

HB

509

# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
PAUL FISCHER  
VIC FISCHER  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITAL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
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## Senate

### Committee on Resources

#### MEMORANDUM

TO: Senate Resources Committee Members

FROM: Senate Resources Committee Staff

RE: Committee Meeting, Friday, May 11th

DATE: May 10, 1984

*S. Resources  
Comm Sub  
a committee  
granted*

On Friday, May 11th at 3:00 pm in the Beltz Room, the Senate Resources Committee will hear the following bills:

HB 509, An Act relating to aviation fuel refiners.

HB 509 (Judiciary) deals with the civil liability of an aviation fuel supplier and the sale of aviation fuel. The House Judiciary Committee substitute states that a supplier of aviation fuel may be held liable in a civil action for injuries resulting from the use of contaminated or impure fuel only when the supplier transfers the contaminated aviation fuel directly into the fuel tanks of an aircraft. The limitation of liability does not apply unless at the time of sale the purchaser signs a sales invoice or other sales document that clearly states that the purchaser assumes all risks of contaminated or impure aviation fuel, that the purchaser is aware that water contamination is an inherent risk of improperly stored fuel, and that the purchaser knows the limitation on liability. The section of the bill on the sale of aviation fuel states that a fuel supplier may not refuse to sell fuel solely on the basis that the purchaser is supplying drums in which the fuel is to be delivered.

Information on major projects fund legislation, which will be heard on Friday, is attached.

MAY 26 1984

Offered: 5/19/84  
Referred: Rules

Resources C.S. simply corrected  
grammatical error.

Original sponsors: Hurlbert, Fritz  
and Cowdery

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 509 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to aviation fuel suppliers; and  
7 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  
11 communications, commerce, and emergencies;

12 (2) suppliers 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 supplier to the  
15 storage tanks of a third party, a supplier has no control over the con-  
16 tinued quality and integrity of the fuel; and

17 (4) in the event of a civil action arising from an aircraft  
18 accident, it may be unfair to hold a supplier liable for the contamination  
19 of fuel that was placed in aircraft fuel tanks after transfer from the  
20 supplier to a third party.

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

22 Sec. 09.65.093. CIVIL LIABILITY OF AN AVIATION FUEL SUPPLIER.

23 (a) An aviation fuel supplier may be held liable in a civil action  
24 for injuries resulting from the use of contaminated or impure fuel  
25 only when the aviation fuel supplier transfers the contaminated or  
26 impure aviation fuel directly into the fuel tanks of an aircraft.

27 (b) The limitation of liability in (a) of this section does not  
28 apply unless at the time of the sale the purchaser signs a sales  
29 invoice or other sales document that clearly [states that]

1           (1) states that the purchaser assumes all risks of  
2 contaminated or impure aviation fuel placed in containers other than  
3 aircraft fuel tanks;

4           (2) states that water contamination is an inherent risk of  
5 improperly stored fuel; and

6           (3) refers to the limitation on liability under (a) of this  
7 section.

8           (c) This section does not apply to a sale of mislabeled fuel.

9           (d) In this section

10           (1) "aviation fuel supplier" means a person or business  
11 that sells or exchanges aviation fuel in the state;

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

14 \* Sec. 3. AS 45.45 is amended by adding a new section to read:

15           Sec. 45.45.910. SALE OF AVIATION FUEL. An aviation fuel sup-  
16 plier may not refuse to sell aviation fuel solely because the pur-  
17 chaser provides drums into which the aviation fuel is to be delivered.  
18 In this section "aviation fuel supplier" has the meaning given in  
19 AS 09.65.093.

20 \* Sec. 4. This Act takes effect immediately in accordance with AS 01.-  
21 10.070(c).

*Chapman*

CS HOUSE BILL NO.(509) (JUDICIARY)

ACT RELATING TO AVIATION FUEL SUPPLIERS

BACKGROUND

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 any other state; indeed, aviation is the only mechanism by which modern commerce and communication can be undertaken by the vast majority of Alaskans.

In order to fuel the evergrowing 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 and rural locations across the state. However, because of the increasing exposure to expensive, time-consuming litigation some refiner/suppliers have removed themselves from the Alaskan market. Due to the relative low volume, and geographically diverse aviation fuel marketing in Alaska, the increased exposure to litigation has resulted in a declining incentive to market aviation fuel in the state.

In an attempt to reduce their exposure to liability, the major suppliers have declined to place aviation fuel in used barrels. Some dealers, while not contractually obligated to do so, have also adopted this practice. Additionally, independent marketers of aviation fuel have been found to have adopted this policy. As a further result of the potential exposure to litigation, at least one of the major suppliers has declined to establish further aviation fuel dealerships in the state.

It is also relevant to note that one major supplier has a nationwide policy, which is varied only in Alaska, to the effect that it will deliver aviation fuel only in 10,000 gallon deliveries and only to its own airport dealers or to wholesale purchasers having vehicles appropriate for the transport of aviation fuel.

The practice of the major aviation fuel suppliers in the state, of declining to place aviation fuel in used barrels, imposes an economic burden on many Alaskans. For example, Alaskans living on or near the Kuskokwim River or the Yukon River and their tributaries generally receive their aviation fuel through barge shipments up the rivers during the summer months. A purchaser of aviation fuel can generally achieve a savings of approximately \$.20 to \$.30 per-gallon if he can induce the seller

to place it in used barrels as opposed new barrels.

An individual who lives on a tributary of the Yukon or Kuskokwim River generally must have a means of water transportation to transport drums of aviation gas from the river up the tributary to the area of his residence. When such an individual makes a trip to the main river to obtain aviation fuel it is quite simple for him to transport used drums to an area accessible by barge as he must transport barrels back to his residence to ultimately get the fuel to his residence. Thus, by merely placing used drums in his water transport on his trip down to get the gas such an individual can achieve a significant savings of \$.20 to \$.30 per gallon. However, attempts at achieving such savings are often frustrated by a policy of the supplier, as described above, of not delivering aviation fuel into used drums.

It is common knowledge that an inherent risk of improperly stored aviation fuel is water contamination. It is a common and accepted practice for any pilot to take appropriate measures (such as pouring aviation fuel through a chamois) before placing the aviation fuel in an aircraft. Thus any individual who follows normal and recognized procedures for the protection of aviation fuel can achieve a savings of \$.20 to \$.30 a gallon by having the fuel delivered into used barrels and properly caring for it before placing it in the aircraft.

The principal concern of aviation suppliers is that they will be embroiled in expensive, time-consuming litigation anytime an accident occurs as to which contaminated fuel is a suspected cause. Additionally, such suppliers will be the subject of negative and adverse publicity as a result of any such litigation. House Bill 509 provides a solution for the aviation suppliers which will enable and require them to deliver aviation fuels into used drums and which will enable an aviation gas consumer to achieve a substantial savings if he desires to care for his own aviation fuel.

THE BILL - HB509

Section 2(a) provides that an aviation fuel supplier may be held liable in a civil action resulting from the use of contaminated or impure fuel only when the aviation suppliers transfers the contaminated or impure fuel directly into the fuel tanks of an aircraft.

Thus, if a person purchasing aviation fuel does not wish to assume the responsibility for the proper care and filtering of aviation fuel and wishes the supplier to instead retain such potential liability, the prospective purchaser need only fly his aircraft to an aviation fuel supplier, and have it fueled by the supplier.

Section 2(b) of the bill provides that the limitation of the liability of a aviation fuel supplier does not apply unless at the time of the sale, the purchaser signs a sales invoice or other document which clearly states that:

1. The purchaser assumes all risk of contaminated or impure aviation fuel.
2. Water contamination is an inherent risk of improperly stored fuel.
3. Refers to the limitation on liability provided in section 2(a) of the bill.

Thus any purchaser of aviation fuel who does not have his aircraft fueled directly by a aviation fuel supplier is given clear and explicit knowledge that he is assuming the risk of contaminated aviation fuel and that water is an inherent risk of improperly stored fuel. The prospective purchaser of aviation fuel is thus given clear and unequivocal notice that by purchasing the fuel and having it delivered other than into his aircraft he is assuming such risk.

Section 3 of the bill, provides that an aviation supplier may not refuse to sell aviation fuel solely because the purchaser provides used drums into which the aviation fuel is to be delivered. Thus, upon the passage of this bill an aviation fuel supplier would be violating the law if he declined to deliver aviation fuel into a used drum provided by the customer.

It is important to note that the concept of assumption of the risk and waiver of liability set forth in HB 509 has precedence in other provisions of the Alaska Statutes. For example, AS 9.65.135 provides a similar concept in regard to assumption of the risk and waiver of liability by one who uses the slopes and tows of the ski-resort facility.

In summary HB 509 provides the potential purchaser of aviation fuel with a knowing informed choice as to whether he desires to achieve an economy by taking delivery of aviation fuel in used drums and at the same time provides the suppliers of aviation fuel with relief from expensive, costly litigation with its attendant adverse publicity. Your support of the bill is urged.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 14, 1984

SUBJECT: CS HB 509(Jud) am

TO: Senator Bettye Fahrenkamp  
Chairman  
Resources Committee

FROM: Richard C. Folta   
Legislative Counsel

You have asked for an opinion on (1) the meaning of "mis-label" as used in Section 2(c); (2) liability of producers; and (3) liability of suppliers in the above bill.

Mislabeled or misbranding describes a departure from the labeling description of a commodity within a package. Agricultural Service Association, Inc. v. Ferry-Morse Seed Co. Inc. 551 F2d 1057 (1977) A "food" is misbranded if it appears that any one representation is false or misleading U.S.U. An Article of Food. 377 F Supp 746, 748.

In the case of aviation fuel products in HB 509 mislabeling would constitute, in my opinion, the placement of the wrong ingredients on a label on a container of aviation fuel products, like "kerosene" on a drum of aviation gasoline. Since fuel contaminants are not considered aviation fuel ingredients, it is my opinion that their presence in aviation fuel is not "mislabeled fuel" under Sec. 2(c).

HB 509 limits the liability of aviation fuel suppliers in the state to cases resulting from deliveries of fuel directly into aircraft tanks or from mislabeled fuel. The purchaser, after signing a sales document with a limited liability provision, assumes all other risks of aviation fuel including contamination or impure fuel conditions. The liability of aviation fuel producers, although not covered in HB 509, is affected by the limited liability of aviation fuel suppliers. If a supplier is adjudged not liable under HB 509 provisions then most likely the producer would not be held liable as well.

RCF:csh  
W2/147

MEMORANDUM

(FROM CHEVRON, USA.)

RE:

HB 509 - Aviation Fuel Liability

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 have removed 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 withdrew from the aviation fuel market in Southeast Alaska sometime ago for the same reason. Others may do 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 was sued for damages in the amount of \$5,000,000.

### 3. The Use of Barrels in the Distribution of Aviation Fuels.

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.

Typical supply routes of aviation fuel in rural Alaska include the following:

- A) Direct purchase by the consumer from a Chevron-owned bulk plant - such as the bulk plants located at Kotzebue, Nome and Bethel.
- B) Purchase by a Chevron aviation fuel dealer from a Chevron-owned bulk plant and sale by the Chevron aviation fuel dealer to the consumer.
- C) Purchase by anyone acting as a "middleman" from a Chevron-owned bulk plant or a Chevron aviation fuel dealer and sale by the middleman to the consumer or to another middleman - such an ultimate sale by the middleman would be of unbranded product.

Chevron has learned that some of its dealers and some "middlemen" who buy aviation fuel from Chevron have (while not be under any obligation to do so) adopted Chevron's policy of declining to deliver aviation fuel in used drums supplied by the customer.

A recent example may help to illustrate the complex supply routes and the impact on rural residents.

Representative Hurlbert lives in Sleetmute which is about 200 miles up the Kuskokwim River from Bethel. The source of petroleum products including aviation gasoline, for this river system is Chevron's bulk plant in Bethel. Avgas can be purchased from Chevron FOB Bethel in new drums or 5 gallon pails or in bulk quantities delivered to a customer's barge or tank truck. There are two barge companies currently serving the river communities.

Sometime last fall Representative Hurlbert apparently had hauled a number of used drums down the river expecting to have the barge operator fill them directly from storage tanks or the barge. The barge operator was not a Chevron aviation fuel dealer but had purchased aviation gas in bulk from Chevron at Bethel. The barge operator, as an independent businessman, apparently adopted Chevron's policy regarding used drums and refused to fill them. Representative Hurlbert had to wait until bulk product was pumped ashore into another customers' tank then move his barrels to that location for filling.

#### 4. Alternate Marketing Options

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.



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

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

January 12, 1984

TO: Representative John Cowdery  
ATTN: Merrill Sikorski

FROM: Nancy Pease *Nancy Pease*  
Legislative Analyst

RE: Product Liability Laws for Aviation Gasoline  
Research Request 83-249

Merrill Sikorski of your office requested information regarding product liability for aviation gasoline in other states. He expressed a special interest in legislation that would limit the liability of suppliers and distributors of aviation gasoline.

I contacted Chevron USA, the Office of Air Worthiness Standards of the Federal Aviation Administration (FAA), the Aircraft Owners and Pilots Lobbying Association, and the aeronautics and consumer protection agencies in Alaska and five other states. It appears that no states have laws which limit product liability for aviation gasoline. However, several of the agencies I contacted mentioned other issues regarding the quality control of aviation fuel which may be of interest to you.

According to Thomas Horess, manager of the Propulsion Branch of the FAA's Office of Air Worthiness Standards, the FAA has seen no need to federally regulate aviation gasoline in the past. However, since August of 1982, the FAA has authorized the use of high octane automobile fuel in 12 or more models of general aviation engines and airplanes. As a result, concern has increased in several states over liability for auto fuel used in aviation. Automobile fuel normally is not subject to the strict quality controls that assure the purity of aviation gasoline. The FAA stipulates that automobile gas used in aircraft be handled according to the American Society of Testing and Materials (ASTM) standards for aviation gasoline. However, Mr. Horess said that the gasoline industry has difficulty controlling product quality at the gas station distribution level, a problem that has raised concern about product liability for the fuel suppliers.

Pat Chapman, a researcher for the Aircraft Owners and Pilots Lobbying Association, also mentioned the issue of product liability for automobile fuel used in aviation. Mr. Chapman noted that the fuel manufacturers are increasingly concerned over major settlements and awards in product liability lawsuits, but he could find no legislation addressing the issue in other states.

Representative Cowdery  
January 12, 1984  
Page 2

Jim Day of Chevron's public affairs office in Anchorage reported that he was not aware of any efforts to legislate limits to liability for aviation fuel. However, Mr. Day mentioned that Chevron had refused to supply some remote fueling sites in Alaska in instances where facilities were inadequate to assure against fuel contamination. According to Mr. Day, general aviation in Alaska involves unique fuel liability situations which are not likely to have arisen in other states.

Mr. Sikorski indicated that he thought Ohio might have a law limiting the product liability of aviation fuel, but I could find no such law in the Ohio Revised Code or through talking with numerous Ohio state agencies. I contacted aeronautics and consumer protection agencies in four other states with similar negative results.

While no states have limited the liability for fuel products, approximately 15 states have adopted ASTM quality standards for the production and handling of petroleum products, and a few states have developed fuel inspection programs.<sup>1</sup> Otherwise, states have little involvement in regulating fuel quality.

I am still trying to contact the Product Liability Defense Bar, an association of attorneys based in Washington D.C. If they can provide any further information on this issue, I will certainly pass it on to you. However, it appears that no states have passed legislation to limit product liability for aviation gasoline.

If we can assist you further on this or other issues, please feel free to contact us.

NP

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<sup>1</sup> Brad Parker, investigator for the Alaska Consumer Protection Agency, telephone conversation, December 20, 1983.

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: CSHB 509(L&C)  
Title: "An Act relating to  
aviation fuel refiners;..."  
Sponsor: Repr. Hurlbert  
Requestor: House Labor & Commerce  
Date of Request: 3/28/84

FISCAL DETAIL

Agency Affected: Department of Law  
Program Category Affected: General Government  
BRU, Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<u>OPERATING</u>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<u>TOTAL OPERATING</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>CAPITAL</u>						
<u>REVENUE</u>						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<u>TOTAL</u>						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 3-28-84  
 Approved by Commissioner: Richard I. Pegues / AR Date: 3-28-84  
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Interested Agencies

AMENDED TITLE: CSHB 509(JUD)AM

AN ACT RELATING TO AVIATION FUEL SUPPLIERS; AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: HURLBERT

CO-SPONSORS: FRITZ, COWDERY

CURRENT STATUS: 5/19/84 IN (S) RULES

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/12/84	01	2239	FIRST READING -- COMMITTEE REPORTS
03/29/84	02	3099	L&C -- CS03, NR05
03/29/84	03	3099	L&C F/NOTE EQUALS ZERO
04/11/84	04	3288	JUD -- CS04
05/02/84	05	3597	SECOND READING
05/02/84	06	3597	JUD CS ADOPTED BY UNAN CONSENT
05/02/84	07	3597	ADVANCED TO 3RD READING BY UNAN CONSENT
05/02/84	08	3597	THIRD READING
05/02/84	09	3598	PASSED BY DIV 25-08-07
05/02/84	10	3598	EFFECTIVE DATE PASSED BY DIV 31-02-07
05/02/84	11	3599	NOTICE OF RECONSIDERATION GIVEN
05/03/84	12	3623	RETURNED SECOND READING UNAN CONSENT
05/03/84	13	3623	AM01 ADOPTED BY UNAN CONSENT
05/03/84	14	3623	PASSED ON RECONSIDERATN BY DIV 23-10-07
05/03/84	15	3674	EFFECTIVE DATE PASSED BY DIV 34-00-06

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DATE	SEQ	PAGE	LEGISLATIVE ACTION
05/04/84	16	2919	FIRST READING -- COMMITTEE REPORTS
05/19/84	17	3184	REF -- CS03, NR02
			RULES

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Resources Committee Report:

Do Pass - Fahrenkamp, Ziegler

No Rec - Vic Fischer, Mulcahy

Absent - Sturgulowski, Paul Fischer, Eliason

# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
PAUL FISCHER  
VIC FISCHER  
BOB MULCAHY  
ARLISS STURGULEWSKI



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(907) 465-3835

## Senate

### Committee on Resources

#### MINUTES

May 11, 1984  
3:08 pm

Beltz Room  
Room 211, Capitol

---

#### MEMBERS PRESENT

Senator Fahrenkamp, Chairman  
Senator Ziegler, Vice-chairman  
Senator Eliason  
Senator Paul Fischer  
Senator Vic Fischer  
Senator Mulcahy  
Senator Sturgulewski

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#### CALENDAR

SB 522, An Act specifying how revenues dedicated to the major projects fund shall be expended.

SJR 32, Proposing an amendment to the Constitution of the State of Alaska creating a fund to finance the construction of capital projects.

HB 509, An Act relating to aviation fuel refiners.

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#### HB 509

Bob Rutschman, Chevron, USA, spoke in support of the bill.

Larry Vavra, Union Oil Company, spoke in support of HB 509.

Ray Plummer, Chevron, USA, spoke in support of the bill, and answered questions on the meaning of "mislabeled", and the liability of producers and suppliers if HB 509 were enacted.

SJR 32  
SB 522

Pete McDowell, Director, Office of Management and Budget, spoke in support of both bills, which propose an amendment to the Constitution creating a major projects fund, and set up a corporation to manage and invest the fund's assets. He answered questions on revenue projections, the "major project" definition and review process, and the effect of SJR 32 on the proposed "four-dam pool" legislation.

The meeting adjourned at 4:32 pm.

# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
PAUL FISCHER  
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## Senate Committee on Resources

### MINUTES

May 18, 1984  
3:07 pm

Beltz Room  
Room 211, Capitol

---

### MEMBERS PRESENT

Senator Fahrenkamp, Chairman  
Senator Ziegler, Vice-chairman  
Senator Vic Fischer  
Senator Mulcahy

---

### CALENDAR

HB 509, An Act relating to aviation fuel suppliers.

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Larry Vavra, Union Oil Company, demonstrated how aviation fuel can be tested to determine if water contamination exists. He recommended that all pilots use a chamois to filter fuel from barrels and use this simple test.

Ray Plummer, Chevron, USA, spoke in support of the bill, explaining that it would enable consumers to obtain fuel at a reasonable cost while accepting the associated risk. It would also relieve Chevron, USA of the costs of frivolous litigation.

Ed Hein, Legislative Legal Council, recommended a technical wording change, and answered questions on the definition of "mislabeled" and whether this bill also applies to new barrels.

Senator Mulcahy moved SCS CSHB 509 (Resources) from committee with individual recommendations. There was no objection.

The meeting adjourned at 3:27 pm.

TESTIMONY OF GEORGE DAY  
OF CHEVRON U.S.A. INC. BEFORE  
THE OUSE LABOR AND COMMERCE COMMITTEE  
CONCERNING HOUSE BILL 509  
FEBRUARY 2, 1984

Good Morning. My name is George Day, I am the Public Affairs Manager for Chevron U.S.A. Inc. in Anchorage. Chevron markets a complete line of petroleum products throughout Alaska and is the largest marketer of aviation fuels in the state. In 1983, Chevron sold a total of 160 million gallons of aviation fuel in Alaska. Jet fuel sales accounted for 147 million gallons, and only 13 million gallons of aviation gas were sold. For this reason, Chevron is vitally interested in the passage of HB 509.

Chevron has developed an extensive distribution system for supplying aviation fuels throughout the State of Alaska. Chevron recognizes that its primary responsibility is to deliver uncontaminated fuel to the next person in the distribution chain. Quality control is an ongoing process that requires constant supervision and the expenditure of much time and money. Nevertheless, inspection of the fuels for contaminants and for water is relatively easy. In order to demonstrate this, we have brought samples of jet fuel, Avgas 80, and Avgas 100.

[Demonstrate inspection process]

A description of our distribution process to the urban areas and to the bush areas of Alaska should help the committee members of understanding the liability problems faced by an aviation fuel refiner.

[Describe Anchorage process]

[Describe Bethel process]

The development of the theory of strict liability in products liability cases has greatly expanded the liability exposure of an aviation fuel refiner to fuel liability. As you may know, the plaintiff in a strict liability lawsuit need only demonstrate that he was sold a "defective product" by the defendant which caused damage to the plaintiff. The plaintiff is not required to demonstrate that the defendant's conduct in manufacturing or maintaining the product was negligent.

The essential distinction between aviation fuel and other products for which strict liability is imposed is that most other products such as automobiles or furniture or even airplanes 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 must carefully be guarded against. Fuel that is clean and dry going into a storage tank can come out wet, dirty, and/or contaminated depending on 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, we believe that it is unfair to hold the refiner liable for the continued quality and integrity of that fuel.

Nevertheless, because most refiners are large companies, plaintiffs' attorneys tend to join them in actions even where liability may be unlikely. Refiners may at times find it more economical to settle the case than spend thousands in defense, even when they believe there is no liability. In response to this increased exposure to liability, companies have quietly withdrawn from the aviation fuel market in Alaska. Texaco did so in 1980, and Union Oil Company has pulled out of the aviation fuel market in Southeast Alaska.

Barrels pose a particular dilemma for the refiner. Chevron continues to market aviation fuels in new barrels only in Alaska, and only as an accommodation to the unique reliance the state has on general aviation in remote areas where the most practical means of supply is by barrel. In all other states, Chevron does not sell aviation fuel in a barrel.

It is important to realize 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

the 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.

Obviously, used barrels pose additional problems beyond subsequent contamination. No dealer has the facilities to complete an accurate inspection of barrels prior to refilling them. For these reasons, Chevron declines to refill used barrels with aviation fuel.

These problems combine to create strong incentive to discontinue the present marketing system in the state. For example, in the lower 48 states, Chevron will deliver aviation fuel only in 10,000-gallon deliveries and only to its own airport dealers who 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 after Chevron has certified that the carrying vehicles are appropriate for the transport of aviation fuels.

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 of the state.

The sole purpose of HB 509 is to create a fair and reasonable business climate for aviation fuel refiners by removing unreasonable exposure to liability. 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 509, refiners are still subject to liability when 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.

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 airplanes directly. Thus, the 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 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, may be held to be "gross negligence" under the bill. Thus, the refiners' liability would be maintained in such situations.

HB 509 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 be held responsible for failure to do so properly. Aviation fuel refiners must continue to ensure quality control during the manufacture and distribution of the product. Wholesalers and retailers must also take adequate steps to ensure 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 for quality before and after each transfer. Only by following such procedures for each fuel transfer can the integrity of the aviation fuel be assured. It is for precisely these reasons that Chevron urges the adoption of HB 509.

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: CSHB 509(L&C)  
Title: "An Act relating to  
aviation fuel refiners;..."  
Sponsor: Repr. Hurlbert  
Requestor: House Labor & Commerce  
Date of Request: 3/28/84

FISCAL DETAIL

Agency Affected: Department of Law  
Program Category Affected: General Government  
BRU, Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<u>OPERATING</u>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<u>TOTAL OPERATING</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>CAPITAL</u>						
<u>REVENUE</u>						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<u>TOTAL</u>						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 3-28-84  
 Approved by Commissioner: Norman C. Gorsuch Date: 3-28-84  
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Interested Agency(ies)

12/1/83


STATE OF ALASKA  
THE LEGISLATURE

POUCH, STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 2, 1984

SUBJECT: Common law liability - CSHB 509  
TO: Representative Don Clocksin  
FROM: Richard C. Folta  
Legislative Counsel 

Your question on HB 509 is whether the aviation fuel suppliers may be still liable if the bill does not specifically repeal common law liability. In my opinion the answer is no.

AS 01.10.010 concerning applicability of common law provides:

Sec. 01.10.010. APPLICABILITY OF COMMON LAW. So much of the common law not inconsistent with the Constitution of the State of Alaska or the Constitution of the United States or with any law passed by the legislature of the State of Alaska is the rule of decision in this state.

The question therefore is of inconsistency with the common law, not whether there is an explicit repeal.

Under Alaska case law statutes providing for a specific inclusion or exclusion of a right or remedy supplant the common law. City of Homer v. Gangl, 650 P.2d 396 (1982), Alaska Airlines v. Lockheed Aircraft Corp., 430 F Supp. 134 (1977) and Prince v. Levan, 486, P.2d 959 (1971)

In sec. 2 of HB 509, liability of fuel suppliers is limited to actions arising out of fuel transfers directly into aircraft tanks or for selling mislabeled fuel. This specific limitation of liability would supplant the common law, in my opinion, under the rationale of the statute and the above cases, which interpreted statutes where common law repealers were not included.

RCF:lmb  
L3/033

AMENDMENT #1

OFFERED IN THE HOUSE:

By: Hurlbert

To: OS

HOUSE BILL No. HB 509

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

PAGE: 2

LINE: 2

Following "Fuel"

add "Placed in containers other than aircraft Fuel Tanks"