

As Introduced

**131st General Assembly
Regular Session
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S. B. No. 150

**Senator Hite
Cosponsors: Senator Seitz**

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 both of the following: 37
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(1) The incompatible motor fuel was dispensed at a retail service station. 41
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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. 43
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Sec. 2307.75. (A) Subject to the exceptions under 46
divisions (D), (E), ~~and (F)~~, (G), and (H) of this section, a 47
product is defective in design or formulation if, at the time it 48
left the control of its manufacturer, the foreseeable risks 49
associated with its design or formulation as determined pursuant 50
to division (B) of this section exceeded the benefits associated 51
with that design or formulation as determined pursuant to 52
division (C) of this section. 53

(B) The foreseeable risks associated with the design or 54
formulation of a product shall be determined by considering 55
factors including, but not limited to, the following: 56

(1) The nature and magnitude of the risks of harm 57
associated with that design or formulation in light of the 58
intended and reasonably foreseeable uses, modifications, or 59
alterations of the product; 60

(2) The likely awareness of product users, whether based 61
on warnings, general knowledge, or otherwise, of those risks of 62
harm; 63

(3) The likelihood that that design or formulation would 64
cause harm in light of the intended and reasonably foreseeable 65
uses, modifications, or alterations of the product; 66

(4) The extent to which that design or formulation 67
conformed to any applicable public or private product standard 68
that was in effect when the product left the control of its 69
manufacturer; 70

(5) The extent to which that design or formulation is more 71
dangerous than a ~~reasonable~~ reasonably prudent consumer would 72
expect when used in an intended or reasonably foreseeable 73
manner. 74

(C) The benefits associated with the design or formulation	75
of a product shall be determined by considering factors	76
including, but not limited to, the following:	77
(1) The intended or actual utility of the product,	78
including any performance or safety advantages associated with	79
that design or formulation;	80
(2) The technical and economic feasibility, when the	81
product left the control of its manufacturer, of using an	82
alternative design or formulation;	83
(3) The nature and magnitude of any foreseeable risks	84
associated with an alternative design or formulation.	85
(D) An ethical drug or ethical medical device is not	86
defective in design or formulation because some aspect of it is	87
unavoidably unsafe, if the manufacturer of the ethical drug or	88
ethical medical device provides adequate warning and instruction	89
under section 2307.76 of the Revised Code concerning that	90
unavoidably unsafe aspect.	91
(E) A product is not defective in design or formulation if	92
the harm for which the claimant seeks to recover compensatory	93
damages was caused by an inherent characteristic of the product	94
which is a generic aspect of the product that cannot be	95
eliminated without substantially compromising the product's	96
usefulness or desirability and which is recognized by the	97
ordinary person with the ordinary knowledge common to the	98
community.	99
(F) A product is not defective in design or formulation	100
if, at the time the product left the control of its	101
manufacturer, a practical and technically feasible alternative	102
design or formulation was not available that would have	103

prevented the harm for which the claimant seeks to recover 104
compensatory damages without substantially impairing the 105
usefulness or intended purpose of the product. 106

(G) Subject to division (H) of this section, a product 107
that is a motor fuel, as defined in section 2305.52 of the 108
Revised Code, or a fuel additive is not defective in design or 109
formulation solely because it is, or contains, a renewable fuel, 110
as defined in section 211(o) (1) (J) of the federal "Clean Air 111
Act," 42 U.S.C. 7545(o) (1) (J). 112

(H) A product that is a motor fuel, as defined in section 113
2305.52 of the Revised Code, or a fuel additive is not defective 114
in design or formulation unless it violates a control or 115
prohibition imposed by the state fire marshal or by the 116
administrator of the United States environmental protection 117
agency pursuant to section 211(c) of the federal "Clean Air 118
Act," 42 U.S.C. 7545(c), as amended. 119

Sec. 3737.88. (A) (1) The state fire marshal shall have 120
responsibility for implementation of the underground storage 121
tank program and corrective action program for releases of 122
petroleum from underground storage tanks established by the 123
"Resource Conservation and Recovery Act of 1976," 90 Stat. 2795, 124
42 U.S.C.A. 6901, as amended. To implement the programs, the 125
state fire marshal may adopt, amend, and rescind such rules, 126
conduct such inspections, require annual registration of 127
underground storage tanks, issue such citations and orders to 128
enforce those rules, enter into environmental covenants in 129
accordance with sections 5301.80 to 5301.92 of the Revised Code, 130
and perform such other duties, as are consistent with those 131
programs. The state fire marshal, by rule, may delegate the 132
authority to conduct inspections of underground storage tanks to 133

certified fire safety inspectors. 134

(2) In the place of any rules regarding release 135
containment and release detection for underground storage tanks 136
adopted under division (A)(1) of this section, the state fire 137
marshal, by rule, shall designate areas as being sensitive for 138
the protection of human health and the environment and adopt 139
alternative rules regarding release containment and release 140
detection methods for new and upgraded underground storage tank 141
systems located in those areas. In designating such areas, the 142
state fire marshal shall take into consideration such factors as 143
soil conditions, hydrogeology, water use, and the location of 144
public and private water supplies. Not later than July 11, 1990, 145
the state fire marshal shall file the rules required under this 146
division with the secretary of state, director of the 147
legislative service commission, and joint committee on agency 148
rule review in accordance with divisions (B) and (C) of section 149
119.03 of the Revised Code. 150

(3) Notwithstanding sections 3737.87 to 3737.89 of the 151
Revised Code, a person who is not a responsible person, as 152
determined by the state fire marshal pursuant to this chapter, 153
may conduct a voluntary action in accordance with Chapter 3746. 154
of the Revised Code and rules adopted under it for either of the 155
following: 156

(a) A class C release; 157

(b) A release, other than a class C release, that is 158
subject to the rules adopted by the state fire marshal under 159
division (B) of section 3737.882 of the Revised Code pertaining 160
to a corrective action, provided that both of the following 161
apply: 162

(i) The voluntary action also addresses hazardous 163
substances or petroleum that is not subject to the rules adopted 164
under division (B) of section 3737.882 of the Revised Code 165
pertaining to a corrective action. 166

(ii) The state fire marshal has not issued an 167
administrative order concerning the release or referred the 168
release to the attorney general for enforcement. 169

The director of environmental protection, pursuant to 170
section 3746.12 of the Revised Code, may issue a covenant not to 171
sue to any person who properly completes a voluntary action with 172
respect to any such release in accordance with Chapter 3746. of 173
the Revised Code and rules adopted under it. 174

(B) Before adopting any rule under this section or section 175
3737.881 or 3737.882 of the Revised Code, the state fire marshal 176
shall file written notice of the proposed rule with the 177
chairperson of the state fire council, and, within sixty days 178
after notice is filed, the council may file responses to or 179
comments on and may recommend alternative or supplementary rules 180
to the state fire marshal. At the end of the sixty-day period or 181
upon the filing of responses, comments, or recommendations by 182
the council, the state fire marshal may adopt the rule filed 183
with the council or any alternative or supplementary rule 184
recommended by the council. 185

(C) The state fire council may recommend courses of action 186
to be taken by the state fire marshal in carrying out the state 187
fire marshal's duties under this section. The council shall file 188
its recommendations in the office of the state fire marshal, 189
and, within sixty days after the recommendations are filed, the 190
state fire marshal shall file with the chairperson of the 191
council comments on, and proposed action in response to, the 192

recommendations. 193

(D) For the purpose of sections 3737.87 to 3737.89 of the 194
Revised Code, the state fire marshal shall adopt, and may amend 195
and rescind, rules identifying or listing hazardous substances. 196
The rules shall be consistent with and equivalent in scope, 197
coverage, and content to regulations identifying or listing 198
hazardous substances adopted under the "Comprehensive 199
Environmental Response, Compensation, and Liability Act of 200
1980," 94 Stat. 2779, 42 U.S.C.A. 9602, as amended, except that 201
the state fire marshal shall not identify or list as a hazardous 202
substance any hazardous waste identified or listed in rules 203
adopted under division (A) of section 3734.12 of the Revised 204
Code. 205

(E) Except as provided in division (A) (3) of this section, 206
the state fire marshal shall have exclusive jurisdiction to 207
regulate the storage, treatment, and disposal of petroleum 208
contaminated soil generated from corrective actions undertaken 209
in response to releases of petroleum from underground storage 210
tank systems. The state fire marshal may adopt, amend, or 211
rescind such rules as the state fire marshal considers to be 212
necessary or appropriate to regulate the storage, treatment, or 213
disposal of petroleum contaminated soil so generated. 214

(F) The state fire marshal shall adopt, amend, and rescind 215
rules under sections 3737.88 to 3737.883 of the Revised Code in 216
accordance with Chapter 119. of the Revised Code. 217

(G) (1) No insurer authorized under Title XXXIX of the 218
Revised Code to conduct business in this state shall deny 219
payment for a claim on the basis that an underground storage 220
tank, underground storage tank system, or associated dispensing 221
equipment that stores or dispenses motor fuel is not compatible 222

with that motor fuel if, in accordance with the rules adopted 223
under division (A) of this section, the state fire marshal has 224
determined that the tank, system, or equipment is compatible 225
with that motor fuel. 226

(2) As used in division (G) (1) of this section, "motor 227
fuel" has the same meaning as in section 2305.52 of the Revised 228
Code. 229

Section 2. That existing sections 2307.75 and 3737.88 of 230
the Revised Code are hereby repealed. 231