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A M E N D M E N T

OFFERED IN THE HOUSE:

By: RULES

To: amend HOUSE BILL No. 332 (Jud)

SENATE BILL No. \_\_\_\_\_

PAGE: \_\_\_\_\_

LINE: \_\_\_\_\_

Page 1, line 25: After "refiner" DELETE "is" and  
INSERT "may be held"

Page 1, line 26: Between "fuel" and "only" INSERT "in an aircraft"



COMMITTEE REPORT

HOUSE

2/19  
Rules

3/13/81

FURTHER:

(7)

Date: Feb 17, 82

Mr. Speaker:

The Committee on JUDICIARY has had HB 332

"An Act limiting the civil liability of aviation fuel refiners; and providing for an effective date."

under consideration and reports it back as follows:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for H.B. 332 (Judiciary)  same title  new title
- and recommends it do pass
- AND attaches a "Letter of intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

Freeman

Patrick W. O'Connell

Thomas H. Barnes, ch

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MEMBERS HAVING  
OTHER RECOMENDATIONS:

W. Anderson No Rec.

Bill E. Kelly: No Rec.

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Thomas H. Barnes  
CHAIRMAN

Committee Reports (House)

HB 52, (cont'd)

The letter of intent from the House Transportation Committee stated: "It is the intent of the House Transportation Committee that the following language accompany Section 1, AS 02.05.050(d)(7) to state that approval by the Commission is contingent upon a finding that the air taxi operator is fit, willing, and able to provide the additional service."

Appropriation HOUSE BILL NO. 244, (see page 394, 1981 report). Reported back to  
(special) the House on February 17 by Health, Education and Social Services  
(Petersburg/ recommending it do pass. To Finance.  
Wrangell  
hospital)

The bill was introduced March 2, 1981 by Rep. Haugen. Makes a special appropriation for hospital expansion and improvement in Petersburg and Wrangell: \$7,100,000 for payment as a grant to the City of Petersburg for hospital expansion and improvement; \$6,500,000 for payment as a grant to the City of Wrangell for hospital expansion and improvement. Provides Act takes effect immediately.

Appropriations HOUSE BILL NO. 273, (see page 404, 1981 report). Reported back to  
(special) the House on February 16 by Transportation with a majority recommend-  
(road recon- ing it do pass. Reps. Moss and Duncan had no recommendation. To  
struction, Finance.  
S.E. Alaska)

Aviation Fuel HOUSE BILL NO. 332, (see pages 480;548, 1981 report). Reported back  
Refiners to the House on February 19 by Judiciary recommending it be replaced  
(liability) with a substitute and that it do pass. Reps. Anderson and Phillips  
had no recommendation. To Rules.

The bill was introduced March 13, 1981 by Reps. Adams and Haugen by Request, and referred to Judiciary. It was introduced to protect aviation fuel refiners from unreasonable liability in the event of a civil action arising from an aircraft accident as a result of the quality or integrity of fuel which was placed in the fuel tanks after transfer from the refiner to a third party. The bill states that without the protection, refiners may be forced to withdraw from the Alaska aviation fuel market.

The Judiciary substitute changes wording in the section added to protect refiners. It reads: "An aviation fuel refiner is liable in a civil action for injuries resulting from the use of contaminated or impure fuel when the aviation fuel refiner (1) intentionally, recklessly, or through gross negligence, causes or contributes to an injury; or (2) transfers the aviation fuel directly into the fuel tanks of an aircraft."

State Loan HOUSE BILL NO. 630, (see page 28). Reported back to the House on  
Programs February 19 by Labor & Commerce recommending it do pass, and that it  
(term. & be referred to the Special Committee on Loans. The bill was referred  
consol.) to the Special Committee on Loans, then to State Affairs and Finance.

Original sponsors: Adams, Haugen and  
Beirne by request

Offered: 2/19/82  
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 332 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 TWELFTH LEGISLATURE - SECOND SESSION  
5 A BILL

6 For an Act entitled: "An Act limiting the civil liability of aviation fuel  
7 refiners; and providing for an effective date."

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

9 \* Section 1. FINDINGS. The legislature finds that

10 (1) aviation is essential to the life of every Alaskan, in com-  
11 munications, commerce, and in emergencies;

12 (2) refiners distributing aviation fuel in Alaska perform an  
13 important service by supplying high quality products throughout the state;

14 (3) once aviation fuel has been transferred by a refiner to the  
15 storage tanks of a third party, a refiner has no control over the continued  
16 quality and integrity of the fuel;

17 (4) in the event of a civil action arising from an aircraft acci-  
18 dent, it may be unfair to hold a refiner liable for the quality and integrity  
19 of fuel which was placed in aircraft fuel tanks after transfer from the  
20 refiner to a third party;

21 (5) without protection from unreasonable liability, refiners may  
22 be forced to withdraw from the Alaska aviation fuel market.

23 \* Sec. 2. AS 09.65 is amended by adding a new section to read:

24 Sec. 09.65.140. CIVIL LIABILITY OF AN AVIATION FUEL REFINER. (a)  
25 An aviation fuel refiner <sup>now he held</sup> is liable in a civil action for injuries result-  
26 ing from the use of contaminated or impure fuel <sup>in an aircraft</sup> only when the aviation  
27 fuel refiner

28 (1) intentionally, recklessly, or through gross negligence,  
29 causes or contributes to an injury; or

1           (2) transfers the aviation fuel directly into the fuel tanks  
2 of an aircraft.

3           (b) In this section

4           (1) "aviation fuel refiner" means a company, corporation, or  
5 individual who owns or controls, or controls through a substantially  
6 owned subsidiary, partnership, or joint venture, a refinery used for the  
7 production of aviation fuel;

8           (2) "injury" includes death, personal injury, and property  
9 damage whether tangible or intangible.

10 \* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-  
11 070(c).

Redraft of CS#B 332 (Judiciary)

Starting on line 24 of page 1:

Sec. 09.65.140. CIVIL LIABILITY OF  
AN AVIATION FUEL REFINER. (a) An aviation  
fuel refiner may be held [Is] liable in a  
civil action for injuries resulting from the  
use of contaminated or impure fuel in an  
aircraft only when the aviation fuel  
refiner

(1) intentionally, recklessly, or through  
gross negligence, causes or contributes to an injury; or

(2) transfers the aviation fuel  
directly into the fuel tanks of an  
aircraft.

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSHB 332 (JUD)  
 Title An act limiting the civil liability of aviation fuel refiners  
 Requested by Judiciary Committee Date 2/19/82

II. FISCAL DETAIL

Agency Affected Division of Insurance  
 Program Category Affected Public Protection  
 BRU, Program, Or Subprogram(s) Affected Division of Insurance  
 (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	0					
200 TRAVEL	0					
300 CONTRACTUAL	0					
400 COMMODITIES	0					
500 EQUIPMENT	0					
600 LAND & STRUCTURES	0					
700 GRANTS, CLAIMS, ETC.	0					
TOTAL	0					

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME	0					
PART TIME	0					
TEMPORARY	0					

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

IV. DATE March 15, 1982

PREPARED BY Kenneth C. Moore, Div. of Insurance  
 AGENCY Commerce & Economic Development  
 PHONE 465-2515

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

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IN THE HOUSE BY ADAMS AND HAUGEN BY REQUEST

HOUSE BILL NO. 332

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act limiting the civil liability of aviation fuel refiners; and providing for an effective date."

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

\* Section 1. FINDINGS. The legislature finds that

(1) aviation is essential to the life of every Alaskan, in communications, commerce, and in emergencies;

(2) refiners distributing aviation fuel in Alaska perform an important service by supplying high quality products throughout the state;

(3) once aviation fuel has been transferred by a refiner to the storage tanks of a third party, a refiner has no control over the continued quality and integrity of the fuel;

(4) in the event of a civil action arising from an aircraft accident, it is unfair to hold a refiner liable for the quality and integrity of fuel which was placed in aircraft fuel tanks after transfer from the refiner to a third party;

(5) without protection from unreasonable liability, refiners may be forced to withdraw from the Alaska aviation fuel market.

\* Sec. 2. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.140. CIVIL LIABILITY OF AN AVIATION FUEL REFINER. (a)

An aviation fuel refiner is not liable in a civil action for injuries resulting from the use of contaminated or impure fuel in an aircraft,

~~(b) This section does not apply to an aviation fuel refiner who, or recklessly or through gross negligence~~

(1) intentionally causes an injury or whose gross negligence causes or contributes to an injury; or

Philips  
Freeman drafted by Bond

Anderson

MEMORANDUM

Dated: March 2, 1982

Re: HB 332 - Aviation Fuel Refiner's Liability;  
Responses to Questions Concerning the Bill

The importance of aviation, both commercial and general, to Alaskan communication and commerce cannot be overstated. It is common knowledge that more air miles per resident are flown in Alaska than in any other state; indeed, aviation is the only mechanism by which modern commerce and communication can be undertaken to the vast majority of Alaskan locations.

1. Marketing Aviation Fuels in Alaska.

In order to fuel the ever growing aviation traffic in Alaska, it has become necessary to develop an enormous marketing system to distribute the relatively few gallons of aviation fuel to many geographically diverse locations across the state. However, because of the increasing exposure to liability from the sale of aviation products, many companies are now removing themselves from the Alaskan market. Due to the relatively low volume, and geographically diverse, aviation fuel market in Alaska, the increased exposure to liability has resulted in a declining incentive to market aviation fuel in the state

This is particularly true with aviation gasolines, as opposed to jet fuels. For the most part, jet fuels are used in commercial aviation where the volume sales are high,

and the geographical distribution is not as great. Aviation gasoline constitutes a relatively minor portion of the total market for aviation fuels. On the other hand, because of its low volume, the relative multitude of individual sales, and the geographical diversity of the ultimate customers, aviation gasolines account for the greatest exposure to liability in the aviation fuel market.

For example, in 1981, Chevron U.S.A. Inc., the largest marketer of aviation fuels in the state of Alaska, sold a total of 375 million gallons of aviation fuel in the state. Of that total, jet fuel sales accounted for 360 million gallons. Only 15 million gallons of aviation gasoline were sold. As stated before, although aviation gasolines account for only 4% of Chevron's annual aviation fuel sales, these sales provide by far the greatest exposure to liability.

2. Aviation Fuel Refiners - Unprecedented Exposure to Liability.

Aviation fuel refiners are at an unfair disadvantage with respect to the sale of their products as opposed to the sale of other products by other companies. The exposure to liability is much greater than with almost any other product because of the serious consequences of any aviation accident.

The court's development of the strict liability theory for defective products has created a legal situation wherein the refiner is virtually guilty until he proves himself innocent.

Because most refiners are large companies, the Deep Pocket Theory invites plaintiffs' attorneys to join them in actions even where liability is unlikely. Refiners may at times find it more economical to settle a case than spend thousands in defense, even when they believe there is no liability.

Even where the refiner is successful in defending such cases, the court's award of costs and attorneys' fees rarely represents even one-half of the actual expenditures. This, of course, does not even consider the in-house costs of the refiner in investigative and administrative endeavors related to the litigation. In addition, where the court makes a cost award for attorneys' fees and costs incurred in defending such an action, collection of the award is never guaranteed and often is not possible.

Examples of the effect of this increased exposure to liability are not difficult to find in Alaska. In 1980, Texaco quietly withdrew from the aviation fuel market because of the potential liability it faced. This removal prompted a letter from Governor Hammond to Chevron U.S.A. Inc., asking that Chevron do everything possible to remain in the aviation fuel market, and inquiring as to whether there might be any assistance the State of Alaska could render in that regard.

Union Oil Company pulled out of the aviation fuel market in Southeast Alaska sometime ago for the same reason. Union apparently is seriously considering doing the same thing in Southcentral Alaska as a result of the Spernak Airways incident.

In that case, a plane carrying four people crashed on take-off at Merrill Field in Anchorage. It was determined that the cause of the crash was water in the gas lines of the airplane. According to the investigator for the National Transportation Safety Board (NTSB), the source of the water which contaminated the plane's fuel lines was the storage tanks kept by Spernak Airways at Merrill Field. Spernak Airways maintained a \$500,000 general liability policy, and has settled the case for the policy limits. However, in spite of the NTSB's findings that the source of the water was the Spernak storage tanks, Union Oil is currently being sued for damages in the amount of \$5,000,000. While it appears that Union Oil will successfully defend itself in that litigation, it will never fully recover its costs and attorneys' fees in making that defense. As a consequence, Union apparently intends to withdraw from the aviation fuel market in Southcentral Alaska. Chevron has had inquiries from several Union airport dealers asking whether Chevron would supply them with aviation fuels.

3. The Use of Barrels in the Distribution of Aviation Fuel.

In an attempt to reduce its exposure to liability, Chevron has declined to place aviation fuel in used barrels for distribution to the popular aviation market. Chevron continues to market aviation fuels in new barrels only in Alaska, and only as an accommodation to the unique reliance this state has on general aviation in remote areas where the most practical means of supply is by barrel. In all other states, Chevron will not sell aviation fuel in a barrel.

In this regard, it should be noted that there is no such thing as a "sealed barrel". All barrels, whether new or used, are susceptible to moisture contamination particularly when they are stored outside in the widely fluctuating temperatures encountered in Alaska. During such fluctuations, when moisture is present on top of the barrel near the bung hole, moisture can be pulled right through the threads on the bung with the expansion and contraction of the barrel. There is thus no guarantee that uncontaminated, clean, dry fuel purchased in a new barrel will remain so when it is stored improperly. For this reason, it is no longer economically prudent to market aviation fuels in barrels. While Chevron presently continues to do so in Alaska, it may not be economically possible to continue that in the future.

4. Alternate Marketing Options -  
A Response to Unreasonable Liability Risks.

It should also be noted that Chevron has implemented a new program in the lower 48 states concerning the sale and distribution of aviation fuels. This program could prove deleterious to the flow of Alaska commerce if implemented in this state.

In the lower 48 states, Chevron will deliver aviation fuel only in 10,000-gallon deliveries and only to its own airport dealers that meet its quality specifications. All other wholesale purchasers must take delivery of such fuels in minimum 10,000-gallon allotments at a Chevron bulk plant when Chevron has certified that the carrying vehicle is appropriate for the transport of aviation fuels.

Chevron has expressed interest in implementing such a policy in Alaska. Under that policy, fuel would be made available to the public only at Chevron airport dealers who have sufficient sales volume to meet the 10,000-gallon minimum delivery requirements. Wholesalers desiring to purchase Chevron aviation products would be able to do so only in minimum deliveries of 10,000 gallons, and only at the bulk plants Chevron operates at Ketchikan, Valdez, Anchorage and Dutch Harbor.

5. House Bill 332 - Part of the Solution.

It is imperative that the State of Alaska take

immediate steps to provide a fair economic climate that would allow the continued distribution of aviation fuels to all areas in the state.

The sole purpose of HB 332 is to create a fair and reasonable business climate for aviation fuel refiners by removing unreasonable liability exposure. This will go a long way toward assuring adequate supplies to remote geographical locations and to individual customers.

The means selected to achieve this objective are carefully tailored to meet the needs that have been stated.

Under HB 332, refiners are still subject to liability where they place fuel directly into aircraft. This is as it should be, since the refiners have total control of the quality of the product up to final delivery.

Except for gross negligence, recklessness or intentional conduct, the refiner is not liable where the fuel is delivered other than directly into an aircraft. The important point to note here is that once title and possession have passed from a refiner, the refiner no longer has control over the integrity of the fuel and should not be held liable therefor.

The essential distinction between aviation fuel and other products for which strict liability is imposed is

that most other products are static in their quality once they have been manufactured. Generally speaking, barring unforeseen events, other products remain in the same form as they were immediately after their manufacture. However, the quality of aviation fuel is always subject to incremental change depending on the quality of the handling thereof. At each stage of the distribution process, contamination is a distinct possibility that it must be carefully guarded against. Fuel that is clean and dry going into a storage tank can come out wet, dirty and/or contaminated depending upon the quality of the storage and the method of handling. Once a refiner has placed aviation fuel in the storage tanks of another person not under the refiner's control, it is unfair to hold the refiner liable for the continued quality and integrity of that fuel.

The benefits of this bill are obvious once the need for it and the means are understood. By reducing the potential liability facing any aviation fuel refiner, the bill will create an economic climate that will allow current suppliers to continue to make wide distribution of aviation fuel and allow others to enter the market.

6. Quality Control Programs Will Remain In Place.

Aviation fuel refiners will not dismantle quality control programs merely because of the passage of this legislation. It should be again emphasized that refiners

are still fully exposed to liability where they fuel planes directly. Thus a dismantling of the quality control program which results in the delivery of contaminated fuel into an aircraft by a refiner would still fully expose the refiner to liability.

Furthermore, even where the deliveries which are not made directly into an aircraft, quality control programs will remain. The dismantling of a quality control program, and the use thereafter of little or no care in the manufacture of aviation fuel, would most likely be held to be "gross negligence" under the bill - i.e., the failure to use even slight care.

7. HB 332 -- Restoring Balance To The Law.

HB 332 re-establishes the balance that has often been lost in the development of products liability law: Each entity in the distribution chain must take responsibility for its actions in handling aviation fuel, and must take responsibility for failure to do so properly. Aviation fuel refiners must continue, as they do now, to insure quality control during the manufacture and distribution of the product by them. Wholesalers and retailers must also take adequate steps to insure the continued integrity of the product during their part of the distribution chain. Finally, airlines and private pilots must continue to handle

fuel in a safe manner and test it for quality before and after each transfer. Only by following such procedures for each fuel transfer can the integrity of aviation fuel be assured. It is for precisely these reasons that HB 332 has been introduced.

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 332

Title An act limiting the civil liability of aviation fuel refiners

Requested by Adams

Date 3/31/81

II. FISCAL DETAIL

Agency Affected Division of Insurance

Program Category Affected Public Protection

BRU, Program, Or Subprogram(s) Affected Division of Insurance

(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	0					
200 TRAVEL	0					
300 CONTRACTUAL	0					
400 COMMODITIES	0					
500 EQUIPMENT	0					
600 LAND & STRUCTURES	0					
700 GRANTS, CLAIMS, ETC.	0					
TOTAL	0					

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0					
FEDERAL FUNDS	0					
OTHER (Specify Source)	0					

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	0					
PART TIME	0					
TEMPORARY	0					

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

IV. DATE February 1, 1982

PREPARED BY

*Kenneth C. Moore*  
Kenneth C. Moore, Div. of Insurance

AGENCY Commerce & Economic Development

PHONE 2515

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

BS-001 (Rev. 12/81)

AMENDED TITLE:

AN ACT LIMITING THE CIVIL LIABILITY OF AVIATION FUEL REFINERS;  
AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: ADAMS.

CO-SPONSORS: HAUGEN, BEIRNE.

CURRENT STATUS: 2/19/82 IN (H) RULES

HB 332 HOUSE ACTION

DATE SEQ PAGE

LEGISLATIVE ACTION

07/13/81	01	0548
02/19/82	02	0557
02/19/82	03	0557

FIRST READING -- COMMITTEE REPORTS  
 JUD -- CS03, NR02  
 ZERO F/NOTE HSE SUPPL #17  
 RULES  
 RULES

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MUNZ  
**NORTHERN**

**AIRLINES, INC.**

P. O. BOX 790 NOME, ALASKA 99762 (907) 443-2215

April 1, 1982

Rep. John G. Fuller  
Pouch V  
Juneau, Alaska 99811

Re: HB332  
Fuel Refiners Liability

Dear Jack,

I would ask that you support any bill that would remove a refiner from financial attack when he has had no control in keeping aviation fuel clean.

As an Airport fuel dealer I readily admit that all of the fuel received into our trucks at a bulk plant cease to be under the control of Chevron U.S.A. In fact, Federal Law prohibits Chevron from telling me how to run my business. It follows that the burdon for proper storage and handling is mine, the dealer. This responsibility cannot and is not shared by Chevron in any way.

Such a bill should, in fairness pass with no objections. Further, considering that the few suppliers may well retreat from the market, leaving Alaska grounded, common sense would dictate support.

I hope that you agree with me and argue strongly for passage of a realistic act.

Thanks and best regards,

MUNZ NORTHERN AIRLINES, INC.

Richard F. Galleher  
President & General Manager

RFG:mpc