Richard	183	1 1		
3A 3 OW	276134	Potts, Luke	183	5 87		
3C 4 OW	276133	Potts, Luke Eamon	183	1 16		
4A 5 OW	276135	Landford, James	183	1 35		
4C 6 OW	276134	Andrews, Kenneth	183	1 10		
5C 7 2nd	275293	Nelson, Michael	183	3 54		
7C 8 OW	276137	Fermoy, Elizabeth	183	1 24		
6A 9 Row	2220179831	Carly, Tom	183	3 69		
6C 10 Row	2220179832	Carl, Mary	183	1 16		
7A 11 OW	276138	Brennan, Mary	183	2 50		
7C 12 2nd	275294	Katherine, Renaud	183	1 8		
8A 13 2nd	276102	Nickmure, Tim	183	2 100		
8C 14 OW	276139	Bouvier, Maria Ellen	183	1 38		
9A 15 OW	276140	Freedly, Abe	183	1 20		
10A 16 2nd	275290	Oscar, Sam	183	4 72		
11C 17 2nd	275291	Alice, Sam	183	1 1		
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**FAX COVER SHEET**  
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**Position Paper on SB 301**

**Prepared by Russ Winner, Chris Schluess, and Meg Simonian  
on behalf of the Alaska Action Trust**

**February 22, 2006**

Alaska Civil Rule 3, which has been in place for many years, provides that venue is generally proper in the court that would best serve the convenience of the parties and witnesses. (Similar venue provisions appear by statute for the state superior and district courts at AS 22.10.40 and AS 22.15.080.) This means that suits are usually heard in courts close to where claims arise. Similar venue provisions exist in the federal courts and the courts of nearly all other states.

SB 301 would change this rule for Alaska. It would grant to most defendants in civil cases involving claims over \$10,000 the absolute right to change venue to their place of residence, the location of their principal place of business, or the location of their main corporate office, irrespective of where the claim arose. SB 301 is apparently intended to give urban defendants, who are sued by rural plaintiffs in rural courts, the absolute right to transfer venue to those defendants' "homo" courts, even for cases that arose in those rural communities.

This position paper is prepared on behalf of the Alaska Action Trust. For the following reasons, we urge that SB 301 not be enacted.

**SB 301 falls victim to the law of unintended consequences.** The bill would not just affect suits filed by rural plaintiffs in rural courts against urban defendants. It would also affect suits filed by urban plaintiffs in urban courts against rural defendants. For example, if a Fairbanks resident is injured in Fairbanks by a rural driver, and if that Fairbanks resident then brings suit in a Fairbanks court, the defendant would have an absolute right under SB 301 to transfer the case to a court near his village. Or, if an urban retailer sells a product worth more than \$10,000 to a rural purchaser who is visiting the retailer's city, and if that purchaser then fails to make payments, under SB 301 the purchaser would have an absolute right to have a collection suit transferred to a rural court. Or, if a bank loans more than \$10,000 to a rural resident who fails to repay the loan, and the bank then brings suit for payment, under SB 301 that bank will probably find itself prosecuting the case in the defendant's rural community. These results would be unfair to those plaintiffs. Instead, cases should generally be heard by juries from the communities where claims arise.

**SB 301 is unconstitutional to the extent that it deprives rural Alaskans of access to courts in their communities.** To the extent that SB 301 would deprive rural Alaskans of venue regarding civil claims arising in their communities, the bill would violate their constitutional right to due process, equal protection, and a jury of the peers.

In *Alvarado v. State*, the Alaska Supreme Court held that the constitution protects the right of rural Alaskans charged with crimes to trial before a jury picked from their communities:

The necessity for selection of juries from a source which truly represents a fair cross section of the community cannot be overemphasized. The jury is an essential institution in our democracy, and serves multifaceted purposes.

\* \* \* \*

The jury, like the right to vote, is fundamentally preservative of ideals which are essential to our democratic system. When the impartiality of jurors is neglected, '(t)he injury is not limited to the defendant--there is injury to the jury system, to the law as an institution, to the community at large, and to the democratic ideal reflected in the processes of our courts.' For this reason, we must be ever militant to protect the notion of our juries as bodies truly representative of the community.

\* \* \* \*

It is of paramount importance that the benefits conferred by the Constitutions of the United States and Alaska be extended with an even hand to the people of our state. When a large segment of the population lives in towns and villages scattered throughout the reaches of the state, we cannot afford to succumb to the temptation of convenience by allowing the machinery of justice to become inflexibly entrenched within the enclaves of our major cities. Instead we must tailor our system of justice to meet the needs of the people. It is our judicial system which must take the initiative to assure compliance with the mandates of the Constitution; we cannot simply neglect or ignore communities of individuals located in remote areas of the state. Justice must be made available to all of the people of Alaska.

486 P.2d 891, at 903-906 (1971).

This reasoning has been extended by the Alaska Supreme Court to civil cases. In *Malvo v. J. C. Penney Co., Inc.*, the court wrote:

[A]ny method of jury selection which is 'in reality a subterfuge to exclude from juries systematically and intentionally some cognizable group or class of citizens in the community' is clearly invalid.

512 P.2d 575, at 580 (1973).

Likewise, in *Wilson v. City of Kotzebue*, the court wrote:

Reduced to its essence the city's argument on this point was that a jury consisting primarily of Eskimos would probably be unfair in a civil case involving a government entity. In other words, Eskimos should be disqualified from jury service in this type of case. We believe that the court erred in accepting this position. There are now resident superior court judges in three Alaskan cities where Eskimos are the predominant ethnic group. Jury trials have for many years been conducted in these cities. There has emerged from these cases no pattern of jurors being unwilling to follow the court's instructions. To be sure, general community attitudes in these cities may well be different from those which might prevail elsewhere, but such differences can better justify retaining rather than changing venue. . . . In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home.

627 P.2d 623, at 635 (1981).

SB 301 is unconstitutional to the extent that it deprives rural Alaskans of the right to a civil trial by a jury of their peers living in their community.

For the above reasons, we urge the Alaska legislature to not enact SB 301. Thank you for consideration of these views.



# Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary  
 committee name  
 committee on SB 301, dated March 1, 2006  
 bill/subject

6 pages - testimony

This fax: = 7 pages total

Signed: Richard Quinn

Testifier Alaska Air Carriers Assoc

Representing (Optional)

Address

Phone No.

Position Paper on SB 301 by the Alaska Air Carriers  
Association -- Response to Arguments by Plaintiffs' Bar  
Prepared by Richmond & Quinn

The Alaska Air Carriers Association supports SB 301 and urges that it be enacted. The Alaska Action Trust, the lobbying arm of the Alaska Trial Lawyers Association, filed a position paper opposing SB 301. The arguments made by the Trust are simply incorrect. Moreover, there are a number of other objections that have been raised with respect to the bill which do not withstand scrutiny.

I. Senate Bill 301 Does Not Amend the Civil Rules;  
Therefore The Bill Need Not Be Enacted By A Super-Majority

Rule 3 of the Alaska Rules of Civil Procedure is unaffected by the proposed Senate Bill. Currently, there is both a statute and court rule regarding venue. Alaska Civil Rule 3 addresses where in the state a civil action may be brought initially. Senate Bill 301 does not change this. Specifically, Civil Rule 3(a) through (c) address in which Judicial District a case may be commenced. These sections allow, but do not require, that cases can be brought in the venue district where the claim arose, if the venue district has jurisdiction over such suits. None of these provisions are affected by Senate Bill 301.

Moreover, change of venue currently is and historically has been a legislative matter. Civil Rule 3(d) subordinates the court's authority to change venue to the legislature, stating that the authority of the court is "subject to a change of venue motion under AS 22.10.040." SB 301 merely adds a new subsection (b) to the current statute, a statute that the rule already directs the courts to follow with respect to change of venue issues. Accordingly, Senate Bill 301 also makes no change to the civil rules in this area.

Although the Civil Rules control the place of initial filing, through the incorporation by reference of the change of venue statute, AS 22.10.040, the rules grant the legislature primacy with regard to change of venue issues. Indeed, the Civil Rules do not even provide for change of venue between Judicial Districts. At most, Civil Rule 3(d) allows a court to move a case between venue districts within a judicial district. As stated above, however, that

right is subject to the right to control venue under AS 22.10.040.

Because the venue rule already provides for legislative control over change of venue issues, Senate Bill 301 does not change those rules. Indeed, given that the venue statute is already incorporated into the rule by reference, Senate Bill 301 does not require or contemplate changing any of the language or intent of the civil rules.

II. Plaintiffs In Civil Cases Have No Constitutional Right To A Choice of Forum, Or To Force Their Choice of Venue On Other Parties In A Lawsuit

The Trust argues that a plaintiff has the right to choose where a complaint is heard and decided, and in fact that this right is constitutionally protected. The contention that plaintiffs, but not defendants, have a constitutional right of forum selection in civil cases has never been accepted by the Alaska courts, and has no merit.

As noted above, the Trust argues that plaintiffs have a constitutional right to a civil trial by a jury of their peers living in their community. A necessary corollary of the Trust's position, of course, is that defendants do NOT have a right to a civil trial by a jury of their peers in their community, but that plaintiffs can force their choice of venue on defendants. Thus, under the Trust's view, only plaintiffs have a constitutional right to a civil jury of their peers, a position that is unreasonable on its face. This position cannot be supported; the constitution does not favor the rights of civil plaintiffs more than those of defendants.

The Trust cites Alvarado v. State,<sup>1</sup> a 1971 Alaska Supreme Court case, and Malvo v. J.C. Penney Co., Inc.,<sup>2</sup> a case from 1973, as support for its contention that SB 301 infringes on the Constitutional rights of Alaskans. A simple examination reveals that these cases do not support the Trust's position.

<sup>1</sup> 486 P.2d 891 (Alaska 1971).

<sup>2</sup> 512 P.2d 575 (Alaska 1973).

Alvarado v. State was a criminal case in which the trial of a man who had allegedly committed a crime in Chignik was venued in Anchorage. The Alaska Supreme Court found that he had a constitutional right to have the case tried as close as possible to the area in which he committed the crime. The criminal trial concept, adopted in Alvarado, that a trial should occur in the locale where a crime has occurred, has never been applied to civil cases.

The criminal defendant Alvarado challenged the selection of jurors from a 15 mile radius around Anchorage, claiming that there were not enough Alaska Natives to mirror his community of Chignik. The Supreme Court broadened its inquiry into why the case was tried in Anchorage at all, given the 6<sup>th</sup> Amendment right that all criminal defendants enjoy. The Supreme Court noted that it was not holding that "citizens from the town or village in which a crime has been committed may never be excluded from representation of the jury panel."<sup>3</sup> However, as the court recognized, it was well-established that jurors from the area in which the crime had occurred should be excluded when "it appears that an unbiased jury could not be drawn therefrom."<sup>4</sup> Alvarado has not been extended to and does not apply to civil cases, despite the Trust's unsupported statement to the contrary.

Nor does the Malvo v. J.C. Penney Co., Inc., case assist the Trust's position. Malvo does not even address issues of venue; rather it addresses the systematic exclusion of persons from juries. In Malvo, the plaintiff contended she had been deprived of a fair trial solely because there had been no blacks on the jury.<sup>5</sup> The Alaska Supreme Court disagreed, holding that the jury composition was proper unless the plaintiff could prove a "systematic and intentional exclusion" of jurors.<sup>6</sup> The Malvo case does not stand for the position that a case must be tried at a particular place, or to a particular jury.

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<sup>3</sup> Alvarado, 486 P.2d at 904 (emphasis added).

<sup>4</sup> Alvarado, 486 P.2d at n. 38.

<sup>5</sup> Malvo, 512 P.2d at 580.

<sup>6</sup> Malvo, 512 P.2d at 580.

Finally, the Trust quotes Wilson v. City of Kotzebue.<sup>7</sup> That case holds, at most, that a jury trial in a civil case may not be moved from a rural to an urban area only because the urban venue is more convenient or has better facilities than the rural venue.<sup>8</sup> In Wilson, the defendant City of Kotzebue argued that its own citizens would not treat it fairly. The Supreme Court held that, under the then existing venue statute, a civil case by a citizen against the city in which the trial court resided should be tried within the city.<sup>9</sup> Wilson did not even address issues of constitutionality, but was a decision addressing the venue statute.

Indeed, the civil venue statute already allows for change of venue out of the plaintiff's community, showing there is no constitutional protection for plaintiff's choice of venue. This statute has been repeatedly upheld.

### III. SB 301 Is Neutral on Urban/Rural Issues.

SB 301 is neutral in its treatment of rural and urban parties. It provides rights to urban and rural defendants equally, and it affects the rights of both urban and rural plaintiffs to dictate the choice of forum. Under the new law, a business based in Nome would be able to defend a case against it in Nome. Businesses based in Bethel, Kotzebue, or Barrow would be able to defend themselves in their home communities. Under the law as it now stands, a rural defendant in an urban court is under the same disadvantage as an urban defendant in a rural court.

The Trust suggests that the even-handedness of the bill is somehow a "flaw." It is not. Rather, the bill rectifies the current statutory scheme, which greatly favors plaintiffs, and disfavors defendants. SB 301 will benefit urban and rural defendants alike. The example provided by the Trust, that of a bank being required to sue a rural resident on a bank loan in a local court, simply proves that the bill does not discriminate between rural

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<sup>7</sup> 627 P.2d 623 (Alaska 1981).

<sup>8</sup> Wilson, 627 P.2d at 634-635.

<sup>9</sup> Wilson, 627 P.2d at 636.

and urban populations. Of course, it is interesting to note that their bank example and most other contract cases would never be tried to a jury, but likely decided by the court on summary judgment. Thus, the contract plaintiff still has initial choice of venue, and the need for change of venue will not be present in most such cases.

#### IV. Federal Statutes and Rules Allow For Change of Venue

At one of the hearings, opponents of SB 301 were heard to argue that federal law did not allow the defendant to change venue. This is patently incorrect. Under the federal venue statute, venue may be changed for the convenience of the parties and witnesses, or in the interest of justice, to any other division or district where it could have been brought originally. 28 USC 1404(a). This statute allows for transfer of cases to any place in the United States.

Venue in a federal case may be changed within Alaska as well. Under 28 USC 1404(c), the federal court may change trial location to any place in the division in which it is pending. Alaska Local Rule 3.3(d) allows for this as well.

Moreover, under federal removal jurisdiction, a defendant has the right to change venue from state court to federal court in certain situations, e.g., where an out-of-state defendant is sued by a local plaintiff, or where the lawsuit involves a federal question. Thus, under federal law, even the choice of state versus federal venue is subject to change at the defendant's request.

Indeed, for 200 years federal law has allowed out-of-state defendants to remove cases from state courts to federal courts, where the plaintiff is local. The policy reason behind an out-of-state defendant's right of removal is to avoid the possibility that a state jury of plaintiff's choice would show bias toward the local plaintiff, or against the non-local defendant. This is a law and policy that has stood the test of time since the founding of this country, and remains in place and relevant today. SB 301, like the federal removal statute, is designed to provide protection to non-local defendants from bias.

In summary, the issues raised by this bill are not constitutional issues. They are issues which accord fairness to Alaskan business, corporation, and individual defendants.