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2D SESSION

S. 2264

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 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) COVERED ENTITY.—The term “covered en-
2 tity” means—

3 (A) any entity engaged in the design, man-
4 ufacture, sale, or distribution of any qualified
5 product, blend stock, or component of any
6 qualified product; or

7 (B) any entity engaged in the design, man-
8 ufacture, sale, or distribution of any motor ve-
9 hicle, motor vehicle engine, nonroad vehicle,
10 nonroad engine, or nonroad equipment.

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

14 (3) MOTOR VEHICLE ENGINE.—The term
15 “motor vehicle engine” means an engine in a motor
16 vehicle.

17 (4) NONROAD ENGINE.—The term “nonroad
18 engine” has the meaning given the term in section
19 216 of the Clean Air Act (42 U.S.C. 7550).

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

1 (6) NONROAD VEHICLE.—The term “nonroad
2 vehicle” has the meaning given the term in section
3 216 of the Clean Air Act (42 U.S.C. 7550).

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

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

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

19 (A) any transportation fuel or transpor-
20 tation fuel additive that is registered, or for
21 which an updated registration is accepted, for
22 introduction into interstate commerce by the
23 Administrator of the Environmental Protection
24 Agency under section 211(b) of the Clean Air

1 Act (42 U.S.C. 7545(b)) or any other Federal
2 law enacted on or after October 13, 2010; or

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

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

8 (ii) is designated for introduction into
9 interstate commerce by the Administrator
10 of the Environmental Protection Agency or
11 the Secretary of Energy under the Clean
12 Air Act (42 U.S.C. 7401 et seq.), the En-
13 ergy Policy Act of 1992 (42 U.S.C. 13201
14 et seq.), or any other Federal law enacted
15 on or after October 13, 2010.

16 (10) STATE.—The term “State” means—

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

19 (B) the District of Columbia;

20 (C) the Commonwealth of Puerto Rico;

21 and

22 (D) any other territory or possession of the
23 United States.

1 **SEC. 3. FUEL COMPATIBILITY.**

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

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

20 “(B) subject to regulation under sections
21 1910.106 and 1926.152 of title 29, Code of
22 Federal Regulations (as in effect on the date of
23 enactment of the Domestic Fuels 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 Act of
2 2012).

3 “(3) PROVIDER OF FINANCIAL ASSURANCE.—
4 The term ‘provider of financial assurance’ has the
5 meaning given the term in section 280.92 of title 40,
6 Code of Federal Regulations (as in effect on the
7 date of enactment of the Domestic Fuels Act of
8 2012).

9 “(4) UNDERGROUND STORAGE TANK.—The
10 term ‘underground storage tank’ has the meaning
11 given the term in section 280.12 of title 40, Code of
12 Federal Regulations (as in effect on the date of en-
13 actment of the Domestic Fuels Act of 2012).

14 “(5) UNDERGROUND STORAGE TANK SYS-
15 TEM.—The term ‘underground storage tank system’
16 means an underground storage tank, connected un-
17 derground piping, underground ancillary equipment,
18 and containment system, if any.

19 “(b) COMPATIBILITY WITH FUELS.—

20 “(1) LIABILITY.—No person shall be liable
21 under any provision of this Act or any other Fed-
22 eral, State, or local law, including common law, be-
23 cause any underground storage tank, underground
24 storage tank system, or associated dispensing equip-
25 ment that stores or dispenses any fuel or fuel addi-

1 tive described in paragraph (3)(A) is not compatible
2 with the fuel or fuel additive if the tank, system, or
3 equipment has been determined to be compatible
4 with the fuel or fuel additive under the guidelines or
5 regulations described in paragraph (3).

6 “(2) FINANCIAL ASSURANCE.—A provider of fi-
7 nancial assurance shall not deny payment for any
8 claim on the basis that any underground storage
9 tank, underground storage tank system, or associ-
10 ated dispensing equipment that stores or dispenses
11 any fuel or fuel additive described in paragraph
12 (3)(A) is not compatible with the fuel or fuel addi-
13 tive if the tank, system, or equipment has been de-
14 termined to be compatible with the fuel or fuel addi-
15 tive under the guidelines or regulations described in
16 paragraph (3).

17 “(3) GUIDELINES AND REGULATIONS.—

18 “(A) IN GENERAL.—Paragraph (1) applies
19 to any underground storage tank and under-
20 ground storage tank system that meets any
21 guidance or regulation, which may be revised
22 under subparagraph (B), issued by the Admin-
23 istrator existing on the date of enactment of the
24 Domestic Fuels Act of 2012 addressing compat-
25 ibility of such tanks or systems with any fuel or

1 fuel additive that is authorized and registered,
2 or for which an updated registration is accept-
3 ed, by the Administrator or under any Federal
4 law, for use in a motor vehicle, motor vehicle
5 engine, nonroad vehicle, nonroad engine, or
6 nonroad equipment.

7 “(B) REGULATIONS.—

8 “(i) IN GENERAL.—Not later than 1
9 year after the date of enactment of the Do-
10 mestic Fuels Act of 2012, the Adminis-
11 trator shall promulgate, or if applicable re-
12 vise, regulations setting standards for de-
13 termining whether any underground stor-
14 age tank, underground storage tank sys-
15 tem, and associated dispensing equipment
16 is compatible with any fuel or fuel additive
17 that is authorized and registered, or for
18 which an updated registration is accepted,
19 by the Administrator or under any Federal
20 law for use in a motor vehicle, motor vehi-
21 cle engine, nonroad vehicle, nonroad en-
22 gine, or nonroad equipment.

23 “(ii) MINIMUM STANDARDS.—Regula-
24 tions promulgated under subparagraph (B)
25 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—

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

4 (2) in section 9004(f)(1)(A) (42 U.S.C.
5 6991c(f)(1)(A)), by striking “section 9014(2)(A)”
6 and inserting “section 9015(2)(A)”;

7 (3) in section 9011 (42 U.S.C. 6991j), by strik-
8 ing “section 9014(2)(D)” and inserting “section
9 9015(2)(D)”.

10 (c) TABLE OF CONTENTS.—The table of contents
11 contained in section 1001 of the Solid Waste Disposal Act
12 (42 U.S.C. 6901) is amended by striking the item relating
13 to section 9014 and inserting the following:

“Sec. 9014. Compatibility.

“Sec. 9015. Authorization of Appropriations.”.

14 **SEC. 4. MISFUELING.**

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

18 “(3) REGULATIONS.—

19 “(A) DEFINITIONS.—In this paragraph:

20 “(i) ASSOCIATED DISPENSING EQUIP-
21 MENT.—The term ‘associated dispensing
22 equipment’ has the meaning given the term
23 in section 9014(a) of the Solid Waste Dis-
24 posal Act.

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

9 “(B) LIABILITY.—

10 “(i) IN GENERAL.—Except as pro-
11 vided in clause (ii), no person shall be lia-
12 ble under any provision of this Act or any
13 Federal, State, or local law, including com-
14 mon law, if—

15 “(I) a self-service purchaser in-
16 troduces any transportation fuel into
17 any motor vehicle, motor vehicle en-
18 gine, nonroad vehicle, or nonroad
19 equipment for which the fuel has not
20 been approved under subsection (f); or

21 “(II) the introduction of any
22 transportation fuel voids the warranty
23 of the manufacturer of the motor ve-
24 hicle, motor vehicle engine, nonroad

1 engine, nonroad vehicle, or nonroad
2 equipment.

3 “(ii) EXCEPTIONS.—Clause (i) shall
4 not apply to—

5 “(I) a person who sells any
6 transportation fuel and does not com-
7 ply with the misfueling regulations
8 adopted by the Administrator under
9 section 80.1501 of title 40, Code of
10 Federal Regulations (or successor reg-
11 ulation); or

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

14 (b) PENALTIES.—Section 211(d) of the Clean Air Act
15 (42 U.S.C. 7545(d)) is amended—

16 (1) in paragraph (1), in the first sentence, by
17 inserting “(g),” after “or the regulations prescribed
18 under subsection (c),”; and

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

1 **SEC. 5. QUALIFIED CIVIL LIABILITY ACTIONS IN FEDERAL**
2 **COURT AND STATE COURT.**

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

6 (b) DISMISSAL OF PENDING ACTIONS.—Any quali-
7 fied civil liability action pending in any court of the United
8 States or any State court on or after the date of enact-
9 ment of this Act shall be dismissed with prejudice.

10 **SEC. 6. SAFE HARBOR.**

11 Notwithstanding any other provision of Federal,
12 State, or local law, including common law, no qualified
13 product, blend stock, or component of a qualified product
14 shall be considered to be a defective product, if the quali-
15 fied product does not violate a control or prohibition with
16 respect to any characteristic or component of the qualified
17 product imposed by the Administrator of the Environ-
18 mental Protection Agency under section 211 of the Clean
19 Air Act (42 U.S.C. 7545).

