

## House Substitute for SENATE BILL No. 285

By Committee on Agriculture

3-13

---

1 AN ACT concerning health and environment; relating to the Kansas  
2 storage tank act; reimbursements; extending the existence of the  
3 underground fund, aboveground fund, UST redevelopment fund and the  
4 UST redevelopment fund compensation advisory board; amending  
5 K.S.A. 65-34,118, 65-34,119, 65-34,120, 65-34,123, 65-34,134 and 65-  
6 34,139 and repealing the existing sections.  
7

8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A. 65-34,118 is hereby amended to read as follows:  
10 65-34,118. (a) Whenever the secretary has reason to believe that there is or  
11 has been a release into the environment from a petroleum storage tank and  
12 has reason to believe that such release poses a danger to human health or  
13 the environment, the secretary shall obtain corrective action for such  
14 release from the owner or operator, or both, or from any past owner or  
15 operator who has contributed to such release. Such corrective action shall  
16 be performed in accordance with a plan approved by the secretary. Upon  
17 approval of such plan, the owner or operator shall obtain and submit to the  
18 secretary at least three bids from persons qualified to perform the  
19 corrective action except that, the secretary may waive this requirement  
20 upon a showing that the owner or operator has made a good faith effort but  
21 has not been able to obtain three bids from qualified bidders.

22 (b) If the owner or operator is unable or unwilling to perform  
23 corrective action as provided for in subsection (a) or no owner or operator  
24 can be found, the secretary may undertake appropriate corrective action  
25 utilizing funds from the underground fund, if the release was from an  
26 underground petroleum storage tank, or from the aboveground fund, if the  
27 release was from an aboveground petroleum storage tank. Costs incurred  
28 by the secretary in taking a corrective action, including administrative and  
29 legal expenses, are recoverable from the owner or operator and may be  
30 recovered in a civil action in district court brought by the secretary.  
31 Corrective action costs recovered under this section shall be deposited in  
32 the underground fund, if the release was from an underground petroleum  
33 storage tank, or ~~from~~ in the aboveground fund, if the release was from an  
34 aboveground petroleum storage tank. Corrective action taken by the  
35 secretary under this subsection need not be completed in order to seek  
36 recovery of corrective action costs, and an action to recover such costs

1 may be commenced at any stage of a corrective action.

2 (c) An owner or operator shall be liable for all costs of corrective  
3 action incurred by the state of Kansas as a result of a release from a  
4 petroleum storage tank, unless the owner or operator, or both, enter into a  
5 consent agreement with the secretary in the name of the state within a  
6 reasonable period of time, ~~which~~. *Such* time period may be specified by  
7 ~~rule rules and regulation regulations~~. At a minimum, the owner or  
8 operator, or both, must agree that:

9 (1) The owner or operator shall be liable for the appropriate amounts  
10 pursuant to K.S.A. 65-34,119, and amendments thereto;

11 (2) the state of Kansas and the respective fund are relieved of all  
12 liability to an owner or operator for any loss of business, damages and  
13 taking of property associated with the corrective action;

14 (3) the department or its contractors may enter upon the property of  
15 the owner or operator, at such time and in such manner as deemed  
16 necessary, to monitor and provide oversight for the necessary corrective  
17 action to protect human health and the environment;

18 (4) the owner or operator shall be fully responsible for removal,  
19 replacement or retrofitting of petroleum storage tanks and the cost thereof  
20 shall not be reimbursable from the respective fund;

21 (5) the owner or operator shall effectuate corrective action according  
22 to a plan approved by the secretary pursuant to subsection (a);

23 (6) the liability of the state and the respective fund shall not exceed  
24 ~~\$1,000,000~~ \$2,000,000, less the deductible amount, for any release from a  
25 petroleum storage tank; and

26 (7) such other provisions as are deemed appropriate by the secretary  
27 to ensure adequate protection of human health and the environment.

28 (d) For purposes of this act, corrective action costs shall include the  
29 actual costs incurred for the following:

30 (1) Removal of petroleum products from petroleum storage tanks,  
31 surface waters, groundwater or soil;

32 (2) investigation and assessment of contamination caused by a release  
33 from a petroleum storage tank;

34 (3) preparation of corrective action plans approved by the secretary;

35 (4) removal of contaminated soils;

36 (5) soil treatment and disposal;

37 (6) environmental monitoring;

38 (7) lease, purchase and maintenance of corrective action equipment;

39 (8) restoration of a private or public potable water supply, where  
40 possible, or replacement thereof, if necessary; and

41 (9) other costs identified by the secretary as necessary for proper  
42 investigation, corrective action planning and corrective action activities to  
43 meet the requirements of this act.

1       Sec. 2. K.S.A. 65-34,119 is hereby amended to read as follows: 65-  
2 34,119. (a) (1) Subject to the provisions of subsection (b), an owner or  
3 operator is entitled to reimbursement of reasonable costs of corrective  
4 action taken in response to a release from a petroleum storage tank if:

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

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

9       ~~(3)-(C)~~ the owner or operator undertakes corrective action, either  
10 through personnel of the owner or operator or through response action  
11 contractors or subcontractors; and

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

15       (2) If the release is from an underground petroleum storage tank,  
16 reimbursement shall be from the underground fund and, if the release is  
17 from an aboveground petroleum storage tank, reimbursement shall be from  
18 the aboveground fund.

19       (b) Reimbursement pursuant to subsection (a) is subject to the  
20 following provisions:

21       (1) Except as provided in subsections (g) and (h), the owner or  
22 operator shall be liable for the first costs of corrective action taken in  
23 response to a release from any petroleum storage tank in an amount equal  
24 to \$3,000 plus \$500 for each such tank owned or operated by the owner or  
25 operator at the site of the release or \$100,000, whichever is less. The first  
26 costs of corrective actions will be waived for any site where petroleum  
27 contamination is discovered and reported during the replacement of a  
28 single-wall underground storage tank from July 1, 2015, to June 30, ~~2020~~  
29 ~~2030~~, if such single-wall underground storage tank system is replaced with  
30 a secondary containment system in accordance with provisions of K.S.A.  
31 65-34,138, and amendments thereto;

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

35       (3) the secretary may, in the secretary's discretion, determine those  
36 costs ~~which~~ that are allowable as corrective action costs and those ~~which~~  
37 that are attributable or ancillary to removal, replacement or retrofitting of  
38 storage tanks;

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

43       (5) within 30 days of receipt of a complete corrective action plan, or

1 as soon as practicable thereafter, the secretary shall make a determination  
2 and provide written notice as to whether the owner or operator responsible  
3 for corrective action is eligible or ineligible for reimbursement of  
4 corrective action costs and, should the secretary determine the owner or  
5 operator is ineligible, the secretary shall include in the written notice an  
6 explanation setting forth in detail the reasons for the determination;

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

10 (7) no later than 30 days from the submission of the notice as  
11 required by subsection (b)(6), the owner or operator must submit an  
12 application for reimbursement of corrective action costs in accordance  
13 with criteria established by the secretary, and the application for  
14 reimbursement must include the total amount of the corrective action costs  
15 and the amount of reimbursement sought. In no case shall the total amount  
16 of reimbursement exceed the lesser of the actual costs of the corrective  
17 action or the amount of the lowest bid submitted pursuant to K.S.A. 65-  
18 34,118, and amendments thereto, and approved by the secretary, less the  
19 appropriate deductible amount;

20 (8) interim payments shall be made to an owner or operator in  
21 accordance with the plan approved by the secretary pursuant to K.S.A. 65-  
22 34,118, and amendments thereto, except that the secretary, for good cause  
23 shown, may refuse to make interim payments or withhold the final  
24 payment until completion of the corrective action;

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

29 (10) the owner or operator shall provide evidence satisfactory to the  
30 secretary that corrective action costs equal to the appropriate deductible  
31 amount have been paid by the owner or operator, and such costs shall not  
32 be reimbursed to the owner or operator;

33 (11) with regard to an underground petroleum storage tank, the owner  
34 or operator submits to the secretary proof, satisfactory to the secretary,  
35 that: (A) Such owner or operator is unable to satisfy the criteria for self-  
36 insurance under the federal act; or (B) such owner or operator is able to  
37 satisfy the criteria for self-insurance under the federal act but the release is  
38 from an underground petroleum storage tank not located at a facility  
39 engaged in production or refining of petroleum;

40 (12) with regard to an aboveground petroleum storage tank, the  
41 owner or operator submits to the secretary proof, satisfactory to the  
42 secretary, that the release is from an aboveground petroleum storage tank  
43 not located at a facility engaged in production or refining of petroleum;

1 and

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

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

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

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

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

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

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

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

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

29 (7) the owner or operator allowed, failed to report or failed to take  
30 corrective action in response to such release, knowing or having reason to  
31 know of such release.

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

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

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

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

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

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

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

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

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

15 (g) (1) Except as provided by ~~subsection (g)~~ *paragraph* (2), a person  
16 who owns property where a petroleum storage tank is located shall not be  
17 required to register such tank to be eligible for reimbursement from the  
18 respective fund of all costs of any necessary corrective action taken in  
19 response to a release from such tank and shall not be subject to the  
20 provisions of subsection (b)(1) if such person has at no time placed  
21 petroleum in such tank or withdrawn petroleum from such tank and such  
22 person:

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

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

27 (C) acquired such tank by intestate succession or testamentary  
28 disposition.

29 (2) A person shall not be eligible for reimbursement under ~~subsection~~  
30 ~~(g)~~ *paragraph* (1) unless the owner or operator of the tank is unable or  
31 unwilling to perform corrective action or cannot be found, in which case  
32 the secretary may recover all reimbursement paid, and any related  
33 administrative and legal expenses, from the owner or operator as provided  
34 by K.S.A. 65-34,118(b), and amendments thereto.

35 (h) An owner or operator shall be entitled, upon written notification  
36 to the secretary, to elect between the deductible provided by this section  
37 before July 1, 1992, and the deductible provided by this section on and  
38 after July 1, 1992, with respect to costs of corrective action taken on or  
39 after April 1, 1990, if such owner or operator has applied before July 1,  
40 1992, for reimbursement of such costs from the respective fund. If an  
41 owner or operator or former owner or operator has paid a deductible that is  
42 greater than the deductible provided by this section on and after July 1,  
43 1992, such owner or operator or former owner or operator may apply to

1 the secretary for a refund of the difference in such deductibles. If the  
2 owner or operator or former owner or operator has died or no longer  
3 exists, no such refund shall be paid.

4 Sec. 3. K.S.A. 65-34,120 is hereby amended to read as follows: 65-  
5 34,120. (a) Nothing in this act shall establish or create any liability or  
6 responsibility on the part of the secretary, the department or its agents or  
7 employees; or the state of Kansas to pay any corrective action costs from  
8 any source other than the respective fund created by this act.

9 (b) In no event shall the underground fund be liable for the payment  
10 of corrective action costs in an amount in excess of the following, less any  
11 applicable deductible amounts of the owner or operator:

12 (1) For costs incurred in response to any one release from an  
13 underground petroleum storage tank, ~~\$1,000,000~~ \$2,000,000;

14 (2) ~~subject to the provisions of subsection (a)(4)~~, for an owner or  
15 operator of 100 or fewer underground petroleum storage tanks, an annual  
16 aggregate of \$1,000,000; and

17 (3) ~~subject to the provisions of subsection (a)(4)~~, for an owner or  
18 operator of more than 100 underground petroleum storage tanks, an annual  
19 aggregate of \$2,000,000.

20 (c) In no event shall the aboveground fund be liable for the payment  
21 of corrective action costs in an amount in excess of the following, less the  
22 deductible amounts of the owner or operator:

23 (1) For costs incurred in response to any one release from an  
24 aboveground petroleum storage tank, ~~\$1,000,000~~ \$2,000,000;

25 (2) for an owner or operator of 100 or fewer aboveground petroleum  
26 storage tanks, an annual aggregate of \$1,000,000; and

27 (3) for an owner or operator of more than 100 aboveground  
28 petroleum storage tanks, an annual aggregate of \$2,000,000.

29 (d) This act is intended to assist an owner or operator only to the  
30 extent provided for in this act, and it is in no way intended to relieve the  
31 owner or operator of any liability that cannot be satisfied by the provisions  
32 of this act.

33 (e) Neither the secretary nor the state of Kansas shall have any  
34 liability or responsibility to make any payments for corrective action if the  
35 respective fund created herein is insufficient to do so. In the event the  
36 respective fund is insufficient to make the payments at the time the claim  
37 is filed, such claims shall be paid in the order of filing at such time as  
38 moneys are paid into the respective fund.

39 (f) No common-law liability, and no statutory liability ~~which~~ *that* is  
40 provided in a statute other than in this act, for damages resulting from a  
41 release from a petroleum storage tank is affected by this act. The authority,  
42 power and remedies provided in this act are in addition to any authority,  
43 power or remedy provided in any statute other than a section of this act or

1 provided at common law.

2 (g) If a person conducts a corrective action activity in response to a  
3 release from a petroleum storage tank, whether or not the person files a  
4 claim against the respective fund under this act, the claim and corrective  
5 action activity conducted are not evidence of liability or an admission of  
6 liability for any potential or actual environmental pollution or third-party  
7 claim.

8 Sec. 4. K.S.A. 65-34,123 is hereby amended to read as follows: 65-  
9 34,123. The underground fund and the aboveground fund shall be and are  
10 hereby abolished on July 1, ~~2024~~ 2034.

11 Sec. 5. K.S.A. 65-34,134 is hereby amended to read as follows: 65-  
12 34,134. The UST redevelopment fund compensation advisory board and  
13 the UST redevelopment fund shall be and are hereby abolished on July 1,  
14 ~~2024~~ 2032. At the time of such abolishment, remaining funds shall be  
15 deposited in the underground fund.

16 Sec. 6. K.S.A. 65-34,139 is hereby amended to read as follows: 65-  
17 34,139. (a) The secretary may provide for the reimbursement to eligible  
18 owners of underground storage tanks in accordance with the provisions of  
19 this section up to \$3,000,000 per state fiscal year and subject to the  
20 availability of moneys in the UST redevelopment fund. An owner of an  
21 underground storage tank shall be eligible for reimbursement under this  
22 section if the:

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

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

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

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

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

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

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

43 (6) underground storage tank was registered with the department on

1 or after May 1, 1981.

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

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

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

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

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

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

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

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

37 Sec. 7. K.S.A. 65-34,118, 65-34,119, 65-34,120, 65-34,123, 65-  
38 34,134 and 65-34,139 are hereby repealed.

39 Sec. 8. This act shall take effect and be in force from and after its  
40 publication in the statute book.