CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5660

Chapter 20, Laws of 1995

54th Legislature
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Heating oil pollution liability protection act

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JOEL PRITCHARD
President of the Senate

Passed by the House April 4, 1995
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MARTY BROWN
Secretary

Approved April 12, 1995

FILED

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MIKE LOWRY
Governor of the State of Washington

Secretary of State
State of Washington
AN ACT Relating to heating oil pollution liability; amending RCW 82.38.090; adding a new section to chapter 70.148 RCW; adding a new chapter to Title 70 RCW; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. It is the intent of the legislature to establish a temporary regulatory program to assist owners and operators of heating oil tanks. The legislature finds that it is in the best interests of all citizens for heating oil tanks to be operated safely and for tank leaks or spills to be dealt with expeditiously. The legislature further finds that it is necessary to protect tank owners from the financial hardship related to damaged heating oil tanks. The problem is especially acute because owners and operators of heating oil tanks used for space heating have been unable to obtain pollution liability insurance or insurance has been unaffordable.

NEW SECTION. Sec. 2. This chapter may be known and cited as the Washington state heating oil pollution liability protection act.
NEW SECTION. Sec. 3. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accidental release" means a sudden or nonsudden release of heating oil, occurring after the effective date of this act, from operating a heating oil tank that results in bodily injury, property damage, or a need for corrective action, neither expected nor intended by the owner or operator.

(2) "Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from the injury, sickness, or disease.

(3)(a) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with a statute, ordinance, rule, regulation, directive, order, or similar legal requirement, in effect at the time of an accidental release, of the United States, the state of Washington, or a political subdivision of the United States or the state of Washington. "Corrective action" includes, where agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release.

(b) "Corrective action" does not include:

(i) Replacement or repair of heating oil tanks or other receptacles; or

(ii) Replacement or repair of piping, connections, and valves of tanks or other receptacles.

(4) "Defense costs" include the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(a) The United States, the state of Washington, or a political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or

(b) A third party for bodily injury or property damage caused by an accidental release.

(5) "Director" means the director of the Washington state pollution liability insurance agency or the director’s appointed representative.
(6) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or for industrial processing or the generation of electrical energy.

(7) "Heating oil tank" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located. "Heating oil tank" does not include a decommissioned or abandoned heating oil tank, or a tank used solely for industrial process heating purposes or generation of electrical energy.

(8) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from a heating oil tank.

(9) "Owner or operator" means a person in control of, or having responsibility for, the daily operation of a heating oil tank.

(10) "Pollution liability insurance agency" means the Washington state pollution liability insurance agency.

(11) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

(12) "Release" means a spill, leak, emission, escape, or leaching into the environment.

(13) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action.

(14) "Tank" means a stationary device, designed to contain an accumulation of heating oil, that is constructed primarily of nonearthen materials such as concrete, steel, fiberglass, or plastic that provides structural support.

(15) "Third-party liability" means the liability of a heating oil tank owner to another person due to property damage or personal injury that results from a leak or spill.
NEW SECTION. Sec. 4. The director shall:

(1) Design a program for providing pollution liability insurance for heating oil tanks that provides sixty thousand dollars per occurrence coverage and aggregate limits, and protects the state of Washington from unwanted or unanticipated liability for accidental release claims;

(2) Administer, implement, and enforce the provisions of this chapter. To assist in administration of the program, the director is authorized to appoint up to two employees who are exempt from the civil service law, chapter 41.06 RCW, and who shall serve at the pleasure of the director;

(3) Administer the heating oil pollution liability trust account, as established under section 7 of this act;

(4) Employ and discharge, at his or her discretion, agents, attorneys, consultants, companies, organizations, and employees as deemed necessary, and to prescribe their duties and powers, and fix their compensation;

(5) Adopt rules under chapter 34.05 RCW as necessary to carry out the provisions of this chapter;

(6) Design and from time to time revise a reinsurance contract providing coverage to an insurer or insurers meeting the requirements of this chapter. The director is authorized to provide reinsurance through the pollution liability insurance agency trust account;

(7) Solicit bids from insurers and select an insurer to provide pollution liability insurance for third-party bodily injury and property damage, and corrective action to owners and operators of heating oil tanks;

(8) Register, and design a means of accounting for, operating heating oil tanks.

NEW SECTION. Sec. 5. (1) In selecting an insurer to provide pollution liability insurance coverage to owners and operators of heating oil tanks used for space heating, the director shall evaluate bids based upon criteria established by the director that shall include:

(a) The insurer’s ability to underwrite pollution liability insurance;

(b) The insurer’s ability to settle pollution liability claims quickly and efficiently;
(c) The insurer’s estimate of underwriting and claims adjustment expenses;
(d) The insurer’s estimate of premium rates for providing coverage;
(e) The insurer’s ability to manage and invest premiums; and
(f) The insurer’s ability to provide risk management guidance to insureds.

(2) The director shall select the bidder most qualified to provide insurance consistent with this chapter and need not select the bidder submitting the least expensive bid. The director may consider bids by groups of insurers and management companies who propose to act in concert in providing coverage and who otherwise meet the requirements of this chapter.

(3) Owners and operators of heating oil tanks, or sites containing heating oil tanks where a preexisting release has been identified or where the owner or operator knows of a preexisting release are eligible for coverage under the program subject to the following conditions:
(a) The owner or operator must have a plan for proceeding with corrective action; and
(b) If the owner or operator files a claim with the insurer, the owner or operator has the burden of proving that the claim is not related to a preexisting release until the owner or operator demonstrates to the satisfaction of the director that corrective action has been completed.

NEW SECTION. Sec. 6. (1) The activities and operations of the program are exempt from the provisions and requirements of Title 48 RCW and to the extent of their participation in the program, the activities and operations of the insurer selected by the director to provide liability insurance coverage to owners and operators of heating oil tanks are exempt from the requirements of Title 48 RCW except for:
(a) Chapter 48.03 RCW pertaining to examinations;
(b) RCW 48.05.250 pertaining to annual reports;
(c) Chapter 48.12 RCW pertaining to assets and liabilities;
(d) Chapter 48.13 RCW pertaining to investments;
(e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent acts or practices; and
(f) Chapter 48.92 RCW pertaining to liability risk retention.
(2) To the extent of their participation in the program, the insurer selected by the director to provide liability insurance...
coverage to owners and operators of heating oil tanks shall not participate in the Washington insurance guaranty association nor shall the association be liable for coverage provided to owners and operators of heating oil tanks issued in connection with the program.

NEW SECTION. Sec. 7. (1) The heating oil pollution liability trust account is created in the custody of the state treasurer. All receipts from the pollution liability insurance fee collected under section 8 of this act and reinsurance premiums shall be deposited into the account. Expenditures from the account may be used only for the purposes set out under this chapter. Only the director or the director’s designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. Any residue in the account shall be transferred at the end of the biennium to the pollution liability insurance agency trust account.

(2) Money in the account may be used by the director for the following purposes:
(a) Corrective action costs;
(b) Third-party liability claims;
(c) Costs associated with claims administration;
(d) Purchase of an insurance policy to cover all registered heating oil tanks, and reinsurance of the policy; and
(e) Administrative expenses of the program, including personnel, equipment, and supplies.

NEW SECTION. Sec. 8. (1) A pollution liability insurance fee of six-tenths of one cent per gallon of heating oil purchased within the state shall be imposed on every special fuel dealer, as the term is defined in chapter 82.38 RCW, making sales of heating oil to a user or consumer.

(2) The pollution liability insurance fee shall be remitted by the special fuel dealer to the department of licensing with payment of the special fuel dealer tax.

(3) The fee proceeds shall be used for the specific regulatory purposes of this chapter.

(4) The fee imposed by this section shall not apply to heating oil exported or sold for export from the state.
NEW SECTION. Sec. 9. The following shall be confidential and exempt under chapter 42.17 RCW, subject to the conditions set forth in this section:

(1) All examination and proprietary reports and information obtained by the director and the director’s staff in soliciting bids from insurers and in monitoring the insurer selected by the director may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) All information obtained by the director or the director’s staff related to registration of heating oil tanks to be insured may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(3) The director may furnish all or part of examination reports prepared by the director or by any person, firm, corporation, association, or other entity preparing the reports on behalf of the director to:

   (a) The Washington state insurance commissioner;
   
   (b) A person or organization officially connected with the insurer as officer, director, attorney, auditor, or independent attorney or independent auditor; and
   
   (c) The attorney general in his or her role as legal advisor to the director.

NEW SECTION. Sec. 10. Nothing contained in this chapter shall authorize any commercial conduct which is prohibited by RCW 19.86.020 through 19.86.060, and no section of this chapter shall be deemed to be an implied repeal of any of those sections of the Revised Code of Washington.

NEW SECTION. Sec. 11. The director shall report by December 31 of each year to the legislature on the status of the regulatory program under this chapter.

NEW SECTION. Sec. 12. A new section is added to chapter 70.148 RCW to read as follows:

The director shall provide reinsurance through the pollution liability insurance program trust account to the heating oil pollution liability protection program under sections 1 through 11 of this act.
Sec. 13. RCW 82.38.090 and 1994 c 262 s 23 are each amended to read as follows:

It shall be unlawful for any person to act as a special fuel dealer or a special fuel user in this state unless such person is the holder of an uncanceled special fuel dealer’s or a special fuel user’s license issued to him or her by the department.

A special fuel dealer’s license authorizes a person to deliver previously untaxed special fuel into the fuel supply tanks of motor vehicles, collect the special fuel tax on behalf of the state at the time of delivery, and remit the taxes collected to the state as provided herein. A licensed special fuel dealer may also deliver untaxed special fuel into bulk storage facilities of a licensed special fuel user or dealer without collecting the special fuel tax. Special fuel dealers, when making deliveries of special fuel into bulk storage to any person not holding a valid special fuel license, must collect the special fuel tax at time of delivery, unless the person to whom the delivery is made is specifically exempted from the tax as provided herein.

A special fuel user’s license authorizes a person to purchase special fuel into bulk storage for use in motor vehicles either on or off the public highways of this state without payment of the special fuel tax at time of purchase. Holders of special fuel licenses are all subject to the bonding, reporting, tax payment, and record-keeping provisions of this chapter. All purchases of special fuel by a licensed special fuel user directly into the fuel supply tank of a motor vehicle are subject to the special fuel tax at time of purchase. Special authorization may be given to farmers, logging companies, and construction companies to purchase special fuel directly into the supply tanks of nonhighway equipment or into portable slip tanks for nonhighway use without payment of the special fuel tax. ((Persons utilizing special fuel for heating purposes only are not required to be licensed.))

Special fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight not exceeding twenty-six thousand pounds are not required to be licensed. Special fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds, or having three or more axles regardless of weight, or a combination of vehicles,
when the combination exceeds twenty-six thousand pounds gross vehicle
weight, must comply with the licensing and reporting requirements of
this chapter. A copy of the license must be carried in each motor
vehicle entering this state from another state or province.

NEW SECTION. Sec. 14. Sections 1 through 11 of this act shall expire June 1, 2001.

NEW SECTION. Sec. 15. Sections 1 through 11 of this act shall constitute a new chapter in Title 70 RCW.

NEW SECTION. Sec. 16. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate March 13, 1995.
Passed the House April 4, 1995.
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