

FIRST REGULAR SESSION

HOUSE BILL NO. 974

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KNIGHT.

2097H.011

DANA RADEMAN MILLER, Chief Clerk

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Section A. Section 319.131, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 319.131, to read as follows:

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

2. The board shall establish an advisory committee which shall be composed of insurers, owners and operators of petroleum storage tanks, and other interested parties. The advisory committee established pursuant to this subsection shall report to the board. The committee shall monitor the fund and recommend statutory and administrative changes as may be necessary to assure efficient operation of the fund. The committee, in consultation with the board and the department of commerce and insurance, shall report every two years to the general assembly on the availability and affordability of the private insurance market as a viable method of meeting the financial responsibilities required by state and federal law in lieu of the petroleum storage tank insurance fund.

3. (1) Except as otherwise provided by this section, any person seeking to participate in the insurance fund shall submit an application to the board of trustees and shall certify that the

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 petroleum tanks meet or exceed and are in compliance with all technical standards established
19 by the United States Environmental Protection Agency, except those standards and regulations
20 pertaining to spill prevention control and counter-measure plans, and rules established by the
21 Missouri department of natural resources and the Missouri department of agriculture. The
22 applicant shall submit proof that the applicant has a reasonable assurance of the tank's integrity.
23 Proof of tank integrity may include but not be limited to any one of the following: tank tightness
24 test, electronic leak detection, monitoring wells, daily inventory reconciliation, vapor test or any
25 other test that may be approved by the director of the department of natural resources or the
26 director of the department of agriculture. The applicant shall submit evidence that the applicant
27 can meet all applicable financial responsibility requirements of this section.

28 (2) A creditor, specifically a person who, without participating in and not otherwise
29 primarily engaged in petroleum production, refining, and marketing, holds indicia of ownership
30 primarily for the purpose of, or in connection with, securing payment or performance of a loan
31 or to protect a security interest in or lien on the tank or the property where the tank is located,
32 or serves as trustee or fiduciary upon transfer or receipt of the property, may be a successor in
33 interest to a debtor pursuant to this section, provided that the creditor gives notice of the interest
34 to the insurance fund by certified mail, return receipt requested. Part of such notice shall include
35 a copy of the lien, including but not limited to a security agreement or a deed of trust as
36 appropriate to the property. The term "successor in interest" as provided in this section means
37 a creditor to the debtor who had qualified real property in the insurance fund prior to the transfer
38 of title to the creditor, and the term is limited to access to the insurance fund. The creditor may
39 cure any of the debtor's defaults in payments required by the insurance fund, provided the
40 specific real property originally qualified pursuant to this section. The creditor, or the creditor's
41 subsidiary or affiliate, who forecloses or otherwise obtains legal title to such specific real
42 property held as collateral for loans, guarantees or other credit, and which includes the debtor's
43 aboveground storage tanks or underground storage tanks, or both such tanks shall provide notice
44 to the fund of any transfer of creditor to subsidiary or affiliate. Liability pursuant to sections
45 319.100 to 319.137 shall be confined to such creditor or such creditor's subsidiary or affiliate.
46 A creditor shall apply for a transfer of coverage and shall present evidence indicating a lien,
47 contractual right, or operation of law permitting such transfer, and may utilize the creditor's
48 affiliate or subsidiary to hold legal title to the specific real property taken in satisfaction of debts.
49 Creditors may be listed as insured or additional insured on the insurance fund, and not merely
50 as mortgagees, and may assign or otherwise transfer the debtor's rights in the insurance fund to
51 the creditor's affiliate or subsidiary, notwithstanding any limitations in the insurance fund on
52 assignments or transfer of the debtor's rights.

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

56 4. Any person making a claim pursuant to this section and sections 319.129 and 319.133
57 shall be liable for the first ten thousand dollars of the cost of cleanup associated with a release
58 from a petroleum storage tank without reimbursement from the fund. The petroleum storage
59 tank insurance fund shall assume all costs, except as provided in subsection 5 of this section,
60 which are greater than ten thousand dollars but less than one million dollars per occurrence or
61 two million dollars aggregate per year. The liability of the petroleum storage tank insurance fund
62 is not the liability of the state of Missouri. The provisions of sections 319.100 to 319.137 shall
63 not be construed to broaden the liability of the state of Missouri beyond the provisions of
64 sections 537.600 to 537.610 nor to abolish or waive any defense which might otherwise be
65 available to the state or to any person. The presence of existing contamination at a site where
66 a person is seeking insurance in accordance with this section shall not affect that person's ability
67 to participate in this program, provided the person meets all other requirements of this section.
68 Any person who qualifies pursuant to sections 319.100 to 319.137 and who has requested
69 approval of a project for remediation from the fund, which request has not yet been decided upon
70 shall annually be sent a status report including an estimate of when the project may expect to be
71 funded and other pertinent information regarding the request.

72 5. The fund shall provide coverage for third-party claims involving property damage or
73 bodily injury caused by leaking petroleum storage tanks whose owner or operator is participating
74 in the fund at the time the release occurs or is discovered. Coverage for third-party property
75 damage or bodily injury shall be in addition to the coverage described in subsection 4 of this
76 section but the total liability of the petroleum storage tank insurance fund for all cleanup costs,
77 property damage, and bodily injury shall not exceed one million dollars per occurrence or two
78 million dollars aggregate per year. The fund shall not compensate an owner or operator for
79 repair of damages to property beyond that required to contain and clean up a release of a
80 regulated substance or compensate an owner or operator or any third party for loss or damage to
81 other property owned or belonging to the owner or operator, or for any loss or damage of an
82 intangible nature, including, but not limited to, loss or interruption of business, pain and
83 suffering of any person, lost income, mental distress, loss of use of any benefit, or punitive
84 damages.

85 6. ~~[The fund shall, within limits specified in this section, assume costs of third-party~~
86 ~~claims and cleanup of contamination caused by releases from petroleum storage tanks.] In~~
87 **addition to other coverage limits in this section,** the fund shall provide the defense of eligible

88 third-party claims including the negotiations of any settlement **and may specify a legal defense**
89 **cost coverage limit.**

90 7. Nothing contained in sections 319.100 to 319.137 shall be construed to abrogate or
91 limit any right, remedy, causes of action, or claim by any person sustaining personal injury or
92 property damage as a result of any release from any type of petroleum storage tank, nor shall
93 anything contained in sections 319.100 to 319.137 be construed to abrogate or limit any liability
94 of any person in any way responsible for any release from a petroleum storage tank or any
95 damages for personal injury or property damages caused by such a release.

96 8. (1) The fund shall provide moneys for cleanup of contamination caused by releases
97 from petroleum storage tanks, the owner or operator of which is participating in the fund or the
98 owner or operator of which has made application for participation in the fund by December 31,
99 1997, regardless of when such release occurred, provided that those persons who have made
100 application are ultimately accepted into the fund. Applicants shall not be eligible for fund
101 benefits until they are accepted into the fund. This section shall not preclude the owner or
102 operator of petroleum storage tanks coming into service after December 31, 1997, from making
103 application to and participating in the petroleum storage tank insurance fund.

104 (2) Notwithstanding the provisions of section 319.100 and the provisions of subdivision
105 (1) of this section, the fund shall provide moneys for cleanup of contamination caused by
106 releases from petroleum storage tanks owned by school districts all or part of which are located
107 in a county of the third classification without a township form of government and having a
108 population of more than ten thousand seven hundred but less than eleven thousand inhabitants,
109 and which make application for participation in the fund by August 28, 1999, regardless of when
110 such release occurred. Applicants shall not be eligible for fund benefits until they are accepted
111 into the fund, and costs incurred prior to that date shall not be eligible expenses.

112 9. (1) The fund shall provide moneys for cleanup of contamination caused by releases
113 from underground storage tanks which contained petroleum and which have been taken out of
114 use prior to December 31, 1997, provided such sites have been documented by or reported to the
115 department of natural resources prior to December 31, 1997, and provided further that the fund
116 shall make no reimbursements for expenses incurred prior to August 28, 1995. The fund shall
117 also provide moneys for cleanup of contamination caused by releases from underground storage
118 tanks which contained petroleum and which have been taken out of use prior to December 31,
119 1985, if the current owner of the real property where the tanks are located purchased such
120 property before December 31, 1985, provided such sites are reported to the fund on or before
121 June 30, 2000. The fund shall make no payment for expenses incurred at such sites prior to
122 August 28, 1999. Nothing in sections 319.100 to 319.137 shall affect the validity of any
123 underground storage tank fund insurance policy in effect on August 28, 1996.

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

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

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

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

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