

SENATE BILL No. 287

By Committee on Agriculture and Natural Resources

1-22

1 AN ACT concerning health and environment; relating to the Kansas
2 storage tank act; underground storage tank replacement and
3 reimbursement; amending K.S.A. 65-34,119 and 65-34,139 and
4 repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 65-34,119 is hereby amended to read as follows:
8 65-34,119. (a) (1) Subject to the provisions of subsection (b), an owner or
9 operator is entitled to reimbursement of reasonable costs of corrective
10 action taken in response to a release from a petroleum storage tank if:

11 ~~(1)-(A)~~ The owner or operator is not the United States government or
12 any of its agencies;

13 ~~(2)-(B)~~ the owner or operator is in substantial compliance, as
14 provided in subsections (e) and (f);

15 ~~(3)-(C)~~ the owner or operator undertakes corrective action, either
16 through personnel of the owner or operator or through response action
17 contractors or subcontractors; and

18 ~~(4)-(D)~~ the corrective action is not in response to a release from an
19 aboveground storage tank described in K.S.A. 65-34,103(g) or (h), and
20 amendments thereto.

21 (2) If the release is from an underground petroleum storage tank,
22 reimbursement shall be from the underground fund and, if the release is
23 from an aboveground petroleum storage tank, reimbursement shall be from
24 the aboveground fund.

25 (b) Reimbursement pursuant to subsection (a) is subject to the
26 following provisions:

27 (1) Except as provided in subsections (g) and (h), the owner or
28 operator shall be liable for the first costs of corrective action taken in
29 response to a release from any petroleum storage tank in an amount equal
30 to \$3,000 plus \$500 for each such tank owned or operated by the owner or
31 operator at the site of the release or \$100,000, whichever is less. The first
32 costs of corrective actions will be waived for any site where petroleum
33 contamination is discovered and reported during the replacement of a
34 single-wall underground storage tank from July 1, 2015, to June 30, ~~2020~~
35 2030, if such single-wall underground storage tank system is replaced with
36 a secondary containment system in accordance with provisions of K.S.A.

1 65-34,138, and amendments thereto;

2 (2) the owner or operator ~~must~~ *shall* submit to and receive from the
3 secretary approval of the proposed corrective action plan, together with
4 projected costs of the corrective action;

5 (3) the secretary may, in the secretary's discretion, determine those
6 costs ~~which~~ *that* are allowable as corrective action costs and those ~~which~~
7 *that* are attributable or ancillary to removal, replacement or retrofitting of
8 storage tanks;

9 (4) the owner or operator, or agents thereof, shall keep and preserve
10 suitable records demonstrating compliance with the approved corrective
11 action plan and all invoices and financial records associated with costs for
12 which reimbursement will be requested;

13 (5) within 30 days of receipt of a complete corrective action plan, or
14 as soon as practicable thereafter, the secretary shall make a determination
15 and provide written notice as to whether the owner or operator responsible
16 for corrective action is eligible or ineligible for reimbursement of
17 corrective action costs and, should the secretary determine the owner or
18 operator is ineligible, the secretary shall include in the written notice an
19 explanation setting forth in detail the reasons for the determination;

20 (6) the owner or operator shall submit to the secretary a written notice
21 that corrective action has been completed within 30 days of completing
22 corrective action;

23 (7) no later than 30 days from the submission of the notice as
24 required by subsection (b)(6), the owner or operator must submit an
25 application for reimbursement of corrective action costs in accordance
26 with criteria established by the secretary, and the application for
27 reimbursement must include the total amount of the corrective action costs
28 and the amount of reimbursement sought. In no case shall the total amount
29 of reimbursement exceed the lesser of the actual costs of the corrective
30 action or the amount of the lowest bid submitted pursuant to K.S.A. 65-
31 34,118, and amendments thereto, and approved by the secretary, less the
32 appropriate deductible amount;

33 (8) interim payments shall be made to an owner or operator in
34 accordance with the plan approved by the secretary pursuant to K.S.A. 65-
35 34,118, and amendments thereto, except that the secretary, for good cause
36 shown, may refuse to make interim payments or withhold the final
37 payment until completion of the corrective action;

38 (9) the owner or operator shall be fully responsible for removal,
39 replacement or retrofitting of petroleum storage tanks and the cost thereof,
40 and costs attributable or ancillary thereto, shall not be reimbursable from
41 the respective fund;

42 (10) the owner or operator shall provide evidence satisfactory to the
43 secretary that corrective action costs equal to the appropriate deductible

1 amount have been paid by the owner or operator, and such costs shall not
2 be reimbursed to the owner or operator;

3 (11) with regard to an underground petroleum storage tank, the owner
4 or operator submits to the secretary proof, satisfactory to the secretary,
5 that: (A) Such owner or operator is unable to satisfy the criteria for self-
6 insurance under the federal act; or (B) such owner or operator is able to
7 satisfy the criteria for self-insurance under the federal act but the release is
8 from an underground petroleum storage tank not located at a facility
9 engaged in production or refining of petroleum;

10 (12) with regard to an aboveground petroleum storage tank, the
11 owner or operator submits to the secretary proof, satisfactory to the
12 secretary, that the release is from an aboveground petroleum storage tank
13 not located at a facility engaged in production or refining of petroleum;
14 and

15 (13) the owner or operator shall be liable for all costs ~~which~~ *that* are
16 paid by or for which the owner or operator is entitled to reimbursement
17 from insurance coverage, warranty coverage or any other source.

18 (c) For the purpose of determining an owner's or operator's eligibility
19 for reimbursement and the applicable deductible of such owner or
20 operator, the secretary shall consider all owners and operators owned or
21 controlled by the same interests to be a single owner or operator, except
22 that each state agency to which moneys are appropriated shall be
23 considered individually as an owner or operator for such purpose.

24 (d) Notwithstanding the provisions of K.S.A. 65-34,118(c), and
25 amendments thereto, should the secretary find that any of the following
26 situations exist, any or all owners or operators shall, in the discretion of the
27 secretary, be liable for 100% of costs associated with corrective action
28 necessary to protect health or the environment, if:

29 (1) The release was due to willful or wanton actions by the owner or
30 operator;

31 (2) the owner or operator is in arrears for moneys owed, other than
32 environmental assurance fees, to either the underground fund or the
33 aboveground fund;

34 (3) the release was from a tank not registered with the department;

35 (4) the owner or operator fails to comply with any provision of the
36 agreement specified in K.S.A. 65-34,118(c), and amendments thereto;

37 (5) the owner or operator moves in any way to obstruct the efforts of
38 the department or its contractors to investigate the presence or effects of a
39 release or to effectuate corrective action;

40 (6) the owner or operator is not in substantial compliance with any
41 provision of this act or rules and regulations promulgated hereunder; or

42 (7) the owner or operator allowed, failed to report or failed to take
43 corrective action in response to such release, knowing or having reason to

1 know of such release.

2 (e) Except as otherwise provided in subsections (f) and (g), an owner
3 or operator is in substantial compliance with this act and the rules and
4 regulations adopted hereunder, if:

5 (1) Each petroleum storage tank owned or operated by such owner or
6 operator has been registered with the secretary, in accordance with the
7 applicable laws of this state and any rules and regulations adopted
8 thereunder;

9 (2) the owner or operator has entered into an agreement with the
10 secretary, as provided in K.S.A. 65-34,118(c), and amendments thereto;

11 (3) the owner or operator has complied with any applicable financial
12 responsibility requirements imposed by the Kansas storage tank act and
13 the rules and regulations adopted thereunder; and

14 (4) the owner or operator has otherwise made a good faith effort to
15 comply with the federal act if applicable, this act, any other law of this
16 state regulating petroleum storage tanks and all applicable rules and
17 regulations adopted under any of them.

18 (f) An owner or operator shall be deemed to be in substantial
19 compliance with this act with respect to the following tanks if such owner
20 or operator has notified the department, on forms provided by the
21 department, of the tank's existence, including age, size, type, location,
22 associated equipment and uses:

23 (1) Any farm or residential tank of 1,100 gallons or less capacity used
24 for storing motor fuel for noncommercial purposes;

25 (2) any aboveground tank of less than 660 gallons capacity; and

26 (3) any tank used for storing heating oil for consumptive use on the
27 single family residential premise where stored.

28 (g) (1) Except as provided by ~~subsection (g)~~ *paragraph* (2), a person
29 who owns property where a petroleum storage tank is located shall not be
30 required to register such tank to be eligible for reimbursement from the
31 respective fund of all costs of any necessary corrective action taken in
32 response to a release from such tank and shall not be subject to the
33 provisions of subsection (b)(1) if such person has at no time placed
34 petroleum in such tank or withdrawn petroleum from such tank and such
35 person:

36 (A) Submitted a corrective action plan prior to July 1, 1990, with
37 respect to an underground petroleum storage tank, or prior to July 1, 1993,
38 with respect to an aboveground petroleum storage tank;

39 (B) acquired such tank before December 22, 1988; or

40 (C) acquired such tank by intestate succession or testamentary
41 disposition.

42 (2) A person shall not be eligible for reimbursement under ~~subsection~~
43 ~~(g)~~ *paragraph* (1) unless the owner or operator of the tank is unable or

1 unwilling to perform corrective action or cannot be found, in which case
2 the secretary may recover all reimbursement paid, and any related
3 administrative and legal expenses, from the owner or operator as provided
4 by K.S.A. 65-34,118(b), and amendments thereto.

5 (h) An owner or operator shall be entitled, upon written notification
6 to the secretary, to elect between the deductible provided by this section
7 before July 1, 1992, and the deductible provided by this section on and
8 after July 1, 1992, with respect to costs of corrective action taken on or
9 after April 1, 1990, if such owner or operator has applied before July 1,
10 1992, for reimbursement of such costs from the respective fund. If an
11 owner or operator or former owner or operator has paid a deductible that is
12 greater than the deductible provided by this section on and after July 1,
13 1992, such owner or operator or former owner or operator may apply to
14 the secretary for a refund of the difference in such deductibles. If the
15 owner or operator or former owner or operator has died or no longer
16 exists, no such refund shall be paid.

17 Sec. 2. K.S.A. 65-34,139 is hereby amended to read as follows: 65-
18 34,139. (a) The secretary may provide for the reimbursement to eligible
19 owners of underground storage tanks in accordance with the provisions of
20 this section up to \$3,000,000 per state fiscal year and subject to the
21 availability of moneys in the UST redevelopment fund. An owner of an
22 underground storage tank shall be eligible for reimbursement under this
23 section if the:

24 (1) Underground storage tank system is used for the storage of
25 petroleum products for resale and is subject to the environmental
26 assurance fee in accordance with provisions of K.S.A. 65-34,117, and
27 amendments thereto;

28 (2) owner has been approved by the secretary and is not the United
29 States government or any federal agency;

30 (3) owner replaces all components of a single-wall storage tank
31 system with a secondary containment system that complies with K.S.A.
32 65-34,138, and amendments thereto, after August 8, 2005, and before June
33 30, ~~2020~~ 2030;

34 (4) owner is in substantial compliance with the Kansas storage tank
35 act;

36 (5) owner provides 30-day notice and access to the department to
37 perform an environmental assessment of the site:

38 (A) During replacement of the single-wall storage tank system with
39 the secondary containment system installation, if done after July 1, 2015;
40 and

41 (B) that determines that petroleum contamination exists and the
42 owner applies to the underground fund to perform corrective action to
43 address the contamination; and

1 (6) underground storage tank was registered with the department on
2 or after May 1, 1981.

3 (b) Reimbursement pursuant to subsection (a) is subject to the
4 following:

5 (1) For replacements undertaken after July 1, 2015, the storage tank
6 owner must submit an application for reimbursement on forms supplied by
7 the department and receive approval from the secretary of the proposed
8 secondary containment system plan;

9 (2) upon approval of such plan, the owner shall obtain and submit to
10 the secretary at least three bids from persons qualified to perform the
11 secondary containment system installation except that, the secretary may
12 waive this requirement upon a showing that the owner has made a good
13 faith effort, but has not been able to obtain three bids from qualified
14 bidders;

15 (3) for replacements undertaken before July 1, 2015, the owner must
16 submit an application for reimbursement on forms supplied by the
17 department with proof of costs and receive approval from the secretary;
18 and

19 (4) the secretary may, in the secretary's discretion, determine those
20 costs—~~which~~ *that* are allowable as secondary containment system
21 installation costs.

22 (c) Applications for reimbursement must include documentation of
23 the secondary containment system installation and expense. Proof of
24 payment of all expenses for which reimbursement is requested must be
25 provided. The department will review those expenses based on current
26 industry costs and provide reimbursement of reasonable and necessary
27 costs. The department shall reimburse an applicant for the approved cost of
28 the secondary containment system not to exceed \$50,000 per facility *for*
29 *replacement work completed on and after August 8, 2005, and prior to*
30 *July 1, 2020. The department shall reimburse an applicant for the*
31 *approved cost of the secondary containment system not to exceed*
32 *\$100,000 per facility for replacement work completed on and after July 1,*
33 *2020, and prior to July 1, 2030.*

34 (d) The secretary may adopt such rules and regulations deemed
35 necessary to carry out the provisions of this section.

36 (e) The provisions of this section shall be *a* part of and supplemental
37 to the Kansas storage tank act.

38 Sec. 3. K.S.A. 65-34,119 and 65-34,139 are hereby repealed.

39 Sec. 4. This act shall take effect and be in force from and after its
40 publication in the statute book.