

FIRST REGULAR SESSION

SENATE BILL NO. 310

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

1507S.01H

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 319.131, RSMo, and to enact in lieu thereof one new section relating to the petroleum storage tank insurance fund.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 319.131, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 319.131,
3 to read as follows:

319.131. 1. Any owner or operator of one or more
2 petroleum storage tanks may elect to participate in the
3 petroleum storage tank insurance fund to meet the financial
4 responsibility requirements of sections 319.114 and
5 414.036. Subject to regulations of the board of trustees,
6 owners or operators may elect to continue their
7 participation in the fund subsequent to the transfer of
8 their property to another party. Current or former refinery
9 sites or petroleum pipeline or marine terminals are not
10 eligible for participation in the fund.

11 2. The board shall establish an advisory committee
12 which shall be composed of insurers, owners and operators of
13 petroleum storage tanks, and other interested parties. The
14 advisory committee established pursuant to this subsection
15 shall report to the board. The committee shall monitor the
16 fund and recommend statutory and administrative changes as
17 may be necessary to assure efficient operation of the fund.
18 The committee, in consultation with the board and the

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 department of commerce and insurance, shall report every two
20 years to the general assembly on the availability and
21 affordability of the private insurance market as a viable
22 method of meeting the financial responsibilities required by
23 state and federal law in lieu of the petroleum storage tank
24 insurance fund.

25 3. (1) Except as otherwise provided by this section,
26 any person seeking to participate in the insurance fund
27 shall submit an application to the board of trustees and
28 shall certify that the petroleum tanks meet or exceed and
29 are in compliance with all technical standards established
30 by the United States Environmental Protection Agency, except
31 those standards and regulations pertaining to spill
32 prevention control and counter-measure plans, and rules
33 established by the Missouri department of natural resources
34 and the Missouri department of agriculture. The applicant
35 shall submit proof that the applicant has a reasonable
36 assurance of the tank's integrity. Proof of tank integrity
37 may include but not be limited to any one of the following:
38 tank tightness test, electronic leak detection, monitoring
39 wells, daily inventory reconciliation, vapor test or any
40 other test that may be approved by the director of the
41 department of natural resources or the director of the
42 department of agriculture. The applicant shall submit
43 evidence that the applicant can meet all applicable
44 financial responsibility requirements of this section.

45 (2) A creditor, specifically a person who, without
46 participating in and not otherwise primarily engaged in
47 petroleum production, refining, and marketing, holds indicia
48 of ownership primarily for the purpose of, or in connection
49 with, securing payment or performance of a loan or to
50 protect a security interest in or lien on the tank or the

51 property where the tank is located, or serves as trustee or
52 fiduciary upon transfer or receipt of the property, may be a
53 successor in interest to a debtor pursuant to this section,
54 provided that the creditor gives notice of the interest to
55 the insurance fund by certified mail, return receipt
56 requested. Part of such notice shall include a copy of the
57 lien, including but not limited to a security agreement or a
58 deed of trust as appropriate to the property. The term
59 "successor in interest" as provided in this section means a
60 creditor to the debtor who had qualified real property in
61 the insurance fund prior to the transfer of title to the
62 creditor, and the term is limited to access to the insurance
63 fund. The creditor may cure any of the debtor's defaults in
64 payments required by the insurance fund, provided the
65 specific real property originally qualified pursuant to this
66 section. The creditor, or the creditor's subsidiary or
67 affiliate, who forecloses or otherwise obtains legal title
68 to such specific real property held as collateral for loans,
69 guarantees or other credit, and which includes the debtor's
70 aboveground storage tanks or underground storage tanks, or
71 both such tanks shall provide notice to the fund of any
72 transfer of creditor to subsidiary or affiliate. Liability
73 pursuant to sections 319.100 to 319.137 shall be confined to
74 such creditor or such creditor's subsidiary or affiliate. A
75 creditor shall apply for a transfer of coverage and shall
76 present evidence indicating a lien, contractual right, or
77 operation of law permitting such transfer, and may utilize
78 the creditor's affiliate or subsidiary to hold legal title
79 to the specific real property taken in satisfaction of
80 debts. Creditors may be listed as insured or additional
81 insured on the insurance fund, and not merely as mortgagees,
82 and may assign or otherwise transfer the debtor's rights in

83 the insurance fund to the creditor's affiliate or
84 subsidiary, notwithstanding any limitations in the insurance
85 fund on assignments or transfer of the debtor's rights.

86 (3) Any person participating in the fund shall
87 annually submit an amount established pursuant to subsection
88 1 of section 319.133 which shall be deposited to the credit
89 of the petroleum storage tank insurance fund.

90 4. Any person making a claim pursuant to this section
91 and sections 319.129 and 319.133 shall be liable for the
92 first ten thousand dollars of the cost of cleanup associated
93 with a release from a petroleum storage tank without
94 reimbursement from the fund. The petroleum storage tank
95 insurance fund shall assume all costs, except as provided in
96 subsection 5 of this section, which are greater than ten
97 thousand dollars but less than one million dollars per
98 occurrence or two million dollars aggregate per year. The
99 liability of the petroleum storage tank insurance fund is
100 not the liability of the state of Missouri. The provisions
101 of sections 319.100 to 319.137 shall not be construed to
102 broaden the liability of the state of Missouri beyond the
103 provisions of sections 537.600 to 537.610 nor to abolish or
104 waive any defense which might otherwise be available to the
105 state or to any person. The presence of existing
106 contamination at a site where a person is seeking insurance
107 in accordance with this section shall not affect that
108 person's ability to participate in this program, provided
109 the person meets all other requirements of this section.
110 Any person who qualifies pursuant to sections 319.100 to
111 319.137 and who has requested approval of a project for
112 remediation from the fund, which request has not yet been
113 decided upon shall annually be sent a status report

114 including an estimate of when the project may expect to be
115 funded and other pertinent information regarding the request.

116 5. The fund shall provide coverage for third-party
117 claims involving property damage or bodily injury caused by
118 leaking petroleum storage tanks whose owner or operator is
119 participating in the fund at the time the release occurs or
120 is discovered. Coverage for third-party property damage or
121 bodily injury shall be in addition to the coverage described
122 in subsection 4 of this section but the total liability of
123 the petroleum storage tank insurance fund for all cleanup
124 costs, property damage, and bodily injury shall not exceed
125 one million dollars per occurrence or two million dollars
126 aggregate per year. The fund shall not compensate an owner
127 or operator for repair of damages to property beyond that
128 required to contain and clean up a release of a regulated
129 substance or compensate an owner or operator or any third
130 party for loss or damage to other property owned or
131 belonging to the owner or operator, or for any loss or
132 damage of an intangible nature, including, but not limited
133 to, loss or interruption of business, pain and suffering of
134 any person, lost income, mental distress, loss of use of any
135 benefit, or punitive damages.

136 6. [The fund shall, within limits specified in this
137 section, assume costs of third-party claims and cleanup of
138 contamination caused by releases from petroleum storage
139 tanks.] **In addition to other coverage limits in this**
140 **section,** the fund shall provide the defense of eligible
141 third-party claims including the negotiations of any
142 settlement **and may specify a legal defense cost coverage**
143 **limit.**

144 7. Nothing contained in sections 319.100 to 319.137
145 shall be construed to abrogate or limit any right, remedy,

146 causes of action, or claim by any person sustaining personal
147 injury or property damage as a result of any release from
148 any type of petroleum storage tank, nor shall anything
149 contained in sections 319.100 to 319.137 be construed to
150 abrogate or limit any liability of any person in any way
151 responsible for any release from a petroleum storage tank or
152 any damages for personal injury or property damages caused
153 by such a release.

154 8. (1) The fund shall provide moneys for cleanup of
155 contamination caused by releases from petroleum storage
156 tanks, the owner or operator of which is participating in
157 the fund or the owner or operator of which has made
158 application for participation in the fund by December 31,
159 1997, regardless of when such release occurred, provided
160 that those persons who have made application are ultimately
161 accepted into the fund. Applicants shall not be eligible
162 for fund benefits until they are accepted into the fund.
163 This section shall not preclude the owner or operator of
164 petroleum storage tanks coming into service after December
165 31, 1997, from making application to and participating in
166 the petroleum storage tank insurance fund.

167 (2) Notwithstanding the provisions of section 319.100
168 and the provisions of subdivision (1) of this section, the
169 fund shall provide moneys for cleanup of contamination
170 caused by releases from petroleum storage tanks owned by
171 school districts all or part of which are located in a
172 county of the third classification without a township form
173 of government and having a population of more than ten
174 thousand seven hundred but less than eleven thousand
175 inhabitants, and which make application for participation in
176 the fund by August 28, 1999, regardless of when such release
177 occurred. Applicants shall not be eligible for fund

178 benefits until they are accepted into the fund, and costs
179 incurred prior to that date shall not be eligible expenses.

180 9. (1) The fund shall provide moneys for cleanup of
181 contamination caused by releases from underground storage
182 tanks which contained petroleum and which have been taken
183 out of use prior to December 31, 1997, provided such sites
184 have been documented by or reported to the department of
185 natural resources prior to December 31, 1997, and provided
186 further that the fund shall make no reimbursements for
187 expenses incurred prior to August 28, 1995. The fund shall
188 also provide moneys for cleanup of contamination caused by
189 releases from underground storage tanks which contained
190 petroleum and which have been taken out of use prior to
191 December 31, 1985, if the current owner of the real property
192 where the tanks are located purchased such property before
193 December 31, 1985, provided such sites are reported to the
194 fund on or before June 30, 2000. The fund shall make no
195 payment for expenses incurred at such sites prior to August
196 28, 1999. Nothing in sections 319.100 to 319.137 shall
197 affect the validity of any underground storage tank fund
198 insurance policy in effect on August 28, 1996.

199 (2) An owner or operator who submits a request as
200 provided in this subsection is not required to bid the costs
201 and expenses associated with professional environmental
202 engineering services. The board may disapprove all or part
203 of the costs and expenses associated with the environmental
204 engineering services if the costs are excessive based upon
205 comparable service costs or current market value of similar
206 services. The owner or operator shall solicit bids for
207 actual remediation and cleanup work as provided by rules of
208 the board.

209 (3) After December 31, 2017, the current legal owner
210 of the site shall be the responsible party for corrective
211 action, pursuant to section 319.109, of any releases from
212 underground storage tanks described in this subsection,
213 provided the creditor, who is a successor in interest as
214 provided in subdivision (2) of subsection 3 of this section,
215 is subject to no greater or lesser responsibility for
216 corrective action than such successor in interest would have
217 on or before December 31, 2017. Nothing in this subdivision
218 shall in any way be construed to alter, alleviate, or modify
219 in any manner any liabilities that the fund has to pay for
220 in cleaning up the site.

221 10. (1) The fund shall provide moneys for cleanup of
222 contamination caused by releases from aboveground storage
223 tanks utilized for the sale of products regulated by chapter
224 414 which have been taken out of use prior to December 31,
225 1997, provided such sites have been documented by or
226 reported to the department of natural resources prior to
227 December 31, 1997, and provided further that the fund shall
228 make no reimbursements for expenses incurred prior to July
229 1, 1997.

230 (2) After December 31, 2017, the current legal owner
231 of the site shall be the responsible party for corrective
232 action of any releases from aboveground storage tanks
233 described in this subsection, provided the creditor, who is
234 a successor in interest as provided in subdivision (2) of
235 subsection 3 of this section, is subject to no greater or
236 lesser responsibility for corrective action than such
237 successor in interest would have on or before December 31,
238 2017. Nothing in this subdivision shall in any way be
239 construed to alter, alleviate, or modify in any manner any

240 liabilities that the fund has to pay for in cleaning up the
241 site.

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