

therapy. Benefits shall be payable only where the services have been delivered pursuant to the referral and periodic review of a holder of a license issued pursuant to chapter 18.71 or 18.57 RCW or where covered services have been rendered by such licensee. Nothing in this section shall preclude a self-funded plan authorized under this chapter from negotiating rates with qualified providers.

(3) Benefits provided under this section shall be for medically necessary services as determined by the self-funded plan authorized under this chapter. Benefits shall be payable for services for the maintenance of a covered individual in cases where significant deterioration in the patient's condition would result without the service. Benefits shall be payable to restore and improve function.

(4) It is the intent of this section that the state, as an employer providing comprehensive health coverage including the benefits required by this section, retains the authority to design and employ utilization and cost controls. Therefore, benefits delivered under this section may be subject to contractual provisions regarding deductible amounts and/or copayments established by the self-funded plan authorized under this chapter. Benefits provided under this section may be subject to standard waiting periods for preexisting conditions, and may be subject to the submission of written treatment plans.

(5) In recognition of the intent expressed in subsection (4) of this section, benefits provided under this section may be subject to contractual provisions establishing annual and/or lifetime benefit limits. Such limits may define the total dollar benefits available, or may limit the number of services delivered as established by the self-funded plan authorized under this chapter.

Passed the House April 17, 1989.

Passed the Senate April 10, 1989.

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## CHAPTER 346

[Substitute House Bill No. 1086]

### UNDERGROUND STORAGE TANKS—DEPARTMENT OF ECOLOGY POWERS AND DUTIES

AN ACT Relating to underground storage tanks; amending RCW 19.27.080; adding a new section to chapter 43.131 RCW; adding a new chapter to Title 90 RCW; creating new sections; providing an effective date; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Sec. 1. LEGISLATIVE FINDING AND INTENT. The legislature finds that leaking underground storage tanks containing petroleum and other regulated substances pose a serious threat to

human health and the environment. To address this threat, the legislature intends for the department of ecology to establish an underground storage tank program designed, operated, and enforced in a manner that, at a minimum, meets the requirements for delegation of the federal underground storage tank program of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901, et seq.). The legislature intends that state-wide requirements for underground storage tanks adopted by the department be consistent with and no less stringent than the objectives outlined in the federal regulations.

The legislature further finds that certain areas of the state possess physical characteristics that make them especially vulnerable to threats from leaking underground storage tanks and that in these environmentally sensitive areas, local requirements more stringent than the state-wide requirements may apply.

**NEW SECTION.** Sec. 2. DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department.

(3) "Federal act" means the federal Resource Conservation and Recovery Act, as amended (42 U.S.C. Sec. 6901, et seq.).

(4) "Federal regulations" means the underground storage tanks regulations (40 C.F.R. Secs. 280 and 281) adopted by the United States environmental protection agency under the federal act.

Except as provided in this section and any rules adopted by the department under this chapter, the definitions contained in the federal regulations apply to the terms in this chapter.

**NEW SECTION.** Sec. 3. DEPARTMENT'S POWERS AND DUTIES. (1) By July 1, 1990, the department shall adopt rules establishing requirements for all underground storage tanks that are regulated under the federal act, taking into account the various classes or categories of tanks to be regulated. The rules must be consistent with and no less stringent than the federal regulations and consist of requirements for the following:

(a) New underground storage tank system design, construction, installation, and notification;

(b) Upgrading existing underground storage tank systems;

(c) General operating requirements;

(d) Release detection;

(e) Release reporting;

(f) Out-of-service underground storage tank systems and closure; and

(g) Financial responsibility for underground storage tanks containing regulated substances.

(2) By July 1, 1990, the department shall adopt rules:

(a) Establishing physical site criteria to be used in designating local environmentally sensitive areas;

(b) Establishing procedures for local government application for this designation; and

(c) Establishing procedures for local government adoption and department approval of rules more stringent than the state-wide standards in these designated areas.

(3) By July 1, 1990, the department shall establish by rule an administrative and enforcement program that is consistent with and no less stringent than the program required under the federal regulations in the areas of:

(a) Compliance monitoring, including procedures for recordkeeping and a program for systematic inspections;

(b) Enforcement;

(c) Public participation; and

(d) Information sharing.

(4) By July 1, 1990, the department shall establish a program that provides for the tagging of underground storage tanks. Tanks are not eligible for tagging unless the owner or operator is in compliance with the requirements of this chapter and annual state and local tank fees have been remitted. The tank tagging program shall be designed to ensure that tags will be clearly identifiable to persons delivering regulated substances to underground storage tanks.

(5) The department may establish programs to certify persons who conduct inspections, testing, closure, cathodic protection, interior tank lining, corrective action, or other activities required under this chapter. Certification programs shall be designed to ensure that each certification will be effective in all jurisdictions of the state.

(6) When adopting rules under this chapter, the department shall consult with the state building code council to ensure coordination with the building and fire codes adopted under chapter 19.27 RCW.

**NEW SECTION. Sec. 4. ADMINISTRATION AND ENFORCEMENT PROGRAM.** (1) The department shall establish a state-wide underground storage tank administration and enforcement program that encourages the delegation of program responsibilities to a qualified city, town, or county. The department shall adopt rules establishing requirements for the delegation of program elements. The department shall provide for an appropriate distribution of resources collected under section 10 of this act between the department and the city, town, or county to cover the cost of delegated responsibilities and shall ensure that these moneys be distributed to the city, town, or county upon delegation of program responsibilities.

(2) A city, town, or county may apply to the department for delegation of program responsibilities of part or all of the underground storage tank program within its jurisdictional boundaries. A fire protection district or

political subdivision may enter into an agreement under chapter 39.34 RCW with a city, town, or county to assume all or a portion of delegated program responsibilities.

(3) In jurisdictions where partial delegation of program responsibilities occurs, the department shall administer and enforce those program elements not delegated. The department shall administer and enforce the entire underground storage tank program in jurisdictions where no delegation of program responsibilities has occurred.

**NEW SECTION.** Sec. 5. ENVIRONMENTALLY SENSITIVE AREAS. (1) A city, town, or county may apply to the department to have an area within its jurisdictional boundaries designated an environmentally sensitive area. A city, town, or county may submit a joint application with any other city, town, or county for joint administration under chapter 39.34 RCW of a single environmentally sensitive area located in both jurisdictions.

(2) A city, town, or county may adopt proposed ordinances or resolutions establishing requirements for underground storage tanks located within an environmentally sensitive area that are more stringent than the statewide standards established under section 3 of this act. If application for the designation of an environmentally sensitive area is made later than five years after the date of final adoption of the rules required under this chapter, proposed local ordinances and resolutions shall only apply to new underground storage tank installations. The local government adopting the ordinances and resolutions shall submit them to the department for approval. Disapproved ordinances and resolutions may be modified and resubmitted to the department for approval. Proposed local ordinances and resolutions become effective when approved by the department.

(3) The department shall approve or disapprove each proposed local ordinance or resolution based on the following criteria:

(a) The area to be regulated is found to be an environmentally sensitive area based on rules adopted by the department; and

(b) The proposed local regulations are reasonably consistent with previously approved local regulations for similar environmentally sensitive areas.

(4) A city, town, or county for which a proposed local ordinance or resolution establishing more stringent requirements is approved by the department may establish local tank fees that meet the requirements of section 10 of this act, if such fees are necessary for enhanced program administration or enforcement.

**NEW SECTION.** Sec. 6. DELIVERY OF REGULATED SUBSTANCES. Regulated substances shall not be delivered to any underground storage tank in the state required to be tagged under section 3 of this act unless proof of valid tagging is displayed on such tank itself or the dispensing or measuring device connected thereto or, where appropriate, in

the office or kiosk of the facility where the tank is located. A supplier shall not refuse to deliver regulated substances to an underground storage tank regulated under this chapter on the basis of its potential to leak contents where the tank is either tagged as required in section 3 of this act or is in compliance with federal underground storage tank regulations and any state or local regulations then in effect. This section does not apply to a supplier who does not directly transfer a regulated substance into an underground storage tank.

**NEW SECTION. Sec. 7. INVESTIGATION AND ACCESS.** (1) If necessary to determine compliance with the requirements of this chapter, an authorized representative of the state engaged in compliance inspections, monitoring, and testing may, by request, require an owner or operator to submit relevant information or documents. The department may subpoena witnesses, documents, and other relevant information that the department deems necessary. In the case of any refusal to obey the subpoena, the superior court for any county in which the person is found, resides, or transacts business has jurisdiction to issue an order requiring the person to appear before the department and give testimony or produce documents. Any failure to obey the order of the court may be punished by the court as contempt.

(2) Any authorized representative of the state may require an owner or operator to conduct monitoring or testing.

(3) Upon reasonable notice, an authorized representative of the state may enter a premises or site subject to regulation under this chapter or in which records relevant to the operation of an underground storage tank system are kept. In the event of an emergency or in circumstances where notice would undermine the effectiveness of an inspection, notice is not required. The authorized representative may copy these records, obtain samples of regulated substances, and inspect or conduct monitoring or testing of an underground storage tank system.

(4) For purposes of this section, the term "authorized representative" or "authorized representative of the state" means an enforcement officer, employee, or representative of the department or a local government unit that has obtained enforcement authority under section 4 of this act.

**NEW SECTION. Sec. 8. ENFORCEMENT.** The director may seek appropriate injunctive or other judicial relief by filing an action in Thurston county superior court or issue such order as the director deems appropriate to:

- (1) Enjoin any threatened or continuing violation of this chapter;
- (2) Restrain immediately and effectively a person from engaging in unauthorized activity that results in a violation of any requirement of this chapter and is endangering or causing damage to public health or the environment;

(3) Require compliance with requests for information, access, testing, or monitoring under section 7 of this act; or

(4) Assess and recover civil penalties authorized under section 9 of this act.

**NEW SECTION. Sec. 9. PENALTIES.** (1) A person who fails to notify the department pursuant to tank notification requirements or who submits false information is subject to a civil penalty not to exceed five thousand dollars per violation.

(2) A person who violates this chapter is subject to a civil penalty not to exceed five thousand dollars for each tank per day of violation.

**NEW SECTION. Sec. 10. ANNUAL TANK FEE.** (1) An annual state tank fee of sixty dollars per tank for fiscal years ending June 30, 1990, and June 30, 1991, and seventy-five dollars per tank each fiscal year thereafter, shall be paid no later than the December 31st of each fiscal year by every person who:

(a) Owns an underground storage tank located in this state; and

(b) Was required to provide notification to the department under the federal act.

This fee is not required of persons who have (i) permanently closed their tanks, and (ii) if required, have completed corrective action in accordance with the rules adopted under this chapter.

(2) The department may authorize the imposition of additional annual local tank fees in environmentally sensitive areas designated under section 5 of this act. Annual local tank fees may not exceed fifty percent of the annual state tank fee.

(3) State and local tank fees collected under this section shall be deposited in the account established under section 11 of this act.

(4) Other than the annual local tank fee authorized for environmentally sensitive areas, no local government may levy an annual tank fee on the ownership or operation of an underground storage tank.

**NEW SECTION. Sec. 11. UNDERGROUND STORAGE TANK ACCOUNT.** The underground storage tank account is created in the state treasury. Money in the account may only be spent, subject to legislative appropriation, for the administration and enforcement of the underground storage tank program established under this chapter. The account shall contain:

(1) All fees collected under section 10 of this act;

(2) All fines or penalties collected under section 9 of this act; and

(3) Any interest earned on the account, subject to RCW 43.84.090.

**NEW SECTION. Sec. 12. PREEMPTION.** (1) Except as provided in section 5 of this act and subsections (2), (3), and (4) of this section, the rules adopted under this chapter supersede and preempt any state or local

underground storage tank law, ordinance, or resolution governing any aspect of regulation covered by the rules adopted under this chapter.

(2) Local laws, ordinances, and resolutions pertaining to local authority to take immediate action in response to a release of a regulated substance are not superseded or preempted.

(3) City, town, or county underground storage tank ordinances that are more stringent than the federal regulations and the uniform codes adopted under chapter 19.27 RCW and that are in effect on November 1, 1988, are not superseded or preempted. A city, town, or county with an ordinance that meets these criteria shall notify the department of the existence of that ordinance by July 1, 1989.

(4) Local laws, ordinances, and resolutions pertaining to permits and fees for the use of underground storage tanks in street right of ways that were in existence prior to the effective date of this section are not superseded or preempted.

NEW SECTION. Sec. 13. The department shall submit an annual report to the appropriate standing committees of the legislature for five years beginning January 1, 1990, on the implementation of the underground storage tank regulatory program, including a report on state and local tank fees. This report shall detail the number of corrective actions taken with regard to leaking underground storage tanks and their associated costs, including anticipated future cleanup costs.

NEW SECTION. Sec. 14. SEVERABILITY CLAUSE. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 15. Section headings used in this act do not constitute any part of the law.

NEW SECTION. Sec. 16. Sections 2 through 14 of this act constitute a new chapter in Title 90 RCW.

NEW SECTION. Sec. 17. A new section is added to chapter 43.131 RCW to read as follows:

Sections 2 through 14 of this act shall expire July 1, 1999.

NEW SECTION. Sec. 18. (1) Except as provided in subsection (2) of this section, sections 6, 12, and 19 of this act take effect on July 1, 1990.

(2) This section shall apply only if this act becomes effective as provided under section 20(2) of this act.

Sec. 19. Section 8, chapter 96, Laws of 1974 ex. sess. as amended by section 1, chapter 282, Laws of 1975 1st ex. sess. and RCW 19.27.080 are each amended to read as follows:

Nothing in this (~~1974 act shall~~) chapter affects the provisions of chapters 19.28, 43.22, 70.77, 70.79, 70.87, 48.48, 18.20, 18.46, 18.51, 28A-.02, 28A.04, 70.41, 70.62, 70.75, 70.108, 71.12, 74.15, 70.94, ((or)) 76.04, or 90.— (sections 2 through 14 of this act) RCW or grant rights to duplicate the authorities provided under chapters 70.94 or 76.04 RCW.

**NEW SECTION.** Sec. 20. (1) Except as provided in subsection (2) of this section, sections 1 through 5, 7 through 11, 13, and 14 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

(2) This act shall take effect only if House Bill 1180 or Senate Bill 5280, as amended or substituted, or any other bill establishing a state reinsurance program for the owners and operators of underground storage tanks, is enacted before July 1, 1989. If the enactment of such reinsurance bill is subsequent to the date of enactment of this act, this act shall take effect on the date of the enactment of the reinsurance bill.

Passed the House April 20, 1989.

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Approved by the Governor May 12, 1989.

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## CHAPTER 347

[House Bill No. 1103]

### MOTOR VEHICLE WARRANTIES—REVISED PROVISIONS

AN ACT Relating to motor vehicle warranties; amending RCW 19.118.021, 19.118.041, 19.118.061, 19.118.080, 19.118.090, 19.118.100, 19.118.110, 19.118.150, and 19.118.160; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 2, chapter 344, Laws of 1987 and RCW 19.118.021 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means new motor vehicle arbitration board.

(2) "Collateral charges" means any (~~sales-related~~) sales or lease related charges including but not limited to sales tax, use tax, arbitration service fees, unused license fees, unused registration fees, unused title fees, finance charges, prepayment penalties, credit disability and credit life insurance costs not otherwise refundable, any other insurance costs prorated for time out of service, transportation charges, dealer preparation charges, or any other charges for service contracts, undercoating, rustproofing, or factory or dealer installed options.