

As Introduced

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H. B. No. 186

Representative Burkley

Cosponsors: Representatives Becker, Buchy, Reineke, Scherer

A BILL

To amend sections 2307.75 and 3737.88 and to enact
section 2305.52 of the Revised Code to create a
qualified immunity for the dispensing of
incompatible motor fuel, to limit the Product
Liability Law with respect to motor fuel and
motor fuel additives, and to prohibit an insurer
from denying a claim on the basis that an
underground storage tank is not compatible with
a motor fuel if the State Fire Marshal has
determined otherwise.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2307.75 and 3737.88 be amended
and section 2305.52 of the Revised Code be enacted to read as
follows:

Sec. 2305.52. (A) As used in this section:

(1) "Covered person" means a person engaged in the design,
refining, manufacture, sale, storage, or distribution of motor
fuel.

(2)(a) "Motor fuel" means all of the following:

(i) Gasoline, diesel fuel, K-1 kerosene, ethanol, gasoline-ethanol blends, or any other liquid motor fuel, including liquid petroleum gas or liquid natural gas; 19
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(ii) Compressed natural gas. 22

(b) "Motor fuel" does not include substances prepackaged and sold in containers of five gallons or less. 23
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(3) "Incompatible motor fuel" means motor fuel that is not authorized to be used with an engine or a motor according to the manufacturer of the engine or motor. 25
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(4) "Retail dealer" means any person that sells or distributes motor fuel at a retail service station in this state. 28
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(5) "Person" has the same meaning as in section 1.59 of the Revised Code, except that it also includes the state or any political subdivision of the state. 31
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(6) "Retail service station" means a location from which motor fuel is sold and is dispensed or pumped into motor vehicle fuel tanks or containers for ultimate consumption. 34
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(B) No covered person is liable in damages or shall be subject to any other remedy in a civil action for the use of incompatible motor fuel in an engine or motor, unless the plaintiff can demonstrate by clear and convincing evidence both of the following: 37
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(1) The incompatible motor fuel was dispensed at a retail service station. 42
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(2) The incompatible motor fuel was dispensed from a motor fuel pump that was not properly maintained or did not correctly identify the type of fuel dispensed from the pump. 44
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Sec. 2307.75. (A) Subject to the exceptions under 47
divisions (D), (E), ~~and (F)~~, and (G) of this section, a product 48
is defective in design or formulation if, at the time it left 49
the control of its manufacturer, the foreseeable risks 50
associated with its design or formulation as determined pursuant 51
to division (B) of this section exceeded the benefits associated 52
with that design or formulation as determined pursuant to 53
division (C) of this section. 54

(B) The foreseeable risks associated with the design or 55
formulation of a product shall be determined by considering 56
factors including, but not limited to, the following: 57

(1) The nature and magnitude of the risks of harm 58
associated with that design or formulation in light of the 59
intended and reasonably foreseeable uses, modifications, or 60
alterations of the product; 61

(2) The likely awareness of product users, whether based 62
on warnings, general knowledge, or otherwise, of those risks of 63
harm; 64

(3) The likelihood that that design or formulation would 65
cause harm in light of the intended and reasonably foreseeable 66
uses, modifications, or alterations of the product; 67

(4) The extent to which that design or formulation 68
conformed to any applicable public or private product standard 69
that was in effect when the product left the control of its 70
manufacturer; 71

(5) The extent to which that design or formulation is more 72
dangerous than a ~~reasonably~~ reasonably prudent consumer would 73
expect when used in an intended or reasonably foreseeable 74
manner. 75

(C) The benefits associated with the design or formulation	76
of a product shall be determined by considering factors	77
including, but not limited to, the following:	78
(1) The intended or actual utility of the product,	79
including any performance or safety advantages associated with	80
that design or formulation;	81
(2) The technical and economic feasibility, when the	82
product left the control of its manufacturer, of using an	83
alternative design or formulation;	84
(3) The nature and magnitude of any foreseeable risks	85
associated with an alternative design or formulation.	86
(D) An ethical drug or ethical medical device is not	87
defective in design or formulation because some aspect of it is	88
unavoidably unsafe, if the manufacturer of the ethical drug or	89
ethical medical device provides adequate warning and instruction	90
under section 2307.76 of the Revised Code concerning that	91
unavoidably unsafe aspect.	92
(E) A product is not defective in design or formulation if	93
the harm for which the claimant seeks to recover compensatory	94
damages was caused by an inherent characteristic of the product	95
which is a generic aspect of the product that cannot be	96
eliminated without substantially compromising the product's	97
usefulness or desirability and which is recognized by the	98
ordinary person with the ordinary knowledge common to the	99
community.	100
(F) A product is not defective in design or formulation	101
if, at the time the product left the control of its	102
manufacturer, a practical and technically feasible alternative	103
design or formulation was not available that would have	104

prevented the harm for which the claimant seeks to recover 105
compensatory damages without substantially impairing the 106
usefulness or intended purpose of the product. 107

(G) A product that is a motor fuel, as defined in section 108
2305.52 of the Revised Code, or a fuel additive is not defective 109
in design or formulation solely because it is, or contains, a 110
renewable fuel, as defined in section 211(o)(1)(J) of the 111
federal "Clean Air Act," 42 U.S.C. 7545(o)(1)(J). 112

Sec. 3737.88. (A)(1) The state fire marshal shall have 113
responsibility for implementation of the underground storage 114
tank program and corrective action program for releases of 115
petroleum from underground storage tanks established by the 116
"Resource Conservation and Recovery Act of 1976," 90 Stat. 2795, 117
42 U.S.C.A. 6901, as amended. To implement the programs, the 118
state fire marshal may adopt, amend, and rescind such rules, 119
conduct such inspections, require annual registration of 120
underground storage tanks, issue such citations and orders to 121
enforce those rules, enter into environmental covenants in 122
accordance with sections 5301.80 to 5301.92 of the Revised Code, 123
and perform such other duties, as are consistent with those 124
programs. The state fire marshal, by rule, may delegate the 125
authority to conduct inspections of underground storage tanks to 126
certified fire safety inspectors. 127

(2) In the place of any rules regarding release 128
containment and release detection for underground storage tanks 129
adopted under division (A)(1) of this section, the state fire 130
marshal, by rule, shall designate areas as being sensitive for 131
the protection of human health and the environment and adopt 132
alternative rules regarding release containment and release 133
detection methods for new and upgraded underground storage tank 134

systems located in those areas. In designating such areas, the state fire marshal shall take into consideration such factors as soil conditions, hydrogeology, water use, and the location of public and private water supplies. Not later than July 11, 1990, the state fire marshal shall file the rules required under this division with the secretary of state, director of the legislative service commission, and joint committee on agency rule review in accordance with divisions (B) and (C) of section 119.03 of the Revised Code.

(3) Notwithstanding sections 3737.87 to 3737.89 of the Revised Code, a person who is not a responsible person, as determined by the state fire marshal pursuant to this chapter, may conduct a voluntary action in accordance with Chapter 3746. of the Revised Code and rules adopted under it for either of the following:

(a) A class C release;

(b) A release, other than a class C release, that is subject to the rules adopted by the state fire marshal under division (B) of section 3737.882 of the Revised Code pertaining to a corrective action, provided that both of the following apply:

(i) The voluntary action also addresses hazardous substances or petroleum that is not subject to the rules adopted under division (B) of section 3737.882 of the Revised Code pertaining to a corrective action.

(ii) The state fire marshal has not issued an administrative order concerning the release or referred the release to the attorney general for enforcement.

The director of environmental protection, pursuant to

section 3746.12 of the Revised Code, may issue a covenant not to sue to any person who properly completes a voluntary action with respect to any such release in accordance with Chapter 3746. of the Revised Code and rules adopted under it.

(B) Before adopting any rule under this section or section 3737.881 or 3737.882 of the Revised Code, the state fire marshal shall file written notice of the proposed rule with the chairperson of the state fire council, and, within sixty days after notice is filed, the council may file responses to or comments on and may recommend alternative or supplementary rules to the state fire marshal. At the end of the sixty-day period or upon the filing of responses, comments, or recommendations by the council, the state fire marshal may adopt the rule filed with the council or any alternative or supplementary rule recommended by the council.

(C) The state fire council may recommend courses of action to be taken by the state fire marshal in carrying out the state fire marshal's duties under this section. The council shall file its recommendations in the office of the state fire marshal, and, within sixty days after the recommendations are filed, the state fire marshal shall file with the chairperson of the council comments on, and proposed action in response to, the recommendations.

(D) For the purpose of sections 3737.87 to 3737.89 of the Revised Code, the state fire marshal shall adopt, and may amend and rescind, rules identifying or listing hazardous substances. The rules shall be consistent with and equivalent in scope, coverage, and content to regulations identifying or listing hazardous substances adopted under the "Comprehensive Environmental Response, Compensation, and Liability Act of

1980," 94 Stat. 2779, 42 U.S.C.A. 9602, as amended, except that
the state fire marshal shall not identify or list as a hazardous
substance any hazardous waste identified or listed in rules
adopted under division (A) of section 3734.12 of the Revised
Code.

(E) Except as provided in division (A) (3) of this section,
the state fire marshal shall have exclusive jurisdiction to
regulate the storage, treatment, and disposal of petroleum
contaminated soil generated from corrective actions undertaken
in response to releases of petroleum from underground storage
tank systems. The state fire marshal may adopt, amend, or
rescind such rules as the state fire marshal considers to be
necessary or appropriate to regulate the storage, treatment, or
disposal of petroleum contaminated soil so generated.

(F) The state fire marshal shall adopt, amend, and rescind
rules under sections 3737.88 to 3737.883 of the Revised Code in
accordance with Chapter 119. of the Revised Code.

(G) (1) No insurer authorized under Title XXXIX of the
Revised Code to conduct business in this state shall deny
payment for a claim on the basis that an underground storage
tank, underground storage tank system, or associated dispensing
equipment that stores or dispenses motor fuel is not compatible
with that motor fuel if, in accordance with the rules adopted
under division (A) of this section, the state fire marshal has
determined that the tank, system, or equipment is compatible
with that motor fuel.

(2) As used in division (G) (1) of this section, "motor
fuel" has the same meaning as in section 2305.52 of the Revised
Code.

Section 2. That existing sections 2307.75 and 3737.88 of 223
the Revised Code are hereby repealed. 224