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 SENATE OF THE UNITED STATES

MARCH 29, 2012

Mr. HOEVEN (for himself, Mr. BLUNT, Ms. KLOBUCHAR, Mr. CRAPO, and Mr. JOHANNES) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Domestic Fuels Act
6 of 2012”.
7
8 SEC. 2. DEFINITIONS.
9 In this Act:
(1) COVERED ENTITY.—The term “covered entity” means—

(A) any entity engaged in the design, manufacture, sale, or distribution of any qualified product, blend stock, or component of any qualified product; or

(B) any entity engaged in the design, manufacture, sale, or distribution of any 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 transportation fuel or transportation fuel additive that is registered, or for which an updated registration is accepted, for introduction into interstate commerce by the Administrator of the Environmental Protection Agency 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; or

(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.

(10) State.—The term “State” means—

(A) each of the several States of the United States;

(B) the District of Columbia;

(C) the Commonwealth of Puerto Rico;

and

(D) any other territory or possession of the United States.
SEC. 3. FUEL COMPATIBILITY.

(a) COMPATIBILITY.—Subtitle I of the Solid Waste Disposal Act (42 U.S.C. 9001 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 that is—

“(A) for the storage and dispensing of any fuel or fuel additive described in subsection (b)(3) at a stationary facility 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


“(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 Act of 2012).

“(3) 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 Act of 2012).

“(4) Underground storage tank.—The term ‘underground storage tank’ 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 Act of 2012).

“(5) 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 provision of this Act or any other Federal, State, or local law, including common law, because any underground storage tank, underground storage tank system, or associated dispensing equipment that stores or dispenses any fuel or fuel addi-
tive described in paragraph (3)(A) is not compatible with the fuel or fuel additive 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 any underground storage tank, underground storage tank system, or associated dispensing equipment that stores or dispenses any fuel or fuel additive described in paragraph (3)(A) is not compatible with the fuel or fuel additive 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.—Paragraph (1) applies to any underground storage tank and underground storage tank system that meets any guidance or regulation, which may be revised under subparagraph (B), issued by the Administrator existing on the date of enactment of the Domestic Fuels Act of 2012 addressing compatibility of such tanks or systems 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 Act of 2012, the Administrator shall promulgate, or if applicable revise, regulations setting standards for determining whether any underground storage tank, underground storage tank system, and associated dispensing equipment is compatible 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.

“(ii) MINIMUM STANDARDS.—Regulations promulgated under subparagraph (B) shall include minimum standards and proc-
esses for certification by the Administrator, owner, operator, manufacturer, or any other entity identified by the Administrator 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, as of the date of enactment of the Domestic Fuels Act of 2012, has been listed by a nationally recognized testing laboratory as compatible with a fuel or fuel additive described in paragraph (3) shall be compatible 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. 4. 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) Regulations.—
“(A) Definitions.—In this paragraph:
“(i) Associated dispensing equipment.—The term ‘associated dispensing equipment’ has the meaning given the term in section 9014(a) of the Solid Waste Disposal Act.
“(ii) TRANSPORTATION FUEL.—The term ‘transportation fuel’ means any fuel that contains fuel or 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) LIABILITY.—

“(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) EXCEPTIONS.—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 Administrator under section 80.1501 of title 40, Code of Federal Regulations (or successor regulation); or

“(II) a person who intentionally misfuels.”.

(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 (e),”; and

(2) in paragraph (2), in the first sentence, by inserting “(g),” after “of the regulations prescribed under subsections (e),”.
SEC. 5. QUALIFIED CIVIL LIABILITY ACTIONS IN FEDERAL COURT AND STATE COURT.

(a) IN GENERAL.—No qualified civil liability action shall be filed or maintained in any court of the United States or any State court.

(b) DISMISSAL OF PENDING ACTIONS.—Any qualified civil liability action 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.

SEC. 6. SAFE HARBOR.

Notwithstanding any other provision of Federal, State, or local law, including common law, no qualified product, blend stock, or component of a qualified product shall be considered to be a defective product, if the qualified product does not violate a control or prohibition with respect to 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).