

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6286

Chapter 203, Laws of 2004

58th Legislature
2004 Regular Session

OIL TANK LIABILITY

EFFECTIVE DATE: 6/10/04 - Except section 3, which becomes effective 7/1/04.

Passed by the Senate March 8, 2004
YEAS 49 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 3, 2004
YEAS 95 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

CERTIFICATE

I, Milton H. Doumit, Jr., Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6286** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MILTON H. DOUMIT JR.

Secretary

Approved March 29, 2004.

FILED

March 29, 2004 - 3:02 p.m.

GARY F. LOCKE

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6286

AS AMENDED BY THE HOUSE

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senator Morton)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to heating oil tank liability protection; amending
2 RCW 70.149.040, 70.149.070, 70.149.080, and 82.23A.010; and providing
3 an effective date.

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

5 **Sec. 1.** RCW 70.149.040 and 1997 c 8 s 1 are each amended to read
6 as follows:

7 The director shall:

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

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

18 (3) Administer the heating oil pollution liability trust account,
19 as established under RCW 70.149.070;

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

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

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

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

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

17 (9) Implement a program to provide advice and technical assistance
18 to owners and operators of active and abandoned heating oil tanks if
19 contamination from an active or abandoned heating oil tank is
20 suspected. Advice and assistance regarding administrative and
21 technical requirements may include observation of testing or site
22 assessment and review of the results of reports. If the director finds
23 that contamination is not present or that the contamination is
24 apparently minor and not a threat to human health or the environment,
25 the director may provide written opinions and conclusions on the
26 results of the investigation to owners and operators of active and
27 abandoned heating oil tanks. The agency is authorized to collect, from
28 persons requesting advice and assistance, the costs incurred by the
29 agency in providing such advice and assistance. The costs may include
30 travel costs and expenses associated with review of reports and
31 preparation of written opinions and conclusions. Funds from cost
32 reimbursement must be deposited in the heating oil pollution liability
33 trust account. The state of Washington, the pollution liability
34 insurance agency, and its officers and employees are immune from all
35 liability, and no cause of action arises from any act or omission in
36 providing, or failing to provide, such advice, opinion, conclusion, or
37 assistance; ((and))

1 (10) Establish a public information program to provide information
2 regarding liability, technical, and environmental requirements
3 associated with active and abandoned heating oil tanks;

4 (11) Monitor agency expenditures and seek to minimize costs and
5 maximize benefits to ensure responsible financial stewardship;

6 (12) Create an advisory committee of stakeholders to advise the
7 director on all aspects of program operations and fees authorized by
8 this chapter, including pollution prevention programs. The advisory
9 committee must have one member each from the Pacific Northwest oil heat
10 council, the Washington oil marketers association, the western states
11 petroleum association, and the department of ecology and three members
12 from among the owners of home heating oil tanks registered with the
13 pollution liability insurance agency who are generally representative
14 of the geographical distribution and types of registered owners. The
15 committee should meet at least quarterly, or more frequently at the
16 discretion of the director; and

17 (13) Study if appropriate user fees to supplement program funding
18 are necessary and develop recommendations for legislation to authorize
19 such fees.

20 **Sec. 2.** RCW 70.149.070 and 1997 c 8 s 2 are each amended to read
21 as follows:

22 (1) The heating oil pollution liability trust account is created in
23 the custody of the state treasurer. All receipts from the pollution
24 liability insurance fee collected under RCW 70.149.080 and reinsurance
25 premiums shall be deposited into the account. Expenditures from the
26 account may be used only for the purposes set out under this chapter.
27 Only the director or the director's designee may authorize expenditures
28 from the account. The account is subject to allotment procedures under
29 chapter 43.88 RCW, but no appropriation is required for expenditures.
30 Any residue in the account in excess of funds needed to meet
31 administrative costs for January of the following year shall be
32 transferred at the end of the (~~biennium~~) calendar year to the
33 pollution liability insurance program trust account.

34 (2) Money in the account may be used by the director for the
35 following purposes:

36 (a) Corrective action costs;

37 (b) Third-party liability claims;

- 1 (c) Costs associated with claims administration;
2 (d) Purchase of an insurance policy to cover all registered heating
3 oil tanks, and reinsurance of the policy; and
4 (e) Administrative expenses of the program, including personnel,
5 equipment, supplies, and providing advice and technical assistance.

6 **Sec. 3.** RCW 70.149.080 and 1995 c 20 s 8 are each amended to read
7 as follows:

8 (1) A pollution liability insurance fee of (~~six-tenths of one~~)
9 one and two-tenths cents per gallon of heating oil purchased within the
10 state shall be imposed on every special fuel dealer, as the term is
11 defined in chapter 82.38 RCW, making sales of heating oil to a user or
12 consumer.

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

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

18 (4) The fee imposed by this section shall not apply to heating oil
19 exported or sold for export from the state.

20 **Sec. 4.** RCW 82.23A.010 and 1989 c 383 s 15 are each amended to
21 read as follows:

22 Unless the context clearly requires otherwise, the definitions in
23 this section apply throughout this chapter.

24 (1) "Petroleum product" means plant condensate, lubricating oil,
25 gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil,
26 residual oil, (~~liquefied or liquefiable gases such as butane, ethane,~~
27 ~~and propane,~~) and every other product derived from the refining of
28 crude oil, but the term does not include crude oil or liquefiable
29 gases.

30 (2) "Possession" means the control of a petroleum product located
31 within this state and includes both actual and constructive possession.
32 "Actual possession" occurs when the person with control has physical
33 possession. "Constructive possession" occurs when the person with
34 control does not have physical possession. "Control" means the power
35 to sell or use a petroleum product or to authorize the sale or use by
36 another.

1 (3) "Previously taxed petroleum product" means a petroleum product
2 in respect to which a tax has been paid under this chapter and that has
3 not been remanufactured or reprocessed in any manner (other than mere
4 repackaging or recycling for beneficial reuse) since the tax was paid.

5 (4) "Wholesale value" means fair market wholesale value, determined
6 as nearly as possible according to the wholesale selling price at the
7 place of use of similar products of like quality and character, in
8 accordance with rules of the department.

9 (5) Except for terms defined in this section, the definitions in
10 chapters 82.04, 82.08, and 82.12 RCW apply to this chapter.

11 NEW SECTION. **Sec. 5.** Section 3 of this act takes effect July 1,
12 2004.

Passed by the Senate March 8, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 29, 2004.

Filed in Office of Secretary of State March 29, 2004.