H. R. 4345

To provide liability protection for claims based on the design, manufacture, sale, offer for sale, introduction into commerce, or use of certain fuels and fuel additives, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 2012

Mr. Shimkus (for himself, Mr. Ross of Arkansas, Mr. Sullivan, and Mr. Peterson) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide liability protection for claims based on the design, manufacture, sale, offer for sale, introduction into commerce, or use of certain fuels and fuel additives, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Domestic Fuels Protection Act of 2012”.

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SEC. 2. FUEL COMPATIBILITY.

(a) COMPATIBILITY.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) is amended—

(1) by redesignating section 9014 as section 9015; and

(2) by inserting after section 9013 the following:

“SEC. 9014. COMPATIBILITY.

“(a) DEFINITIONS.—In this section:

“(1) ASSOCIATED DISPENSING EQUIPMENT.—

The term ‘associated dispensing equipment’ means equipment, at a stationary facility, that is—

“(A) used for the storage and dispensing of any fuel or fuel additive described in sub-section (b)(3)(A) and that dispenses the fuel or fuel additive into any fuel tank of any motor vehicle, motor vehicle engine, nonroad vehicle, nonroad engine, or nonroad equipment; and

“(B) subject to regulation under sections 1910.106 and 1926.152 of title 29, Code of Federal Regulations (as in effect on the date of enactment of the Domestic Fuels Protection Act of 2012).

“(2) COMPATIBLE.—The term ‘compatible’ has the meaning given the term in section 280.12 of title 40, Code of Federal Regulations (as in effect on the
date of enactment of the Domestic Fuels Protection Act of 2012).

“(3) MOTOR VEHICLE.—The term ‘motor vehicle’ has the meaning given the term in section 216 of the Clean Air Act (42 U.S.C. 7550).

“(4) MOTOR VEHICLE ENGINE.—The term ‘motor vehicle engine’ means an engine in a motor vehicle.

“(5) NONROAD ENGINE.—The term ‘nonroad engine’ has the meaning given the term in section 216 of the Clean Air Act (42 U.S.C. 7550).

“(6) NONROAD EQUIPMENT.—The term ‘nonroad equipment’ means any recreational, construction, industrial, agricultural, logging, residential, commercial lawn and garden, or other equipment that is powered by a nonroad engine.

“(7) NONROAD VEHICLE.—The term ‘nonroad vehicle’ has the meaning given the term in section 216 of the Clean Air Act (42 U.S.C. 7550).

“(8) PROVIDER OF FINANCIAL ASSURANCE.—The term ‘provider of financial assurance’ has the meaning given the term in section 280.92 of title 40, Code of Federal Regulations (as in effect on the date of enactment of the Domestic Fuels Protection Act of 2012).
“(9) UNDERGROUND STORAGE TANK SYSTEM.—The term ‘underground storage tank system’ means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

“(b) COMPATIBILITY WITH FUELS.—

“(1) LIABILITY.—No person shall be liable under any Federal, State, or local law (including common law) because an underground storage tank, underground storage tank system, or associated dispensing equipment is not compatible with a fuel or fuel additive described in paragraph (3)(A) if the tank, system, or equipment has been determined to be compatible with the fuel or fuel additive under the guidelines or regulations described in paragraph (3).

“(2) FINANCIAL ASSURANCE.—A provider of financial assurance shall not deny payment for any claim on the basis that an underground storage tank, underground storage tank system, or associated dispensing equipment is not compatible with a fuel or fuel additive described in paragraph (3)(A) if the tank, system, or equipment has been determined to be compatible with the fuel or fuel additive under
the guidelines or regulations described in paragraph (3).

“(3) GUIDELINES AND REGULATIONS.—

“(A) IN GENERAL.—Paragraphs (1) and (2) apply to any underground storage tank, underground storage tank system, and associated dispensing equipment that meets any guidelines or regulations, which may be revised under subparagraph (B), issued by the Administrator and in effect on the date of enactment of the Domestic Fuels Protection Act of 2012, addressing compatibility of such tanks, systems, or equipment with any fuel or fuel additive that is authorized and registered, or for which an updated registration is accepted, by the Administrator or under any Federal law, for use in a motor vehicle, motor vehicle engine, nonroad vehicle, nonroad engine, or nonroad equipment.

“(B) REGULATIONS.—

“(i) IN GENERAL.—Not later than 1 year after the date of enactment of the Domestic Fuels Protection Act of 2012, the Administrator shall issue, or if applicable revise, regulations setting standards for determining whether an underground storage
tank, underground storage tank system, or associated dispensing equipment is compatible with a fuel or fuel additive described in subparagraph (A).

“(ii) Minimum Standards.—The regulations issued under clause (i) shall include minimum standards and processes for certification by the Administrator or by an owner, operator, or manufacturer of underground storage tanks, underground storage tank systems, or associated dispensing equipment, to ensure compatibility.

“(4) Underground Storage Tanks, Underground Storage Tank Systems, and Associated Dispensing Equipment Previously Listed as Compatible.—Any underground storage tank, underground storage tank system, or associated dispensing equipment that, on or before the date of enactment of the Domestic Fuels Protection Act of 2012, is listed by a nationally recognized testing laboratory as compatible with a fuel or fuel additive described in paragraph (3)(A) shall be deemed compatible with such fuel or fuel additive under the regulations issued under this subsection.
“(5) ADMINISTRATION.—Nothing in this section affects—

“(A) the introduction into commerce, offering for sale, or sale of any fuel or fuel additive; or

“(B) any applicable requirement, including any requirement under section 211(o) of the Clean Air Act (42 U.S.C. 7545(o)).”.

(b) CONFORMING AMENDMENTS.—The Solid Waste Disposal Act is amended—


(3) in section 9011 (42 U.S.C. 6991j), by striking “section 9014(2)(D)” and inserting “section 9015(2)(D)”.

(c) TABLE OF CONTENTS.—The table of contents contained in section 1001 of the Solid Waste Disposal Act (42 U.S.C. 6901) is amended by striking the item relating to section 9014 and inserting the following:

“Sec. 9014. Compatibility.

“Sec. 9015. Authorization of Appropriations.”.
SEC. 3. MISFUELING.

(a) In General.—Section 211(g) of the Clean Air Act (42 U.S.C. 7545(g)) is amended by adding at the end the following:

“(3) Limitation on Liability.—

“(A) Limitation.—

“(i) In general.—Except as provided in clause (ii), no person shall be liable under any provision of this Act or any Federal, State, or local law, including common law, if—

“(I) a self-service purchaser introduces any transportation fuel into any motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad equipment for which the fuel has not been approved under subsection (f); or

“(II) the introduction of any transportation fuel voids the warranty of the manufacturer of the motor vehicle, motor vehicle engine, nonroad engine, nonroad vehicle, or nonroad equipment.

“(ii) Exception.—Clause (i) shall not apply to—

“(I) a person who sells any transportation fuel and does not comply with the misfueling regulations adopted by the Ad-
ministrator under section 80.1501 of title 40, Code of Federal Regulations (or successor regulations); or

“(II) a person who intentionally misfuels.

“(B) DEFINITIONS.—In this paragraph:

“(i) NONROAD EQUIPMENT.—The term ‘nonroad equipment’ means any recreational, construction, industrial, agricultural, logging, residential, commercial lawn and garden, or other equipment that is powered by a nonroad engine.

“(ii) TRANSPORTATION FUEL.—The term ‘transportation fuel’ means any fuel that contains fuel or a fuel additive that is authorized after January 1, 2010, by the Administrator or under any Federal law, for use in any motor vehicle, motor vehicle engine, nonroad vehicle, nonroad engine, or nonroad equipment.”.

(b) PENALTIES.—Section 211(d) of the Clean Air Act (42 U.S.C. 7545(d)) is amended—

(1) in paragraph (1), in the first sentence, by inserting “(g),” after “or the regulations prescribed under subsection (c),”; and
(2) in paragraph (2), in the first sentence, by inserting “(g),” after “of the regulations prescribed under subsections (e),”.

SEC. 4. LIMITATION ON LIABILITY.

(a) Qualified Civil Liability Actions in Federal Court and State Court.—

(1) In general.—No qualified civil liability action shall be filed or maintained in any court of the United States or any State court.

(2) Dismissal of pending actions.—Any qualified civil liability action filed or pending in any court of the United States or any State court on or after the date of enactment of this Act shall be dismissed with prejudice.

(b) Safe Harbor.—Notwithstanding any Federal, State, or local law (including common law), no qualified product shall be considered to be a defective product, if the qualified product does not violate a control or prohibition, respecting any characteristic or component of the qualified product, imposed by the Administrator of the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545).

(e) Definitions.—In this section:
(1) Covered entity.—The term “covered entity” means any entity engaged in the design, manufacture, sale, or distribution of any—

   (A) qualified product; or

   (B) motor vehicle, motor vehicle engine, nonroad vehicle, nonroad engine, or nonroad equipment.

(2) Motor vehicle.—The term “motor vehicle” has the meaning given the term in section 216 of the Clean Air Act (42 U.S.C. 7550).

(3) Motor vehicle engine.—The term “motor vehicle engine” means an engine in a motor vehicle.

(4) Nonroad engine.—The term “nonroad engine” has the meaning given the term in section 216 of the Clean Air Act (42 U.S.C. 7550).

(5) Nonroad equipment.—The term “nonroad equipment” means any recreational, construction, industrial, agricultural, logging, residential, commercial lawn and garden, or other equipment that incorporates a nonroad engine.

(6) Nonroad vehicle.—The term “nonroad vehicle” has the meaning given the term in section 216 of the Clean Air Act (42 U.S.C. 7550).
(7) PERSON.—The term “person” has the meaning given the term in section 1 of title 1, United States Code, except that the term includes any governmental entity.

(8) QUALIFIED CIVIL LIABILITY ACTION.—The term “qualified civil liability action” means any civil action or proceeding brought by any person against a covered entity for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, penalties, or other relief, resulting from the introduction of any qualified product into any motor vehicle, motor vehicle engine, nonroad vehicle, nonroad engine, or nonroad equipment.

(9) QUALIFIED PRODUCT.—The term “qualified product” means—

(A) any fuel or fuel additive for which a registration is in effect under section 211(b) of the Clean Air Act (42 U.S.C. 7545(b)) or any other Federal law enacted on or after October 13, 2010;

(B) a transportation fuel or transportation fuel additive that—

(i) contains any renewable fuel (as defined in section 211(o)(1) of the Clean Air Act (42 U.S.C. 7545(o)(1))); and
(ii) is designated for introduction into interstate commerce by the Administrator of the Environmental Protection Agency or the Secretary of Energy under the Clean Air Act (42 U.S.C. 7401 et seq.), the Energy Policy Act of 1992 (42 U.S.C. 13201 et seq.), or any other Federal law enacted on or after October 13, 2010;

(C) any component of a fuel or fuel additive described in subparagraph (A) or (B); or

(D) any blend stock.

(10) State.—The term “State” means each of the several States of the United States; the District of Columbia; and any territory, commonwealth, or possession of the United States.