

**Hall of the House of Representatives**  
84th General Assembly - Regular Session, 2003  
**Amendment Form**

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**Subtitle of House Bill No. 2344**

"AN ACT TO AMEND THE PETROLEUM STORAGE TANK TRUST FUND COVERAGE  
AND ELIGIBILITY CRITERIA FOR REIMBURSEMENT OF THIRD PART CLAIMS."

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**Amendment No. 1 to House Bill No. 2344.**

Amend House Bill No. 2344 as originally introduced:

Page 2, delete line 3 and substitute the following: "corrective action or compensation for bodily injury or property damage a claim for compensatory damages, or"

AND

Page 2, delete lines 7 through 16 and substitute the following:

"(4) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(5)(A) "Compensatory damages" means all damages for which an owner or operator may be liable including, without limitation, bodily injury or property damage.

(B) "Compensatory damages" do not include:

(i) Punitive damages; or

(ii) The costs of litigation, which shall not be limited to attorney or expert witness fees.

(C) This definition shall apply to any pending third party claim which has not been reduced to judgment as of the effective date of this subdivision (5);"

AND

Page 3, line 19, delete "(60ø F)" and substitute "~~(60ø F)~~ (60° F)"

AND

Delete sections 2, 3, and 4 in their entirety and substitute the following:

"SECTION 2. Arkansas Code § 8-7-905(d) is amended to read as follows:

(d) Moneys in the fund may be expended by the director solely for the following purposes, as limited by the provisions of subsection (e) of this



section:

(1) The state share mandated by the federal Resource Conservation and Recovery Act of 1976;

(2) To pay costs incurred by the Arkansas Pollution Control and Ecology Commission, the director, the Attorney General, or the Advisory Committee on Petroleum Storage Tanks in the performance of their duties under this subchapter;

(3) To pay reimbursement to owners and operators for taking corrective action or to ~~compensate owners or operators for claims by pay~~ third parties for ~~bodily injury and property damage~~ compensatory damages, ~~or both~~, caused by accidental releases from qualified storage tanks;

(4) To pay reasonable and necessary costs and expenses of the department for taking corrective action caused by accidental releases from a storage tank of unknown ownership or when corrective action is not commenced by the owner or operator in a timely manner; and

(5) To reimburse owners and operators in the vicinity of the release for performing short-term testing or monitoring which is in addition to that required by the department's rules and regulations if the department has a reasonable basis for believing that such petroleum underground storage tank or tanks may be the source of the release. The owners and operators of petroleum underground storage tanks, including out-of-service and nonoperational tanks, not found to be the source of the release and who cooperate with the department may apply to the fund for reimbursement for such testing and monitoring costs, not including lost managerial time or loss of revenues because of temporary business closure.

SECTION 3. Arkansas Code § 8-7-907(b), concerning payments for corrective action from the Petroleum Storage Tank Trust Fund, is amended to read as follows:

(b) Payment for corrective action shall not exceed ~~one million dollars (\$1,000,000)~~ one million five hundred thousand dollars (\$1,500,000) per occurrence.

SECTION 4. Arkansas Code § 8-7-908(a), third-party claims to the Petroleum Storage Tank Trust Fund, is amended to read as follows:

(a)(1) No payment to any owner or operator against whom a third-party claim is brought for ~~bodily injury or property damage~~ compensatory damages, ~~or both~~, shall be paid from the Petroleum Storage Tank Trust Fund until the owner or operator has expended seven thousand five hundred dollars (\$7,500) on third-party claims for the occurrence, except in cases where the Director of the Arkansas Department of Environmental Quality is using his or her emergency authority under § 8-7-905(e) or the owner or operator has been discharged under the United States Bankruptcy Code or is determined by a court to be insolvent.

(2) It is the intent of the General Assembly that this initial level of expenditure be considered the equivalent of an insurance policy deductible.

(3) Owners and operators of underground storage tanks must demonstrate financial responsibility for the seven-thousand-five-hundred-dollar deductible for third-party liability costs.

SECTION 5. Arkansas Code § 8-7-908(c) is amended to read as follows:

(c) All payments for third-party claims shall be made only following proof that:

- (1) At the time of the occurrence, the owner or operator was in substantial compliance with the financial responsibility requirements;
- (2) At the time of discovery of the release, the owner or operator had paid all fees required under state law or regulations applicable to petroleum storage tanks; and
- (3) A valid final court order or valid final order of the Arkansas State Claims Commission establishing a judgment against the owner or operator for ~~bodily injury or property damage~~ compensatory damages caused by an accidental release from a qualified storage tank has been entered.

SECTION 6. Arkansas Code § 8-7-908(d)(1) is amended to read as follows:

(d)(1)(A) Any owner or operator against whom a third-party claim is filed in court or in the Arkansas State Claims Commission shall give written notice of the claim to the Arkansas Department of Environmental Quality no later than twenty (20) days after service of summons or receipt of notification of the claim from the Arkansas State Claims Commission.

(B) As a condition of eligibility, an owner or operator shall cooperate with and assist the department and, if applicable, the Attorney General's office in connection with the third-party claim.

(C) At a minimum, such cooperation shall include active participation by the owner or operator throughout the litigation and providing assistance as required by the department or the Attorney General's office during resolution of a third-party claim.

(D) In determining compliance with subdivisions (d)(1)(B) and (C), the director shall consider the owner's or operator's financial condition.

SECTION 7. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that under present law a requirement for Petroleum Storage Tank Fund eligibility for reimbursement for third party claims for bodily injury and property damage is the payment of seven thousand five hundred dollars (\$7,500) to injured third parties by the owner or operator; that if the owner or operator is discharged in bankruptcy or declared insolvent, injured third parties may have no protection under the law; that existing law should be changed immediately so that injured third parties will be guaranteed access to the fund that is specifically designed to compensate them for their injuries; and that, in addition, owners or operators may not enjoy the protection originally intended by the General Assembly when it initially enacted this statute unless the definition of compensatory damages is clarified. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

The Amendment was read \_\_\_\_\_  
By: Representative Ledbetter  
LDH/JMB - 031920030956  
JMB430 \_\_\_\_\_ Chief Clerk