

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
4

As Engrossed: H3/20/03

A Bill

HOUSE BILL 2344

5 By: Representative Ledbetter
6
7

For An Act To Be Entitled

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 AN ACT TO AMEND THE PETROLEUM STORAGE
16 TANK TRUST FUND COVERAGE AND ELIGIBILITY
17 CRITERIA FOR REIMBURSEMENT OF THIRD PART
18 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~~ a
4 claim for compensatory damages, or both, neither expected nor intended by the
5 tank owner or operator;

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

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

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

13 (B) "Compensatory damages" do not include:

14 (i) Punitive damages; or

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

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

20 ~~(5)(6)~~ "Corrective action" means those actions which may be necessary
21 to protect human health and the environment as a result of an accidental
22 release, sudden or nonsudden;

23 ~~(6)(7)~~ "Department" means the Arkansas Department of Environmental
24 Quality;

25 ~~(7)(8)~~ "Director" means the Director of the Arkansas Department of
26 Environmental Quality;

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

34 (A) Making the first sale in the State of Arkansas of any motor
35 fuel, imported into the state from any other state, territory, or foreign
36 country, after it shall have been received within this state within the

1 meaning of § 26-55-201 et seq.;

2 (B) Consuming or using in the State of Arkansas any motor fuel
3 so imported and who shall have purchased it before it shall have been
4 received by any other person in this state, within the meaning of § 26-55-201
5 et seq.; or

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

8 ~~(9)~~(10) "Fund" means the Petroleum Storage Tank Trust Fund created by
9 this subchapter;

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

13 ~~(11)~~(12) "Owner or operator", when the owner and operator are separate
14 parties, means the person who is required to obtain financial assurances
15 under the state or federal underground storage tank program;

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

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

24 ~~(14)~~(15)(A) "Release" means any spilling, leaking, emitting,
25 discharging, escaping, leaching, or disposing from a storage tank into
26 groundwater, surface water, or subsurface soils.

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

29 ~~(15)~~(16) "Storage tank" means an aboveground storage tank or
30 underground storage tank as defined in this subchapter;

31 ~~(16)~~(17)(A) "Storage tank self-inspection audit" means a checklist or
32 form issued by the department addressing the compliance status of a storage
33 tank that the owner or operator completes on an annual basis.

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

1 ~~(17)~~(18) (A) "Supplier" means any person who is customarily in the
2 wholesale business of offering distillate special fuels or liquefied gas
3 special fuels for resale or use to any person in this state and who makes
4 bulk sales of fuel.

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

7 ~~(18)~~(19) "Terminal" means a bulk storage facility for storing
8 petroleum products supplied by pipeline or marine vessels;

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

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

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

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

20 (iii) Septic tank;

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

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

26 (b) The Hazardous Liquid Pipeline Safety Act of
27 1979;

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

29 (vi) Storm water or wastewater collection system;

30 (vii) Flow-through process tank;

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

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

36 (x) Any pipes connected to any tank which is described in

1 subdivisions (19)(B)(i)-(19)(B)(ix) of this section; and

2 ~~(20)~~(21)(A) "Unknown petroleum storage tank" means a petroleum storage
3 tank as defined by this subchapter whose existence on a property or facility
4 at the time of the discovery of a release was not known or should not have
5 reasonably been known by the owner or operator.

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

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

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

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

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

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

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

29 *(5) To reimburse owners and operators in the vicinity of the*
30 *release for performing short-term testing or monitoring which is in addition*
31 *to that required by the department's rules and regulations if the department*
32 *has a reasonable basis for believing that such petroleum underground storage*
33 *tank or tanks may be the source of the release. The owners and operators of*
34 *petroleum underground storage tanks, including out-of-service and*
35 *nonoperational tanks, not found to be the source of the release and who*
36 *cooperate with the department may apply to the fund for reimbursement for*

1 such testing and monitoring costs, not including lost managerial time or loss
2 of revenues because of temporary business closure.

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

7 (b) Payment for corrective action shall not exceed ~~one million dollars~~
8 ~~(\$1,000,000)~~ one million five hundred thousand dollars (\$1,500,000) per
9 occurrence.

10
11 SECTION 4. Arkansas Code § 8-7-908(a), third-party claims to the
12 Petroleum Storage Tank Trust Fund, is amended to read as follows:

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

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

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

28
29 SECTION 5. Arkansas Code § 8-7-908(c) is amended to read as follows:

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

32 (1) At the time of the occurrence, the owner or operator was in
33 substantial compliance with the financial responsibility requirements;

34 (2) At the time of discovery of the release, the owner or
35 operator had paid all fees required under state law or regulations applicable
36 to petroleum storage tanks; and

1 (3) A valid final court order or valid final order of the
2 Arkansas State Claims Commission establishing a judgment against the owner or
3 operator for ~~bodily injury or property damage~~ compensatory damages caused by
4 an accidental release from a qualified storage tank has been entered.
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6 SECTION 6. Arkansas Code § 8-7-908(d)(1) is amended to read as
7 follows:

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

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

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

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

23
24 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the
25 General Assembly of the State of Arkansas that under present law a
26 requirement for Petroleum Storage Tank Fund eligibility for reimbursement for
27 third party claims for bodily injury and property damage is the payment of
28 seven thousand five hundred dollars (\$7,500) to injured third parties by the
29 owner or operator; that if the owner or operator is discharged in bankruptcy
30 or declared insolvent, injured third parties may have no protection under the
31 law; that existing law should be changed immediately so that injured third
32 parties will be guaranteed access to the fund that is specifically designed
33 to compensate them for their injuries; and that, in addition, owners or
34 operators may not enjoy the protection originally intended by the General
35 Assembly when it initially enacted this statute unless the definition of
36 compensatory damages is clarified. Therefore, an emergency is declared to

1 exist and this act being immediately necessary for the preservation of the
2 public peace, health, and safety shall become effective on:

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

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

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

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/s/ Ledbetter