

## BILL ANALYSIS

C.S.H.B. 1927  
By: Chisum  
Civil Practices  
Committee Report (Substituted)

### BACKGROUND AND PURPOSE

In recent years fuel refiners and sellers have been targeted by lawsuits at the state and federal level based on the presence in gasoline of fuel additives designed to reduce vehicle emissions. These suits have alleged, among other things, that gasoline containing additives such as MTBE or ethanol is a “defective product,” even though it fully meets the requirements of the federal Clean Air Act and accompanying regulations. These suits have also attempted to apply other theories of liability, such as trespass and public nuisance, to fuel refiners and sellers, although their only conduct involved making or selling gasoline manufactured in compliance with specific government standards.

While these lawsuits have yet to succeed, they have cost the refining industry millions of dollars to defend and, consequently, increase the cost of gasoline for consumers. Should these lawsuits proliferate, they will also discourage manufacturers of fuel additives and renewable fuels, such as biodiesel, from pursuing new clean fuel technologies, to the detriment of consumers and the environment. The proposed legislation would end this type of costly and non-meritorious litigation by assuring that the mere use of a state and federally-mandated fuel additive in gasoline that complies with state and federal standards may not be the basis of a lawsuit.

### RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### ANALYSIS

**SECTION 1:** Adds Section 82.009, Civil Practice and Remedies Code.

**Subsection (a)** states that a manufacturer or seller of a fuel additive or blending component is not liable in a products liability action for any injury to a claimant caused by some aspect of the formulation or production of the additive or blending component unless: (1) the additive or component failed to comply with standards, regulations, controls, or prohibitions promulgated by this state or the federal government or an agency of this state or the federal government at the time of manufacture or sale; and (2) the failure to comply was a producing cause of the claimant’s injury.

**Subsection (b)** states that a manufacturer or seller of a fuel is not liable in a products liability action for any injury to a claimant caused by some aspect of the formulation or production of the fuel unless: (1) the fuel failed to comply with standards, regulations, controls, or prohibitions promulgated by this state or the federal government or an agency of this state or the federal government at the time of manufacture or sale; and (2) the failure to comply was a producing cause of the claimant’s injury.

**Subsection (c)** states that this section does not affect the liability of a person who spills or discharges a fuel additive, blending component, or fuel for: (1) environmental remediation costs; (2) damages arising from drinking water contamination; or (3) damages arising from negligence, public or private nuisance, trespass, breach of warranty, breach of contract, or any other theory of liability.

**Subsection (d)** defines “fuel additive,” “blending component,” or “fuel” to mean a fuel additive, blending component, or fuel that is subject to the specifications mandated by: (1) Chapter 4, Title 132, Revised Statutes; (2) 30 T.A.C. Part 1, Chapter 114; (3) 40 C.F.R. Part 79; (4) 40 C.F.R. Part 80; or (5) any successor statute, rule, or regulation mandating the specifications of a fuel additive, blending component, or fuel.

**SECTION 2:** States that the change in the law made by the bill applies only to an action: (1) commenced on or after March 1, 2007, if the action is pending on the effective date of this Act; or (2) the effective date of this Act.

**SECTION 3:** States that the Act applies immediately if it receives a vote of two-thirds of all the members elected to each house, or if the Act does not receive the vote necessary for immediate effect, then the Act takes effect September 1, 2007.

### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

In Section 1 of the substitute bill, Section 82.009(a)(1) (as added by this Act), language was added to include standards, regulations, controls, or prohibitions promulgated by this state or an agency of this state. The original bill only specified such standards, regulations, controls, or prohibitions promulgated by the federal government or an agency of the federal government.

In Section 1 of the substitute bill, Section 82.009(b)(1) (as added by this Act), language was added to include standards, regulations, controls, or prohibitions promulgated by this state or an agency of this state. The original bill only specified such standards, regulations, controls, or prohibitions promulgated by the federal government or an agency of the federal government.

In Section 1 of the substitute bill, Section 82.009(d) was added to define a “fuel additive,” “blending component,” or “fuel.” The original bill contained no definition of these terms.

In Section 2 of the substitute bill, the applicability of the bill is changed to apply only to an action commenced on or after March 1, 2007, if the action is pending on the effective date of the Act, or on or after the effective date of the Act. The original bill applied to an action pending on the effective date of the Act for which a trial, new trial, or summary adjudication had not yet commenced.