

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003

A Bill

HOUSE BILL 2344

4
5 By: Representative Ledbetter
6
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For An Act To Be Entitled

8
9 AN ACT TO AMEND THE PETROLEUM STORAGE TANK TRUST
10 FUND COVERAGE AND ELIGIBILITY CRITERIA FOR
11 REIMBURSEMENT OF THIRD PART CLAIMS; TO INCREASE
12 THE MAXIMUM PAYMENT FOR CORRECTIVE ACTIONS; AND
13 FOR OTHER PURPOSES.
14

Subtitle

15
16 AN ACT TO AMEND THE PETROLEUM STORAGE
17 TANK TRUST FUND COVERAGE AND ELIGIBILITY
18 CRITERIA FOR REIMBURSEMENT OF THIRD PART
19 CLAIMS.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 8-7-902 is amended to read as follows:
25 8-7-902. Definitions.

26 As used in this subchapter, unless the context otherwise requires:

27 (1)(A) "Aboveground storage tank" means any one (1) or a combination
28 of containers, vessels, and enclosures located aboveground, including
29 structures and appurtenances connected to them, whose capacity is greater
30 than one thousand three hundred twenty gallons (1,320 gals.) and not more
31 than forty thousand gallons (40,000 gals.) and that is used to contain or
32 dispense motor fuels, distillate special fuels, or other refined petroleum
33 products.

34 (B) Such term does not include mobile storage tanks used to
35 transport petroleum from one (1) location to another or those used in the
36 production of petroleum or natural gas;



1 (2) "Accidental release" means any sudden or nonsudden confirmed
 2 release of petroleum from a storage tank that results in a need for
 3 corrective action or compensation for bodily injury or property damage, or
 4 both, neither expected nor intended by the tank owner or operator;

5 (3) "Advisory committee" or "committee" means the Advisory Committee
 6 on Petroleum Storage Tanks as established in this subchapter;

7 (4)(A) "Bodily injury and property damage" means any compensatory
 8 damages.

9 (B) "Bodily injury and property damage" does not include:

10 (i) Punitive damages; or

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

13 (C) This definition shall be retroactive to the effect of Act
 14 173 of 1989;

15 ~~(4)(5)~~ "Commission" means the Arkansas Pollution Control and Ecology
 16 Commission;

17 ~~(5)(6)~~ "Corrective action" means those actions which may be necessary
 18 to protect human health and the environment as a result of an accidental
 19 release, sudden or nonsudden;

20 ~~(6)(7)~~ "Department" means the Arkansas Department of Environmental
 21 Quality;

22 ~~(7)(8)~~ "Director" means the Director of the Arkansas Department of
 23 Environmental Quality;

24 ~~(8)(9)~~ "Distributor" means and includes any person, including the
 25 State of Arkansas and any political subdivision thereof, but not including
 26 the United States of America or any of its instrumentalities, except to the
 27 extent permitted by the Constitution or laws thereof, who is customarily in
 28 the wholesale business of offering motor fuels for resale or delivery to
 29 dealers, consumers, or others in tanks of two hundred gallons (200 gals.) or
 30 more which are not connected to motor vehicles and is:

31 (A) Making the first sale in the State of Arkansas of any motor
 32 fuel, imported into the state from any other state, territory, or foreign
 33 country, after it shall have been received within this state within the
 34 meaning of § 26-55-201 et seq.;

35 (B) Consuming or using in the State of Arkansas any motor fuel
 36 so imported and who shall have purchased it before it shall have been

1 received by any other person in this state, within the meaning of § 26-55-201
 2 et seq.; or

3 (C) Producing, refining, preparing, distilling, manufacturing,
 4 blending, or compounding motor fuel in this state;

5 ~~(9)~~(10) "Fund" means the Petroleum Storage Tank Trust Fund created by
 6 this subchapter;

7 ~~(10)~~(11) "Occurrence" means an accident, including continuous or
 8 repeated exposure to conditions, which results in a release from a storage
 9 tank;

10 ~~(11)~~(12) "Owner or operator", when the owner and operator are separate
 11 parties, means the person who is required to obtain financial assurances
 12 under the state or federal underground storage tank program;

13 ~~(12)~~(13) "Person" means any individual, corporation, company, firm,
 14 partnership, association, trust, joint-stock company or trust, or venture, or
 15 municipal, state, or federal government or agency, or any other legal entity,
 16 however organized;

17 ~~(13)~~(14) "Petroleum" means petroleum, including crude oil or any
 18 fraction thereof, which is liquid at standard conditions of temperature and
 19 pressure of sixty degrees Fahrenheit (60ø F) and fourteen and seven-tenths
 20 pounds per square inch (14.7 lbs. psi) absolute;

21 ~~(14)~~(15)(A) "Release" means any spilling, leaking, emitting,
 22 discharging, escaping, leaching, or disposing from a storage tank into
 23 groundwater, surface water, or subsurface soils.

24 (B) This term does not include releases that are permitted or
 25 authorized by the department or by federal law;

26 ~~(15)~~(16) "Storage tank" means an aboveground storage tank or
 27 underground storage tank as defined in this subchapter;

28 ~~(16)~~(17)(A) "Storage tank self-inspection audit" means a checklist or
 29 form issued by the department addressing the compliance status of a storage
 30 tank that the owner or operator completes on an annual basis.

31 (B) The storage tank self-inspection audit shall accompany or be
 32 a part of other documents the department requires the owner or operator to
 33 execute on an annual basis;

34 ~~(17)~~(18) (A) "Supplier" means any person who is customarily in the
 35 wholesale business of offering distillate special fuels or liquefied gas
 36 special fuels for resale or use to any person in this state and who makes

1 bulk sales of fuel.

2 (B) The term "supplier" shall include pipeline importers, first
3 receivers, and second receivers;

4 ~~(18)~~(19) "Terminal" means a bulk storage facility for storing
5 petroleum products supplied by pipeline or marine vessels;

6 ~~(19)~~(20) (A) "Underground storage tank" means any one (1) or a
7 combination of tanks, including underground pipes connected thereto, which is
8 or has been used to contain petroleum, and the volume of which, including the
9 volume of the underground pipes connected thereto, is ten percent (10%) or
10 more beneath the surface of the ground.

11 (B) The term "underground storage tank" does not include any:

12 (i) Farm or residential tank of one thousand one hundred
13 gallons (1,100 gals.) or less capacity used for storing motor fuel for
14 noncommercial purposes;

15 (ii) Tank used for storing heating oil for consumptive use
16 on the premises where stored;

17 (iii) Septic tank;

18 (iv) Intrastate and interstate pipeline facilities
19 regulated by the Arkansas Public Service Commission or other applicable state
20 or federal agency and all other pipeline facilities, including gathering
21 lines regulated under:

22 (a) The Natural Gas Pipeline Safety Act of 1968; or

23 (b) The Hazardous Liquid Pipeline Safety Act of
24 1979;

25 (v) Surface impoundment, pit, pond, or lagoon;

26 (vi) Storm water or wastewater collection system;

27 (vii) Flow-through process tank;

28 (viii) Liquid trap or associated gather lines directly
29 related to oil or gas production and gathering operations;

30 (ix) Storage tank situated in an underground area, such as
31 a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank
32 is situated upon or above the surface of the floor; or

33 (x) Any pipes connected to any tank which is described in
34 subdivisions (19)(B)(i)-(19)(B)(ix) of this section; and

35 ~~(20)~~(21)(A) "Unknown petroleum storage tank" means a petroleum storage
36 tank as defined by this subchapter whose existence on a property or facility

1 at the time of the discovery of a release was not known or should not have
 2 reasonably been known by the owner or operator.

3 (B) An owner or operator is deemed to have known of the
 4 existence of an unknown petroleum storage tank if there was surficial
 5 evidence of such tank in the form of visible vent pipes, fill caps, or lines
 6 protruding from such tank.

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 8 SECTION 2. Arkansas Code § 8-7-907(b), concerning payments for
 9 corrective action from the Petroleum Storage Tank Trust Fund, is amended to
 10 read as follows:

11 (b) Payment for corrective action shall not exceed ~~one million dollars~~
 12 ~~(\$1,000,000)~~ one million five hundred thousand dollars (\$1,500,000) per
 13 occurrence.

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 15 SECTION 3. Arkansas Code § 8-7-908(a), third-party claims to the
 16 Petroleum Storage Tank Trust Fund, is amended to read as follows:

17 (a)(1) No payment to any owner or operator against whom a third-party
 18 claim is brought for bodily injury or property damage, or both, shall be paid
 19 from the Petroleum Storage Tank Trust Fund until the owner or operator has
 20 expended seven thousand five hundred dollars (\$7,500) on third-party claims
 21 for the occurrence, except in cases where the Director of the Arkansas
 22 Department of Environmental Quality is using other his or her emergency
 23 authority under § 8-7-905(e) or the owner or operator is either unable or
 24 unwilling to expend seven thousand five hundred dollars (\$7,500).

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

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

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 32 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
 33 General Assembly of the State of Arkansas that under present law a
 34 requirement for Petroleum Storage Tank Fund eligibility for reimbursement for
 35 third party claims for bodily injury and property damage is the payment of a
 36 seven thousand five hundred dollars (\$7,500) to injured third parties by the

1 owner or operator. If the owner or operator cannot or will not meet this
2 requirement, injured third parties may have no protection under the law. The
3 threshold deductible must be eliminated immediately so that injured third
4 parties will be guaranteed access to the fund that is specifically designed
5 to compensate them for their injuries. Therefore, an emergency is declared
6 to exist and this act being immediately necessary for the preservation of the
7 public peace, health, and safety shall become effective on:

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

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

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

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