

**SB**

**139**



## HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120  
(907) 465-4990

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Room 405  
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### MEMORANDUM

Date: January 17, 2008

To: Representative John Coghill  
Chairman House Rules Committee

From: Representative Jay Ramras  
Chairman House Judiciary Committee

Re: Transmittal for HCS SSSB 139(JUD)

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Enclosed please find the following documents pertaining to HCS SSSB 139(JUD):

- Sponsor Statement
- HCS SSB 139(JUD) 25-LS0792\M
- HCR re: Title Change
- House Judiciary Committee Report
- SSSB 139 25-LS0792\C
- SB 139 25-LS0792\A
- Fiscal Notes
  - ADM - 0
  - LAW - 0
- AS 09.65.093
- *McLemore v. Harris* 374 P.2d 410 (Alaska 1962)

Out of Session:  
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# Alaska State Legislature



In Session:  
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## SENATOR DONALD C. OLSON

### DISTRICT T

### SPONSOR STATEMENT

#### SSSB 139, Liability for Airports and Airstrips

Alakanuk  
Ambler  
Anaktuvuk Pass  
Atkasuk  
Barrow  
Brovig Mission  
Browerville  
Buckland  
Chevak  
Deering  
Diomedea  
Elim  
Emmonak  
Gambell  
Golovin  
Hooper Bay  
Kaktovik  
Kiana  
Kivalina  
Kobuk  
Kotlik  
Kotzebue  
Koyak  
Mountain Village  
Noatak  
Nome  
Noorvik  
Nuiqsut  
Nunam Iqua  
Pilot Station  
Pitka's Point  
Point Hope  
Point Lay  
Savoonga  
Scammon Bay  
Selawik  
Shaktolik  
Shishmaref  
Shungnak  
St. Mary's  
St. Michael  
Stebbins  
Teller  
Unalakleet  
Wainwright  
Wales  
White Mountain

SB 139 is introduced to correct changes to the limited liability statutes for runways, airfields, and landing areas enacted by Chapter 39, SLA 04 that inadvertently negated the purpose and intent of that legislation. The original liability limitation applied to airstrips and landing areas on public and private land that are both marked by placement of a large "X" on the ground and are listed as closed in FAA charts and publications.

Specifically, the wording of AS 09.65.093 (b) created confusion as to the requirements an airport owner or operator had to meet to be exempt from liability during time when an airstrip was not actively in use. The problem is that under federal regulations the X marking and the FAA notification is only for "abandoned" airstrips. This was neither the intent of the legislation's sponsors nor the 37 representatives and 20 senators that voted for its enactment.

The proposed House Judiciary Committee substitute for SB 139 resolves the impairment of chapter 39 by deleting the (b) subsection with a corresponding adjustment to include airstrip owners in the (a) subsection. In this way, SB 139 preserves the original intention of AS 09.65.093 to limit the liability for those Alaskans who own, operate and maintain airfields and landing strips on private and public lands. These facilities are often essential for transportation to vast areas of the state that lack public access.

The bill does not change liability protections against acts of gross negligence, recklessness or intentional misconduct.



# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SSSB 139  
 () Publish Date: \_\_\_\_\_

Identifier (file name): SB139SS-DOA-RM-12-04-07 Dept. Affected: Administration  
 Title An act relating to liability for certain airfield RDU Risk Management  
owners or operators Component Risk Management  
 Sponsor Senators Oson and Huggins  
 Requester \_\_\_\_\_ Component Number \_\_\_\_\_

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

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>								
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>0.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<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>	<b>0.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time							
Part-time							
Temporary							

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

This bill repeals existing law limiting civil liability in circumstances where a listed or chartered runway is marked closed in accordance with Federal Aviation Administration (FAA) guidelines and that closure is published in the appropriate FAA aeronautical charts and publications.

The specific conditions precedent to this protection are rarely in place - typically only in a major reconstruction project of an existing runway.

Given the rarity of these circumstances, Risk Management anticipates no measurable effect to the state's airport insurance program, therefore no fiscal impact is presented.

Prepared by: J. Brad Thompson, Director Phone 465-5723  
 Division Risk Management Date/Time 12/4/07 12:00 AM  
 Approved by: Kevin Brooks, Deputy Commissioner Date 12/4/2007  
Department of Administration

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: SSSB139-LAW-CIV-01-15-08  
 Bill Version: SSSB139  
 ( ) Publish Date: \_\_\_\_\_

Identifier (file name): \_\_\_\_\_ Dept. Affected: LAW  
 Title An Act relating to liability for airports and airstrips RDU CIVIL  
 Component Torts & Workers Compensation  
 Sponsor Senator(s) Olson, Huggins  
 Requester House Judiciary Component Number \_\_\_\_\_

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

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

	Appropriation Required	Information					
		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>							
Personal Services	0.0	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>	<b>0.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<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>	<b>0.0</b>

Estimated of any current year (FY2008) cost: 0.0

**POSITIONS**

Full-time							
Part-time							
Temporary							

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

The bill would limit liability of an owner or operator of an aircraft runway, airfield or landing area listed or charted, and designated as private in the appropriate aeronautical charts and publications published by the Federal Aviation Administration. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

Prepared by: Robert Meiners, Administrative Services Manager  
 Division: Administrative Services Division  
 Approved by: Talis Colberg, Attorney General  
Department of Law

Phone 907-465-5427  
 Date/Time 1/15/08 8:00 AM  
 Date 1/15/2008

## Westlaw.

AK ST § 09.65.093

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AS § 09.65.093

▷

West's Alaska Statutes Annotated Currentness

Title 9. Code of Civil Procedure

Chapter 65. Actions, Immunities, Defenses, and Duties

## → § 09.65.093. Civil liability relating to aircraft runways, airfields, and landing areas

(a) Except as provided in (c) of this section, a person who without compensation constructs, maintains, or repairs an aircraft runway, airfield, or landing area may not be held civilly liable, except for an act or omission that constitutes gross negligence or recklessness or intentional misconduct, for the injury to or death of a person or for damage to an aircraft, resulting from the use of the runway, airfield, or landing area to take off, land, park, or operate an aircraft.

(b) A person who is the owner or operator of an aircraft runway, airfield, or landing area is not civilly liable, except for an act or omission that constitutes gross negligence or recklessness or intentional misconduct, for the injury to or the death of a person or for damage to an aircraft, resulting from the use or attempted use of the runway, airfield, or landing area to take off, land, park, or operate an aircraft while the runway, airfield, or landing area is

(1) marked as closed by placement of a large "X" on the runway, in accordance with Federal Aviation Administration guidelines; and

(2) listed or charted, and designated as closed in the appropriate aeronautical charts and publications published by the Federal Aviation Administration.

(c) The immunity from civil liability under (a) of this section does not limit the liability of an owner or operator of an aircraft runway, airfield, or landing area to a provider of flight services or its passengers under contract with the owner or operator.

SLA 2001, ch. 56, § 12; SLA 2004, ch. 39, § 1, 2.

## LIBRARY REFERENCES

Aviation ↪ 232.

Westlaw Key Number Search: 48Bk232.

C.J.S. Aeronautics and Aerospace §§ 71 to 72, 76 to 82, 131.

AS § 09.65.093, AK ST § 09.65.093

Current through the 2007 First Regular and First Special Sessions of the 25th Legislature

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CJS AERO § 146

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2A C.J.S. Aeronautics & Aerospace § 146

Corpus Juris Secundum  
Database updated December 2007

Aeronautics & Aerospace  
By Lucas Martin, J.D.

IX. Duties and Liabilities Arising Generally from Operation of Aircraft

A. Nature and Grounds of Liability

3. Proximate Cause; Contributory Negligence and Assumption of Risk; Damage to Aircraft by Third Person

Topic Summary References Correlation Table

§ 146. Damage to aircraft caused by third person

West's Key Number Digest

West's Key Number Digest, Aviation ☞ 145. 147.

A person may be liable for injuries to another's aircraft caused by his negligence.

A person may be liable for injuries to another's aircraft caused by his negligence.[FNI]

[FNI] Mich.—Lawrence C. Young, Inc. v. Servair, Inc., 33 Mich. App. 643, 190 N.W.2d 316 (1971).

**Deliberately parking truck on airfield**

A defendant's deliberately parking a truck on a bush airfield in a position in which it was struck by a plaintiff's landing aircraft, with full knowledge of hazards he was thereby creating, evidenced reckless disregard of possible consequences and indifference to the rights of others, and such a showing supported a finding that he was guilty of gross and wanton negligence.

Alaska—McLemore v. Harris, 374 P.2d 410 (Alaska 1962).

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CJS AERO § 146

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C

McLEMORE v. HARRIS  
Alaska 1962Supreme Court of Alaska.  
Larche R. McLEMORE, Appellant.

v.

James HARRIS, Appellee.  
No. 197.

Sept. 5, 1962.

Action to recover for damage to airplane allegedly caused by collision with truck wilfully or recklessly left by defendant on a bush airstrip where the plaintiff landed. The Superior Court of the State of Alaska, Third Judicial District, Hubert A. Gilbert, J., affirmed the magistrate court's judgment for the plaintiff. An appeal was taken. The Supreme Court, Arend, J., held that defendant's deliberately parking truck on bush airfield in position in which it was struck by plaintiff's landing aircraft, with full knowledge of hazards he was thereby creating, evidenced reckless disregard of possible consequences and indifference to rights of others, and such showing supported finding that he was guilty of gross and wanton negligence.

Affirmed.

West Headnotes

## [1] Aviation 48B ⇨ 231

48B Aviation

48BV Airports and Services

48Bk231 k. Obstructions and Hazards. Most Cited Cases

Defendant's deliberately parking truck on bush airfield in position in which it was struck by plaintiff's landing aircraft, with full knowledge of hazards he was thereby creating, evidenced reckless disregard of possible consequences and indifference to rights of others, and such showing supported

finding that he was guilty of gross and wanton negligence. Laws 1960, c. 174, § 1; 1961, ch. 65; A.C.L.A.Supp. §§ 32-5A-2(1), 32-7-5(a); A.C.L.A. 1949, § 32-4-6.

## [2] Appeal and Error 30 ⇨ 740(2)

30 Appeal and Error

30XI Assignment of Errors

30k735 Including Errors in One Assignment

30c740 Determination

30k740(2) k. Findings of Fact and

Conclusions of Law. Most Cited Cases

Specification of error in failing to find contributory negligence was not properly before reviewing court where it was not separately set out but had been combined with another alleged error in single specification.

## [3] Negligence 272 ⇨ 547

272 Negligence

272XVI Defenses and Mitigating Circumstances

272k545 Effect of Others' Fault

272k547 k. As Bar to Recovery;

Contributory Negligence Doctrine. Most Cited Cases

(Formerly 272k100)

Ordinary contributory negligence is not a defense to action for injury from reckless or wanton misconduct, but only if plaintiff's own conduct is wilful or wanton will it balance against similar conduct by defendant.

\*410 Charles E. Tulin, Anchorage, for appellant.  
James E. Fisher, Kenai, for appellee.

Before NESBETT, C. J., and DIMOND and  
AREND, JJ.  
AREND, Justice.

The principal question before us on this appeal is whether the lower court erred in finding that Larche R. McLemore, the defendant below, was guilty of gross or wanton negligence in parking his

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motor vehicle on a 'bush' airfield

The term 'bush airfield' or 'bush airstrip' connotes in Alaska an unregulated field for light aircraft.<sup>FN1</sup> These fields played an important part in the settlement and development of the Territory of Alaska and continue to do so under statehood. They are often found adjacent to a village but in many instances have been carved out of the wilderness to accommodate miners, prospectors, trappers and fishermen in near and faraway places. They are usually constructed on the sandbar of a river, lake shore, or other suitable ground by removing trees, brush, rocks and other obstructions. Sometimes the runway for the wheels of the aircraft is 'dragged' to provide a smoother landing surface. In the winter season they may even be laid out upon frozen bodies of water. Sometimes they are located on private property and at other times on the public domain.

FN1. Bush airfields have been specifically referred to by that name by the Alaska state legislature in S.L.A.1960, ch. 174, § 1, which provides for the issuance of general obligation bonds, 'for the purpose of paying all or part of the cost of acquiring, constructing, equipping, and making necessary capital improvements to bush airfields.' See also S.L.A.1961, ch. 65. The general term 'airport' has been defined by the legislature as 'any area of land or water designed for the landing and taking-off of aircraft and utilized or to be utilized as a point of arrival or departure by air.' S.L.A.1951, ch. 12, § 1 (§ 32-5A-2(1) A.C.L.A.Cum.Supp.1957).

In 1937 the territorial legislature made it unlawful to park or place upon the runway of any aviation field in Alaska any wagon, sled, vehicle or other article unless used in the construction or repair of such field.<sup>FN2</sup> Then in 1951 the legislature further provided:

FN2. S.L.A.1937, ch. 71, § 1 (now § 32-4-6 A.C.L.A.1949).

'It shall be unlawful for any person to place any object on the surface of any public or private airport which because of its nature or location might cause injury or damage to any aircraft or person riding therein.'<sup>FN3</sup>

FN3. S.L.A.1951, ch. 43, § 5(a) (§ 32-7-5(a) A.C.L.A.Cum.Supp.1957).

With that bit of history in mind we turn to the case at hand. The plaintiff, James Harris, brought this action in the district magistrate court to recover for damages to his Piper PA-11 airplane, allegedly caused by collision with an obstruction 'wilfully or lecklessly' left by the defendant on the airstrip where the plaintiff landed the plane. The defendant denied the allegations of the complaint and charged the plaintiff with contributory negligence in the premises.

The magistrate court, sitting as trier of the facts, found that the defendant, with full knowledge that the field in question was used as an airfield, was 'grossly negligent or wantonly negligent to park [his truck] there.' Judgment was for the plaintiff for the full amount of the damages claimed. An appeal was taken to the superior court where the case was heard on the record made in the magistrate court and the judgment affirmed. An appeal to this court followed.

Since the defendant has challenged the finding of the trial court as to negligence, we must take the view of the evidence most favorable to the prevailing party, in this case the plaintiff, and give him the benefit of all inferences in his favor which may be drawn from the facts proved.<sup>FN4</sup> The evidence in the record most favorable to the plaintiff is as follows:

FN4. Los Angeles Shipbuilding & Drydock Corp. v. United States, 289 F.2d 222, 226-227 (9th Cir. 1961); Chirikoff Island Cattle Corp. v. Robinette, 372 P.2d 791 (Alaska 1962).

The Oshetna Strip is a bush airfield, which was

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built by the plaintiff, with some help from others, on the public domain, specifically on a creek bed and sandbar at the confluence of the Big Oshetna and Little Oshetna Rivers, about 45 miles from the town of Eureka. The gravel bar upon which the airstrip is located is over 900 feet in length and about 60 feet wide with a clump of willows on one side and water on the other. The actual runway is on the willow side of the field and is only about 15 to 20 feet in width. It was once dragged with a 17 foot railroad iron and shows wear from the wheels of aircraft using it. From pictures admitted as exhibits at the trial it appears that there was enough open space between the runway and the willows to allow for the spread of one wing of a light plane. The Oshetna Strip is used only during the hunting and fishing seasons. As many as six planes have been seen on the strip at one time.

On the evening of August 19, 1959 the plaintiff flew in his Piper aircraft to land some gear at the Oshetna Strip. As he came in for the landing he observed defendant's truck (also referred to in the record as a swamp buggy) parked on the strip and obstructing the runway. So he made a pass over the field and shouted to the defendant and the men with him to move the truck off the strip. The defendant promptly moved the truck but only a few feet. Nevertheless the plaintiff was able to land his plane without mishap and stayed on the #412 field that night. Immediately after landing and again on the following morning the plaintiff explained to the defendant the dangers inherent in parking the truck on the strip and asked him to park it in the brush or somewhere else off the strip. The defendant finally complied and moved it out of there.

Later on the morning of August 20, the plaintiff came in for another landing on the Oshetna Strip, this time with a passenger whom he had picked up at Eureka. Before landing he checked the wind and made certain that there were no planes on the field. The windshield of his own plane was splattered by rain from intermittent showers, and he testified that on account of this condition 'I had poor visibility in front of me.' Not until just as he set the plane down on the runway did the plaintiff see the defendant's truck parked on the airstrip right at the edge of the willow patch. The front end of the truck was headed

toward the willows but at such an angle that about eighteen inches of the right wing tip of the plane struck the left tail gate of the truck. This caused the plane to spin around and to dig its left wing into the ground.

As stated earlier the runway of the airstrip measured 15 to 20 feet in width. Other facts to be noted are that the total wingspread of the plaintiff's airplane was 36 feet; that the distance from the left tail gate of the truck to the center of the runway was between 12 and 15 feet; that it was at the most 25 feet from the edge of the brush where the truck was parked to the center of the runway; that a pilot coming down for a landing on the strip would 'have to go close to the brush to sit down and square up with the strip,' as the plaintiff explained; that the defendant admitted that he knew the Oshetna Strip to be an airfield; that the defendant and his companions were gathered around the truck and watched the plaintiff come in for a landing; and that immediately after the accident, upon being reproved by the plaintiff for having parked the truck on the airstrip again, the defendant stated that he was sorry and then moved the truck completely into the brush when told that a second plane was following in for a landing.

[1] In the face of such evidence in the record we cannot say that the magistrate court erred in its finding that 'the defendant was guilty of gross or wanton negligence. The behavior of the defendant in deliberately parking his truck in the position it was when struck by the plaintiff's aircraft, with full knowledge of the hazards he was thereby creating, evidenced a reckless disregard of possible consequences and indifference to the rights of others and supported the trial court's finding.'<sup>FN5</sup>

FN5. See McDonald v. International & G. N. R. Co., 21 S.W. 774, 775 (Tex.Civ.App.1893).

[2][3] Another error specified by the defendant is that the trial court erred in failing to find that the contributory negligence of the plaintiff was a defense barring plaintiff's recovery. We need not consider that specification of error for two reasons.

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First, it is not separately set out as required by our rule 11(a) but has been combined with another alleged error in a single specification of error.<sup>FN6</sup> In *Parks v. Brown*<sup>FN7</sup> we held that a specification of error which sets out more than one error is improper and does not need to be considered by this court. Secondly, ordinary contributory negligence on the part of the plaintiff is not a defense to an action for injury caused by the defendant's reckless or wanton misconduct.<sup>FN8</sup> Only if the plaintiff's own conduct is wilful or wanton will it be balanced against similar conduct on the part of the \*413 defendant and recognized as a defense.<sup>FN9</sup> The defendant in the instant case did not allege or undertake to prove any wanton or reckless misconduct on the part of the plaintiff as a bar to recovery.

For the reasons set forth above, we find no error in the record and therefore the judgment below is affirmed.

FN6. The plaintiff's second specification of error reads: 'That the trial court erred in finding the defendant to be guilty of gross and wanton negligence *and* in failing to find that the contributory negligence of plaintiff was a defense barring plaintiff's recovery.' [Emphasis added.]

FN7. 368 P.2d 220 (Alaska 1962).

FN8. *Falls v. Mortensen*, 207 Or. 130, 295 P.2d 182, 184-187 (1956); Prosser, *Torts* § 51 at 289-90 (2d ed. 1955).

FN9. *Cawog v. Rothbaum*, 165 Cal.App.2d 577, 331 P.2d 1063, 1071 (1958); Prosser, *op. cit. supra* note 8, at 290.

So ordered.

Alaska 1962  
*McLemore v. Harris*  
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