

112TH CONGRESS
2D SESSION

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Domestic Fuels Pro-
5 tection Act of 2012”.

1 **SEC. 2. FUEL COMPATIBILITY.**

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

4 (1) by redesignating section 9014 as section
5 9015; and

6 (2) by inserting after section 9013 the fol-
7 lowing:

8 **“SEC. 9014. COMPATIBILITY.**

9 “(a) DEFINITIONS.—In this section:

10 “(1) ASSOCIATED DISPENSING EQUIPMENT.—

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

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

19 “(B) subject to regulation under sections
20 1910.106 and 1926.152 of title 29, Code of
21 Federal Regulations (as in effect on the date of
22 enactment of the Domestic Fuels Protection
23 Act of 2012).

24 “(2) COMPATIBLE.—The term ‘compatible’ has
25 the meaning given the term in section 280.12 of title
26 40, Code of Federal Regulations (as in effect on the

1 date of enactment of the Domestic Fuels Protection
2 Act of 2012).

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

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

9 “(5) NONROAD ENGINE.—The term ‘nonroad
10 engine’ has the meaning given the term in section
11 216 of the Clean Air Act (42 U.S.C. 7550).

12 “(6) NONROAD EQUIPMENT.—The term
13 ‘nonroad equipment’ means any recreational, con-
14 struction, industrial, agricultural, logging, residen-
15 tial, commercial lawn and garden, or other equip-
16 ment that is powered by a nonroad engine.

17 “(7) NONROAD VEHICLE.—The term ‘nonroad
18 vehicle’ has the meaning given the term in section
19 216 of the Clean Air Act (42 U.S.C. 7550).

20 “(8) PROVIDER OF FINANCIAL ASSURANCE.—
21 The term ‘provider of financial assurance’ has the
22 meaning given the term in section 280.92 of title 40,
23 Code of Federal Regulations (as in effect on the
24 date of enactment of the Domestic Fuels Protection
25 Act of 2012).

1 “(9) UNDERGROUND STORAGE TANK SYS-
2 TEM.—The term ‘underground storage tank system’
3 means an underground storage tank, connected un-
4 derground piping, underground ancillary equipment,
5 and containment system, if any.

6 “(b) COMPATIBILITY WITH FUELS.—

7 “(1) LIABILITY.—No person shall be liable
8 under any Federal, State, or local law (including
9 common law) because an underground storage tank,
10 underground storage tank system, or associated dis-
11 pensing equipment is not compatible with a fuel or
12 fuel additive described in paragraph (3)(A) if the
13 tank, system, or equipment has been determined to
14 be compatible with the fuel or fuel additive under
15 the guidelines or regulations described in paragraph
16 (3).

17 “(2) FINANCIAL ASSURANCE.—A provider of fi-
18 nancial assurance shall not deny payment for any
19 claim on the basis that an underground storage
20 tank, underground storage tank system, or associ-
21 ated dispensing equipment is not compatible with a
22 fuel or fuel additive described in paragraph (3)(A) if
23 the tank, system, or equipment has been determined
24 to be compatible with the fuel or fuel additive under

1 the guidelines or regulations described in paragraph
2 (3).

3 “(3) GUIDELINES AND REGULATIONS.—

4 “(A) IN GENERAL.—Paragraphs (1) and
5 (2) apply to any underground storage tank, un-
6 derground storage tank system, and associated
7 dispensing equipment that meets any guidelines
8 or regulations, which may be revised under sub-
9 paragraph (B), issued by the Administrator and
10 in effect on the date of enactment of the Do-
11 mestic Fuels Protection Act of 2012, address-
12 ing compatibility of such tanks, systems, or
13 equipment with any fuel or fuel additive that is
14 authorized and registered, or for which an up-
15 dated registration is accepted, by the Adminis-
16 trator or under any Federal law, for use in a
17 motor vehicle, motor vehicle engine, nonroad ve-
18 hicle, nonroad engine, or nonroad equipment.

19 “(B) REGULATIONS.—

20 “(i) IN GENERAL.—Not later than 1
21 year after the date of enactment of the Do-
22 mestic Fuels Protection Act of 2012, the
23 Administrator shall issue, or if applicable
24 revise, regulations setting standards for de-
25 termining whether an underground storage

1 tank, underground storage tank system, or
2 associated dispensing equipment is compat-
3 ible with a fuel or fuel additive described
4 in subparagraph (A).

5 “(ii) MINIMUM STANDARDS.—The
6 regulations issued under clause (i) shall in-
7 clude minimum standards and processes
8 for certification by the Administrator or by
9 an owner, operator, or manufacturer of un-
10 derground storage tanks, underground
11 storage tank systems, or associated dis-
12 pensing equipment, to ensure compat-
13 ibility.

14 “(4) UNDERGROUND STORAGE TANKS, UNDER-
15 GROUND STORAGE TANK SYSTEMS, AND ASSOCIATED
16 DISPENSING EQUIPMENT PREVIOUSLY LISTED AS
17 COMPATIBLE.—Any underground storage tank, un-
18 derground storage tank system, or associated dis-
19 pensing equipment that, on or before the date of en-
20 actment of the Domestic Fuels Protection Act of
21 2012, is listed by a nationally recognized testing lab-
22 oratory as compatible with a fuel or fuel additive de-
23 scribed in paragraph (3)(A) shall be deemed compat-
24 ible with such fuel or fuel additive under the regula-
25 tions issued under this subsection.

1 “(5) ADMINISTRATION.—Nothing in this section
2 affects—

3 “(A) the introduction into commerce, offer-
4 ing for sale, or sale of any fuel or fuel additive;
5 or

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

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

11 (1) in section 9003(h)(12)(A) (42 U.S.C.
12 6991b(h)(12)(A)), by striking “section 9014(2)(B)”
13 and inserting “section 9015(2)(B)”;

14 (2) in section 9004(f)(1)(A) (42 U.S.C.
15 6991c(f)(1)(A)), by striking “section 9014(2)(A)”
16 and inserting “section 9015(2)(A)”;

17 (3) in section 9011 (42 U.S.C. 6991j), by strik-
18 ing “section 9014(2)(D)” and inserting “section
19 9015(2)(D)”.

20 (c) TABLE OF CONTENTS.—The table of contents
21 contained in section 1001 of the Solid Waste Disposal Act
22 (42 U.S.C. 6901) is amended by striking the item relating
23 to section 9014 and inserting the following:

“Sec. 9014. Compatibility.

“Sec. 9015. Authorization of Appropriations.”.

1 **SEC. 3. MISFUELING.**

2 (a) IN GENERAL.—Section 211(g) of the Clean Air
3 Act (42 U.S.C. 7545(g)) is amended by adding at the end
4 the following:

5 “(3) LIMITATION ON LIABILITY.—

6 “(A) LIMITATION.—

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

11 “(I) a self-service purchaser intro-
12 duces any transportation fuel into any
13 motor vehicle, motor vehicle engine,
14 nonroad vehicle, or nonroad equipment for
15 which the fuel has not been approved
16 under subsection (f); or

17 “(II) the introduction of any transpor-
18 tation fuel voids the warranty of the manu-
19 facturer of the motor vehicle, motor vehicle
20 engine, nonroad engine, nonroad vehicle, or
21 nonroad equipment.

22 “(ii) EXCEPTION.—Clause (i) shall not
23 apply to—

24 “(I) a person who sells any transpor-
25 tation fuel and does not comply with the
26 misfueling regulations adopted by the Ad-

1 administrator under section 80.1501 of title
2 40, Code of Federal Regulations (or suc-
3 cessor regulations); or

4 “(II) a person who intentionally
5 misfuels.

6 “(B) DEFINITIONS.—In this paragraph:

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

13 “(ii) TRANSPORTATION FUEL.—The term
14 ‘transportation fuel’ means any fuel that con-
15 tains fuel or a fuel additive that is authorized
16 after January 1, 2010, by the Administrator or
17 under any Federal law, for use in any motor ve-
18 hicle, motor vehicle engine, nonroad vehicle,
19 nonroad engine, or nonroad equipment.”.

20 (b) PENALTIES.—Section 211(d) of the Clean Air Act
21 (42 U.S.C. 7545(d)) is amended—

22 (1) in paragraph (1), in the first sentence, by
23 inserting “(g),” after “or the regulations prescribed
24 under subsection (c),”; and

1 (2) in paragraph (2), in the first sentence, by
2 inserting “(g),” after “of the regulations prescribed
3 under subsections (c),”.

4 **SEC. 4. LIMITATION ON LIABILITY.**

5 (a) QUALIFIED CIVIL LIABILITY ACTIONS IN FED-
6 ERAL COURT AND STATE COURT.—

7 (1) IN GENERAL.—No qualified civil liability ac-
8 tion shall be filed or maintained in any court of the
9 United States or any State court.

10 (2) DISMISSAL OF PENDING ACTIONS.—Any
11 qualified civil liability action filed or pending in any
12 court of the United States or any State court on or
13 after the date of enactment of this Act shall be dis-
14 missed with prejudice.

15 (b) SAFE HARBOR.—Notwithstanding any Federal,
16 State, or local law (including common law), no qualified
17 product shall be considered to be a defective product, if
18 the qualified product does not violate a control or prohibi-
19 tion, respecting any characteristic or component of the
20 qualified product, imposed by the Administrator of the
21 Environmental Protection Agency under section 211 of
22 the Clean Air Act (42 U.S.C. 7545).

23 (c) DEFINITIONS.—In this section:

1 (1) COVERED ENTITY.—The term “covered en-
2 tity” means any entity engaged in the design, manu-
3 facture, sale, or distribution of any—

4 (A) qualified product; or

5 (B) motor vehicle, motor vehicle engine,
6 nonroad vehicle, nonroad engine, or nonroad
7 equipment.

8 (2) MOTOR VEHICLE.—The term “motor vehi-
9 cle” has the meaning given the term in section 216
10 of the Clean Air Act (42 U.S.C. 7550).

11 (3) MOTOR VEHICLE ENGINE.—The term
12 “motor vehicle engine” means an engine in a motor
13 vehicle.

14 (4) NONROAD ENGINE.—The term “nonroad
15 engine” has the meaning given the term in section
16 216 of the Clean Air Act (42 U.S.C. 7550).

17 (5) NONROAD EQUIPMENT.—The term
18 “nonroad equipment” means any recreational, con-
19 struction, industrial, agricultural, logging, residen-
20 tial, commercial lawn and garden, or other equip-
21 ment that incorporates a nonroad engine.

22 (6) NONROAD VEHICLE.—The term “nonroad
23 vehicle” has the meaning given the term in section
24 216 of the Clean Air Act (42 U.S.C. 7550).

1 (7) PERSON.—The term “person” has the
2 meaning given the term in section 1 of title 1,
3 United States Code, except that the term includes
4 any governmental entity.

5 (8) QUALIFIED CIVIL LIABILITY ACTION.—The
6 term “qualified civil liability action” means any civil
7 action or proceeding brought by any person against
8 a covered entity for damages, punitive damages, in-
9 junctive or declaratory relief, abatement, restitution,
10 fines, penalties, or other relief, resulting from the in-
11 troduction of any qualified product into any motor
12 vehicle, motor vehicle engine, nonroad vehicle,
13 nonroad engine, or nonroad equipment.

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

16 (A) any fuel or fuel additive for which a
17 registration is in effect under section 211(b) of
18 the Clean Air Act (42 U.S.C. 7545(b)) or any
19 other Federal law enacted on or after October
20 13, 2010;

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

23 (i) contains any renewable fuel (as de-
24 fined in section 211(o)(1) of the Clean Air
25 Act (42 U.S.C. 7545(o)(1))); and

1 (ii) is designated for introduction into
2 interstate commerce by the Administrator
3 of the Environmental Protection Agency or
4 the Secretary of Energy under the Clean
5 Air Act (42 U.S.C. 7401 et seq.), the En-
6 ergy Policy Act of 1992 (42 U.S.C. 13201
7 et seq.), or any other Federal law enacted
8 on or after October 13, 2010;

9 (C) any component of a fuel or fuel addi-
10 tive described in subparagraph (A) or (B); or

11 (D) any blend stock.

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

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