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# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999

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**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 2746**

(By Delegates Beane, Douglas, Staton and Johnson)

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Passed March 12, 1999

In Effect Ninety Days from Passage

HB 2746

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SENATE CHAMBERS  
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## ENROLLED

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FOR

# H. B. 2746

(BY DELEGATES BEANE, DOUGLAS, STATON AND JOHNSON)

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[Passed March 12, 1999; in effect ninety days from passage.]

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AN ACT to amend and reenact sections three, five, six, twelve and sixteen, article seventeen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to incorporating federal updates to the underground storage tank act and providing subrogation authority to the director of the division of environmental protection; and proposal of rules.

*Be it enacted by the Legislature of West Virginia:*

That sections three, five, six, twelve and sixteen, article seventeen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

### ARTICLE 17. UNDERGROUND STORAGE TANK ACT.

#### §22-17-3. Definitions.

- 1 (a) "Change in status" means causing an underground
- 2 storage tank to be no longer in use or a change in the reported
- 3 uses, contents or ownership of an underground storage tank.

4 (b) "Director" means the director of the West Virginia  
5 division of environmental protection or such other person to  
6 whom the director has delegated authority or duties pursuant to  
7 sections six or eight, article one of this chapter.

8 (c) "Nonoperational storage tank" means an underground  
9 storage tank in which regulated substances will not be deposited  
10 or from which regulated substances will not be dispensed after  
11 the eighth day of November, one thousand nine hundred eighty-  
12 four.

13 (d) "Operator" means any person in control of, or having  
14 responsibility for, the daily operation of an underground storage  
15 tank.

16 (e) "Owner" means:

17 (1) In the case of an underground storage tank in use on the  
18 eighth day of November, one thousand nine hundred  
19 eighty-four, or brought into use after that date, a person who  
20 owns an underground storage tank used for the storage, use or  
21 dispensing of a regulated substance.

22 (2) In the case of an underground storage tank in use before  
23 the eighth day of November, one thousand nine hundred eighty-  
24 four, but no longer in use on that date, a person who owned  
25 such a tank immediately before the discontinuation of its use.

26 (f) "Person" means any individual, trust, firm, joint stock  
27 company, corporation (including government corporations),  
28 partnership, association, state, municipality, commission,  
29 political subdivision of a state, interstate body, consortium,  
30 joint venture, commercial entity and the United States govern-  
31 ment.

32 (g) "Petroleum" means petroleum, including crude oil or  
33 any fraction thereof which is liquid at a temperature of sixty  
34 degrees Fahrenheit and a pressure of fourteen and seven-tenths  
35 pounds per square inch absolute.

36 (h) "Regulated substance" means:

37 (1) Any substance defined in section 101 (14) of the  
38 Comprehensive Environmental Response, Compensation and

39 Liability Act of 1980, but not including any substance regulated  
40 as a hazardous waste under Subtitle C of the federal Resource  
41 Conservation and Recovery Act of 1976, as amended; or

42 (2) Petroleum.

43 (i) "Release" means any spilling, leaking, emitting,  
44 discharging, escaping, leaching or disposing from an under-  
45 ground storage tank into groundwater, surface water or  
46 subsurface soils.

47 (j) "Subtitle I" means Subtitle I of the federal Resource  
48 Conservation and Recovery Act of 1976, as amended.

49 (k) "Underground storage tank" means one tank or a  
50 combination of tanks, and the underground pipes connected  
51 thereto, which is used to contain an accumulation of regulated  
52 substances and the volume of which, including the volume of  
53 the underground pipes connected thereto, is ten percent or more  
54 beneath the surface of the ground, but does not include:

55 (1) Farm or residential tanks with a capacity of eleven  
56 hundred gallons or less and used for storing motor fuel for  
57 noncommercial purposes;

58 (2) Tanks used for storing heating oil for consumptive use  
59 on the premises where stored;

60 (3) Septic tanks;

61 (4) A pipeline facility, including gathering lines, regulated  
62 under the Natural Gas Pipeline Safety Act of 1968, or the  
63 Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate  
64 pipeline facility regulated under state laws comparable to the  
65 provisions of either of those acts;

66 (5) Surface impoundments, pits, ponds or lagoons;

67 (6) Storm water or wastewater collection systems;

68 (7) Flow-through process tanks;

69 (8) Liquid traps or associated gathering lines directly  
70 related to oil or gas production and gathering operations; or

71 (9) Storage tanks situated in an underground area such as a  
72 basement, cellar, mineworking, drift, shaft or tunnel, if the  
73 storage tank is situated upon or above the surface of the floor.

74 The term "underground storage tank" does not include any  
75 pipes connected to any tank which is described in subpara-  
76 graphs (1) through (9).

**§22-17-5. Powers and duties of director; integration with other acts.**

1 (a) In addition to all other powers and duties prescribed in  
2 this article or otherwise by law, and unless otherwise specifi-  
3 cally set forth in this article, the director shall perform any and  
4 all acts necessary to carry out the purposes and requirements of  
5 Subtitle I.

6 (b) The director shall cooperate with and may receive and  
7 expend money from the federal government or other source.

8 (c) The director may accept applications for and issue  
9 policies of insurance to owners or operators of petroleum  
10 underground storage tanks that are subscribers to the under-  
11 ground storage tank insurance fund and may accept, review, pay  
12 and settle claims pursuant to those policies of insurance under  
13 such terms as the director may establish by rules proposed for  
14 legislative approval in accordance with the provisions of article  
15 three, chapter twenty-nine-a of this code.

16 (d) The director may enter into any agreements, including  
17 reimbursement or subrogation agreements, contracts and  
18 cooperative arrangements under such terms and conditions as  
19 he or she deems appropriate, with other state agencies, educa-  
20 tional institutions or other organizations and individuals as  
21 necessary to implement the provisions of this article.

22 (e) The director may take such actions as are necessary and  
23 appropriate to carry out and enforce any agreements, contracts  
24 or cooperative arrangements entered into as provided in  
25 subsection (d) of this section, including the institution and  
26 prosecution of suits in any state or federal court or administra-  
27 tive tribunal, whether in the director's name or in the name of  
28 an insured or a subrogor.

**§22-17-6. Promulgation of rules and standards by director.**

1 (a) The director has overall responsibility for the promulga-  
2 tion of rules under this article. In promulgating and revising  
3 such rules the director shall comply with the provisions of  
4 chapter twenty-nine-a of this code. Such rules shall be no more  
5 stringent than the rules and regulations promulgated by the  
6 United States environmental protection agency pursuant to  
7 Subtitle I.

8 (b) The director shall promulgate rules applicable to owners  
9 or operators of underground storage tanks or other affected  
10 persons, as appropriate, as follows:

11 (1) A requirement for a yearly registration fee for under-  
12 ground storage tanks;

13 (2) A requirement that an owner or operator register with  
14 the director each underground storage tank after the effective  
15 date of the rules and that an owner or operator report annually  
16 on changes in status of any underground storage tank;

17 (3) Such release detection, prevention and correction rules  
18 applicable to underground storage tanks as may be necessary to  
19 protect human health and the environment;

20 (4) Requirements for maintaining a leak detection system,  
21 inventory control systems together with tank testing, or a  
22 comparable system or method designed to identify releases  
23 from underground storage tanks in a manner consistent with the  
24 protection of human health and the environment;

25 (5) Requirements for maintaining records of any monitoring  
26 or leak detection system or inventory control system or tank  
27 testing system;

28 (6) Rules for procedures and amount of fees to be assessed  
29 for the underground storage tank administrative fund, the  
30 leaking underground storage tank response fund and the  
31 underground storage tank insurance fund established pursuant  
32 to this article, which shall include a capitalization fee to be  
33 assessed against all owners or operators of underground tanks  
34 to be used for initial establishment of the underground storage  
35 tank insurance fund;

36 (7) Procedures for making expenditures from the under-  
37 ground storage tank administrative fund, the leaking under-  
38 ground storage tank response fund and the underground storage  
39 tank insurance fund;

40 (8) Acceptable methods by which an owner or operator may  
41 demonstrate financial responsibility;

42 (9) Requirements for reporting of releases and corrective  
43 action taken in response to a release;

44 (10) Requirements for taking corrective action in response  
45 to a release from an underground storage tank;

46 (11) Requirements for the closure of tanks to prevent future  
47 releases of regulated substances to the environment;

48 (12) Requirements for certification of installation, removal,  
49 retrofit, testing and inspection of underground storage tanks and  
50 leak detection systems by a registered professional engineer or  
51 other qualified person;

52 (13) Requirements for public participation in the enforce-  
53 ment of the state underground storage tank program;

54 (14) Procedures establishing when and how the director  
55 determines if information obtained by any agency under this  
56 article is confidential;

57 (15) Standards of performance for new underground storage  
58 tanks;

59 (16) Procedures for the review, acceptance, settlement and  
60 payment of claims under policies issued by the director  
61 pursuant to subsection (c) of section five of this article; or

62 (17) Any other rules or standards necessary and appropriate  
63 for the effective implementation and administration of this  
64 article.

**§22-17-12. Confidentiality.**

1 (a) Any records, reports or information obtained from any  
2 persons under this article shall be available to the public, except  
3 that upon a showing satisfactory to the director by any person  
4 that records, reports or information, or a particular part thereof,

5 to which the director or any officer, employee, or representative  
6 thereof has access under this section, if made public, would  
7 divulge information entitled to protection under section 1905 of  
8 title 18 of the United States Code, such information or particu-  
9 lar portion thereof is confidential in accordance with the  
10 purposes of this section, except that such record, report,  
11 document or information may be disclosed to other officers,  
12 employees, or authorized representatives of the United States  
13 environmental protection agency or of this state if such officers,  
14 employees or authorized representatives are implementing the  
15 provisions of this article.

16 (b) Any person who knowingly and willfully divulges or  
17 discloses any information entitled to protection under this  
18 section is guilty of a misdemeanor and, upon conviction  
19 thereof, shall be fined not more than five thousand dollars, or  
20 imprisoned in the county jail for not more than one year, or  
21 both fined and imprisoned.

22 (c) In submitting data under this article, a person required  
23 to provide such data may designate the data which he or she  
24 believes is entitled to protection under this section and submit  
25 such designated data separately from other data submitted under  
26 this article. A designation under this subsection shall be made  
27 in writing and in such manner as the director may prescribe.

#### **§22-17-16. Civil penalties.**

1 (a) Any violator who fails to comply with an order of the  
2 director issued under subsection (a), section fifteen of this  
3 article within the time specified in the order is liable for a civil  
4 penalty of not more than twenty-five thousand dollars for each  
5 day of continued noncompliance.

6 (b) Any owner who knowingly: (1) Fails to register; or (2)  
7 submits false information pursuant to this article is liable for a  
8 civil penalty not to exceed ten thousand dollars for each tank  
9 which is not registered or for which false information is  
10 submitted.

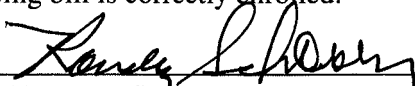
11 (c) Any owner or operator of an underground storage tank  
12 who fails to comply with any requirement or standard promul-  
13 gated by the director under section six of this article is subject



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14 to a civil penalty not to exceed ten thousand dollars for each  
15 tank for each day of violation.

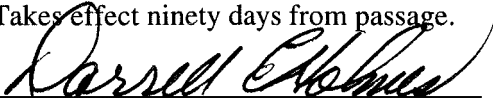
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

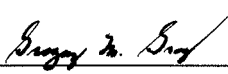
  
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Chairman Senate Committee

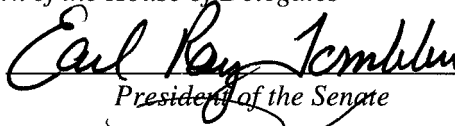
  
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Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

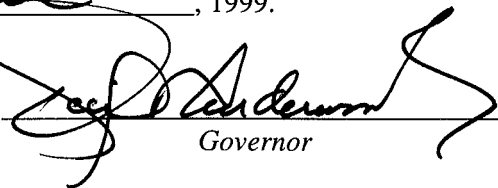
  
\_\_\_\_\_  
Clerk of the Senate

  
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Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within approved this the 8th  
day of April, 1999.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/6/99

Time 2:10 pm