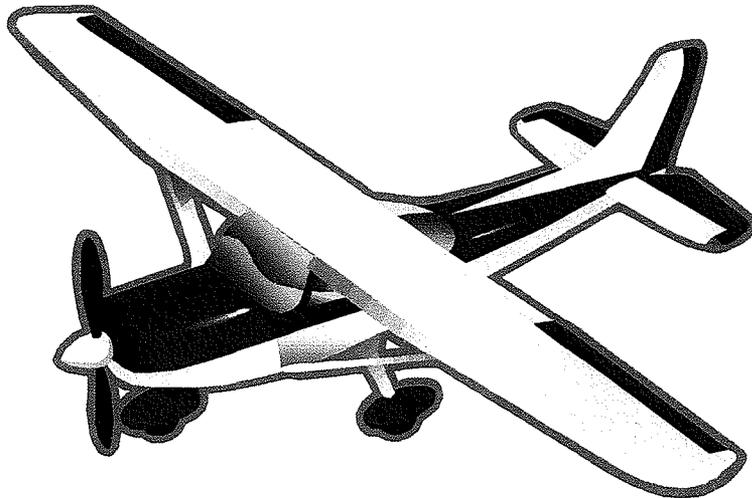


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Aviation Insurance Meet and Confer Group

As created under Minnesota Laws, 2007, Regular Session, Chapter 79, Section 1



Report to Legislature

January 7, 2008

January 7, 2008

The Honorable Linda Scheid
Chair, Senate Committee on Commerce and Consumer Protection
Room G-9, State Capitol Room
75 Dr. Martin Luther King, Jr. Blvd.
St. Paul, Minnesota 55155

The Honorable Joe Atkins
Chair, House Committee on Commerce and Labor
503 State Office Building
100 Dr. Martin Luther King, Jr. Blvd.
St. Paul, Minnesota 55155

Dear Senator Scheid and Representative Atkins:

This report reflects the discussion and solutions to issues arising from the aviation insurance meet and confer group created under Minnesota Laws, 2007, Regular Session, Chapter 79, Section 1. The group was comprised of representatives of aircraft owners, aircraft pilots, insurance companies that issue aircraft insurance, and other interested parties that met and conferred regarding issues related to aviation insurance and third parties. Not all parties support the conclusions of this report. AIG and Travelers supports some of the groups' considerations; however, AIG does not support the statutory language establishing a causal relationship and Travelers is neutral on the statutory language.

In preparing this report the meet and confer group met to discuss the initial legislation as proposed under SF 608 (Prettner Solon) and HF 772 (Paymar), to explore the history of the original bills, to examine the underlying aviation insurance issues, to study other states' treatment of these issues, and to propose possible solutions to these issues. The report reflects the discussion and the group's findings.

This report was mandated under Minnesota Laws 2007, Regular Session, Chapter 79, Section 2.

Minnesota Statutes, Section 3.197, specifies that a report to the legislature must include the cost of its preparation. There is no approximate governmental cost in preparing this report except for the legislative staff time expended by Tom Pender in preparing statutory language, the staff time used to attend the meet and confer group meetings, and the use of a Capitol meeting room.

Respectfully submitted,

The Aviation Insurance Meet and Confer Group

cc: Secretary of the Senate
Chief Clerk of the House
Legislative Reference Library—6 copies
Senator Yvonne Prettner Solon
Representative Michael Paymar

History and Purpose of Aviation Insurance Meet and Confer Group:

During the 2007 Legislative Session, Representative Michael Paymar and Senator Yvonne Prettner Solon authored bills in their respective bodies regarding aviation insurance. Paymar and Solon did so at the request Toby Pearson and out of concern for injured third parties in aviation accidents. As the bill progressed through committee, interested parties agreed to new minimum liability thresholds for aviation insurance and to collectively meet and confer aviation insurance issues. The final outcome, Senate File 608, raised the minimum liability aviation insurance coverage for Minnesota registered aircraft as described below and formed the Aviation Insurance Meet and Confer Group to further discuss aviation insurance issues and third parties.

Minimum liability provisions:

Senate File 608 raised minimum liability aviation insurance coverage. Below is the language enacted:

1.6 Subd. 10. **Certificate of insurance.** (a) Every owner of aircraft in this state
1.7when applying for registration, reregistration, or transfer of ownership shall supply any
1.8information the commissioner reasonably requires to determine that the aircraft during the
1.9period of its contemplated operation is covered by an insurance policy with limits of not
1.10less than ~~\$25,000~~ \$100,000 per passenger seat liability both for passenger bodily injury
1.11or death and for property damage; not less than ~~\$25,000~~ \$100,000 for bodily injury or
1.12death to each nonpassenger in any one accident; and not less than ~~\$50,000~~ \$300,000 per
1.13occurrence for bodily injury or death to nonpassengers in any one accident.

Insurance minimum liability coverage changes do not go into effective until January 1, 2009. Testimony for this provision indicated that most policies issued in Minnesota are at or above the limits proposed under SF 608.

Aviation Insurance Meet and Confer Group:

Senate File 608 also created a meet and confer group to review aviation insurance issues. Below is the language enacted:

2.20 Sec. 2. **CONSULTATIONS ON CERTAIN ISSUES.**
2.21 (a) Representatives of aircraft owners, aircraft pilots, insurance companies that issue
2.22aircraft insurance, and other interested parties shall meet and confer regarding issues
2.23related to aviation insurance and third parties.
2.24 (b) The parties shall provide a written report of their recommendations by November
2.2515, 2007, to the chairs of the house and senate committees that have jurisdiction over
2.26insurance legislation.

Toby Pearson, Christine Zimmer Lonetti and John Kavanagh contacted parties who expressed interest in SF 608 and HF 772 during legislative committee hearings to form this meet and confer group informally known as the Aviation Insurance Meet and Confer Group. The following information summarizes the meetings, attendees, topics discussed and suggested outcomes.

Review of Meetings:

Meeting dates/location:

1. June 21, 2007--Capitol Room 125
2. August 29, 2007--Capitol Room 125
3. October 11, 2007--Capitol Room 125
4. November 15, 2007—Capitol Room 125

Attendees (meeting number attended):

Mitch Anderson, MN pilot, AOPA (1, 2, 3, 4)
Representative Mike Beard (1, 2, 3, 4)
Bill Blake, Aircraft Owners and Pilots Association (1)
Paul Blume, American International Group (1)
Jennifer Breitinger, JWB Associates representing Insurance Federation of Minnesota (2)
Steve Bruss, Wings Insurance (1, 2, 3, 4)
Marnie Bureau Kesler, Senate Staff (1, 2, 3, 4)
Gordon Hoff, MN Business Aviation Association (1, 2, 3, 4)
Christopher Jones, Aerospace Insurance Managers, Inc. (2)
John Kavanagh, Cook Hill Girard Associates (1, 2, 3, 4)
Gordon Murray, Travelers Insurance (2)
Jamie Olson, Senate Staff (4)
Toby Pearson (1, 2, 3, 4)
Tom Pender, House Legislative Analyst (3, 4)
Tom Poul, Messerli & Kramer representing AIG (2, 3, 4)
Steve Schneider, Amer. Insurance Assn (3)
Bev Turner, Travelers Insurance (1, 2, 3, 4)
Mike Warren, Travelers Insurance (2)
Christine Zimmer Lonetti, Winthrop and Weinstine representing American Insurance Association (1, 2, 3, 4)

Summaries of the meetings are attached as Appendix A.

Group recommendations

The Aviation Insurance Meet and Confer Group recommends the adoption of new statutory language requiring aviation insurers to establish a direct cause relationship between a breach of a policy and an accident to deny coverage for a claim. It also recommends that the Department of Commerce update its *Aviation Insurance: Private and Commercial* manual. AIG and Travelers remain neutral on these recommendations and the proposed statutory language.

1. Propose statutory language (recommendation)

The group suggests establishing a Minnesota Statute requiring a direct cause relationship between the breach of a policy and an accident before an aviation insurer may deny coverage. Although this may not align with some states, it should not significantly affect how most aviation insurance providers operate in Minnesota, diminish the coverage currently offered or decrease the availability of aviation insurance to aircraft owners and pilots in Minnesota. However, because the statutory language is untested in Minnesota or other states, some group members maintain it may carry unforeseen ramifications to premiums and coverage. Finally, it may avoid considerable time and expense for Minnesota courts in deciding issues arising from aviation accidents.

In most states where the issue has been decided, aviation insurers are allowed to deny coverage of an accident claim for any breach of a policy. In some states, an aviation insurer is allowed to deny coverage for a breach only if that breach had a direct cause relationship to the accident (“causal states”). “Causal states” law tends to be constructed by courts using general statutory insurance law and public policy arguments; no statute, rules, or regulations directly addressing aviation insurance could be found. Other states have no legal decisions or statutory language addressing the issue.

During the June 21st meeting, much of the discussion focused on “misrepresentations” and “material misrepresentations” regarding the breach of an aviation insurance policy. A “misrepresentation” refers to an applicant’s providing incorrect or omitting information required on an insurance policy application or an insured party failing to follow directives contained in the application or policy. A misrepresentation that is “material” refers to a misrepresentation that would have likely resulted in rejection of the application, cancellation of the policy or the issuance a policy or insurance premium structure different than was issued to the insured party. For pilots, listing flight time, flying experience, former accidents, instrument ratings, aircraft maintenance and medical fitness are among application information usually required and required to be kept current to obtain and maintain aviation insurance coverage. Due to the complexity of this issue, the group asked to have aviation insurance underwriters in attendance of the next meeting to clarify the issue.

During the August 29th meeting, two underwriters in attendance speculated that most aviation insurers currently process most aviation insurance claims as though they occurred in “causal states.” At the October 11th meeting, Representative Beard provided

the working group with data from AVEMCO supporting that assertion. The underwriters confirmed that other states which are “causal states” have seen no measurable increase in aviation insurance premiums or a loss of aviation insurers operating in those states directly linked to the issue. However, some group members mentioned a rise of aviation insurance premiums in Montana after its establishment as a “causal state.” The group discussed at length concerns of aviation insurance availability and affordable premiums. The group has no desire to negatively affect the aviation insurers operating in the State of Minnesota and the pilots and aircraft owners they serve by establishing this industry standard through statutory language.

House Legislative Analyst Tom Pender agreed to construct language to reflect the working group’s recommendation. The proposed statutory language is attached to this report as Appendix B.

The group also considered narrowly constructing the statutory “direct cause” language to only apply to injured third parties. Because the effect of broader language on all parties does not stray from current practice, the group agreed that a narrow construction was not necessary.

2. Update Minnesota Department of Commerce Policy Manual on Aviation Insurance (recommendation)

The Minnesota Department of Commerce publishes a manual on aviation insurance. The 2007 Legislature passed an increase in compulsory insurance thresholds and will become effective in 2009. The manual will need to be updated to reflect that change. When that change is made, the manual should also reflect any changes made in response to the recommendations of this working group.

Group considerations:

The Aviation Insurance Working Group discussed many issues relating to aviation insurance and third parties. The following items outline some of the issues and proposed solutions upon which no consensus was reached.

1. Mandate coverage for injured third party

The group considered mandating aviation insurance policies to cover injured third parties regardless of a breach of the policy by the insured or policy holder. This would allow injured third parties to be covered by the insurer and require the insurer to recover any claims paid out from the insured pilot or aircraft owner. The underwriters in the August 29th meeting agreed that this would increase premiums and likely result in fewer aviation insurers operating in Minnesota. No agreement was reached

Other third party issues were discussed. Some group members expressed concerns that most third parties, as passengers, do not know whether the aircraft is properly covered by insurance or if the coverage provided is adequate. The group discussed mandating the

posting of certificates of insurance to allow third parties to verify aviation insurance coverage. No agreement on this issue was reached.

2. Retroactive cancellation

The group discussed the process of “retroactive cancellation.” This is the process by which an insurer may settle a claim with the insured party and retroactively cancel the insurance policy. This would leave an injured third party to pursue any claim against the pilot or aircraft owner instead of the insurer. If the insured pilot or aircraft owner is bankrupt, injured parties would have no ability to recover their losses. House Legislative Analyst Tom Pender believes retroactive cancellations of aviation liability insurance under certain conditions are outlawed under *MN Stat. 60A.08, subd. 14*. The group makes no recommendation at this time.

3. Establish a state or federal pilot registry

The working group considered establishing a nation-wide public or private registry for pilots to track accident data by pilots instead of by the aircraft involved in accidents (similar to a state/federal driver license registry).

Currently, the National Transportation Safety Board (NTSB) publicly tracks aviation accident data by the aircraft involved in accidents. Therefore, aviation insurance underwriters are unable to sufficiently track pilots’ accident history when reviewing aviation insurance applications.

This may result in pilots with good flying records paying higher premiums to offset lower premiums from pilots with accident-ridden records but not tracked under the current system; pilots with accidents in their histories may obtain lower premiums by not disclosing their records.

Furthermore, insurance underwriters have little incentive or ability to verify the veracity of pilots applications prior to the reporting of an accident; after an accident occurs, insurers may search for accident records to establish policy breaches in the application process and, thus, deny any claims arising from accidents.

The group also talked about establishing a private tracking system among aviation insurers. Some members raised concerns about the legality of privately sharing information among insurers.

Some group members expressed concerns of a federal registry without details regarding revenue sources to pay for a registry and the public nature of information contained in the registry. The group agreed the issue merits more discussion at the federal level.

4. Establish objective legal definitions regarding “accident” and “incident”

Some group members expressed concerns that under the current NTSB reporting system, “accident” is not properly defined. This may result in some aviation accidents not being reported and, thus, further skew the information collected by the NTSB. The concerned group members believe establishing objective legal definitions of “accident” and “incident” would create more accurate standards for tracking accidents. The group believes no action is necessary at the state level.

5. Increase enforcement of required aircraft registrations

Some group members believe, due to extensive interstate travel among aircraft, aircraft that should be registered in Minnesota may go undetected and unregistered. These unregistered aircraft may avoid Minnesota’s compulsory liability aviation insurance provision. For example, aircraft registered in South Dakota have no compulsory aviation insurance requirement and, thus, when traveling into Minnesota may not carry liability coverage for accidents occurring in Minnesota. Also, unregistered aircraft do not pay the fees which, in part, pay for the costs associated with aircraft operation such as airport capital costs and aviation law enforcement. The group recognizes that this is the nature of interstate travel particularly by aircraft. Increasing registration enforcement and keeping more accurate aircraft registration records may resolve this issue. Further discussion of this issue is merited by the Airport Funding Working Group.

Appendix A: Meeting Summaries

Aviation Meet and Confer Group
Meeting Summaries

June 21, 2007
Capitol Room 125

Summary of meeting:

- Introductions
- Reading of the antitrust disclaimer
- History of legislative actions
- Rep. Beard's article from AOPA website
- Topics of discussion (included items but not an exhaustive list):
 - Third party injuries and remedies
 - Other states' law (Wisconsin, TX, Nevada)
 - Subrogation
 - Misrepresentation v. material misrepresentation
 - Direct cause.
 - Verification of pilot data as submitted by pilot
 - Federal database for pilot information
 - Mandated proof of insurance on board plane
 - Incidents and state laws of other states
 - Purpose of insurance
- Setting of next meeting time

August 29, 2007
Capitol Room 125

Summary of meeting:

- Introduction of attendees
- Reading of the antitrust disclaimer
- NTSB state and national data regarding incident/accident/losses from AOPA (next meeting, if available)—possible differentiation among classifications (parts 91, 121, 135, etc.)
- Discussion of pilot registry (extensive discussion):
 - Private possibility: may be limited under anti-trust law and Sarbanes-Oxley Act, and some companies may view pilot data as proprietary data
 - Public possibility: federal issue, contact Oberstar's office
 - Differentiate purposes of FAA and insurers' desire for Pilot Registry
 - What is pilots/aircraft owners stance on Pilot Registry
- Discussion of mandatory coverage of injured third party claims: loss caps and guest mandatory coverage/settlement
- Discussion of "causal state" laws and their effects
- Request for Senate Counsel to research "causal state" laws (Montana, Texas, etc.), mandatory coverage for injured third parties, uninsured pilots/planes registered outside MN (work through Sen. Prettner Solon and Rep. Paymar's offices)
- Request for Departments of Commerce to attend next meeting
- Discussion of "retroactive cancellation" delayed until next meeting

October 11, 2007
Capitol Room 125

Summary of meeting:

- Introduction of attendees
- Reading of the antitrust disclaimer
- AVEMCO information regarding claim denials presented by Representative Mike Beard
- NTSB state and national data collected by AOPA and presented by Mitch Anderson
- Review of other state laws regarding causation presented by John Kavanagh:
 - Not exhaustive report, but survey of different state laws
 - Majority rule is not to require causation to deny coverage
 - Nevada example of majority rule
 - Minority rule is to require causal link between breach and accident to deny coverage
 - Texas example of minority rule
 - No example of statutory language for aviation insurance found
- Department of Commerce Policy Manual on Aviation Insurance presented by Bev Turner
 - Purpose of manual
 - Need to update manual (last updated on 05/98)
 - Discussion of “Fair Claims Practices Act” and code of conduct
- “Retroactive cancellation” discussion led by Toby Pearson; Tom Pender believes the practice is currently illegal in certain circumstances under MN Stat. 60A.08 Subd. 14.
- Construction of statutory language to require direct cause connection between the breach of policy and accident to deny coverage to be completed by Tom Pender and distributed to attendees for review
- Summary/highlight of issues discussed during Aviation Insurance Meet and Confer Group meetings:
 - Review of history and purpose of Aviation Insurance Meet and Confer Group
 - Review of meetings
 - Review of “direct cause” discussion and suggested statutory language
 - Need to update Dept. of Commerce Policy Manual on Aviation Insurance
 - Summary of discussion of a federal registry
 - Summary of discussion of accident reporting
 - Summary of discussion of “accident” and “incident” definitions
 - Summary of discussion of innocent 3rd party issues
- Final report to Rep. Atkins and Sen. Scheid (Legislature) to be drafted by John Kavanagh and sent to meeting attendees for revisions, corrections and editing

November 15, 2007
Capitol Room 125

Summary of meeting:

- Reading of the antitrust disclaimer (copy attached)
- Page by page review of Report to Legislature (Revised Draft)
- John Kavanagh will revise Report to reflect discussed changes and send to group
- Tom Pender will revise proposed statutory language to reflect discussion
- Group will reassemble only if required upon completion of final draft of Report.

Appendix B:
Proposed Statutory Language

1.1 A bill for an act
1.2 relating to insurance; regulating claim denials under aviation liability coverage;
1.3 amending Minnesota Statutes 2006, section 60A.081, subdivision 1; Minnesota
1.4 Statutes 2007 Supplement, section 360.59, subdivision 10.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2006, section 60A.081, subdivision 1, is amended to
1.7 read:

1.8 Subdivision 1. **Compliance exclusions prohibited; exception.** (a) No policy of
1.9 insurance issued or delivered in this state covering any loss, damage, expense, or liability
1.10 arising out of the ownership, maintenance, or use of an aircraft, shall exclude or deny
1.11 coverage because the aircraft is operated in violation of federal or civil air regulations,
1.12 state law or rules, or local ordinances.

1.13 This section does not prohibit the use of specific exclusions or conditions in the
1.14 policy which relate to:

1.15 (1) Certification of an aircraft in a stated category by the federal aviation
1.16 administration;

1.17 (2) Certification of a pilot in a stated category by the federal aviation administration;

1.18 (3) Establishing requirements for pilot experience; or

1.19 (4) Establishing limitations on the use of the aircraft.

1.20 (b) An insured's action or failure to act is not a basis for denial of a claim, unless
1.21 the insured's action or failure to act had a direct causal connection to the loss upon which
1.22 the claim is based. For purposes of this paragraph, "denial of a claim" includes refusal
1.23 to pay a claim due to a retroactive termination of the policy on the basis of the insured's
1.24 action or failure to act.

2.1 **EFFECTIVE DATE.** This section is effective January 1, 2009, and applies to
2.2 policies issued, renewed, or continued as defined in section 60A.02, subdivision 2a, on or
2.3 after that date.

2.4 Sec. 2. Minnesota Statutes 2007 Supplement, section 360.59, subdivision 10, is
2.5 amended to read:

2.6 Subd. 10. **Certificate of insurance.** (a) Every owner of aircraft in this state
2.7 when applying for registration, reregistration, or transfer of ownership shall supply any
2.8 information the commissioner reasonably requires to determine that the aircraft during
2.9 the period of its contemplated operation is covered by an insurance policy with limits of
2.10 not less than \$100,000 per passenger seat liability both for passenger bodily injury or
2.11 death and for property damage; not less than \$100,000 for bodily injury or death to each
2.12 nonpassenger in any one accident; and not less than \$300,000 per occurrence for bodily
2.13 injury or death to nonpassengers in any one accident. The insurance must comply with
2.14 section 60A.081, unless that section is inapplicable under section 60A.081, subdivision 3.

2.15 The information supplied to the commissioner must include but is not limited to the name
2.16 and address of the owner, the period of contemplated use or operation, if any, and, if
2.17 insurance coverage is then presently required, the name of the insurer, the insurance policy
2.18 number, the term of the coverage, policy limits, and any other data the commissioner
2.19 requires. No certificate of registration shall be issued pursuant to subdivision 3 in the
2.20 absence of the information required by this subdivision.

2.21 (b) In the event of cancellation of aircraft insurance by the insurer, the insurer shall
2.22 notify the Department of Transportation at least ten days prior to the date on which the
2.23 insurance coverage is to be terminated. Unless proof of a new policy of insurance is
2.24 filed with the department meeting the requirements of this subdivision during the period
2.25 of the aircraft's contemplated use or operation, the registration certificate for the aircraft
2.26 shall be revoked forthwith.

2.27 (c) Nothing in this subdivision shall be construed to require an owner of aircraft to
2.28 maintain passenger seat liability coverage on aircraft for which an experimental certificate
2.29 has been issued by the administrator of the Federal Aviation Administration pursuant to
2.30 Code of Federal Regulations, title 14, sections 21.191 to 21.195 and 91.42, whereunder
2.31 persons operating the aircraft are prohibited from carrying passengers in the aircraft.
2.32 Whenever the aircraft becomes certificated to carry passengers, passenger seat liability
2.33 coverage shall be required as provided in this subdivision.

2.34 (d) The requirements of this subdivision shall not apply to any aircraft built by the
2.35 original manufacturer prior to December 31, 1939 and owned and operated solely as a

3.1 collector's item, if the owner files an affidavit with the commissioner. The affidavit shall
3.2 state the owner's name and address, the name and address of the person from whom the
3.3 aircraft was purchased, the make, year, and model number of the aircraft, the federal
3.4 aircraft registration number, the manufacturer's identification number, and that the aircraft
3.5 is owned and operated solely as a collector's item and not for general transportation
3.6 purposes.

3.7 **EFFECTIVE DATE.** This section is effective January 1, 2009, and applies to
3.8 policies issued, renewed, or continued as defined in section 60A.02, subdivision 2a, on or
3.9 after that date.