

SUBJECT: Products liability immunity for manufacturers or sellers of fuel additives

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 6 ayes — B. Cook, Strama, P. King, Madden, Miller, Woolley

3 nays — Martinez Fischer, Raymond, Talton

WITNESSES: For — George Christian, Texas Civil Justice League; Pat Troyer, Valero; Richard O. Faulk, Gardere Wynne, Texas Civil Justice League; John Kneiss, Clean Transportation Advisory Council (*Registered, but did not testify*: Carter Casteel, Cary Roberts, Texas Civil Justice League; Jayme Cox, Shell Oil; Doug DuBois, Texas Petroleum Marketers and Convenience Store Association; Paige Fish, Conoco Phillips; Hugo Gutierrez, Marathon Oil Company; Steve Hazlewood, Dow Chemical; Robert S. Howden, Texas Association of Manufacturers; Casey Kelley, ORYXE Energy International, Inc.; Mary Miksa, Texas Association of Business; Julie W. Moore, Occidental Petroleum Corporation; Bill Oswald, Koch Industries, Flint Hills Resources; Steve Perry, Chevron USA; Karen Reagan, Texas Retailers Association; Ben Sebree, Texas Oil & Gas Association; Linda Sickels, Trinity Ind. Inc.; Justin Unruh, Texans for Lawsuit Reform; Christina Wisdom, Texas Chemical Council; Trey Blocker, Biodiesel Coalition of Texas; Mike Hull, Texans for Lawsuit Reform; Cindy McCauley, Lyondell Chemical; Sara Tays, Exxon Mobil Corporation; Kinnan Golemon, Shell Oil; Mike Meroney, Huntsman Corporation; Shannon Ratliff, Citgo)

Against —Monte Akers, Texas Municipal League; John Burke, Aqua Water Supply Corporation; Charles R. Maddox, Texas Section American Water Works Association; Nelson Roach, TTCA; and 2 other individuals (*Registered, but did not testify*: Cyrus Reed, Ken Kramer, Lone Star Chapter of Sierra Club; Kaiba White, Public Citizen; Pamela J. Bolton, Texas Watch; Nick Kralj, Blackburn Palo Duro Ranches; T.J. Patterson, Jr., City of Fort Worth)

BACKGROUND: In 1990, Congress amended the Clean Air Act to require the use of gasoline that has been oxygenated, or infused with oxygen, in areas with unhealthy levels of air pollution. Oxygen helps gasoline burn more

completely, which reduces tailpipe emissions. Two of the most common oxygenates are ethanol and Methyl Tertiary Butyl Ether (MTBE).

EPA Protection of Environment Rule, 40 C.F.R. parts 79-80, details federal fuel guidelines and specifications. State guidelines and specifications are found in VTCS, arts. 8601-8614 and 30 TAC, part 1, ch. 114.

More than 20 states have banned or restricted use of MTBEs because it has been found in groundwater in some areas and is difficult and costly to remove and because of health concerns. The additive has not been proven as a human carcinogen, but has been shown to cause cancer in some animal research.

DIGEST:

CSHB 1927 would remove liability of a manufacturer or seller of fuel, a fuel additive, or blending component in a products liability case unless:

- the fuel, additive, or component did not meet federal or state standards, regulations, and controls at the time of manufacturer or sale; and
- the failure to comply was a producing cause of the claimant's injury.

This provision would not affect the liability of an entity that spilled or discharged a fuel additive, blending component, or fuel for:

- environmental remediation costs;
- damages arising from drinking water contamination; or
- damages arising from negligence, public or private nuisance, trespass, breach of warranty, breach of contract, or any other theory of liability.

The section would define fuel additive, blending component, and fuel by using specifications set out in existing state and federal code and any successive law governing those specifications.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007. The bill would apply only to actions begun on or after the effective date, or March 1, 2007, if the actions were pending when the bill became effective. For actions that began before the bill

became effective, and for any legal proceeding that was underway before that day, the current law would still govern.

**SUPPORTERS
SAY:**

CSHB 1927 would protect fuel refiners and sellers from frivolous lawsuits that have been filed at the state and federal level in recent years. Companies following and meeting federal and state guidelines governing oxygenated fuel should not be punished for their business practices. The bill would not exempt the liability of companies that were negligent and spilled additives or contaminated groundwater. These lawsuits only serve to discourage refiners and sellers from pursuing clean-fuel technology and increase costs for consumers.

The lawsuits from which this bill is seeking protection are punishing companies for following the law. Government has dictated requirements for fuel in certain high-pollution areas, and the two chief options for fulfilling these standards are use of ethanol and MTBE. The supply of ethanol cannot meet the market's demand for oxygenated gasoline. Additionally, while the conventional wisdom has focused on ethanol as the better alternative, its health risks also are cause for concern; a recent study has shown it could cause significant respiratory problems. If the industry were to be subjected to expensive litigation for every substance it uses to try to meet state and federal law, that would cause a major disincentive to exploring cleaner options such as renewable fuels.

Although none of the lawsuits filed has succeeded, the costs of defending against these suits has cost refiners and sellers millions of dollars. The costs associated with losing one of these cases also would be a significant financial burden to the industry. These costs are and would be passed on to consumers, which unfairly would hit low-income drivers.

The bill would not shield refiners or sellers from civil action based on negligence, but it would give them immunity against claims that their product is defective. There is no consensus that ethanol or MTBE are ineffective in meeting federal and state guidelines focusing on oxygenated fuel. No one is arguing that refiners or sellers should be exempt from liability for improperly blending gasoline or failing to prevent against leaking underground storage tanks, and those actions would not be covered under this bill. Additionally, most of the major MTBE problems have been identified, and actions have been filed in those cases, which would not be affected by this bill.

OPPONENTS
SAY:

Texas should not be giving civil immunity to any industry, especially one that has been contributing to an environmental and health problem. Regardless of whether the companies knew the effect of their actions, they must play a role in cleaning up the mess. The state has typically had a “polluter pays” mentality, and this bill would contradict that to the detriment of municipalities and counties that would wind up footing the bill for costly cleanups.

In numerous instances, companies meeting existing regulations have been found liable, even if they did not intend or know they were causing damages. The health and environmental problems that could be caused by MTBE are significant, and the costs and difficulty of trying to remove the chemical from groundwater are high.

NOTES:

The committee substitute added language to the original version that would maintain liability for a manufacturer or seller that failed to meet state specifications on fuel, fuel additives, and blending components. It also added specific references to those specifications and added the provision covering actions begun on or after March 1, 2007.