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**SUBSTITUTE HOUSE BILL 1573**

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**State of Washington**

**54th Legislature**

**1995 Regular Session**

**By** House Committee on Financial Institutions & Insurance (originally sponsored by Representatives L. Thomas, Mielke, Blanton, Wolfe, Rust, Horn and Dellwo)

Read first time 02/13/95.

1 AN ACT Relating to heating oil pollution liability; amending RCW  
2 82.38.090; adding a new section to chapter 70.148 RCW; adding a new  
3 chapter to Title 70 RCW; and providing an expiration date.

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

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
6 establish a temporary regulatory program to assist owners and operators  
7 of heating oil tanks. The legislature finds that it is in the best  
8 interests of all citizens for heating oil tanks to be operated safely  
9 and for tank leaks or spills to be dealt with expeditiously. The  
10 legislature further finds that it is necessary to protect tank owners  
11 from the financial hardship related to damaged heating oil tanks. The  
12 problem is especially acute because owners and operators of heating oil  
13 tanks used for space heating have been unable to obtain pollution  
14 liability insurance or insurance has been unaffordable.

15 NEW SECTION. **Sec. 2.** This chapter may be known and cited as the  
16 Washington state heating oil pollution liability protection act.

1        NEW SECTION.        **Sec. 3.**        Unless the context clearly requires  
2 otherwise, the definitions in this section apply throughout this  
3 chapter.

4        (1) "Accidental release" means a sudden or nonsudden release of  
5 heating oil, occurring after the effective date of this act, from  
6 operating a heating oil tank that results in bodily injury, property  
7 damage, or a need for corrective action, neither expected nor intended  
8 by the owner or operator.

9        (2) "Bodily injury" means bodily injury, sickness, or disease  
10 sustained by a person, including death at any time, resulting from the  
11 injury, sickness, or disease.

12        (3)(a) "Corrective action" means those actions reasonably required  
13 to be undertaken by the insured to remove, treat, neutralize, contain,  
14 or clean up an accidental release in order to comply with a statute,  
15 ordinance, rule, regulation, directive, order, or similar legal  
16 requirement, in effect at the time of an accidental release, of the  
17 United States, the state of Washington, or a political subdivision of  
18 the United States or the state of Washington. "Corrective action"  
19 includes, where agreed to in writing, in advance by the insurer, action  
20 to remove, treat, neutralize, contain, or clean up an accidental  
21 release to avert, reduce, or eliminate the liability of the insured for  
22 corrective action, bodily injury, or property damage. "Corrective  
23 action" also includes actions reasonably necessary to monitor, assess,  
24 and evaluate an accidental release.

25        (b) "Corrective action" does not include:

26        (i) Replacement or repair of heating oil tanks or other  
27 receptacles; or

28        (ii) Replacement or repair of piping, connections, and valves of  
29 tanks or other receptacles.

30        (4) "Defense costs" include the costs of legal representation,  
31 expert fees, and related costs and expenses incurred in defending  
32 against claims or actions brought by or on behalf of:

33        (a) The United States, the state of Washington, or a political  
34 subdivision of the United States or state of Washington to require  
35 corrective action or to recover costs of corrective action; or

36        (b) A third party for bodily injury or property damage caused by an  
37 accidental release.

38        (5) "Director" means the director of the Washington state pollution  
39 liability insurance agency or the director's appointed representative.

1 (6) "Heating oil" means any petroleum product used for space  
2 heating in oil-fired furnaces, heaters, and boilers, including stove  
3 oil, diesel fuel, or kerosene. "Heating oil" does not include  
4 petroleum products used as fuels in motor vehicles, marine vessels,  
5 trains, buses, aircraft, or any off-highway equipment not used for  
6 space heating, or for industrial processing or the generation of  
7 electrical energy.

8 (7) "Heating oil tank" means a tank and its connecting pipes,  
9 whether above or below ground, or in a basement, with pipes connected  
10 to the tank for space heating of human living or working space on the  
11 premises where the tank is located. "Heating oil tank" does not  
12 include a decommissioned or abandoned heating oil tank, or a tank used  
13 solely for industrial process heating purposes or generation of  
14 electrical energy.

15 (8) "Occurrence" means an accident, including continuous or  
16 repeated exposure to conditions, that results in a release from a  
17 heating oil tank.

18 (9) "Owner or operator" means a person in control of, or having  
19 responsibility for, the daily operation of a heating oil tank.

20 (10) "Pollution liability insurance agency" means the Washington  
21 state pollution liability insurance agency.

22 (11) "Property damage" means:

23 (a) Physical injury to, destruction of, or contamination of  
24 tangible property, including the loss of use of the property resulting  
25 from the injury, destruction, or contamination; or

26 (b) Loss of use of tangible property that has not been physically  
27 injured, destroyed, or contaminated but has been evacuated, withdrawn  
28 from use, or rendered inaccessible because of an accidental release.

29 (12) "Release" means a spill, leak, emission, escape, or leaching  
30 into the environment.

31 (13) "Remedial action costs" means reasonable costs that are  
32 attributable to or associated with a remedial action.

33 (14) "Tank" means a stationary device, designed to contain an  
34 accumulation of heating oil, that is constructed primarily of  
35 nonearthen materials such as concrete, steel, fiberglass, or plastic  
36 that provides structural support.

37 (15) "Third-party liability" means the liability of a heating oil  
38 tank owner to another person due to property damage or personal injury  
39 that results from a leak or spill.

1        NEW SECTION.    **Sec. 4.**    The director shall:

2        (1) Design a program for providing pollution liability insurance  
3 for heating oil tanks that provides sixty thousand dollars per  
4 occurrence coverage and aggregate limits, and protects the state of  
5 Washington from unwanted or unanticipated liability for accidental  
6 release claims;

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

12        (3) Administer the heating oil pollution liability trust account,  
13 as established under section 7 of this act;

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

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

20        (6) Design and from time to time revise a reinsurance contract  
21 providing coverage to an insurer or insurers meeting the requirements  
22 of this chapter. The director is authorized to provide reinsurance  
23 through the pollution liability insurance agency trust account;

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

28        (8) Register, and design a means of accounting for, operating  
29 heating oil tanks.

30        NEW SECTION.    **Sec. 5.**    (1) In selecting an insurer to provide  
31 pollution liability insurance coverage to owners and operators of  
32 heating oil tanks used for space heating, the director shall evaluate  
33 bids based upon criteria established by the director that shall  
34 include:

35        (a) The insurer's ability to underwrite pollution liability  
36 insurance;

37        (b) The insurer's ability to settle pollution liability claims  
38 quickly and efficiently;

1 (c) The insurer's estimate of underwriting and claims adjustment  
2 expenses;

3 (d) The insurer's estimate of premium rates for providing coverage;

4 (e) The insurer's ability to manage and invest premiums; and

5 (f) The insurer's ability to provide risk management guidance to  
6 insureds.

7 (2) The director shall select the bidder most qualified to provide  
8 insurance consistent with this chapter and need not select the bidder  
9 submitting the least expensive bid. The director may consider bids by  
10 groups of insurers and management companies who propose to act in  
11 concert in providing coverage and who otherwise meet the requirements  
12 of this chapter.

13 (3) Owners and operators of heating oil tanks, or sites containing  
14 heating oil tanks where a preexisting release has been identified or  
15 where the owner or operator knows of a preexisting release are eligible  
16 for coverage under the program subject to the following conditions:

17 (a) The owner or operator must have a plan for proceeding with  
18 corrective action; and

19 (b) If the owner or operator files a claim with the insurer, the  
20 owner or operator has the burden of proving that the claim is not  
21 related to a preexisting release until the owner or operator  
22 demonstrates to the satisfaction of the director that corrective action  
23 has been completed.

24 NEW SECTION. **Sec. 6.** (1) The activities and operations of the  
25 program are exempt from the provisions and requirements of Title 48 RCW  
26 and to the extent of their participation in the program, the activities  
27 and operations of the insurer selected by the director to provide  
28 liability insurance coverage to owners and operators of heating oil  
29 tanks are exempt from the requirements of Title 48 RCW except for:

30 (a) Chapter 48.03 RCW pertaining to examinations;

31 (b) RCW 48.05.250 pertaining to annual reports;

32 (c) Chapter 48.12 RCW pertaining to assets and liabilities;

33 (d) Chapter 48.13 RCW pertaining to investments;

34 (e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent  
35 acts or practices; and

36 (f) Chapter 48.92 RCW pertaining to liability risk retention.

37 (2) To the extent of their participation in the program, the  
38 insurer selected by the director to provide liability insurance

1 coverage to owners and operators of heating oil tanks shall not  
2 participate in the Washington insurance guaranty association nor shall  
3 the association be liable for coverage provided to owners and operators  
4 of heating oil tanks issued in connection with the program.

5 NEW SECTION. **Sec. 7.** (1) The heating oil pollution liability  
6 trust account is created in the custody of the state treasurer. All  
7 receipts from the pollution liability insurance fee collected under  
8 section 8 of this act and reinsurance premiums shall be deposited into  
9 the account. Expenditures from the account may be used only for the  
10 purposes set out under this chapter. Only the director or the  
11 director's designee may authorize expenditures from the account. The  
12 account is subject to allotment procedures under chapter 43.88 RCW, but  
13 no appropriation is required for expenditures. Any residue in the  
14 account shall be transferred at the end of the biennium to the  
15 pollution liability insurance agency trust account.

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

18 (a) Corrective action costs;

19 (b) Third-party liability claims;

20 (c) Costs associated with claims administration;

21 (d) Purchase of an insurance policy to cover all registered heating  
22 oil tanks, and reinsurance of the policy; and

23 (e) Administrative expenses of the program, including personnel,  
24 equipment, and supplies.

25 NEW SECTION. **Sec. 8.** (1) A pollution liability insurance fee of  
26 six-tenths of one cent per gallon of heating oil purchased within the  
27 state shall be imposed on every special fuel dealer, as the term is  
28 defined in chapter 82.38 RCW, making sales of heating oil to a user or  
29 consumer.

30 (2) The pollution liability insurance fee shall be remitted by the  
31 special fuel dealer to the department of licensing with payment of the  
32 special fuel dealer tax.

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

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

1        NEW SECTION.    **Sec. 9.**    The following shall be confidential and  
2 exempt under chapter 42.17 RCW, subject to the conditions set forth in  
3 this section:

4        (1) All examination and proprietary reports and information  
5 obtained by the director and the director's staff in soliciting bids  
6 from insurers and in monitoring the insurer selected by the director  
7 may not be made public or otherwise disclosed to any person, firm,  
8 corporation, agency, association, governmental body, or other entity.

9        (2) All information obtained by the director or the director's  
10 staff related to registration of heating oil tanks to be insured may  
11 not be made public or otherwise disclosed to any person, firm,  
12 corporation, agency, association, governmental body, or other entity.

13        (3) The director may furnish all or part of examination reports  
14 prepared by the director or by any person, firm, corporation,  
15 association, or other entity preparing the reports on behalf of the  
16 director to:

17        (a) The Washington state insurance commissioner;

18        (b) A person or organization officially connected with the insurer  
19 as officer, director, attorney, auditor, or independent attorney or  
20 independent auditor; and

21        (c) The attorney general in his or her role as legal advisor to the  
22 director.

23        NEW SECTION.    **Sec. 10.**    Nothing contained in this chapter shall  
24 authorize any commercial conduct which is prohibited by RCW 19.86.020  
25 through 19.86.060, and no section of this chapter shall be deemed to be  
26 an implied repeal of any of those sections of the Revised Code of  
27 Washington.

28        NEW SECTION.    **Sec. 11.**    The director shall report by December 31 of  
29 each year to the legislature on the status of the regulatory program  
30 under this chapter.

31        NEW SECTION.    **Sec. 12.**    A new section is added to chapter 70.148  
32 RCW to read as follows:

33        The director shall provide reinsurance through the pollution  
34 liability insurance program trust account to the heating oil pollution  
35 liability protection program under sections 1 through 11 of this act.

1       **Sec. 13.** RCW 82.38.090 and 1994 c 262 s 23 are each amended to  
2 read as follows:

3       It shall be unlawful for any person to act as a special fuel dealer  
4 or a special fuel user in this state unless such person is the holder  
5 of an uncanceled special fuel dealer's or a special fuel user's license  
6 issued to him or her by the department.

7       A special fuel dealer's license authorizes a person to deliver  
8 previously untaxed special fuel into the fuel supply tanks of motor  
9 vehicles, collect the special fuel tax on behalf of the state at the  
10 time of delivery, and remit the taxes collected to the state as  
11 provided herein. A licensed special fuel dealer may also deliver  
12 untaxed special fuel into bulk storage facilities of a licensed special  
13 fuel user or dealer without collecting the special fuel tax. Special  
14 fuel dealers, when making deliveries of special fuel into bulk storage  
15 to any person not holding a valid special fuel license, must collect  
16 the special fuel tax at time of delivery, unless the person to whom the  
17 delivery is made is specifically exempted from the tax as provided  
18 herein.

19       A special fuel user's license authorizes a person to purchase  
20 special fuel into bulk storage for use in motor vehicles either on or  
21 off the public highways of this state without payment of the special  
22 fuel tax at time of purchase. Holders of special fuel licenses are all  
23 subject to the bonding, reporting, tax payment, and record-keeping  
24 provisions of this chapter. All purchases of special fuel by a  
25 licensed special fuel user directly into the fuel supply tank of a  
26 motor vehicle are subject to the special fuel tax at time of purchase.  
27 Special authorization may be given to farmers, logging companies, and  
28 construction companies to purchase special fuel directly into the  
29 supply tanks of nonhighway equipment or into portable slip tanks for  
30 nonhighway use without payment of the special fuel tax. ((Persons  
31 utilizing special fuel for heating purposes only are not required to be  
32 licensed.))

33       Special fuel users operating motor vehicles in interstate commerce  
34 having two axles and a gross vehicle weight or registered gross vehicle  
35 weight not exceeding twenty-six thousand pounds are not required to be  
36 licensed. Special fuel users operating motor vehicles in interstate  
37 commerce having two axles and a gross vehicle weight or registered  
38 gross vehicle weight exceeding twenty-six thousand pounds, or having  
39 three or more axles regardless of weight, or a combination of vehicles,



1 when the combination exceeds twenty-six thousand pounds gross vehicle  
2 weight, must comply with the licensing and reporting requirements of  
3 this chapter. A copy of the license must be carried in each motor  
4 vehicle entering this state from another state or province.

5 NEW SECTION. **Sec. 14.** Sections 1 through 11 of this act shall  
6 expire June 1, 2001.

7 NEW SECTION. **Sec. 15.** Sections 1 through 11 of this act shall  
8 constitute a new chapter in Title 70 RCW.

9 NEW SECTION. **Sec. 16.** If any provision of this act or its  
10 application to any person or circumstance is held invalid, the  
11 remainder of the act or the application of the provision to other  
12 persons or circumstances is not affected.

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