

HOUSE BILL No. 1257

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-1.2-2-31; IC 13-11-2; IC 13-14-12-1; IC 13-18-28; IC 13-19-3-7.2; IC 13-30-4-1; IC 14-12-2-30; IC 35-52-13-1.3; IC 36-7-29-8.

Synopsis: Notice of environmental contamination. Requires a person who causes a spill of certain substances into waters of the state to report the spill immediately to the following: (1) The department of environmental management (department). (2) The county health officer of each county in which the spill occurred. (3) A downstream water user. (4) At least one emergency response agency. (5) Each park located in the county in which the spill occurred. Requires the department, the county health officer, the downstream water user, the emergency response agency, and each park (entity) to: (1) post the information received about the spill on each entity's Internet web site; and (2) in a manner determined by each entity, make the information received about the spill available to the public. Requires the person who caused the spill to immediately provide notice by publication to the public in each county in which the spill occurred. Establishes a civil penalty of not more than \$25,000 for each day that the person fails to make the report or provide the notice required by the bill. Provides that the civil penalty is not more than \$50,000 for each day that the person fails to make the report or provide the notice if a court has entered a judgment against a person for a previous violation of the reporting and notification requirements added by the bill. Provides that a person who fails to make the report or provide the notice required by the bill commits a Class A misdemeanor. Specifies that a person commits a Level 6 felony if the person has a prior unrelated conviction for a violation of the reporting and notification requirements added by the bill. Provides that money collected by the department for a civil violation of the reporting and notification requirements added by the

(Continued next page)

Effective: July 1, 2020.

Boy, Errington

January 7, 2020, read first time and referred to Committee on Environmental Affairs.



Digest Continued

bill shall be deposited into the environmental management special fund. Adds definitions of "downstream water user", "objectionable substance", "park", and "spill". Makes conforming changes.



Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1257

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-1.2-2-31, AS ADDED BY P.L.189-2018,
2 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]: Sec. 31. "Hazardous substance", for purposes of the
4 Indiana brownfields program established under IC 5-1.2-12, has the
5 meaning set forth in ~~IC 13-11-2-98~~ **IC 13-11-2-98(b)**.
6 SECTION 2. IC 13-11-2-49 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 49. **(a) "Damage", for**
8 **purposes of this chapter and IC 13-18-28, means the actual or**
9 **imminent alteration of the waters of the state so as to render the**
10 **waters harmful, detrimental, or injurious to:**
11 **(1) public health, safety, or welfare;**
12 **(2) domestic, commercial, industrial, agricultural, or**
13 **recreational uses; or**
14 **(3) an animal or aquatic life.**
15 **(b) "Damage", for purposes of IC 13-24-2, means damage of any**



kind for which liability may exist under Indiana law:

- (1) resulting from;
- (2) arising out of; or
- (3) related to;

the discharge or threatened discharge of oil.

SECTION 3. IC 13-11-2-60.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 60.7. "Downstream water user", for purposes of IC 13-18-28, means:**

- (1) a community public water supply described in IC 14-25-7-13(d); or
- (2) a significant water withdrawal facility described in IC 14-25-7-15.

SECTION 4. IC 13-11-2-66 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 66. "Emergency response agency", for purposes of IC 13-18-28 and IC 13-25-6, means:**

- (1) the state police;
- (2) the environmental response branch of the department;
- (3) a police department established under IC 36-8-2-2;
- (4) a fire department established under IC 36-8-2-3;
- (5) any agency of a governmental entity, or any combination of agencies of governmental entities, that provides:
 - (A) firefighting services;
 - (B) emergency rescue services; or
 - (C) emergency medical services; or
- (6) any other agency of a governmental entity that provides manpower, equipment, or supplies at the scene of a hazardous materials emergency.

SECTION 5. IC 13-11-2-76 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 76. (a) "Extremely hazardous substance", for purposes of this chapter and IC 13-18-28, means a substance identified under 42 U.S.C. 11002 and 42 U.S.C. 11004. The term includes a substance listed in 40 CFR 355 Appendix A.**

(b) "Extremely hazardous substance", for purposes of IC 13-25-2, has the meaning set forth in 42 U.S.C. 11049.

SECTION 6. IC 13-11-2-98, AS AMENDED BY P.L.189-2018, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 98. (a) "Hazardous substance", for purposes of this chapter and IC 13-18-28, has the meaning set forth in 42 U.S.C. 9601(14).**

(b) "Hazardous substance", for purposes of:



(1) IC 13-25-4; and

(2) IC 13-25-5;

has the meaning set forth in Section 101 of CERCLA (42 U.S.C. 9601). The term includes any substance that the board determines to be hazardous under environmental management laws.

SECTION 7. IC 13-11-2-142.9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 142.9. (a) "Objectionable substance", for purposes of this chapter and IC 13-18-28, means a substance that is:**

(1) of a quantity and a type; and

(2) present for a duration and in a location;

so as to damage waters of the state.

(b) The term does not include any of the following:

(1) Extremely hazardous substances.

(2) Hazardous substances.

(3) Petroleum.

(4) Any mixture of substances listed in subdivisions (1) through (3).

SECTION 8. IC 13-11-2-152.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 152.3. "Park", for purposes of IC 13-18-28, means any of the following:**

(1) A national park.

(2) A state park.

(3) Any property operated by a political subdivision for park purposes (as defined in IC 36-10-1-2).

SECTION 9. IC 13-11-2-160 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 160. "Petroleum", for purposes of:**

(1) this chapter;

(2) IC 13-18-28;

(+) (3) IC 13-23;

(-) (4) IC 13-24-1; and

(-) (5) IC 13-25-5;

includes petroleum and crude oil or any part of petroleum or crude oil that is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit (60°F) and fourteen and seven-tenths (14.7) pounds per square inch absolute).

SECTION 10. IC 13-11-2-183, AS AMENDED BY P.L. 113-2014, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 183. "Regulated substance", for purposes of this**



chapter and IC 13-23, includes the following:

(1) Any substance defined in section ~~98~~ **98(b)** of this chapter as a hazardous substance, but excluding any substance regulated as a hazardous waste under:

(A) Subtitle C of the federal Solid Waste Disposal Act, as amended (42 U.S.C. 6921 through 6939(a)); or

(B) IC 13-22-2-3.

(2) Petroleum.

(3) Any other substance designated by rules adopted by the board under IC 13-23-1-2.

SECTION 11. IC 13-11-2-216.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 216.5. (a) "Spill", for purposes of IC 13-18-28, means any unexpected, unintended, abnormal, or unapproved dumping, leakage, drainage, seepage, discharge, or other loss of:**

(1) petroleum;

(2) hazardous substances;

(3) extremely hazardous substances; or

(4) objectionable substances.

The term includes a discharge or exceedance of a substance described in this subsection that is subject to an applicable permit.

(b) The term does not include a release to an impermeable surface if the substance does not migrate off the surface or penetrate the surface and enter the soil.

SECTION 12. IC 13-14-12-1, AS AMENDED BY P.L.170-2006, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 1. (a) The officials collecting the following shall remit the money to the treasurer of state:

(1) Money collected under the following:

(A) IC 13-18-28-7.

~~(A)~~ **(B)** IC 13-30-4-1.

~~(B)~~ **(C)** IC 13-30-4-2.

~~(C)~~ **(D)** IC 13-30-5-1.

(2) Fees collected under IC 13-16-1-2 through IC 13-16-1-5.

(b) Except as provided in subsection (c), the treasurer of state shall credit the money to the environmental management special fund.

(c) With respect to the money collected under subsection ~~(a)(1)(A)~~ **(a)(1)(B)** and ~~(a)(1)(B)~~ **(a)(1)(C)**:

(1) the commissioner may direct the treasurer of state to credit all or a part of the money to the solid waste management fund established by IC 13-20-22-2; and



(2) the treasurer of state shall:

(A) credit money as directed by the commissioner under subdivision (1); and

(B) credit to the environmental management special fund only money that is not credited under subdivision (1).

SECTION 13. IC 13-18-28 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

Chapter 28. Reporting and Notification of Spills into Waters

Sec. 1. This chapter does not apply to a release that is subject to IC 13-25-2.

Sec. 2. As used in this chapter, "327 IAC 2-6.1" refers to the administrative rule of the environmental rules board in effect on July 1, 2020, concerning the:

(1) reporting and containment of:

(A) extremely hazardous substances;

(B) hazardous substances;

(C) petroleum; and

(D) objectionable substances; and

(2) response to spills of substances described in subdivision

(1);

that damage the waters of the state.

Sec. 3. (a) A person who is subject to the reporting requirements of this chapter or 327 IAC 2-6.1 or who otherwise engages in activity that results in a spill of an extremely hazardous substance, a hazardous substance, petroleum, or an objectionable substance into waters of the state shall, upon discovering the spill, report the spill immediately to:

(1) the department;

(2) the county health officer of each county in which the spill occurred;

(3) a downstream water user;

(4) at least one (1) emergency response agency; and

(5) each park located in a county in which the spill occurred, if a park is located in the county.

(b) An entity described in subsection (a) that receives a report of a spill under this section shall:

(1) post the information received about the spill on each entity's Internet web site; and

(2) in a manner determined by each entity, make the information received about the spill available to the public.

Sec. 4. In addition to satisfying the reporting requirement



described in section 3 of this chapter, a person shall also immediately provide notice by publication as provided in IC 5-3-1 to the public in each county in which the spill occurred.

Sec. 5. (a) Subject to IC 13-14-2-6, a person who fails to:

- (1) make a report required by section 3 of this chapter; or
- (2) provide a notice required by section 4 of this chapter;

is liable for a civil penalty. Except as provided in subsection (b), the amount of the civil penalty is not more than twenty-five thousand dollars (\$25,000) for each day that the person fails to make the report required by section 3 of this chapter or provide the notice required by section 4 of this chapter.

(b) The civil penalty for which a person is liable under this section is not more than fifty thousand dollars (\$50,000) for each day that the person fails to make the report required by section 3 of this chapter or provide the notice required by section 4 of this chapter if a court has entered a judgment against the person for a previous violation of this section.

(c) The department may:

- (1) recover the civil penalty described in this section in a civil action commenced in any court with jurisdiction; and
- (2) request in the action that the person be enjoined from continuing the violation.

Sec. 6. (a) A person who knowingly or intentionally fails to:

- (1) make a report required by section 3 of this chapter; or
- (2) provide a notice required by section 4 of this chapter;

commits a Class A misdemeanor. Notwithstanding the maximum fine provisions of IC 35-50-3-2, the criminal fine for a person convicted under this subsection is ten thousand dollars (\$10,000) for each day that the person violates section 3 or 4 of this chapter.

(b) The offense described in subsection (a) is a Level 6 felony if the person has a prior unrelated conviction for violating this section. Notwithstanding the maximum fine provisions of IC 35-50-2-7, the criminal fine for a person convicted under this subsection is ten thousand dollars (\$10,000) for each day that the person violates section 3 or 4 of this chapter.

Sec. 7. The department shall deposit money collected from the civil penalty described in section 5 of this chapter into the environmental management special fund established under IC 13-14-12-1.

SECTION 14. IC 13-19-3-7.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 7.2. (a) The board may adopt rules under IC 4-22-2 and IC 13-14-9 to develop a voluntary



certification program for persons that remediate sites where releases of hazardous substances (as defined in ~~IC 13-11-2-98~~) **IC 13-11-2-98(b)**) or petroleum (as defined in IC 13-11-2-160) have occurred.

(b) The rules adopted under this section must establish, at a minimum, the following:

(1) Eligibility criteria for certification.

(2) Criteria and procedures for suspension or revocation of certification.

(3) A certification application fee.

(c) The department may audit remediations performed by persons certified under rules adopted under this section.

SECTION 15. IC 13-30-4-1, AS AMENDED BY P.L.133-2012, SECTION 160, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 1. (a) Subject to IC 13-14-6 and except as provided in **IC 13-18-28**, IC 13-23-14-2, and IC 13-23-14-3, a person who violates:

(1) any provision of:

(A) environmental management laws;

(B) air pollution control laws;

(C) water pollution control laws;

(D) IC 13-18-14-1;

(E) a rule or standard adopted by the board; or

(F) a rule or standard adopted by the underground storage tank financial assurance board created by IC 13-23-11-1; or

(2) any determination, permit, or order made or issued by the commissioner under:

(A) environmental management laws or IC 13-7 (before its repeal);

(B) air pollution control laws or IC 13-1-1 (before its repeal); or

(C) water pollution control laws or IC 13-1-3 (before its repeal);

is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day of any violation.

(b) The department may:

(1) recover the civil penalty described in subsection (a) in a civil action commenced in any court with jurisdiction; and

(2) request in the action that the person be enjoined from continuing the violation.

SECTION 16. IC 14-12-2-30, AS AMENDED BY P.L.172-2016, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 30. (a) Money in the accounts of the fund, other



than the stewardship account, may be used for the following:

- (1) Acquisition costs, such as costs of surveying, title insurance, and other activities associated with the transfer of title to property.
- (2) Costs of services and expenses related to acquisition, such as engineering, appraisal, environmental, accounting, project development, and legal services and expenses.

(b) Money in the fund may not be used for the following:

- (1) The costs of construction of structures other than those authorized under section 26(a)(6) of this chapter.
- (2) The costs of removal (as defined in IC 13-11-2-187) and remedial action (as defined in IC 13-11-2-185) relating to hazardous substances (as defined in ~~IC 13-11-2-98~~; **IC 13-11-2-98(b)**).
- (3) The costs of wastewater treatment.

SECTION 17. IC 35-52-13-1.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 1.3. IC 13-18-28-6 defines crimes concerning reporting and notification of spills into waters of the state.**

SECTION 18. IC 36-7-29-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 8. As used in this chapter, "substance" has the meaning set forth in ~~IC 13-11-2-98~~ **IC 13-11-2-98(b)** for the term "hazardous substance".

