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PREFACE BY THE RESEARCH GROUP, INC.*

The Research Group was commissioned by the Indiana Trial Lawyers Association to undertake a national, comparative study of various components of Indiana tort law. It was the highest priority of both parties that the study reflect a thorough, independent and objective analysis of the pertinent legal authority. Accordingly, this report accurately states the present status of American jurisprudence concerning the selected areas of inquiry but takes no stance nor makes any judgments as to the propriety or impropriety of the Indiana position.

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GUEST STATUTES

I. Introduction

Single and multi-vehicle automobile accidents long have been a familiar sight on American highways. In most cases, a person injured in an automobile accident can sue the person who caused the accident and thereby recover money damages for medical, property, and other expenses incurred because of the accident. Hence, in most states, an automobile passenger can sue the driver of his vehicle and recover damages for any injury caused by the driver's negligence.[1] In Indiana and five other states, however, special laws prohibit such suits if the passenger was a non-paying guest[2] of the driver, unless the driver's conduct was so outrageous as to evidence more than a simple lack of care.[3] These laws typically are referred to as "guest statues" or "guest rules."[4]

The divergence of viewpoint in this area essentially reflects a fundamental disagreement as to whether the burdens placed on automobile passengers by guest laws are outweighed by the policies guest laws are believed to promote. This disagreement began shortly after guest laws were first created in the 1920s and continues today.[5] The dispute as to the social desirability of guest laws is particularly reflected in the large number of states which have repealed

or judicially invalidated guest laws approved in earlier years.[6]

The following discussion examines in more detail the present status of automobile guest laws in the United States. As a starting point, guest laws are viewed nationally from a historical perspective and the policies which guest laws were designed to promote are identified. Against this background, the operation of the Indiana guest statute is considered and an attempt to invalidate the statute is briefly discussed. Guest laws then are viewed solely from a midwestern perspective. Finally, a listing is provided of the current status of guest laws in all 50 states.

II. Commentary

A. The Development of Guest Laws In The United States

By the mid-1920s the automobile began to have a considerable impact on American society.[7] Automobile accident cases began to clog court calendars and more and more drivers purchased automobile liability insurance.[8] Insurance companies complained of being presented with a large number of fradulent claims in which a host driver falsely confessed to "negligence so as to permit . . . [the driver's] guest--presumably a friend or relative--to collect from the host's insurance company."[9] Some authorities also felt that

drivers, threatened by the possibility of lawsuits instituted by ungrateful guest passengers, might refrain from offering rides to others, particularly hitchhikers. As one commentator has noted:[10]

> The justification [for guest laws] most frequently espoused in one form or another has been the notion of protecting the hospitable driver from suits by an ungrateful guest. The economic conditions of the 1930's gave particular force to the hospitality rationale for the guest statutes. The Depression is credited with causing a substantial increase in the number of hitchhikers on America's highways. It was feared that these strangers would take advantage of generous but unsuspecting motorists, and thus offend society's sense of justice and hospitality.

State legislatures, stimulated by "persistent and effective lobbying on the part of liabiity insurance companies,"[11] responded to these problems by enacting guest statutes. The legislatures believed that, by precluding guest suits for injuries caused by a driver's ordinary negligence, passenger-driver insurance collusion could be avoided and the protection of driver hospitality insured.[12]

In 1927, Connecticut and Iowa enacted the first automobile guest statutes.[13] By 1939 guest statutes had been enacted in 29 states.[14] In addition, three states created guest laws through judicial decisions.[15] Accordingly, 32 states have enforced guest laws at some time.

Since their appearance in the 1920s and 1930s, "guest

statutes have been subject to some praise but a great deal more criticism." Proponents of guest laws traditionally have argued that the social importance of promoting driver hospitality and preventing collusive lawsuits outweighs the burden placed on guest passengers by the statutes' prohibition against passenger-driver suits. Early critics countered by questioning whether guest laws were constitutional. Pointing out that guest laws treat guest passengers different from other automobile victims, these critics contended that guest laws "denie[d] to guests in motor vehicles the equal protection of the laws."[18]

The United States Supreme Court in 1929, however, rejected this contention in a case arising under the Connecticut statute.[19] Notwithstanding this validation, the Connecticut legislature repealed the Connecticut guest statute in 1937.[20] The Kentucky Court of Appeals in 1932 also invalidated the Kentucky guest statute, finding that the statute violated the Kentucky constitution.[21] More than 20 years passed, however, before another court or legislature invalidated a guest law.[22]

In the late 1960s and the early 1970s, courts and legislatures in an increasing number of states began to reexamine the constitutionality and the social desirability of guest laws. Opponents of the laws questioned whether

guest laws truly operated to promote driver hospitality. These critics denied that the presence or absence of a guest law actually influenced most drivers' decisions to offer rides to passengers.[23] They also argued that widespread social changes which had occurred since the 1930s--particularly the significantly greater number of drivers carrying automobile liability insurance in the 1970s than the 1930s--eliminated any possibility of "rider ingratitude."[24]

The guest law critics also questioned whether the laws could be justified on grounds that they prevented passengers and drivers from colluding against insurance companies. Even if some fraudulent claims were inevitable, these critics found it unreasonable to prohibit all guest suits merely because of the possibility of fraudulent collusion in some cases.[25]

Finding the foregoing arguments persuasive, the California Supreme Court in 1973 held the California guest statute to be unconstitutional, finding that the statute's discrimination against guest passengers could not be justified on grounds that the statute promoted driver hospitality and prevented collusive lawsuits.[26] Following the California Supreme Court's lead, 12 other state supreme courts struck down their guest laws on constitutional grounds.[27]

In addition to these court decisions, eight state legislatures between 1969 and 1979 repealed their guest statutes on policy or constitutional grounds.[28] Four state legislatures, declining to repeal their guest statutes outright, effectively repealed their guest laws by enacting amendments which substantially narrowed the statutes' scope.

Notwithstanding the abrogation or repeal of guest statutes in many states in the 1970s, the courts in other states rejected constitutional challenges to guest statutes.[30] These courts generally found that the promotion of hospitality and prevention of collusion rationales[31] provided sufficient justification to uphold the guest/non-guest classification created by guest statutes.[32] Although upholding the statutes on constitutional grounds, the opinions of some of these courts, however, reflect the beliefs of individual justices that guest statutes are no longer socially desirable and should be repealed.[33]

As of November 1982, five states--Alabama, Arkansas, Delaware, Indiana, and Utah--retain guest statutes in force substantially as enacted.[34] In addition, one state--Georgia--retains a judicially created guest law.[35] Four states--Illinois, Nebraska, Texas, and Virginia--retain guest statutes which have been effectively repealed through amendment.[36]

B. The Indiana Guest Statute

Originally enacted in 1929, the Indiana guest statute is quite similar to the guest statutes enacted by a number of other states.[37] The statute provides that a motor vehicle owner or operator is not liable for the ". . . injuries to or death of a guest, while being transported without payment therefor . . . unless such injuries or death are caused by the wanton or wilful misconduct of such operator . . . [or] owner . . . ."[38] Hence, where an accident is caused by the ordinary negligence of the host driver, the driver cannot be held liable to an injured passenger if the passenger was a non-paying guest of the driver.

The payment requirement has caused some confusion.[39] Where a passenger is invited or permitted to ride with a driver primarily for social rather than business purposes, the passenger may be deemed a guest even though he has contributed to gas expenses or otherwise has made some incidental form of "payment" to the driver. The ultimate test is the motive of the driver in inviting or permitting the passenger to ride. If the driver's motive was social companionship, the passenger will usually be considered a guest despite an incidental payment. Conversely, if the driver expects to obtain some material gain from the passenger's presence, the passenger usually will not be con-

sidered to be a guest.[40]

Once a passenger's status as a guest has been established, recovery is denied unless the driver's injury-causing conduct amounted to "wanton or wilful misconduct." Wilful misconduct primarily encompasses situations where a court finds that the driver "intentionally performed the dangerously injurious act or that he had a design to cause the injury."[41] Wanton misconduct refers to situations where a driver consciously operates his vehicle with a reckless indifference to the safety of his guests.[42] Where a court concludes that a driver's conduct amounted to either wanton or wilful misconduct, an injured guest is permitted to bring suit against the driver.

The Indiana guest statute has been challenged as being unconstitutional in that the statute creates two classifications of passengers--guest and non-guests--who are treated differently with respect to the right to recover from host drivers. In Sidle v. Majors,[43] however, the Indiana Supreme Court upheld the constitutionality of the statute.[44] The court reasoned that the Indiana legislature had enacted the statute to promote driver hospitality, to prevent collusion against insurance companies, and to prevent the escalation of liability insurance premiums by insurance companies forced to pay out excessive verdicts to

guest passengers.[45] The accomplishment of these policies, the court concluded, tended to justify the different treatment accorded guests and non-guests by the statute.

Reviewing the Indiana Supreme Court's decision in Sidle v. Majors, the Seventh Circuit Court of Appeals flatly disagreed that the Indiana guest statute accomplished any of the goals identified by the Indiana court.[46] The Seventh Circuit accordingly indicated its belief that the Indiana guest statute violated the federal equal protection clause. Notwithstanding this conclusion, however, the Seventh Circuit concluded that it was bound to affirm the Indiana Supreme Court's decision upholding the statute pursuant to federal procedural rules.[47] The United States Supreme Court declined to review the Seventh Circuit's decision.[48] Accordingly, drivers in Indiana continue to enjoy the protection afforded by the Indiana guest statute.

C. The Present Status of Guest Laws In the Midwestern States

Eight of the 11 midwestern states--Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Ohio, and Wisconsin--have enforced guest laws at some time.[49] Minnesota, Missouri, and Tennessee have never created guest laws.[50]

Indiana is the only midwestern state which currently retains a guest law substantially as originally enacted. Illinois, in a 1971 amendment, modified its guest statute so

that the statute now applies only to hitchhikers.[51] All other Illinois guest passengers are entitled to bring suit against their host for ordinary negligence.

In direct contrast to Indiana, the state supreme [illegible] of the remaining midwestern states which once [illegible]ed guest laws have all held these laws to be unconstitutional.[52] These courts have concluded that the guest/non-guest classification created by their respectiv guest statutes violates state and federal equal protection of the laws guarantees. Applying the traditional equal protection analysis, these courts generally found that the prohibition of guest passenger suits did not suitably further the stated objective of guest statutes, i.e., promoting driver hospitality and preventing collusive lawsuits.

Commenting on the promotion of hospitality rationale, the Michigan Supreme Court has flatly rejected any notion that the presence or absence of a guest statute would affect a driver's decision to offer a ride to another:[53]

> In point of fact, the presence or absence of a guest statute does not affect the decision of friends and relatives to ride together in an automobile. Drivers may hesitate to pick up hitchhikers, but not because of potential liability for negligence, ordinary or gross. Friends and relatives offer, seek, accept, or decline rides with each other for reasons quite apart from the ability to recover for negligently inflicted injury, death or loss. It is only after the fortuitous

> event of an accident that the existence of the statute becomes known to most people. The absence of a guest passenger statute would not chill hospitality or group transportation any more or less than its existence promotes such activity.

Other courts have pointed to the widespread availability of automobile liability insurance as puncturing the promotion of hospitality rationale:[54]

> We . . . reject the thesis that a guest passenger's lawsuit against his host constitutes the epitome of ingratitude and as such ought to be condemned. . . .This argument is not persuasive because widespread liability insurance has largely eliminated any notion of "ingratitude" that may once have adhered to a guest's suit against his host and also because the deprivation of a guest's redress for negligence cannot rationally be justified by a desire to promote hospitality. . . .
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> . . . .
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> . . . The overwhelming majority of the automobile drivers in Kansas today have liability insurance. Furthermore the modern trend is to make mandatory insurance coverage for all owners of motor vehicles. This is one of the basic concepts of no fault legislation which has been enacted or is being considered in practically every state in the nation today. Hence it is clear to us that the "hospitality" argument first advanced in 1930, has no validity under the facts of life as they exist today.

The courts typically rejected the prevention of collusion rationale on grounds of the unreasonableness inherent in barring <u>all</u> guest claims merely because of the

possibility that some might be fraudulent:[55]

> We further hold that the "collusion prevention" justification does not provide a sufficient basis for the statute's wholesale elimination of all automobile guests' causes of action for negligently inflicted injuries. The theory behind the "collusion" argument appears to be that the driver who gives a free ride to a passenger does so because of a close relationship with his guest; because of the presumed closeness of this relationship, the driver may falsely admit liability so that his guest may collect from the driver's insurance company. To combat this risk of potential fraud, the guest statute eliminates all causes of action in negligence for automobile guests. We believe that it is unreasonable to eliminate causes of action of an entire class of persons simply because some undefined portion of the designated class may file fraudulent lawsuits.

As the foregoing discussion indicates, the number of guest laws existing in the midwestern states has declined dramatically in the last 12 years. Indeed, Indiana at present stands alone among the midwestern states in prohibiting ordinary negligence suits by all guest passengers against host drivers.

III. Conclusion

No state has enacted a guest statute or created a guest law since 1939.[56] Although more than one-half of the states enforced guest laws at one time, only Indiana and five other states at present prohibit all ordinary negli-

tionality of the statute to be "fairly debatable" and thereupon deferred to the legislature in accordance with Delaware principles of judicial restraint).

4. Indiana - Ind. Code Ann. § 9-3-3-1 (Burns 1973) [1929]; Sidle v. Majors, 264 Ind. 206, 341 N.E.2d 763, aff'd, 536 F.2d 1156 (7th Cir.), cert. denied, 429 U.S. 945 (1976) (the Indiana Supreme Court upheld the constitutionality of the statute; the Seventh Circuit Court of Appeals indicated its belief that the statute was unconstitutional but was constrained to affirm the Indiana Supreme Court's decision pursuant to principles of federal procedural law).

5. Utah - Utah Code Ann. § 41-9-1 (Supp. 1981) [1935]; Critchley v. Vance, 575 P.2d 187 (Utah 1978) (upholding statute against constitutional attack; Justice Wilkins and Justice Maughan dissented, finding the statute to be unconstitutional; Justice Wilkins also suggested that the statute had been impliedly repealed by Utah's no fault legislation, 575 P.2d at 189, Wilkins, J., and Maughan, J., dissenting).

B. States Retaining Judicial Guest Rule (1)

Georgia - Epps v. Parrish, 26 Ga. App. 399, 106 S.E. 297 (1921) (creating Georgia guest rule by decision); Bickford v. Nolen, 240 Ga. 255, 240 S.E.2d 24 (1977) (upholding guest rule against constitutional attack; Justice Hall in dissent conceded that the rule was constitutional but urged that it be overruled on public policy grounds, 240 S.E.2d at 28, Hall, J., dissenting).

In 1980 the Georgia Legislature passed a bill abolishing the Georgia guest rule. See S.B. 557, 1980 Ga. Legislature. As one commentator has reported, however, the Georgia governor vetoed the bill: "It is encouraging to note that in the session just past, the Georgia legislature enacted a bill that would have abolished Georgia's guest rule. . . . It is unfortunate that Governor Busbee vetoed this legislation on April 9, 1980. The reason given for the veto was that the governor thought that in this time of energy shortage, legislation should not be enacted that would in any way discourage drivers from sharing their automobiles with others." Comment, "Treatment of Guest Passengers: Georgia Maintains Its Minority

Rule," 31 Mercer L. Rev. 1061, 1068-69 (1980) (footnote omitted).

C. States Retaining Modified Guest Statutes (4)

1. Illinois - Ill. Ann. Stat. ch. 95 1/2, § 10-201 (Smith-Hurd 1980) [1935] (restricted to hitchhikers by a 1971 amendment).

2. Nebraska - Neb. Rev. Stat. § 39-6, 191 Supp. 1981) [1931] (amended in 1981 to restrict statute's application to certain relatives of the driver).

3. Texas - Tex. Rev. Civ. Stat. Ann. art. 6701b (Vernon 1977) [1931] (amended in 1973 to restrict statute's application to certain relatives of the driver).

4. Virginia - Va. Code Ann. § 8-646.1 (1957) [1938] (amended in 1974 to permit guest passengers a cause of action for ordinary negligence).

D. States in Which Guest Statutes Have Been Repealed by the Legislature (9)

1. Colorado - Colo. Rev. Stat. § 42-9-101 (1973) [1931] (repealed in 1975).

2. Connecticut - 1927 Conn. Pub. Acts 4404 (1927) [1927] (repealed in 1937).

3. Florida - Fla. Stat. Ann. § 320.59 (West 1968) [1937] (repealed in 1972).

4. Massachusetts - Mass. Gen. Law Ann. ch. 231, § 85 L (West Supp. 1981) (overruling guest rule created by the court in Massaletti v. Fitzroy, 228 Mass. 487, 118 N.E. 168 (1917)).

5. Montana - Mont. Code Ann. § 32-1113 (1961) [1931] (repealed in 1975).

6. Oregon - Or. Rev. Stat. § 30.115 (1979) [1921] (repealed in 1961 with respect to automobile passengers).

7. South Dakota - S.D. Codified Laws Ann. § 32-34-1 (1976) [1933] (repealed in 1978).

8. Vermont - Vt. Stat. Ann. tit. 23, § 1491 (1967) [1929] (repealed in 1969).

9. Washington - Wash. Rev. Code Ann. § 46.08.080 (1970) [1933] (repealed in 1974).

E. States Judicially Abolishing Guest Statute or Rule (12)

1. California - Cal. Veh. Code § 17158 (West 1971) [1929] (declared unconstitutional in Brown v. Merlo, 8 Cal. 3d 855, 506 P.2d 212 (1973). In order to harmonize the statute with the Brown decision, the legislature in a 1973 amendment made the statute inapplicable to guests).

2. Idaho - Idaho Code § 49-1401 (1980) [1931] (declared unconstitutional in Thompson v. Hagan, 96

Idaho 19, 523 P.2d 1365 (1974)).

3. Iowa - Iowa Code Ann. § 321.494 (West Supp. 1979) [1927] (declared unconstitutional in Bierkamp v. Rogers, 293 N.W.2d 577 (Iowa 1980)).

4. Kansas - Kan. Stat. Ann. § 8-122b (1975) [1931] (declared unconstitutional in Henry v. Bauder, 213 Kan. 751, 518 P.2d 362 (1974) and repealed to conform with Henry decision in 1974).

5. Kentucky - 1930 Ky. Acts ch. 85 [1930] (declared unconstitutional in Ludwig v. Johnson, 243 Ky. 533, 49 S.W.2d 347 (1932)).

6. Michigan - Mich. Comp. Laws Ann. § 257.401 (1977) [1929] (guest passenger exception declared unconstitutional in Manistee Bank & Trust Co. v. McGowan, 394 Mich. 655, 232 N.W.2d 636 (1975)).

7. Nevada - Nev. Rev. Stat. § 41.180 (1977) [1933] (declared unconstitutional in Laakonen v. Eighth Judicial District Court, 91 Nev. 506, 538 P.2d 574 (1975), and repealed in 1977 to conform to Laakonen decision).

8. New Mexico - N.M. Stat. Ann. § 64-24-1 (1953) [1935] (declared unconstitutional in McGeehan v. Bunch, 88 N.M. 308, 540 P.2d 238 (1975), omitted from current code).

9. North Dakota - N.D. Cent. Code § 39-15 (1980) [1931] (declared unconstitutional in Johnson v. Hassett, 217 N.W.2d 771 (N.D. 1974), and repealed in 1979).

10. Ohio - Ohio Rev. Code Ann. § 4515.02 (Page 1973) [1933] (declared unconstitutional in Primes v. Tyler, 43 Ohio St. 2d 195, 331 N.E.2d 723 (1975)).

11. South Carolina - S.C. Code Ann. § 15-1-290 (Law. Co-op. 1976) (declared unconstitutional in Ramey v. Ramey, 273 S.C. 680, 258 S.E.2d 883, cert. denied, 444 U.S. 1078 (1979)).

12. Wisconsin - McConville v. State Farm Mutual Automobile Insurance Co., 15 Wis. 2d 374, 113 N.W.2d 14 (1962) (overruled Wisconsin guest rule created by the court's decision in O'Shea v. Lavoy, 175 Wis. 456, 185 N.W. 521 (1921)).

13. Wyoming - Wyo. Stat. § 31-5-1116 (1977) (declared unconstitutional in Nehring v. Russel, 585 P.2d 67 (Wyo. 1978)).

F. States Which Have Never Enacted or Judicially Created a Guest Law

1. Alaska
2. Arizona
3. Hawaii
4. Louisiana
5. Maine
6. Maryland
7. Minnesota
8. Mississippi
9. Missouri
10. New Hampshire
11. New Jersey
12. New York
13. North Carolina
14. Oklahoma
15. Pennsylvania
16. Rhode Island
17. Tennessee
18. West Virginia

FOOTNOTES

[1]These states "follow the common law and treat an automobile passenger like any other plaintiff, i.e., the driver is responsible for his ordinary negligence that causes an injury to the passenger." Note, "Treatment of Guest Passengers: Georgia Maintains Its Minority Rule," 31 Mercer L. Rev. 1061, 1062 (1980).

[2]Although payment by a passenger is not always conclusive on the issue of his status as a guest, virtually all jurisdictions agree that a paying passenger is not a guest as a general rule. 5 Blashfield Automobile Law and Practice § 212.10 at 130-32 (3d ed. 1966).

[3]This standard varies from state to state but all guest law states require some form of aggravated misconduct greater than ordinary negligence as a prequisite to a host driver's liability. Compare Epps v. Parrish, 26 Ga. App. 399, 106 S.E. 297 (1921) (guest can recover only when host is guilty of gross negligence), with Ala. Code § 32-1-2 (1975) (guest can recover only when the host is guilty of willful or wanton misconduct).

[4]In the majority of states having guest laws, the laws were created by legislative enactment. Courts in a few states, however, in the absence of a guest statute, have created "guest rules" by judicial decision. See, e.g., Epps v. Parrish, supra, 106 S.E. 297.

[5]See infra text accompanying notes 18-25.

[6]See infra text accompanying notes 26-29.

[7]One commentator described this impact as follows:

> A few years ago there were none. Now they are everywhere; moving in every direction, quicker almost than sight, myriads in number, rushing, crashing, killing. What is more, they have evidently come to stay. Their uses are too strong to admit of any contemplation of doing without them. . . . The menace from negligence in their use has constantly increased.

Allen, "Why Do Courts Coddle Automobile Indemnity Companies?" 61 Am. L. Rev. 77, 77 (1927).

[8]See Note, "Alabama's Automobile Guest Statute: The Edsel Lives!" 33 Ala. L. Rev. 143, 145 (1981).

[9]Brown v. Merlo, 8 Cal. 3d 855, 506 P.2d 212, 218 (1973). See "Report of the Casualty Committee," 2 Ins. Counsel J. 15 (1935).

[10]Note, "The Present Status of Automobile Guest Statutes," 59 Cornell L. Rev. 659, 664 (1974) (footnotes omitted). See Dobbs v. Sugioka, 117 Colo. 218, 185 P.2d 784, 785 (1947) (stating that guest statutes were enacted to protect drivers from "'hitchhikers' and 'bums' who sought to make profit out of soft-hearted and unfortunate motorists").

[11]W. Prosser, Handbook of Law of Torts § 34 at 187 (4th ed. 1971).

[12]Although other rationales have been suggested, see infra, text accompanying note 45, the promotion of hospitality and the prevention of collusion are most frequently identified as the policies guest laws were designed to promote. See Note, supra, 59 Cornell L. Rev. at 663-65; Brown v. Merlo, supra, 506 P.2d at 218.

[13]See 1927 Conn. Pub. Acts 4404, ch. 308, §§ 1-2 (1927) [repealed in 1937]; 1927 Iowa Acts 112, ch. 119, § 1 (1927).

[14]See Note, supra, 33 Ala. L. Rev. at 143 n.4; Note, supra, 31 Mercer L. Rev. at 1061 n.1.

[15]Georgia, Wisconsin and Massachusetts have at some time enforced guest laws created by judicial decision.

[16]Note, supra, 59 Cornell L. Rev. at 660.

[17]See, e.g., Crawford v. Foster, 110 Cal. App. 81, 293 P. 841 (1930); Weber, "Guest Statutes," 11 U. Cin. L. Rev. 24 (1937).

[18]Silver v. Silver, 108 Conn. 371, 143 A. 240, 242 (1928), aff'd, 280 U.S. 117 (1929).

[19]Silver. Silver, 280 U.S. 117 (1929). The Court found that the statute had been enacted to eliminate the

"vexatious litigation" generated by automobile guest cases and found this goal to be "a permissible legislative object." Id. at 122. Hence the Court rejected the equal protection challenge. The Court did not address the distinction between paying and non-paying passengers, however, but rather decided the case on the distinction "between gratuitous passengers in automobiles and those in other classes of vehicles." Id. at 123. Subsequent courts, declaring guest statutes unconstitutional, would distinguish Silver on this basis:

> Over 40 years ago, in Silver v. Silver (1929) 280 U.S. 117, 50 S.Ct. 57, 74 L.Ed. 221, the United States Supreme Court did uphold the constitutionality of a Connecticut automobile guest statute in the face of an equal protection challenge In Silver, however, the plaintiff had attacked the statute solely on the ground that the distinction drawn between automobile guests and guests in other conveyances was impermissible; in rejecting this argument, the Supreme Court did not consider the reasonableness of the two additional statutory distinctions--between "guests" and paying passengers and between different categories of automobile guests--which are attacked in the instant case.

Brown v. Merlo, supra, 506 P.2d at 217-18 n.4.

[20]See ch. 308, §§ 1-2 [1927] Conn. Acts 4404 (repealed 1937).

[21]Ludwig v. Johnson, 243 Ky. 534, 49 S.W.2d 347 (1932). The court found that, by eliminating recovery for injuries to automobile guests caused by driver negligence, the Kentucky guest statute violated a Kentucky Constitution provision which prohibited the legislature from enacting laws which would deprive an injured person of all remedies.

[22]In 1962, Wisconsin became the third state to invalidate a guest law when the Wisconsin Supreme Court overruled

the judicially created Wisconsin guest rule. See McConville v. State Farm Mutual Automobile Insurance Co., 15 Wis. 2d 374, 113 N.W.2d 14 (1962). The court found the guest rule to be "no longer consistent with sound policy." 113 N.W.2d at 19.

[23]See, e.g., Mainistee Bank of Trust Co. v. McGowan, 394 Mich. 655, 232 N.W.2d 636 (1975), Brown v. Merlo, supra, 506 P.2d 212.

[24]See, e.g., Laakonen v. Eighth Judicial District Court, 91 Nev. 506, 538 P.2d 574 (1975); Brown v. Merlo, supra, 506 P.2d 212.

[25]See, e.g., Brown v. Merlo, supra, 506 P.2d 212. Commentator criticizing guest laws on these and other grounds included Lascher, "Hard Laws Make Bad Cases--Lots of Them (The California Guest Statute), 9 Santa Clara L. Rev. 1 (1968); Vetri, "The Case for Repeal of the Oregon Guest Passenger Legislation," 13 Willamette L.J. 53 (1976); Note, supra, 33 Ala. L. Rev. 143, Note, supra, 31 Mercer L. Rev. 1061. See also Prosser, supra, § 34 at 187 (Dean Prosser, commenting on guest laws, stated: "If this is good social policy, it at least appears under a novel front").

[26]Brown v. Merlo, supra, 506 P.2d 212.

[27]See infra pp. 18-20.

[28]Vermont, in 1969 became the second state (after Connecticut in 1937) to repeal its guest statute. See No. 194, § 1, 1969 Vt. Laws Adj. Sess. 70 (effective 1970). Six other state legislatures--Florida (1972), Washington (1974), Colorado (1975), Montana (1975), Oregon (1977), and South Dakota (1978)--repealed their guests statutes on their own initiative. Three state legislatures--Kansas (1974), Nevada (1977), and North Dakota (1979)--repealed their guest statutes subsequent to state supreme court rulings declaring the statutes unconstitutional.

[29]Illinois restricted the application of the Illinois guest statute to hitchhikers. See infra note 51 and accompanying text. Texas and Nebraska restricted the application of their statutes to certain relative of the driver. See infra p. 17. Virginia amended its statute to permit guest passengers to maintain a cause of action for ordinary negligence.

[30]The Supreme Courts of Alabama, Arkansas, Delaware, Indiana and Utah all upheld the constitutionality of their state guest statutes. See infra pp. 14-15. The Supreme Court of Georgia upheld the constitutionality of the Georgia guest rule. See infra p. 16.

[31]The Indiana Supreme Court also identified an additional rationale which it considered to support the constitutionality of the Indiana guest statute. See infra note 45 and accompanying text.

[32]See, e.g., Davis v. Cox, 268 Ark. 78, 593 S.W.2d 180 (1980).

[33]See, e.g., Beasley v. Bozeman, 294 Ala. 288, 315 So. 2d 570 (1975). In Beasley, the court upheld the constitutionality of the Alabama guest statute. In a concurring opinion, however, Justice Jones states:

> My initial complusion was to strike down the guest statute as bad law. While I have not changed my mind about the quality of the Act, I have concluded there is no legal basis on which this Court could hold the statute invalid.
> . . .
>
> . . . The legislative process, through elective representatives, with all of its faults, and its tendency to be unduly influenced by pressure groups, is the best method yet derived by man for the enactment of laws expressive of the public policy of its people. (I would add parenthetically: My faith in this process further leads me to believe that a legislature sensitive to the will of the people it represents will now exercise its prerogative to repeal this inherently bad law.)

315 So. 2d at 571 (Jones, J., concurring specially).

[34]See infra pp. 14-15.

[35]See Bickford v. Nolen, 240 Ga. 255, 240 S.E.2d 24 (1977) (upholding Georgia guest rule against constitutional attack). See generally Note, "Treatment of Guest Passengers: Georgia Maintains Its Minority Rule," 31 Mercer L. Rev. 1061 (1980).

[36]See, supra, note 29.

[37]Ind. Rev. Stat. ch. 201, § 1 (1929) currently codified at Ind. Code Ann. § 9-3-3-1 (Burns 1980). The Indiana guest statute is essentially identical to the statute enacted by Alabama.

[38]The full text of the statute provides:

> Guest of owner or operator--Right to damages.--The owner, operator, or person responsible for the operation of a motor vehicle shall not be liable for loss or damage arising from injuries to or death of a guest, while being transported without payment therefor, in or upon such motor vehicle, resulting from the operation thereof, unless such injuries or death are caused by the wanton or wilful misconduct of such operator, owner, or person responsible for the operation of such motor vehicle. [Acts 1929, ch. 201, § 1, p. 679; 1937, ch. 259, § 1, p. 1229.]

Ind. Code Ann. § 9-3-3-1.

[39]As one authority has stated, commenting on guest statutes:

> There is perhaps no other group of statutes which have filled the courts with appeals on so many knotty little problems involving petty and otherwise entirely inconsequential points of law. There is first of all the question of who is a "guest." What is the effect of sharing expenses, or of the guest

> buying a tank of gasoline? Of an indirect, prospective, or merely remotely potential, benefit to the host in the form of some business interest or hope in having the guest take the ride?

Prosser, supra, § 34 at 187.

[40]Liberty Mutual Insurance Co. v. Stitzle, 220 Ind. 180, 41 N.E.2d 133 (1942), is the leading Indiana case on when an automobile passenger qualifies as a guest within the meaning of the Indiana statute. 41 N.E.2d at 135-36. See also Allison v. Ely, 241 Ind. 248, 170 N.E.2d 371 (1960); Hainey v. Zink, 394 N.E.2d 238 (Ind. Ct. App. 1979).

[41]Note, "The Indiana Guest Statute," 34 Ind. L.J. 338, 346 n.39 (19__). See Trent v. Rodgers, 123 Ind. App. 139, 104 N.E.2d 759 (1952).

[42]For more complete statement of the "wanton or wilful misconduct" standard see Tutterrow v. Brookshire, 152 Ind. App. 471, 284 N.E.2d 87 (1972).

[43]264 Ind. 206, 341 N.E.2d 763 (1975).

[44]The court found that the guest statute did not violate Ind. Const. art. 1, § 12 (entitling every person injured to a remedy by due course of law), Ind. Const. art. 1, § 23 (the Indiana equal protection provision), or the equal protection clause of the fourteenth amendment to the United States Constitution.

[45]The court referred to the third rationale as the "benevolent thumb syndrome:"

> We perceive a third and to us a very likely legislative policy behind our guest statute, one which has not, to our knowledge, been previously suggested in any of the litigated cases and which, for want of a better designation, could be called protection against the "benevolent thumb syndrome." This policy recognizes the value to our society of liability insurance to protect against the inequity of

damages inflicted by otherwise financially irresponsible motor vehicle owners and operators. This policy also recognizes that the cost of such insurance is unalterably determined by the loss experience of the companies providing such insurance, that such insurance is optional with the owners and operators and is purchased by them, not for the benefit of the victims of the negligence but rather for their own personal benefit and at their expense. The policy also recognizes the "Robin Hood" proclivity of juries. The tendency to take from the rich and give to the needy is as American as applie pie; but unfettered, it may logically be expected to lead to the escalation of liability insurance premiums to the level where the majority of users would be either unable or unwilling to pay them. . . .

. . . .

. . . It is, therefore, not unreasonable to credit the Legislature with recognizing that when a guest sues his host, the jury can and will most likely assume that the real defendant is an insurance company and will relax the standard of proof traditional in negligence actions and renders biased judgments in favor of plaintiffs. The guest statute may, therefore, logically be a legislative endeavor to promote financial responsibility for damages caused by the negligent operation of motor vehicles by protecting liability insurance companies from the human propensities of juries to weigh their "benevolent thumb" along with the evidence of the defendant's negligence.

341 N.E.2d at 771-71.

[46]The Seventh Circuit agreed with the California Supreme Court that the promotion of hospitality and prevention of collusion rationales did not justify the guest statute classification scheme. Sidle v. Majors, 536 F.2d 1156, 1157-58 (7th Cir. 1976). The Seventh Circuit also rejected the "benevolent thumb" rationale:

> One further reason the Indiana Supreme Court advanced in favor of the constitutionality of the guest statute was that otherwise there might be an escalation of automobile liability insurance premiums. But when the Guest Act was enacted in Connecticut in 1927, there was no reduction in automobile premiums, nor was there an increase in the premiums when that statute was repealed ten years later. Note, 42 U.Cinn.L.Rev. 709, 721 (1972). Defendant has not demonstrated that our invalidation of this statute would increase premiums for such insurance.

Id. at 1158 (footnote omitted).

[47]Id. at 1160.

[48]Sidle v. Majors, 429 U.S. 945 (1976) (denying cetiorari). Justice Brennan and Justice Marshall dissented frm the denial of certiorari on grounds that the numerous state court decisions declaring guest statutes unconstitutional indicated that the constitutionality of such statutes should be re-examined. Id. at 945 (Brennan, J., dissenting from denial of certiorari).

[49]See infra pp. 15-20. For purposes of this presentation, "Midwestern" states include the following: Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin.

[50]See Note, supra, 31 Mercer L. Rev. at 1064-70.

[51]See Ill. Ann. Stat. ch. 95 1/2, § 10-201 (Smith-Hurd Supp. 1982).

[52]See infra pp. 18-20.

[53]Manistee Bank & Trust Co. v. McGowan, 394 Mich. 655, 232 N.W.2d 636, 644-45 (1975).

[54]Henry v. Bauder, 213 Kan. 751, 518 P.2d 362, 369-70 (1975). See also Primm v. Taylor, 43 Ohio St. 2d 195, 331 N.E.2d 723 (1975).

[55]Henry v. Bauder, supra, 518 P.2d at 370. See also Bierkamp v. Rogers, 293 N.W.2d 577 (Iowa 1980) (guest classification both overinclusive and underinclusive for purpose of preventing collusion).

[56]See Manistee Bank & Trust Co. v. McGowan, supra, 232 N.W.2d at 638.

[57]The bracketed date indicates the date of enactment.

HB 126
BILL ANALYSIS AND JUSTIFICATION

WHAT HB 126 WOULD DO WOULD BE TO DISALLOW THE RECOVERY OF DAMAGES TO A GUEST ABOARD AN AIRCRAFT RESULTING FROM AN ACCIDENT.

AS EVERYONE IS AWARE ALASKA HAS THE HIGHEST NUMBER OF PILOTS AND AIRCRAFT PER CAPITA THAN ANY STATE IN THE NATION. THE REASON FOR THIS IS BECAUSE OF THE VAST DISTANCE BETWEEN CONCENTRATIONS OF POPULATIONS AND MOST OF THEM ARE OFF OF THE ROAD SYSTEM. HENCE THE BEST WAY TO TRAVEL IS BY AIRCRAFT. ALSO AIRCRAFT ARE POPULAR BECAUSE OF THEIR RECREATIONAL VALUE. IN A SITUATION AS WE HAVE IN ALASKA IT IS PRACTICAL THAT WE UTILIZE EVERY AVAILABLE SEAT. PILOTS IN GENERAL ARE OFTEN VERY HAPPY TO GIVE SOMEONE A RIDE IF THEY ARE BOTH GOING IN THE SAME DIRECTION AND THERE ARE SEATS AVAILABLE. THE PROBLEM IS THAT A PILOT TAKES THE RISKS OF BEING LIABLE FOR SUIT FOR STRICTLY DOING SOMEONE A FAVOR.

THE RESULT OF THIS IS THAT PILOTS ARE OFTEN RELUCTANT TO GIVE RIDES BECAUSE OF THE LIABILITY AND A LOT OF SEAT MILES ARE LOST. HOPEFULLY THIS BILL WOULD REMEDY THIS.

Introduced: 1/26/83
Referred: Labor & Commerce
and Judiciary

Draft CS

IN THE HOUSE BY HURLBERT AND COWDERY

HOUSE BILL NO. 126 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act limiting the liability of aircraft owners or operators for personal injury or death to guest passengers."

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

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

Section 09.65.140. LIMITATION ON LIABILITY FOR INJURIES TO OR DEATH OF GUEST IN AIRCRAFT. (a) Notwithstanding other provisions of law, a ~~guest~~ REQUESTING who rides in an aircraft may not recover damages from the owner or operator of the aircraft for personal injuries to, or the death of, the guest resulting from the ride in the aircraft, unless the plaintiff in the action establishes that the injury or death was caused by the intoxication or gross negligence of the operator of the aircraft. This limitation does not apply to ~~commercial operations where the Civil Aeronautics Board or the Alaska Transportation Commission has issued certification of authorization.~~ AIRCRAFT USED IN COMMERCIAL OPERATIONS OR FOR WHICH THE OWNER OR OPERATOR RECIEVES DIRECT OR INDIRECT COMPENSATION.

(b) In this section "guest" means a person who is carried in an aircraft with the consent of the owner or operator of the aircraft without compensating the owner or operator for the aircraft ride. REQUESTS AND GRATUITOUS PASSAGE

STET. OK.

prevention of collision / protect hospitable owner or operator

Ch. 245

This is the most important case supporting a "guest" statute - Oregon

1-9 1974 (Ore) Duerst v. Limbocker 525 P2d 99
Not unconst. (all conveyances)
~~Cert denied 54 L ed 2d~~

[8] 1974 (Idaho) Messmer v Ker 524 P2d 536
Unconst. (Airplane) (car previously) in
Thompson v Hagen 523 P2d 1365

Washington repealed ~~death~~ Guest statute before final ruling by S. Ct. Lower courts held unconst.

1977 (Utah) American Casualty v. Eagle Star Ins Co
568 P2d 731
citing Aircraft guest statute U.C.A. 2-1-33 (1953)
No ruling on constitutionality

1-12 1973 (Calif) Brown v. Merlo 506 P2d 212
Unconst - Automobile but see
Call App on Aircraft
Cal. Rptr.

1980 (Colo) Haydts v Dixon 606 P2d 1303
const - auto
98 S Ct 624
97 S Ct 367
561 P2d 1016 Ore ~~certioned~~ 54 L Ed 2nd 486 (1977) d White Brennan
606 P2d 1305 Colo
~~624 P2d 1310~~

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Such Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 28, 1982

MEMORANDUM

TO: Representative Jack Fuller

FROM: David Teal
Research Staff

RE: Aircraft Liability Insurance
Research Request Number 81-195

Legal Services forwarded a request by your office to identify and evaluate options that would address a problem experienced by "Bush" air transport operators. The problem specified was financial hardship caused by high aircraft liability insurance rates.

Although aircraft operators in other states may make similar claims about insurance, Linn Asper (Legal Services) and Don Koch (Division of Insurance) are not aware of recent specific action taken by any State to reduce aircraft liability insurance rates.

The primary factors producing high aircraft liability insurance rates in Alaska are 1) high awards by the court system (roughly $450,000 per fatality) and 2) high aircraft accident rate (approximately five times the rate experienced in the rest of the country).

The options below are those identified by this agency as potential means of alleviating the problem of high insurance rates. The list is not exhaustive and does not evaluate all aspects of each option. Additional options will be forwarded to your office if such options come to the attention of agency staff.

HB634 would limit the amount of damages that could be awarded in legal action against a registered air carrier in Alaska. The bill appears to offer an effective means of reducing premiums via reduced awards. However, Linn Asper, Legislative Counsel, stated that the bill may violate the equal protection clause of the U.S. Constitution, in that there may be no justifiable reason to treat air carrier plaintiffs differently from all other plaintiffs. There are at least four options which might solve potential constitutional conflicts while retaining the desired effect of reducing premiums by reducing awards for damages.

- Place a limit on awards for all causes of wrongful death. This may remove objections based on equal protection, but would have effects outside the aviation industry. Due to decreased awards, aircraft liability insurance premiums would be likely to decline if this option were adopted.

- Model a statute after AS 9.65.135 (attachment A), which limits liability of ski area operators. Assumption of risk is an established principle of tort law. One could argue that when voluntarily participating in activities with recognized high inherent risk, the individual should assume a portion of the risk (or purchase personal insurance to cover that risk).

  Accident statistics clearly indicate that Alaska has roughly five times the aircraft accident rate experienced in the contiguous states. In acknowledgment of the high risk of flying in Alaska, the law could require that passengers relinquish rights to claim damages above a statutory limit.

  In Linn Asper's opinion, if accident statistics are acceptable to the Supreme Court as "reasonable, not arbitrary" justification for separate treatment of a group of potential plaintiffs, the equal protection clause may not be violated.

  A ceiling on awards for aircraft accidents might succeed in lowering premiums by allowing air carriers to decrease insurance coverage, but a ruling that the ceiling is unconstitutional could cause severe financial hardship to air carriers that might be responsible for damages awarded in excess of the ceiling.

- Model a statute after California law (attachment B), which places limits on liability of aircraft owners, but leaves an option for plaintiffs to claim damages above the established limits. Damages above the limits could be imposed for the sake of example or punishment. The California limits are dated 1953.

- Provide a fair and equitable exhange for the injured parties' right to sue. Constitutionally tested exchanges include no-fault auto insurance and workers' compensation. In both cases, the right to sue was exchanged for a "no proof required" payment of damages.

  A schedule of payments for injury or death will not necessarily reduce premiums. Although huge awards may be eliminated, proof of liability would no longer be required so that the number of awards and total amount of damages awarded may increase. This could put upward pressure on premiums. On the other hand, elimi-

nation of huge awards might decrease the average award and therefore tend to stabilize rates and draw more insurance carriers into the market. Increased competition among the insurance carriers may result in rate decreases.

A requirement that all aircraft carry minimum insurance coverage would expand the premium base and might reduce rates for air carriers, but such action may have the effect of reducing the number of pilots flying for pleasure. A relatively high proportion of private aircraft in Alaska are presently uninsured and some pilots may discontinue flying if insurance coverage were mandatory. Based on experience with mandatory automobile insurance, this option would be likely to incur high enforcement costs.

Reciprocal exchanges (groups which exchange contracts of insurance in order to spread risk) or other cooperative, mutual, or group insurance plans might reduce premiums somewhat via reductions in administrative costs and/or industry profits. These options are available under current law and would not require State involvement.

Other options require participation by the State. SB277 would establish a quasi-public corporation to provide aircraft insurance in the state. The bill received support from the aviation industry but the insurance industry strongly objected to the bill. Some criticism of the concepts in SB277 could be avoided if direct State participation were eliminated. That is, the State could stay out of the business of selling insurance to individual operators and instead act only through insurance companies. The State could act as reinsurer by establishing an "Excess Award Fund" which would reimburse insurance companies for individual claim payments in excess of some arbitrary amount. An alternative form of such a Fund might reimburse insurance carriers based on the ratio of total premium income to total losses over some arbitrary period of time.

State participation might bring the danger of inflated claims for damages due to knowledge of the existence of a deep pocket to provide funds. State participation in insurance awards also raises questions concerning potential sources for this type of financial backing. If aircraft owner/operators provide the funds--directly or through premiums--the fund may offer no great advantage. If the financial resources were provided by State revenues, premiums could be expected to decrease, but the State would then be subsidizing air transportation through the insurance industry.

Some argue that the only sure way of reducing insurance costs is to reduce the accident rate. Various safety programs have been proposed. Two steps that have been proposed are conducting pilot safety training and increasing the number of navigational aids.

parties temporarily without funds, subsection (b) of this section suggests that it is contemplated that such services typically are to be performed by a private agency. Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

Performance of "other services" cannot be compelled. — There is no implied grant of power in subsection (a) or (c) of this section to compel the performance of "other services" by a state agency not wishing to perform them. Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

The vague directive of this section that in a private custody dispute the court may order that "services be provided for the protection of the child" does not empower a court to command the aid of the department of health and social services in a private custody dispute. Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

Distinctions between AS 47.10.020 and this section. — See Granato v. Occhipinti, Sup. Ct. Op. No. 1962 (File No. 3756), 602 P.2d 442 (1979).

Quoted in Chavre v. Chavre, Sup. Ct. Op. No. 1691 (File No. 3349), 598 P.2d 81 (1979).

Sec. 09.65.135. Limitations on claims arising from skiing. (a) A skier may not recover from a ski area operator for injury resulting from an inherent risk of skiing unless the injury occurred when the ski area operator was not providing the information required by (b) of this section.

(b) A ski area operator shall post trail signs at prominent locations within a ski area which shall include a list of the inherent risks of skiing and the limitation on liability of the ski area operator provided by this section.

(c) In this section

(1) "inherent risks of skiing" means the dangers or conditions which are an integral part of the sport of skiing, including, but not limited to,

(A) changing weather conditions;

(B) variations or steepness in terrain;

(C) snow or ice conditions;

(D) surface or subsurface conditions such as bare spots, forest growth, and rocks;

(E) collisions with lift towers, other structures, and their components unless the skier is on the lift;

(F) collisions with other skiers; and

(G) a skier's failure to ski within the limits of his own ability;

(2) "injury" means a personal injury or property damage or loss;

(3) "skier" means a person in a ski area engaged in the sport of skiing, sliding downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, or other device for recreation in snow;

(4) "ski area" means all ski slopes, trails and other places under the control of a ski area operator and administered as a single enterprise in the state;

(5) "ski area operator" means the operator of a ski area. (§ 2 ch 80 SLA 1980)

ATTACHMENT B

§ 21004. Exercise of powers granted to division by this part as matters of public necessity
§ 21005. Right of State to regulate airport hazards by zoning not limited
§ 21006. Operation or landing of helicopters in populated areas not restricted
§ 21006.5. "Department"
§ 21007. "Division": "California Aeronautics Commission"
§ 21008. "Director"
§ 21008.5. "Board"
§ 21009. "Person"
§ 21010. "Political subdivision"
§ 21011. "Aeronautics"
§ 21012. "Aircraft"
§ 21013. "Airport"
§ 21014. "Air navigation facility"
§ 21015. "Operation of aircraft": "Operate aircraft"
§ 21015.5. "Parachute jump"
§ 21016. "Airman"
§ 21017. "Airport hazard"
§ 21018. "Airway"
§ 21019. Violation of part other than § 21407.5: Punishment

§ 21001. Citation of part

This part may be cited as the "State Aeronautics Act."

Legislative History:

1. Added by Stats 1953 ch 151 § 1 p 927. Based on Stats 1947 ch 1379 § 27 p 2941.
2. Amended by Stats 1961 ch 2071 § 2 p 4312, deleting "Commission" after "Aeronautics."

Collateral References:

Cal Jur 2d Aviation § 2.
McKinney's Cal Dig Aeronautics § 1.
8 Am Jur 2d Aviation § 17.

Law Review Articles:

Enforcement of safety regulations by Civil Aeronautics Authority. 25 CLR 280.

Attorney General's Opinions:

33 Ops Atty Gen 106 (it is not legal duty of California aeronautics commission to determine whether some airport permittees must purchase runway clear zones in order to secure benefits under federal rule or law).

§ 21002. Purpose of part

The purpose of this part is to further and protect the public interest in aeronautics and aeronautical progress by the following means:

(a) Encouraging the development of private flying and the general use of air transportation.

(b) Fostering and promoting safety in aeronautics.

(c) Effecting uniformity of the laws and regulations relating to aeronautics consistent with federal aeronautics laws and regulations.

(d) Granting to a state agency such powers and imposing upon it such duties that the State may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property, assist in the development of a state-wide system of airports, encourage the flow of private capital into aviation facilities, and cooperate with and assist political subdivisions and others engaged in aeronautics in the development and encouragement of aeronautics.

(e) Establishing only those regulations which are essential and clearly within the scope of the authority granted by the Legislature, in order that persons may engage in every phase of aeronautics with the least possible restriction consistent with the safety and the rights of others.

(f) Providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this State.

Legislative History:

Added by Stats 1953 ch 151 § 1 p 927. Based on Stats 1947 ch 1379 § 2 subd (a) p 2929.

Cross References:

Encouragement of aeronautics: § 21241.
Co-operation with federal agencies: §§ 21249, 21250.
Assistance to political subdivisions: §§ 21601–21603.
Airport district: §§ 22001 et seq.
Authority of supervisors concerning airports: Gov C §§ 26020 et seq.
Powers and duties of cities and counties concerning airports: Gov C §§ 50470 et seq.
Airport Approaches Zoning Law: Gov C §§ 50485 et seq.
Aircraft facilities of San Francisco harbor: H & N C §§ 1940 et seq.

Collateral References:

Cal Jur 2d Aviation §§ 2, 13, 17.
McKinney's Cal Dig Aeronautics § 1.
8 Am Jur 2d Aviation § 17.

Law Review Articles:

Sovereignty of airspace. 36 CLR 41.
Public control and regulation of aviation. 2 SCLR 430.
Law governing acts done in course of flight. 2 SCLR 483, 36 CLR 41.
Responsibility of the landowner to the airplane overhead. 8 Hast LJ 230.
Proposed uniform state aeronautical code. 8 LA Bar B 92.

Annotations:

Aeroplanes and aeronautics. 69 ALR 316, 83 ALR 333, 99 ALR 173.

...suit in action by them against commercial airlines operating jet aircraft into and out of airport where, though plaintiffs alleged that defendants' flight operations constituted nuisance, aircraft involved were operated with federal airworthiness certificates in federally certificated, scheduled passenger service, in conformity with federal safety regulations, in manner not creating imminent danger, and in furtherance of public interest in safe, regular air transportation of goods and passengers. Loma Portal Civic Club v American Airlines, Inc. (1964) 61 C2d 582, 39 Cal Rptr 708, 394 P2d 548.

State action in field of commercial aircraft flight operations has not been precluded by extensive pattern of federal regulation in such field, especially in view of express declaration in Federal Aviation Act that nothing therein contained shall in any way abridge or alter remedies now existing at common law or by statute and that the provisions of act are in addition to such remedies. Loma Portal Civic Club v American Airlines, Inc. (1964) 61 C2d 582, 39 Cal Rptr 708, 394 P2d 548.

A temporary invasion of air space by aircraft over the land of another is privileged so long as it does not unreasonably interfere with persons or property on the land. Pacific Gas & Elec. Co. v Peterson (1969) 270 CA2d 434, 75 Cal Rptr 673.

§ 21404. Liability for death of passengers

Subject to Section 21406, the liability of the owner or pilot of an aircraft carrying passengers for injury or death to the passengers is determined by the rules of law applicable to torts on the land or waters of this state, arising out of similar relationships. Every owner of an aircraft is liable and responsible for death or injury to person or property resulting from a negligent or wrongful act or omission in the operation of the aircraft, in the business of the owner or otherwise, by any person using or operating the same with the permission, express or implied, of the owner.

Legislative History:

1. Added by Stats 1953 ch 151 § 1 p 934. Based on Stats 1947 ch 1379 § 2 subd (f) p 2929.

2. Amended by Stats 1968 ch 1458 § 1 p 2890, adding the last sentence to the section.

Collateral References:

Cal Jur 2d Aviation §§ 59, 63.
McKinney's Cal Dig Aeronautics § 3.
8 Am Jur 2d Aviation §§ 64 et seq.

Law Review Articles:

The liability of the aviator to third persons. 2 SCLR 405.
Res ipsa loquitur in aviation law. 18 SCLR 15.

Attorney General's Opinions:

12 Ops Atty Gen 28 (questions respecting liability of owner or pilot for injury or death of passenger discussed).

Annotations:

Negligence in connection with aircraft and aviation. 69 ALR 316, 83 ALR 333, 99 ALR 173.
Tort liability of one granting or loaning aeroplane to another. 4 ALR2d 1306.
Res ipsa loquitur in aviation accidents. 6 ALR2d 528.
Death or injury to occupant of aeroplane from collision or near collision with another aircraft. 12 ALR2d 677.
Limitation of liability for personal injury by air carrier. 13 ALR2d 337.
Defenses of fellow servant and assumption of risk in actions involving injury or death of member of aeroplane crew. 13 ALR2d 1137.
Liability of operator of flight training school for injury or death of trainee. 17 ALR2d 557.
Pre-flight inspection and maintenance of aircraft. 30 ALR2d 1172.

Notes of Decisions

In action for death of one of two pilots in airplane crash, burden is on plaintiff to prove that decedent was not guest riding in plane without giving compensation for such ride or while engaged in joint enterprise with airman flying it, where it is not claimed that death resulted from intoxication or wilful misconduct of airman. Whittemore v Lockheed Aircraft Corp. (1944) 65 CA2d 737, 151 P2d 670.

Where president of construction company took prospective customer and his wife on flight in company owned plane over two ranches in which customer was interested and which would require construction work, and then crashed in attempting to land at third ranch where parties planned to do some hunting, evidence sustained finding that pilot was acting within scope of his employment by construction company at time of accident, it being common knowledge that businessmen often entertain customers and prospective customers for business reasons. Halbert v Berlinger (1954) 127 CA2d 6, 273 P2d 274.

In action for personal injuries in wrongful death arising when plane crashed in attempting landing at ranch, jury finding that pilot's negligence was proximate cause of accident was sustained by evidence that wind conditions were turbulent, that pilot was unable to locate ranch at first and then, on seeing landing strip, attempted sharp turn toward it, but plane did not have enough speed when turn was attempted, and that pilot should have circled strip before attempting a landing. Halbert v Berlinger (1954) 127 CA2d 6, 273 P2d 274.

Properly handled by competent pilot, airplane is not inherently dangerous instrument within rule imposing absolute liability on bailors in connection with ultrahazardous activities. Boyd v White (1954) 128 CA2d 641, 276 P2d 92.

Possibility that one who chartered plane was going to commit suicide would not give pilot such information as to put him on notice that one chartering plane would take it and attempt to fly it. Fresno Air Service v Wood (1965) 232 CA2d 801, 43 Cal Rptr 276.

At no time has either federal law or FAA Regulations invested the Federal Aviation Agency or its administrator with any authority to "deny" the owner of private property the right to perform construction work on his property, and to do so would be an outright violation of the concluding clause of U. S. Const., 5th Amend. Rader v Apple Valley Bldg. & Dev. Co. (1968) 261 CA2d 308, 68 Cal Rptr 108.

§ 21404.1. Same: Limitation of liability: Exemplary or punitive damages

(a) The liability of an owner, bailee of an owner, or personal representative of a decedent imposed by Section 21404 and not arising through the relationship of principal and agent or master and servant is limited to the amount of fifteen thousand dollars ($15,000) for the death of or injury to one person in any one accident and, subject to the limit as to one person, is limited to the amount of thirty thousand dollars ($30,000) for the death of or injury to more than one person in any one accident and is limited to the amount of five thousand dollars ($5,000) for damage to property of others in any one accident.

(b) An owner, bailee of an owner, or personal representative of a decedent is not liable under this section for damages imposed for the sake of example and by way of punishing the operator of the aircraft. Nothing in this subdivision makes an owner, bailee of an owner, or personal representative immune from lia-

bility for damages imposed for the sake of example and by way of punishment of him for his own wrongful conduct.

punitive damage

Legislative History:

Added by Stats 1968 ch 1458 § 2 p 2691.

Collateral References:

Cal Jur 2d Aviation §§ 59, 63.
McKinney's Cal Dig Aeronautics § 3.
8 Am Jur 2d Aviation § 108.

§ 21405. Liability for collision of aircraft

Subject to Section 21406, the liability of the owner of one aircraft to the owner of another aircraft, or to operators or passengers on either aircraft, for damage caused by collision on land or in the air, is determined by the rules of law applicable to torts on land.

Legislative History:

Added by Stats 1953 ch 151 § 1 p 934. Based on Stats 1947 ch 1379 § 2 subd (g) p 2929.

Collateral References:

Cal Jur 2d Aviation §§ 59, 65.
McKinney's Cal Dig Aeronautics § 3(6).
8 Am Jur 2d Aviation §§ 88 et seq., 98.

Law Review Articles:

The liability of the aviator to third persons. 2 SCLR 405.

Res ipsa loquitur in aviation law. 18 SCLR 15.

Liability for damages to ground victims resulting from flight of aircraft. 2 UCLA LR 598.

Strict liability for aircraft crashes and forced landings on ground victims outside of established landing areas. 5 Hast LJ 1.

Annotations:

Negligence in connection with aircraft and aviation. 69 ALR 316, 83 ALR 353, 99 ALR 173.

Tort liability of one granting or loading aeroplane to another. 4 ALR2d 1306.

Res ipsa loquitur in aviation accidents. 6 ALR2d 528.

Death or injury to occupant of aeroplane from collision with another aircraft. 12 ALR2d 677.

Pre-flight inspection and maintenance of aircraft. 30 ALR2d 1172.

Notes of Decisions

In consolidated actions for damages for death resulting from collision of two airplanes which were under control of defendants and in which deceased persons had been riding as passengers, where no explanation of cause of collision was furnished by plaintiffs' evidence, which clearly left it doubtful as to whether ultimate cause of collision was negligence of defendants, it was proper to instruct jury as to doctrine of res ipsa loquitur. Parker v Granger (James), Inc. (1935) 4 C2d 668, 52 P2d 226, cert den 298 US 644, 80 L Ed 1375, 56 S Ct 958.

In action for damages for destruction of airplane rented to defendant, where there was

evidence that at time of accident pilot took off straight into wind and then made two turns so that wind was at his back and plane lost altitude rapidly, and expert testified that he made pilot errors in choosing short runway under conditions then present and in pulling ship off ground before it had flying speed, and plaintiff's president testified that if pilot had difficulty in climbing he should have landed in field straight ahead and that he discussed with pilot characteristics of plane and airport, there was substantial evidence precluding court from withdrawing issue of negligence from jury. United Air Services, Ltd. v Sampson (1938) 30 CA2d 135, 86 P2d 366.

Assuming that competent flying instructor knew his student to be incompetent, such fact is not enough to render owner, who rented airplane to instructor, knowing it was to be flown by student, liable for damages caused by airplane while flown by student, under rule that bailor who entrusts vehicle to person he knows to be incompetent is liable for bailee's negligent acts. Boyd v White (1954) 128 CA2d 641, 276 P2d 92.

Hubbard

§ 21406. Liability for personal injuries to or death of "guest" in aircraft

A guest riding in or upon any aircraft without giving compensation, or any other person, does not have any right of action for civil damages against the airman flying the aircraft or against any other person otherwise legally liable for the conduct of the airman, on account of personal injury to, or the death of, the guest during such ride, unless the plaintiff in the action establishes that the injury or death proximately resulted from the intoxication or wilful misconduct of the airman.

helps general navigation

Legislative History:

Added by Stats 1953 ch 151 § 1 p 934. Based on:

(a) Stats 1947 ch 1379 § 15, as added by Stats 1949 ch 653 § 1 p 1157.

(b) Stats 1929 ch 850 § 1½, as added by Stats 1933 ch 438 § 1 p 1135.

Collateral References:

Cal Jur 2d Aviation §§ 62, 75.
McKinney's Cal Dig Aeronautics § 3(5).
8 Am Jur 2d Aviation §§ 81–84.

Law Review Articles:

Jurisdiction and venue in aviation accident cases. 36 CLR 41.

Tort liability of air carriers to air passengers. 39 CLR 541.

Liability for ground damaged from crashes or forced landings of aircraft. 43 CLR 309.

Interpretation of California "guest statute" applicable to airplane accidents. 16 SCLR 358.

Attorney General's Opinions:

12 Ops Atty Gen 28 (questions respecting liability of owner or pilot for injury or death of passenger discussed).

Words and Phrases:

"Airplanes": Cal Words, Phrases and Maxims.

Annotations:

Liability for injury to guest in aeroplane. 12 ALR2d 656.

Liability of operator of flight training school for injury or death of trainee as that of owner or operator to guest or passenger. 17 ALR2d 557.

Bill Fact Sheet

Date Received _____

Bill Number HB126 Title _____

Fiscal Note - Date Requested _____ Date Received _____

- Of Whom _____

Dept. Position Paper - Date Requested _____ Date Received _____

- Of Whom _____

Resource People

Initial Hearing - Date 5/24/83

People Contacted

Hurlbert - 3799 - 5/20 - 5/23

Law - 5/23

Hurlbert 6/13 Bennie Kelly

Hooley 6-13

Follow-up Hearing - Date 6-14-83

Passed out CS

Final Action _____ Date _____

PATRICK M. RODEY
3271 MONTCLAIRE CT
ANCHORAGE, AK 99503

DURING SESSION
POUCH V
JUNEAU, AK 99811
(907) 465-3717

ALASKA STATE SENATE

June 8, 1983

TO : Senator Dick Eliason
Chairman, Senate Labor & Commerce Committee

FROM: Senator Patrick Rodey PMR

RE : House Bill 126 (Aircraft guest statute)

I am enclosing a copy of the letter and enclosed materials I just received from Bernard Kelly regarding House Bill 126.

I wanted to bring this information to your attention to include in any further committee deliberations on HB 126.

Enclosures

LAW OFFICES
KELLY & LUCE
A PROFESSIONAL CORPORATION
1015 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 279-9571

BERNARD P. KELLY
L. AMES LUCE
GREGORY J. GREBE

June 2, 1983

Senator Patrick Rodey
State Senate
Juneau, AK 99801

Dear Senator Rodey:

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We believe that there are other reasons for defeating this bill. It is like MICA where there may be unaffordable insurance coverage. I am sure it can be established that the insurance is too high because writing individual coverage for certain types of risks is something the insurance industry doesn't like to do and therefore they charge inordinant premiums for such situations. I think a better solution can be found than taking away people's rights. If the guest passenger statute were passed, there are many situations, such as people who pay for part of the gas for the airplane ride or who make a business arrangement of some kind with the pilot, such as a salesman and accountant or lawyer and client, etc., which situations avoid the guest statute. Private pilots who want the legislation are seeking a liability picture where they don't have to pay for any insurance. Yet, to my way of thinking, this is a trap for the pilot because the guest statute might be avoided on one of the basis outlined above or the statute might be held unconstitutional. Pilots in those situations would be lulled into a false sense of security and as a result could lose their personal assets.

In the meantime, the victims, widows and survivors of deceased passengers in aircrafts may have to be demeaned by going on welfare or public assistance. This legislation treats them as an underprivileged class as compared to victims in other types of vehicular accidents, such as boats and cars.

We would like to be kept apprised regarding a hearing on this bill. I will arrange to either be personally present or have a knowledgeable fellow attorney come down to argue against this legislation.

Thank you for any information you can provide us on hearings, time tables and the like.

Very truly yours,

KELLY, LUCE & GREBE

BERNARD P. KELLY

BPK/llm

Enclosures

LAW OFFICES

Mastas & Schneider, P.C.

DENNIS M. MESTAS
MICHAEL J. SCHNEIDER

860 "N" STREET, SUITE 202
ANCHORAGE, ALASKA 99501

AREA CODE 907
277-4551

April 14, 1983

Joseph Brewer
Staff Counsel
House Judiciary Committee
Pouch V
Juneau, AK 99811

Re: House Bill 126 (Aircraft Guest Statute)

Dear Joe:

As I mentioned in our phone conversation the other day, the above bill makes it necessary for a passenger in a private aircraft to prove the pilot was grossly negligent or intoxicated before that passenger can maintain a successful claim for personal injury or death. This bill would appear to be terrible public policy as passengers are rarely, if ever, in a position to assess the risks of any given flight in any given aircraft. Indeed, the control of critical decisions regarding weather, terrain, and performance capabilities of the aircraft is always in of the hands of the pilot no matter what the passenger's opinion on the matter might be.

Legislation of this type has been held unconstitutional in a number of states. The first group of cases that I will refer to deal specifically with airplane guest statutes:

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3. Lightenburger v. Gordon, 510 P.2d 865 (Nev. 1973).

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opposite side of road; court held classification which car guest statute created between those allowed and those denied recovery for injuries due to negligence does not have a substantial and rational relationship to statute's purpose of protecting hospitality of host driver and preventing collusive lawsuits and therefore, as applied to negligently-injured guest, the guest statute violates equal protection guarantees of California and United States Constitutions; judgment for defendant reversed.

2. Newman v. Coleman, 524 P.2d 541 (Idaho 1974).

3. Manistee Bank & Trust Co. v. McGowan, 232 N.W.2d 636 (Mich. 1975), to deny guest's recompense for negligently-inflicted injury, death, or loss cannot be justified as reasonable means to promote hospitality, foster gratitude, prevent collusion, perjury or fraud, reduce insurance premiums, or protect generous drivers from vexacious litigation by ungrateful guests or conniving hitchhikers.

4. Stanfill v. Powers, 243 N.W.2d 24 (1976), auto guest statute violative of equal protection clause of Michigan Constitution.

5. Lakonen v. 8th Judicial District Court, 538 P.2d 574 (Nev. 1975), Nevada's automobile guest statute unconstitutional as denying equal protection of the laws.

6. McGeehan v. Bunch, 540 P.2d 238 (N.M. 1975), classifications created by guest statutes, as between those who are denied and those who are permitted recovery for negligently-inflicted injuries, do not bear substantial and rational relation to statute's purpose of protecting hospitality of host driver and preventing collusive lawsuits; statute is unconstitutional and void as denial of equal protection of law.

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8. Primes v. Tyler, 331 N.E.2d 723 (Ohio 1975).

9. Nehring v. Russell, 582 P.2d 68 (Wyo. 1978), an action arising out of injuries sustained by plaintiff while riding as passenger in vehicle driven by defendant, court held that Wyoming's guest statute violates state constitution which requires "uniform operation of laws;" reasons for prohibition imposed upon guest from suing host to promote hospitality and gratuity and to prevent possible collusion were no longer viable, as party to be protected by guest statute today is insure, not host and judicial system is well armed with numerous implements for prevention and detecton of fraud.

I hope the above convince you, as they have convinced me, that House Bill 126 suffers from irreparable State and Federal Constitutional infirmity. As a former president of the Alaska Academy of Trial Lawyers and the present Chairman of the Alaska Action Trust, I can assure you and the members of the House Judiciary Committee that the plaintiff's trial bar in this State is much opposed to this legislation. More

importantly, this legislation promotes the interests of a very limited group of people to the detriment of the public in general.

Thanks very much for your time and consideration of my thoughts with regard to this bill.

Sincerely,

MESTAS & SCHNEIDER, P.C.

By _____
Michael J. Schneider

MJS:nh

P.S. What wonders arrive in the mail!! Since dictating this, I received (and have enclosed) a comprehensive treatment of the guest statute issue by an independent research group. Hope it helps.

THE RESEARCH GROUP

LEGAL RESEARCH ANALYSIS
AND ABBREVIATION ATTORNEYS

2401 IVY ROAD
POST OFFICE BOX 7167
CHARLOTTESVILLE, VIRGINIA 22906
(804) 977-1870
IN VIRGINIA (804) 977-3040

April 4, 198

Michael J. Schneider, Esquire
880 North Street, Suite 202
Anchorage, Alaska 99501

Dear Mr. Schneider:

As you may know, The Research Group is a firm of 65 specialized attorneys which provides lawyers across the nation with professional legal support in the areas of legal research, writing, and analysis.

In addition, and of more immediate concern to the Alaska Trial Lawyer's Association, we have broad experience in preparing national and state surveys and other major studies. For example, we researched and wrote a seven volume study for The Commerce Department evaluating the status of American products liability law.

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We would be happy to discuss with you ways in which we can be of assistance to your organization. Please contact me directly (toll-free 800-446-1870) should you desire further information relative to our services or to receive a cost estimate for a specific project.

Sincerely,

Edward B. Gerber
Vice President

EBG/ntt
Enclosure

PATRICK M. RODEY
3271 MONTCLAIRE CT.
ANCHORAGE, AK 99503

DURING SESSION:
POUCH V
JUNEAU, AK 99811
(907) 465-3717

ALASKA STATE SENATE

June 8, 1983

TO : Senator Dick Eliason
Chairman, Senate Labor & Commerce Committee

FROM: Senator Patrick Rodey PMR

RE : House Bill 126 (Aircraft guest statute)

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I wanted to bring this information to your attention to include in any further committee deliberations on HB 126.

Enclosures

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A PROFESSIONAL CORPORATION
1015 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 279-9571

BERNARD P. KELLY
L. AMES LUCE
GREGORY J. GREBE

June 2, 1983

Senator Patrick Rodey
State Senate
Juneau, AK 99801

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KELLY, LUCE & GREBE

BERNARD P. KELLY

BPK/llm

Enclosures

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DENNIS M. MESTAS
MICHAEL J. SCHNEIDER

660 "N" STREET, SUITE 202
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AREA CODE 907
277-4551

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Staff Counsel
House Judiciary Committee
Pouch V
Juneau, AK 99811

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By _____
Michael J. Schneider

MJS:nh

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THE RESEARCH GROUP

LEGAL RESEARCH, ANALYSIS
AND ADVOCACY FOR ATTORNEYS

2011 IVY ROAD
POST OFFICE BOX 7387
CHARLOTTESVILLE, VIRGINIA 22906
(804) 977-1870
IN VIRGINIA (804) 977-3040

April 4, 1983

Michael J. Schneider, Esquire
880 North Street, Suite 202
Anchorage, Alaska 99501

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Sincerely,

Edward B. Gerber
Vice President

EBG/ntt
Enclosure

SIGN-IN SHEET Proposed Legislation HB 126

Name (please print)	Address	Representing	Testify?? (YES or NO)	Phone Number
Rep Hurlbert				

SENATE LABOR AND COMMERCE COMMITTEE HEARING DATE 5/24/83

Limiting liability /air craft

HB

154

Appropriation lapses June 30, 1984. Effective immediately.

Introduced February 2 and referred to Community & Regional Affairs and Finance.

Appropriation (supplemental) (Municipal Assistance Fund)

HOUSE BILL NO. 153, by the Community & Regional Affairs Committee. Would make a $25.1 million supplemental appropriation to the Dept. of Revenue for the Municipal Assistance Fund (AS 43.20.016(a)) for distribution to municipalities for the fiscal year ending June 30, 1983. Lapses on June 30, 1984. Effective immediately.

Identical to SB 17, as amended by Senate C&RA Committee, and identical to HB 136 p. 99, except for lapse date.

Introduced February 2 and referred to Community & Regional Affairs and Finance.

Minimum Train Crews (repealing law)

HOUSE BILL NO. 154, by the Rules Committee by request of the Governor. Would repeal law establishing minimum train crews in Alaska (AS 23.10.420). See Governor's letter, below.

Does not provide for an effective date (effective 90 days after Governor's signature).

Introduced February 2 and referred to Labor & Commerce and Transportation.

In his message transmitting the bill to the House for consideration, Governor Sheffield stated:

> Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill repealing the existing law requiring train crews of certain minimum sizes. The existing law requires that passenger and freight trains have crews of no less than five persons, that a light engine without cars have a crew of at least three persons, and that a switch engine have a crew of at least three persons.
>
> The repeal may allow railroads within the state to determine crew size based on economic and operational concerns. However, this repeal does not relieve a railroad of its existing obligation to operate with customary due care and high regard for the safety of its passengers, freight, and employees. The repeal is not intended to make any pronouncement on what is or is not an appropriate subject for collective bargaining.
>
> I urge you to approve this bill.

Commis. on Status of Women

HOUSE BILL NO. 155, by the Rules Committee by request of the Governor. Would continue the existence of the Alaska Commission on the Status of Women until June 30, 1986 (set to terminate on June 30, 1983). Effective immediately. See SB 63, p. 21, similar.

Introduced February 2 and referred to State Affairs and Finance.

In his message transmitting the bill to the House for consideration, Governor Hammond stated:

HB 149 (cont'd)

to $500,000.

Minimum Train Crews (repealing law)

HOUSE BILL NO. 154, (see page 124). Reported back to the House on March 11 by Labor & Commerce with the committee recommending as follows: Furnace (Chmn.), Cowdery and Ringstad recommended do pass; Koponen and Malone had no recommendation. To Transportation.

State Bonded Indebtedness (retirement of)

HOUSE BILL NO. 161, (see page 127). Reported back to the House on March 9 by State Affairs with the committee recommending as follows: Abood (Chmn.), Furnace, Cowdery and Shultz signed do pass; Larson and M.M. Miller signed no recommendation; Vaska signed do not pass. To Finance.

Legis. Per Diem/Temp. Staff Salaries (cutting off)

HOUSE BILL NO. 171, (see page 150). Reported back to the House on March 7 by Finance with the committee members having individual recommendations. Bettisworth, Ward and Pestinger signed "do pass"; Zharoff and Duncan signed "do not pass"; Martin signed "no recommendation until proper amendment"; and Adams (Chmn.), Flood, Hurlbert, Grussendorf, and Lindauer signed "no recommendation." To Rules.

Big Game Hunting (nonresidents)

HOUSE BILL NO. 188, (see page 156). Reported back to the House on March 9 by Resources with a majority recommending it do pass. Concurring: Shultz (Co-Chmn.), Goll, Cowdery, Liska, Larson and Ringstad. Not concurring: Vaska, who had no recommendation. To Judiciary.

Emergency Guards (in exempt service)

HOUSE BILL NO. 209, (see page 183). Reported back to the House on March 11 by State Affairs with the committee recommending it be replaced with State Affairs Committee Subst. and as follows: Abood (Chmn.), Furnace, Larson, Cowdery and Shultz recommended do pass; Vaska and M.M. Miller had no recommendation. To Finance.

The State Affairs CS would place Public Safety emergency guards in the partially exempt classification of state service, rather than the exempt service.

Bd. of Marine Pilots (continuing existence)

HOUSE BILL NO. 218, (see page 215). Reported back to the House on March 11 by Finance with the committee recommending it be replaced with Finance Committee Substicute and do pass. Signing do pass: Adams (Chmn.), Pestinger, Flood, Ward, Hurlbert, Zharoff, Duncan, Grussendorf, Lindauer, Martin and Bettisworth. To Rules.

The Finance CS adds an immediate effective date to the bill.

SSHB 58, (cont'd)

not be authorized for a prisoner who refuses to participate in available alcohol, drug, sex offender or other mental health treatment required by the division of corrections.

Does not provide for an effective date (becomes law 90 days after Governor's approval).

State Retirement Bills (fiscal notes)

HOUSE BILL NO. 66, (see pages 49;161;337). Reported back to the House March 25 by Finance recommending it be replaced with the Labor & Commerce substitute (page 161), and that it do pass. Concurring: Adams (Chairman), Lindauer, Bettisworth, Duncan, Zharoff, Hurlbert, Grussendorf, Martin, Pestinger, Flood and Ward. To Rules.

AK Marine Highway Auth. (establishing)

HOUSE BILL NO. 68, (see page 49). Reported back to the House March 21 by Transportation as follows: Cato (Chairman), Herrmann and M. W. Miller recommended do pass. McBride and Lacher recommended do not pass, and Abood and Phillips had no recommendation. To Finance.

AK Bidder Preference

HOUSE BILL NO. 106, (see pages 60;300;347). Reported back to the House March 25 by Finance recommending it do pass. Concurring: Adams (Chairman), Pestinger, Flood, Ward, Hurlbert, Zharoff, Duncan, Grussendorf, Lindauer, Martin and Bettisworth. To Rules.

Child Prostitution (raising penalties)

HOUSE BILL NO. 128, (see pages 97;258). Reported back to the House March 23 by Judiciary recommending it be replaced with a Judiciary substitute and that it do pass. Concurring: Bussell (Chairman), Liska, Hayes, Wendte and Barnes. At the request of the Finance Committee Chairman, the Speaker waived referral to the Finance Committee. To Rules. On March 23 Rep. Bussell was added as a co-sponsor.

The Judiciary substitute adds an immediate effective date clause.

Appropriation (special) (Iditarod Race, '84 expenses)

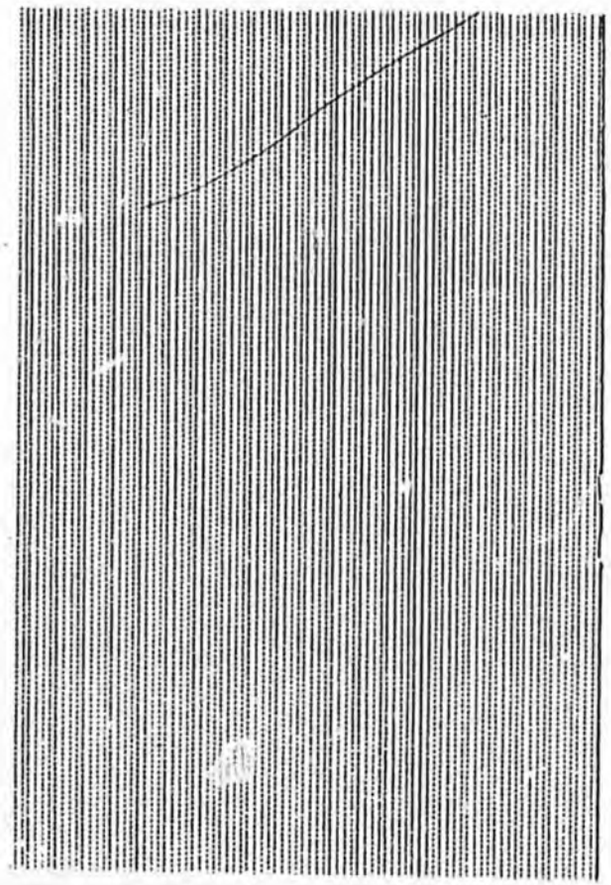
HOUSE BILL NO. 142, (see pages 100;300). Reported back to the House March 23 by Finance recommending it be replaced with the Labor & Commerce substitute (page 300) and that it do pass. Concurring: Pestinger, Flood, Hurlbert, Ward, Zharoff, Duncan, Martin, Grussendorf, and Bettisworth. Not concurring: Adams (Chairman) had no recommendation. To Rules.

Minimum Train Crews (repealing law)

HOUSE BILL NO. 154, (see pages 124;301). Reported back to the House March 23 by Transportation recommending it do pass. Concurring: Cato (Chairman), Phillips, M.W. Miller and Herrmann. Not concurring: Lacher, Szymanski and Davis had no recommendation. To Rules.

Obstructing Lawful Use of Public Land (punishment for)

HOUSE BILL NO. 163, (see page 128). Reported back to the House March 21 by Resources recommending it be replaced with a Resources substitute and that it do pass. Concurring: Ringstad (Co-Chairman), Shultz, Bussell, Liska, and Cowdery. Not concurring: Larson and Vaska had no recommendation. To



HB 154

HOUSE BILL NO. 154 (relating to train crew size) was read the second time with the Labor & Commerce Committee report (page 452 of the Journal) and the Transportation Committee report (page 592 of the Journal).

Amendment No. 1 by Goll:

Page 1, line 8

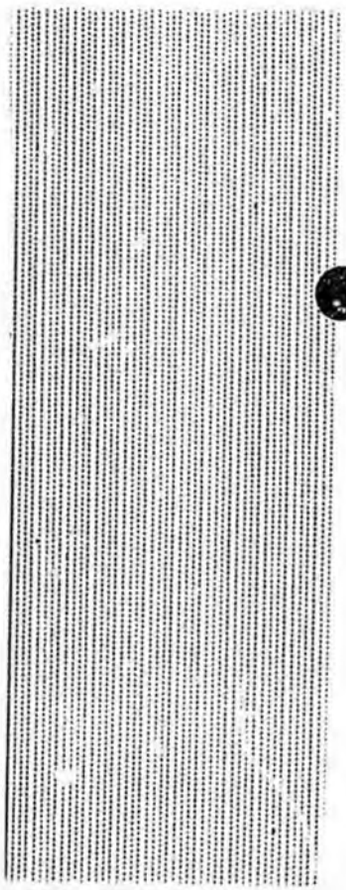
Following "AS 23.10.420":

Delete "is repealed." and insert the following:

"(a) is amended to read:

(a) No person operating an Interstate Commerce Commission-regulated narrow gauge railroad offering passenger service in this state may operate a train or engine, outside of yard limits, regardless of the form of energy used for propulsion, unless it meets the following requirements:

(1) a passenger train shall have at least a minimum passenger crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), one conductor, one brakeman, and one flagman;



HB 154

(2) a freight train shall have at least a minimum freight crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), one conductor, and two brakemen;

(3) a light engine without cars shall have at least a minimum light engine crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), and one conductor.

* Sec. 2. AS 23.10.420(b) is amended to read:

(b) Except for hostling movements and duties as negotiated for each railroad company, no person operating an Interstate Commerce Commission-regulated narrow gauge railroad offering passenger service in this state may operate an engine or locomotive, regardless of the form of energy used for propulsion, for switching cars or in transfer movements, unless every engine or locomotive is manned by a minimum crew consisting of one locomotive engineer, one conductor, and one brakeman."

Representative Goll moved and asked unanimous consent that Amendment No. 1 be adopted.

Representative Uehling objected.

The question being: "Shall Amendment No. 1 be adopted?" The roll was taken with the following result:

HB 154 AM 1

Yeas:	17	Adams, Clocksin, Davis, Duncan, Fuller, Goll, Grussendorf, Hurlbert, Koponen, Lacher, Lindauer, McBride, Miller,M.M., Szymanski, Vaska, Wendte, Zharoff

HB 154

Nays:	20	Abood, Barnes, Bettisworth, Bussell, Cowdery, Flood, Fritz, Furnace, Hayes, Herrmann, Liska, Martin, Miller,M.W., Pestinger, Phillips, Ringstad, Shultz, Tischer, Uehling, Ward
Excused:	3	Cato, Larson, Malone
Absent:	0	

And so, Amendment No. 1 was not adopted.

Representative Barnes moved and asked unanimous consent that HB 154 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

HB 154 was read the third time.

The question being: "Shall HB 154 pass the House?" The roll was taken with the following result:

HB 154

Yeas:	24	Abood, Adams, Barnes, Bettisworth, Bussell, Cowdery, Flood, Fritz, Fuller, Furnace, Grussendorf, Hayes, Herrmann, Hurlbert, Liska, Martin, Miller,M.W., Pestinger, Phillips, Ringstad, Shultz, Tischer, Uehling, Ward
Nays:	12	Clocksin, Davis, Duncan, Goll, Koponen, Lacher, Lindauer, McBride, Miller,M.M., Szymanski, Vaska, Zharoff
Excused:	3	Cato, Larson, Malone
Absent:	1	Wendte

Representative Lindauer changed his vote from "Yea" to "Nay."

And so, HB 154 passed the House.

Representative Goll gave notice of reconsideration of his vote on HB 154.

SIGN-IN SHEET Proposed Legislation HB 154

Name (please print)	Address	Representing	Testify?? (YES or NO)	Phone Number
Jeffrey Ruff	Skagway, AK.	United Transportation Union	Yes	983-2453
Jim Robinson	Anch. AK	White Pass	Yes	
Thomas King	whitehorse Yukon	white Pass	yes	403-667-6663
DAN CASEY	JUNEAU	STATE OF ALASKA	YES	465-3900

SENATE LABOR AND COMMERCE COMMITTEE HEARING DATE 6-16

Effect of amendments. — The 1982 amendment, effective March 12, 1982, substituted the present provisions of this section for those set out in the main pamphlet.

Editor's notes. — As it appeared in Executive Order No. 52, this section contained an incorrect reference to "AS 18.06.010 — 18.60.150." This reference has been corrected by the revisor of statutes pursuant to AS 01.05.031.

Sec. 23.10.130. Statute of limitations. An action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages under AS 23.10.050 — 23.10.150 is forever barred unless it is started within two years after the cause of action accrues. For the purposes of this section an action is considered to be started on the date when the complaint is filed. (§§ 11, 12 ch 171 SLA 1959; am § 57 ch 59 SLA 1982)

Effect of amendments. — The 1982 amendment, effective May 28, 1982, rewrote this section.

Article 7. Employment of Children.

Section
355. Persons under 19

Sec. 23.10.355. Persons under 19. No person under 19 may be employed or allowed to sell or serve alcoholic beverages or to work in any room or other place where alcoholic beverages are sold for consumption on the premises, except as provided in AS 04.16.049(c). (§ 3 ch 73 SLA 1949; am § 2 ch 28 SLA 1951; am § 24 ch 245 SLA 1970; am § 5 ch 112 SLA 1976; am § 58 ch 59 SLA 1982)

Effect of amendments. — The 1982 amendment, effective May 28, 1982, substituted "alcoholic beverages" for "intoxicating liquors" in two places and substituted "AS 04.16.049(c)" for "AS 04.15.020(h)."

Article 9. Industrial Safety.

Section
420. Train crews

Sec. 23.10.420. Train crews. (a) No person operating an Interstate Commerce Commission-regulated railroad offering passenger service in this state may operate a train or engine, outside of yard limits, regardless of the form of energy used for propulsion, unless it meets the following requirements:

(1) a passenger train shall have at least a minimum passenger crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), one conductor, one brakeman, and one flagman;

(2) a freight train shall have at least a minimum freight crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), one conductor, and two brakemen;

(3) a light engine without cars shall have at least a minimum light engine crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), and one conductor.

(b) Except for hostling movements and duties as negotiated for each railroad company, no person operating an Interstate Commerce Commission-regulated railroad offering passenger service in this state may operate an engine or locomotive, regardless of the form of energy used for propulsion, for switching cars or in transfer movements, unless every engine or locomotive is manned by a minimum crew consisting of one locomotive engineer, one conductor, and one brakeman.

(c) In this section "engine" includes connected, multiple units under single control.

(d) A person who violates a provision of this section may be fined up to $500 upon conviction. Each violation constitutes a separate offense. (§ 1 ch 50 SLA 1970; am § 1 ch 116 SLA 1982)

Effect of amendments. — The 1982 amendment, effective June 25, 1982, substituted "one locomotive engineer, one conductor, and one brakeman" for "one locomotive engineer, one locomotive fireman (or helper), one conductor, and two helpers" at the end of subsection (b).

Chapter 15. Employment Services.

Article
1. Vocational Rehabilitation (§§ 23.15.100, 23.15.130 — 23.15.135, 23.15.180, 23.15.210)

Article 1. Vocational Rehabilitation.

Section
100. Powers and duties
130. Vocational rehabilitation small business enterprise revolving fund
132. Vending facilities
133. Vendors' licenses
134. Active participation by severely handicapped licensees
135. Committee of blind vendors
180. Hearings
210. Definitions

Sec. 23.15.100. Powers and duties. (a) In carrying out AS 23.15.010 — 23.15.210 the agency shall

(1) take the action it considers necessary or appropriate to carry out the purposes of AS 23.15.010 — 23.15.210, and adopt regulations in conformity with these purposes;

(2) determine the eligibility of applicants for vocational rehabilitation service;

(3) submit to the governor annual reports of activities and expenditures and, before each regular session of the legislature, estimates of sums required for carrying out AS 23.15.010 — 23.15.210 and estimates of the amounts to be made available for this purpose from all sources;

Sec. 23.10.405. Employment in underground mines. Employment in underground coal mines, underground lode mines, underground placer mines, in underground coal, lode or placer workings, or in all other underground mines or workings is injurious to health and dangerous to life and limb. (§ 43-2-1 ACLA 1949)

Cross references. — As to accident prevention, see AS 18.60.010 — 18.60.105.

Sec. 23.10.410. Limitation on period of employment in mines. (a) No person may be employed in an underground coal mine, underground lode mine, underground placer mine, underground coal, lode or placer workings, or other underground mine, or workings for more than eight hours in 24 hours, except on a day when a change of shift is made, excluding, however, an intermission of time for meals, or otherwise going to or from the place where the work is actually carried on, whether in going on or off shift, or in going to or returning from meals.

(b) It is the purpose of this section to limit the hours of employment in 24 hours to eight hours of actual labor at the face, or other place where the work or labor to be done is actually performed.

(c) In case of emergency, where life or property is in imminent danger, the period may be extended during the continuance of the emergency. (§ 43-2-2 ACLA 1949)

Sec. 23.10.415. Penalties. (a) A person who, whether as principal or agent, employs a person in violation of the provisions of AS 23.10.410 is guilty of a misdemeanor, and upon a first conviction is punishable by a fine of not less than $100 nor more than $500, or by imprisonment in a jail for not less than 60 days, nor more than six months, or by both.

(b) Upon a second conviction under AS 23.10.405 — 23.10.415, the punishment is imprisonment in a jail for not less than 60 days, nor more than one year. A second conviction under AS 23.10.405 — 23.10.415 means a conviction for a violation of AS 23.10.405 — 23.10.415 committed within a period of two years after a previous conviction for a violation of AS 23.10.405 — 23.10.415. Other convictions are first convictions. Each day's violation of the provisions of AS 23.10.405 — 23.10.415 is a separate offense. (§ 43-2-3 ACLA 1949)

Sec. 23.10.420. Train crews. (a) No person operating an Interstate Commerce Commission-regulated railroad offering passenger service in this state may operate a train or engine, outside of yard limits, regardless of the form of energy used for propulsion, unless it meets the following requirements:

(1) a passenger train shall have at least a minimum passenger crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), one conductor, one brakeman, and one flagman;

(2) a freight train shall have at least a minimum freight crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), one conductor, and two brakemen;

(3) a light engine without cars shall have at least a minimum light engine crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), and one conductor.

(b) Except for hostling movements and duties as negotiated for each railroad company, no person operating an Interstate Commerce Commission-regulated railroad offering passenger service in this state may operate an engine or locomotive, regardless of the form of energy used for propulsion, for switching cars or in transfer movements, unless every engine or locomotive is manned by a minimum crew consisting of one locomotive engineer, one locomotive fireman (or helper), one conductor, and two helpers.

(c) In this section "engine" includes connected, multiple units under single control.

(d) A person who violates a provision of this section may be fined up to $500 upon conviction. Each violation constitutes a separate offense. (§ 1 ch 150 SLA 1970)

Legislative history reports. — For report on ch. 150, SLA 1970 (CSHB 666 am S), see 1970 House Journal, p. 604.

Chapter 15. Employment Services.

Article
1. Vocational Rehabilitation (§§ 23.15.010 — 23.15.210)
2. Governor's Committee on Employment of Handicapped (§§ 23.15.220 — 23.15.320)
3. Employment Agencies (§§ 23.15.330 — 23.15.520)
4. Manpower Development and Training (§§ 23.15.610 — 23.15.617)
5. Work Incentive Program for Welfare Recipients (§ 23.15.650)

Article 1. Vocational Rehabilitation.

Section
10. Board of Vocational Rehabilitation
20. Powers and duties of board
30. Appointment of administrative officers
40. Division of vocational rehabilitation established
50. Director of vocational rehabilitation
60. Agreements under Social Security Act
70. Personnel policies
80. Eligibility for vocational rehabilitation service
90. Priority as to eligibility
100. Powers and duties
110. Extension of services outside state
120. Cooperation with federal government
130. Vocational rehabilitation small business enterprise revolving fund
140. [Repealed]
150. Receipt and disbursement of funds
160. Gifts
170. Maintenance not assignable
180. Hearings
190. Misuse of lists and records
200. Limitation on political activity
210. Definitions

cc

THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HOUSE BILL NO. 154

Title "An Act relating to train crew size."

Requested by Rules - Committee Date 1/27/83

II. FISCAL DETAIL

Agency Affected Labor

Program Category Affected Social Services

BRU, Program, or Subprogram(s) Affected Commissioner's Office

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT			-			
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0			

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0			
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

No Fiscal Impact.

IV. DATE January 27, 1983 PREPARED BY Judy Knight

AGENCY Labor

PHONE 465-2700

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

B 154 TITLE & SPONSOR SUMMARY 17:00 6/04/04 PAGE 1 OF 3

ENDED TITLE:

ACT RELATING TO TRAIN OPEN SIZE

IME SPONSOR: HOUSE RULES COMMITTEE.

-SPONSORS:

URRENT STATUS: 7/01/03 CHAPTER 0040 SLA 03

B 154 HOUSE ACTION 17:01 6/04/04 PAGE 2 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
2/02/83	01	0158	FIRST READING -- COMMITTEE REPORTS
2/02/83	02	0159	F/NOTE EQUALS ZERO/ANALYSIS
2/02/83	03	0159	GOV TRANSMITTAL LETTER
3/11/83	04	0452	L&C -- DP03, NR02
3/23/83	05	0592	TRAN -- DP04, NR03
4/12/83	06	0825	SECOND READING
4/12/83	07	0827	AM01 NOT ADOPTED BY DIV 17-20-03
4/12/83	08	0827	ADVANCED TO 3RD READING BY UNAN CONSENT
4/12/83	09	0827	THIRD READING
4/12/83	10	0827	PASSED BY DIV 24-12-04
4/12/83	11	0827	NOTICE OF RECONSIDERATION GIVEN
4/13/83	12	0849	POSTPONED UNTIL 04/18/83 BY UNAN CONSENT
4/18/83	13	0906	FAILD TO RETN 2ND READING BY DIV 18-21-01
4/18/83	14	0907	PASSED ON RECONSIDERATN BY DIV 26-13-01
6/22/83	22	2131	TRANSMITTED TO GOVERNOR
7/01/83	24	2188	SIGNED BY GOVERNOR-CH0040, EFF 07/29/83
****	**	**	*** *** ***

B 154 SENATE ACTION 17:01 6/04/04 PAGE 3 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
4/19/83	15	0749	FIRST READING -- COMMITTEE REPORTS
6/01/83	16	1150	TRAN -- DP03, NR01
6/22/83	17	1436	L&C -- DP02, NR02
6/24/83	18	1502	RLS --
			TAKEN UP IMMEDIATELY
6/24/83	19	1504	SECOND READING
6/24/83	20	1504	ADVANCED TO 3RD READING BY UNAN CONSENT
6/24/83	21	1505	THIRD READING
6/24/83	22	1505	PASSED BY DIV 16-04-00
****	**	**	*** *** ***

BILL SHEFFIELD
GOVERNOR

cc

HB 154

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 1, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill repealing the existing law requiring train crews of certain minimum sizes. The existing law requires that passenger and freight trains have crews of no less than five persons, that a light engine without cars have a crew of at least three persons, and that a switch engine have a crew of at least three persons.

The repeal ma allow railroads within the state to determine crew size based on economic and operational concerns. However, this repeal does not relieve a railroad of its existing obligation to operate with customary due care and high regard for the safety of its passengers, freight, and employees. The repeal is not intended to make any pronouncement on what is or is not an appropriate subject for collective bargaining.

I urge you to approve this bill.

Sincerely,

Bill Sheffield
Governor

SENATE LABOR AND COMMERCE
STANDING COMMITTEE
June 16, 1983
1:30 p.m.

Members Present: Senator Dick Eliason
Senator Pat Rodey
Senator Fritz Pettyjohn

Members Absent: Senator Bob Mulcahy
Senator John Sackett

COMMITTEE CALENDAR

CSHB 313(L&C)
"An Act relating to the Alaska Transporation Commission; and providing for an effective date."

HB 154
"An Act relating to train crew size."

SB 286
"An Act relating to motor vehicle warranties; and providing for an effective date."

HB 7
"An Act relating to motor vehicles; and providing for an effective date."

WITNESS REGISTER

(HB 154)

Jeffrey Ruff, United Transportation Union
Skagway, Alaska
983-2455
Spoke in opposition to HB 154

Jim Robinson, counsel for White Pass Railroad on U. S. side
711 H St., Suite 600
Anchorage, Alaska 99501
272-6474
Spoke in favor of HB 154

Tom King, Chief Executive Officer
White Pass Railroad
Whitehorse, Yukon, Canada
403-661-6663

Dan Casey, Commissioner
Dept. of Transportation and Public Facilities
Pouch Z
Juneau, Alaska 99811
465-3900

No position on issue

(SB 286)

Rep. Mike M. Miller, sponsor house companion measure
Pouch V
Juneau, Alaska 99811
465-3744
Spoke in support of SB 286

(HB 7)

Bill Brown, Division of Motor Vehicles
Dept. of Public Safety
Pouch N
Juneau, Alaska 99811
465-4322
Spoke in opposition to HB 7

Michael Lessmeier, Allstate/State Farm Insurance
210 Ferry Way, Suite 100
Juneau, Alaska 99801
586-5912
Spoke in opposition to HB 7

Dan Motley
9304 Turn Road
Juneau, Alaska 99801
789-3603
Still has problems with provisions in HB 7 affecting his unique car

PREVIOUS ACTION

HB 313 and HB 154: No previous action in Senate Labor and Commerce.

SB 286: See Senate Labor and Commerce Committee minutes for 6/7/83.

HB 7: See Senate Labor and Commerce minutes for 5/31.

ACTION NARRATIVE

Tape #40
007

Sen. Eliason called the meeting to order with Senators Rodey and Pettyjohn in attendance.

025

Sen. Rodey moved for the adoption of SCS CSHB 313(L&C). There was no objection.

043

The committee took up the subject of the Letter of Intent and planned to send SCS CSHB 313(L&C) out of committee with the same Letter of Intent which accompanied SB 184.

Sen. Pettyjohn and Sen. Rodey brought up the fact that a Supplemental Letter of Intent had been offered for SB 184.

Sen. Rodey moved that the Labor and Commerce Committee Letter of Intent for SCS CSHB 313(L&C) include the language of the original Letter of Intent for SB 184 and the language of the Supplemental Letter of Intent. He also moved it be adopted. There was no objection.

114

Sen. Rodey moved to pass out SCS CSHB 313(L&C) with individual recommendations. There was no objection.

121

(HB 154)

The committee took up HB 154, relating to train crew size, introduced by the Governor.

Sen. Eliason invited Comm. Casey to testify. He deferred.

144

Jeffrey Ruff, representing the United Transporation Union, testified in opposition to HB 154. He is employed by White Pass and represents the members of train crews who are mostly opposed as the bill does not address their concerns as far as safety is concerned. Safety has been good due to five-person crews on the U. S. side.

If they can't stop the bill they'd like a commitment from White Pass to address safety issues, and concerns dealing with Federal Railroad safety. If some of these laws were applied to the company their safety concerns would be alleviated.

There was committee discussion, during which Jeffrey Ruff confirmed that even if the 5-man train crew size law were repealed, as provided by HB 154, the provisions of the contract would retain five man crews.

283

Jim Robinson, counsel for White Pass Railroad on the U. S. side, and Tom King, chief Executive Officer for White Pass, testified in support of the bill. They introduced Doug Bell, the Canadian Yukon Territory Commissioner.

334

Jim Robinson provided historical background on the issue of crew size which was addressed at the federal level in the 60's under John F.

Kennedy. The same arguments were brought forth then, as now. He requested the committee see it as an economic issue rather than as a safety issue. The Railroad is regulated under the Federal Railroad Commission and will continue to be. This is a critical bill if they are to continue to have cooperation of Canadian and U. S. and Alaska governments.

517

Marvin Taylor of White Pass Railroad spoke from the audience in response to a question.

There was committee discussion.

588

Tom King discussed the Canadian portion of the railway, and compared safety standards with those on the U. S. side. He also views it as an economic issue.

622

Tom King described the desperate situation in the Yukon in terms of employment and the road which may be opening through Canada. There is a need to make the railroad economical in order to compete with the trucking industry.

There was committee discussion of competition with the trucking industry.

806

Dan Casey, Commissioner of the Dept. of Transportation and Public Facilities, stated that he had been working with Denny Lyon, the Canadian Minister of Transportation, on the question of the uses of the road. He is concerned with the matter of balancing the uses of the road as an alternative to the railroad, and the question of tourist vs. industrial uses.

The real question is whether or not legislative or statutory forum is the appropriate one in which to address this issue, he said.

Side 2
006

Commissioner Casey stated that the Department's recommendation is based on not taking a side. They are not sure "where to divide the line, what the economic questions are". They are concerned about the precedent of legislative involvement in crewing decisions. Dept. of Labor Commissioner James Robison is in charge of safety, and the Dept. of Transportation is not going to become involved in train crew size or in rate matters.

235

(SB 286)

Rep. Mike M. Miller, sponsor of the House companion measure to SB 286, testified in support of the measure. He said that he understands the committee plans to draft a substitute, and wished to emphasize the purpose of the legislation. The bill insists that for one year the manufacturer live up to the warranty. The rest of the bill provides for ways to accomplish that goal. He made an additional amendment, providing that a vehicle returned in a certain section of the bill may not be resold unless the new buyer is advised that it is a "lemon".

Rep. Miller discussed the recent amendments, and engaged in discussion of provisions with the committee.

534

Sen. Rodey moved that the changes proposed by Rep. Miller be adopted. There was no objection.

550

(HB 7)

Sen. Eliason stated that, to be quite frank, he was hoping SB 286 and HB 7 could be combined.

Bill Brown, from the Division of Motor Vehicles, provided a sectional analysis of the bill, dwelling on points such as the definition of "mobile home" and provisions tying demonstration of proof of insurance to licensing, which the Department regards as a bad section (#7) which should be struck from the bill. No other state ties drivers' licensing to mandatory insurance. He realizes that there was no fiscal note from the Dept. of Law or the Public Defender, but it could prove to be a costly item to them.

641

Bill Brown also pointed out that the bill does not set out a time frame for when a person can get a citation voided. He thinks the 40% uninsured rate quoted in previous testimony is inaccurate.

675

Michael Lessmeier, representing Allstate and State Farm Insurance companies, submitted written testimony and stated opposition to HB 7, stating that the realistic benefits are not worth the cost incurred. Offering uninsured and underinsured motorists coverage is a much less costly way to address the problem. He supports Sections 14, 18, and 19 of the original bill, and stated that everyone who bought insurance would be protected from the financially irresponsible driver.

784

Dan Motley testified that the solution to his problem with his show car stored in Seattle was not provided by the proposal offered by Dave Donnelly (Sen. Josephson's office) and Jeff Day (Rep. Hayes' office). His car is not an historic vehicle and he does not like their approach. He asked for further modification of the language in HB 7 to accomodate the problem, which is not his alone, but shared by others.

Tape #41
Side 1
007

Sen. Eliason asked that Jeff Day and Dave Donelly continue to find a solution. Jeff Day reminded Sen. Eliason that HB 7 is a House priority and the House has targeted Wednesday for adjournment. Sen. Eliason stated that the committee was going to do its work whether the bill is a House priority or not. He asked that Jeff check with Mr. Motley, and see if they could get him to sign off on the solution they propose.

Sen. Eliason also stated that the exemption language about small villages needs to be extended to include a list of those small villages connected to the state highway by the ferry system.

171
There was some further discussion of the exemption for small villages, and time constraints caused the meeting to be adjourned.

UNITED TRANSPORTATION UNION
LOCAL 1787
SKAGWAY, ALASKA 99840

March 30, 1983

HOUSE BILL NO. 154

POSITION PAPER UPDATE

The United Transportation Union, Local 1787, takes the position that House Bill 154 is not in the best interests of the State of Alaska as the bill relates to Alaska's second and smaller railroad, the White Pass & Yukon Route. While H. B. 154 will essentially pave the way for state purchase of the Alaska Railroad, it does not address the unique situation presently facing the employees and passengers on the WP&YR. In addition:

1. All of the safety concerns identified in Attachment 1 are still extent. None have been addressed in the repeal of the state statute.
2. The WP&YR has not operated their railroad since October 8, 1982, and presently have made no sure plans for reopening this line. They presently hold all three American unions in Skagway in a "legal lockout", and the litigation related to that lockout is ongoing even now. Any blanket change of the train crew manning laws will aid and abet only the Company, and will give unnecessary assistance to them in their continued closure of the railroad. The Company has refused to sit down for bargaining and negotiations of any sort on the subject of re-opening the railroad. The passage of H. B. 154 will essentially give the Company even more ammunition to hold the employees, businesses, and citizens of Skagway hostage to foreign corporate whims without any assurance that even the passage of this bill would guarantee the opening of the railroad.

The members of United Transportation Union, Local 1787, want the railroad re-opened. This should be the primary issue before the State. If the WP&YR never intends to operate another train, this bill is meaningless to all concerned.

Larry Jacquot
General Chairman
United Transportation Union
Local 1787
Skagway, Alaska

SH:gc

POSITION PAPER OF THE UNITED TRANSPORTATION UNION

(1) The union has gone on public record saying that when their safety concerns are met (walkways on bridges, etc. See Attachment 1), they will themselves come to Juneau to assist in the orderly repeal of the train crew law. Thus far, the company has made no attempt to address these concerns, and with the closing of the railway and disclosures of their financial troubles, it is doubtful that they intend to do so.

(2) For thirteen years the state has been on public record saying that this law exists for safety;s sake. No change has been made to the physical railroad to upgrade it along the lines recommended by the union. For the state to back away from the long-held position without any accompanying change in the physical railroad would indeed leave the state open as party to any litigation which might emerge from injury suits occuring on the WP&YR.

(3) Due to the UTU's guarantee clause, the removal of the law will not affect the number of men who will work on the trains. The company is obliged to pay 18 men under contract, with or without the law. Therefore it is erroneous to accept the company's testimony that "the railroad will not reopen until this law is repealed". The law's repeal will give them no financial or bargaining "relief" whatsoever, and a recent court decision in favor of the union has upheld the guarantee clause as non-negotiable.

(4) While testifying that they want to remove state law barriers to allow for collective bargaining, and that the state "should not be involved in management-labor negotiations", the company has at the same time submitted to the state a

list of their own demands which must be complied with before they will reconsider opening the railroad. These include a reduction of 20% in wages and benefits, removal of all guarantee and penalty rules, reinstatement of managements rights rules, an hourly wage basis, removal of "costly and restrictive" items, etc. It would seem that on one hand they ask the state not to be involved; on the other, they ask that the state condone their demands.

(5) One reason for the interest in the repeal of this law has been the anticipated sale or takeover of the Alaska Railroad by the state. It has been argued that a "crew law" would burden the transfer. The standard guage Alaska Railroad under federal control reduced their crew size as safety and modernization measures allowed such action. A "state owned" Alaska Railroad would fall back under this crew statute unless the law was changed to apply to "narrow guage railroads" (i.e., the WP&YR). We contend this would satisfy both the Alaska Railroad transfer situation, and at the same time satisfy the needs arising from the unique safety situation on the steep curvatious White Pass & Yukon Route. It would also separate out the two railroads on this issue once and for all, making the matter crystal clear, and the law all that much easier to repeal when the concerns of the employees of the WP&YR and the state have been addressed.

UNITED TRANSPORTATION UNION

LOCAL 1787

SKAGWAY, ALASKA 99840

ATTACHMENT 1

BACKGROUND

The White Pass & Yukon Route Railroad, a Canadian-owned railroad with home offices in Whitehorse, Yukon Terri ry, is the last common carrier three-foot wide narrow gauge ailroad in North America. Built at the height of the Klondike Gold Rush in 1898, it runs 110 miles from tidewater at Skagway, Alaska to Whitehorse in the Yukon Territory. A five-man train crew has been employed on the railroad on each train since 1898. In 1970 a state statute was placed on the books in the interest of safety for passengers and employees. Since 1970, American crews (who had operated all trains on the railroad since 1898) run only the 41 miles to Lake Bennett, B.C., the division point, and Canadian crews take the trains the balance of the distance to Whitehorse. The railroad suspended all operations on October 8, 1982 and no train has run since that date.

SAFETY FACTORS INVOLVED

Though "modern" in some respects, such as diesel locomotives and a containerized freight handling system, the WP&YR operates a fleet of "museum" vintage equipment while at the same time contending with some of the worst terrain and climate conditions in the world. The Canadian side from Bennett to Whitehorse is flat with only a few grades; the U.S. division if referred to as "The Hill".

Alaskan crews must drag their trains up 21 miles of 3.9% grade to reach the summit, and then contend with another pass and two short (but equally steep) grades before reaching Bennett. The return to Skagway presents the problem of controlling long heavy tonnage trains on the steepest railroad grade in America.

The railroad is interspaced with high wooden trestles, bridges, and cliff-like retaining wallswhich perch the track hundreds of feet above the canyon floor for miles. Blizzards have dumped over four hundred inches on the summit of White Pass in a season, and thought there are "good" years, the railroad has been blockaded sometimes for weeks on end. The worst storm shut down the road for 21 days.

The geography and weather compound the dangers of railroading. Even on a well-maintained railroad, pursuing safe operational standards is critical. Here it is very literally a matter of life and death. Avalanches and rock slides periodically take cars over the side, and derailment (which occur frequently) could mean disaster at many locations.

Train crews have learned to place safety above all else. Five-man crews on the WP&YR exist primarily for safety, in spite of management's stand on this bill. Items of concern are as follows:

1. Bridges and trestles on the road are not equipped with walkways. A train which is stretched across a bridge leaves no walking (or climbing) room at the edge. Therefore, a brakeman cannot walk from one end of the train to the other, and a second brakeman is needed to walk the other end in emergencies. This can be a critical situation.

2. Ice building up between the wheels and the brake shoes can cause winter brake failures. The company has not upgraded their equipment, and this leaves crews to deal with problems out on the road.

3. In winter months it often takes the combined strength of two men to set a good safe handbrake on a car, and the same force of two men to "knock-down" or remove the brake. On older cars with faulty handbrakes this applies all year, even with brake clubs.

4. The two way radios in use are continually in for repairs and are prone to failure. Communications inside tunnels or on long winding trains around cliffs can and are often broken up or lost. The crews do not relay on radios because of this safety hazard, and hand signals are regularly used in switching moves.

5. The primary job of the crew while underway is to watch for any hint of trouble on or around the train. The railroad is twisted like a piece of spaghetti with 16 to 24° curves, and there are documented cases of the fireman, riding on the left-hand side of the locomotive, spotting danger which was out of the engineer's line of sight and stopping the train. Similarly, brakemen ride at both ends and watch over the train for hotboxes,