

# ALASKA STATE LEGISLATURE

**Rep. Lesil McGuire, Chair**  
Rep. Tom Anderson, Vice-Chair  
Rep. Dan Ogg  
Rep. Jim Holm  
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## House Judiciary Committee Sponsor Statement CSHB 549 (JUD)

### **"An Act relating to unsolicited communications following an aircraft accident."**

Across the nation, there are rules of professional conduct that all attorneys are bound to abide by to keep their license to practice law. Alaska is no exception and its rules are similar to those found across the nation. Alaska's Rules of Professional Conduct state that an attorney "shall not solicit by in-person or live telephone contact professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain." [Rule 7.3\(a\)](#). The lawyer cannot solicit professional employment by written or recorded means, even if allowed under 7.3(a), where the client has made known that they do not desire to be solicited by the lawyer, or the solicitation involves coercion, duress, or harassment. Rule 7.3(b). The reason for this rule is that the "prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation and over-reaching." Comment to Rule 7.3. Even though this rule and rules like it have been in place across the nation for some time, they have not controlled the legal feeding frenzy that takes place in the aftermath of aviation accidents.

The federal government tried to correct this problem when it recognized the vulnerability of aviation accident victims and their families in 1996 and passed the Aviation Disaster Family Assistance Act ([Public Law 104-264](#)). This federal law mandated that air carriers provide specific support to the families of those injured or killed and prohibited unsolicited contact by attorneys with these individuals for 30 days. In 2000, this law was amended to expand the scope of unsolicited contact to include "any associated, agent, employee or other representative of an attorney" and expanded the time period from 30 to 45 days. Unfortunately, the enforcement of this law requires action by the Civil Aeronautics Board or the U.S. Attorney General, and the penalty for its violation is a mere \$1,000 fine. There is currently very little enforcement of this law. There is also some legal debate as to whether or not the federal law is enforceable against attorneys who violate it in the context of aviation accidents involving flights entirely within Alaska.

In the aftermath of an aviation accident in Alaska, the injured and the families of the deceased or injured are vulnerable to the external pressures of others. This is particularly true

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when the accident happens in rural Alaska due to their initial isolation from all of the necessary support services immediately after the accident. These individuals should not be preyed upon by anyone who is pressing them to decide matters relating to future legal actions until they themselves decide that the time is appropriate to initiate that process.

[HB 549](#) is based on the federal law, and applies only to flights that take place entirely within Alaska (intrastate transportation). Like the federal law, HB 549 does not interfere with the performance of the family support functions provided for in the Family Assistance Act by the air carrier and its insurer. HB 549 is different from the federal counterpart in that a reference to “the air carrier’s attorney” has been added to make it clear that all attorneys are to refrain from having contact with the injured passengers or their families.

Regarding sanctions against attorneys who violate this statute, the Sponsor believes that a civil financial penalty only would be inadequate because the financial incentive of representing aircraft accident victims on contingency fee arrangements is so great. A criminal sanction would serve as the greatest deterrent to this type of predatory conduct, since the Alaska Bar Association will take notice of an attorney’s criminal conviction and be in a position to take licensing actions that will more directly impact the attorney’s future earning capacity. Under HB 549, a first offense is a Class A misdemeanor with a \$10,000 fine, and a second or greater offense within ten years of the prior offense is a Class B felony punishable by a fine of \$100,000. HB 549 does not propose any jail time for offenders.

Under HB 549, an Alaskan affected by an aviation accident may initiate contact with an attorney immediately, without any restrictions. HB 549 only prevents lawyers and their agents from initiating the contact. This will allow Alaskans to take time to reflect on their potential claims, and research their options for the best legal representation to meet their needs. This may or may not be the attorney who was well positioned to rush to the hospital and drive them home.