

**As Introduced**

**131st General Assembly  
Regular Session  
2015-2016**

**S. B. No. 150**

**Senator Hite  
Cosponsors: Senator Seitz**

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**A BILL**

To amend sections 2307.75 and 3737.88 and to enact  
section 2305.52 of the Revised Code to create a  
qualified immunity for the dispensing of  
incompatible motor fuel, to limit the Product  
Liability Law with respect to motor fuel and  
motor fuel additives, and to prohibit an insurer  
from denying a claim on the basis that an  
underground storage tank is not compatible with  
a motor fuel if the State Fire Marshal has  
determined otherwise.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 2307.75 and 3737.88 be amended  
and section 2305.52 of the Revised Code be enacted to read as  
follows:

**Sec. 2305.52.** (A) As used in this section:

(1) "Covered person" means a person engaged in the design,  
refining, manufacture, sale, storage, or distribution of motor  
fuel.

(2)(a) "Motor fuel" means all of the following:

(i) Gasoline, diesel fuel, K-1 kerosene, ethanol, gasoline-ethanol blends, or any other liquid motor fuel, including liquid petroleum gas or liquid natural gas; 19  
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(ii) Compressed natural gas. 22

(b) "Motor fuel" does not include substances prepackaged and sold in containers of five gallons or less. 23  
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(3) "Incompatible motor fuel" means motor fuel that is not authorized to be used with an engine or a motor according to the manufacturer of the engine or motor. 25  
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(4) "Retail dealer" means any person that sells or distributes motor fuel at a retail service station in this state. 28  
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(5) "Person" has the same meaning as in section 1.59 of the Revised Code, except that it also includes the state or any political subdivision of the state. 31  
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(6) "Retail service station" means a location from which motor fuel is sold and is dispensed or pumped into motor vehicle fuel tanks or containers for ultimate consumption. 34  
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(B) No covered person is liable in damages or shall be subject to any other remedy in a civil action for the use of incompatible motor fuel in an engine or motor, unless the plaintiff can demonstrate both of the following: 37  
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(1) The incompatible motor fuel was dispensed at a retail service station. 41  
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(2) The incompatible motor fuel was dispensed from a motor fuel pump that was not properly maintained or did not correctly identify the type of fuel dispensed from the pump. 43  
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**Sec. 2307.75.** (A) Subject to the exceptions under 46  
divisions (D), (E), ~~and (F)~~, (G), and (H) of this section, a 47  
product is defective in design or formulation if, at the time it 48  
left the control of its manufacturer, the foreseeable risks 49  
associated with its design or formulation as determined pursuant 50  
to division (B) of this section exceeded the benefits associated 51  
with that design or formulation as determined pursuant to 52  
division (C) of this section. 53

(B) The foreseeable risks associated with the design or 54  
formulation of a product shall be determined by considering 55  
factors including, but not limited to, the following: 56

(1) The nature and magnitude of the risks of harm 57  
associated with that design or formulation in light of the 58  
intended and reasonably foreseeable uses, modifications, or 59  
alterations of the product; 60

(2) The likely awareness of product users, whether based 61  
on warnings, general knowledge, or otherwise, of those risks of 62  
harm; 63

(3) The likelihood that that design or formulation would 64  
cause harm in light of the intended and reasonably foreseeable 65  
uses, modifications, or alterations of the product; 66

(4) The extent to which that design or formulation 67  
conformed to any applicable public or private product standard 68  
that was in effect when the product left the control of its 69  
manufacturer; 70

(5) The extent to which that design or formulation is more 71  
dangerous than a ~~reasonable~~ reasonably prudent consumer would 72  
expect when used in an intended or reasonably foreseeable 73  
manner. 74

(C) The benefits associated with the design or formulation 75  
of a product shall be determined by considering factors 76  
including, but not limited to, the following: 77

(1) The intended or actual utility of the product, 78  
including any performance or safety advantages associated with 79  
that design or formulation; 80

(2) The technical and economic feasibility, when the 81  
product left the control of its manufacturer, of using an 82  
alternative design or formulation; 83

(3) The nature and magnitude of any foreseeable risks 84  
associated with an alternative design or formulation. 85

(D) An ethical drug or ethical medical device is not 86  
defective in design or formulation because some aspect of it is 87  
unavoidably unsafe, if the manufacturer of the ethical drug or 88  
ethical medical device provides adequate warning and instruction 89  
under section 2307.76 of the Revised Code concerning that 90  
unavoidably unsafe aspect. 91

(E) A product is not defective in design or formulation if 92  
the harm for which the claimant seeks to recover compensatory 93  
damages was caused by an inherent characteristic of the product 94  
which is a generic aspect of the product that cannot be 95  
eliminated without substantially compromising the product's 96  
usefulness or desirability and which is recognized by the 97  
ordinary person with the ordinary knowledge common to the 98  
community. 99

(F) A product is not defective in design or formulation 100  
if, at the time the product left the control of its 101  
manufacturer, a practical and technically feasible alternative 102  
design or formulation was not available that would have 103

prevented the harm for which the claimant seeks to recover 104  
compensatory damages without substantially impairing the 105  
usefulness or intended purpose of the product. 106

(G) Subject to division (H) of this section, a product 107  
that is a motor fuel, as defined in section 2305.52 of the 108  
Revised Code, or a fuel additive is not defective in design or 109  
formulation solely because it is, or contains, a renewable fuel, 110  
as defined in section 211(o) (1) (J) of the federal "Clean Air 111  
Act," 42 U.S.C. 7545(o) (1) (J). 112

(H) A product that is a motor fuel, as defined in section 113  
2305.52 of the Revised Code, or a fuel additive is not defective 114  
in design or formulation unless it violates a control or 115  
prohibition imposed by the state fire marshal or by the 116  
administrator of the United States environmental protection 117  
agency pursuant to section 211(c) of the federal "Clean Air 118  
Act," 42 U.S.C. 7545(c), as amended. 119

**Sec. 3737.88.** (A) (1) The state fire marshal shall have 120  
responsibility for implementation of the underground storage 121  
tank program and corrective action program for releases of 122  
petroleum from underground storage tanks established by the 123  
"Resource Conservation and Recovery Act of 1976," 90 Stat. 2795, 124  
42 U.S.C.A. 6901, as amended. To implement the programs, the 125  
state fire marshal may adopt, amend, and rescind such rules, 126  
conduct such inspections, require annual registration of 127  
underground storage tanks, issue such citations and orders to 128  
enforce those rules, enter into environmental covenants in 129  
accordance with sections 5301.80 to 5301.92 of the Revised Code, 130  
and perform such other duties, as are consistent with those 131  
programs. The state fire marshal, by rule, may delegate the 132  
authority to conduct inspections of underground storage tanks to 133

certified fire safety inspectors. 134

(2) In the place of any rules regarding release 135  
containment and release detection for underground storage tanks 136  
adopted under division (A)(1) of this section, the state fire 137  
marshal, by rule, shall designate areas as being sensitive for 138  
the protection of human health and the environment and adopt 139  
alternative rules regarding release containment and release 140  
detection methods for new and upgraded underground storage tank 141  
systems located in those areas. In designating such areas, the 142  
state fire marshal shall take into consideration such factors as 143  
soil conditions, hydrogeology, water use, and the location of 144  
public and private water supplies. Not later than July 11, 1990, 145  
the state fire marshal shall file the rules required under this 146  
division with the secretary of state, director of the 147  
legislative service commission, and joint committee on agency 148  
rule review in accordance with divisions (B) and (C) of section 149  
119.03 of the Revised Code. 150

(3) Notwithstanding sections 3737.87 to 3737.89 of the 151  
Revised Code, a person who is not a responsible person, as 152  
determined by the state fire marshal pursuant to this chapter, 153  
may conduct a voluntary action in accordance with Chapter 3746. 154  
of the Revised Code and rules adopted under it for either of the 155  
following: 156

(a) A class C release; 157

(b) A release, other than a class C release, that is 158  
subject to the rules adopted by the state fire marshal under 159  
division (B) of section 3737.882 of the Revised Code pertaining 160  
to a corrective action, provided that both of the following 161  
apply: 162

(i) The voluntary action also addresses hazardous 163  
substances or petroleum that is not subject to the rules adopted 164  
under division (B) of section 3737.882 of the Revised Code 165  
pertaining to a corrective action. 166

(ii) The state fire marshal has not issued an 167  
administrative order concerning the release or referred the 168  
release to the attorney general for enforcement. 169

The director of environmental protection, pursuant to 170  
section 3746.12 of the Revised Code, may issue a covenant not to 171  
sue to any person who properly completes a voluntary action with 172  
respect to any such release in accordance with Chapter 3746. of 173  
the Revised Code and rules adopted under it. 174

(B) Before adopting any rule under this section or section 175  
3737.881 or 3737.882 of the Revised Code, the state fire marshal 176  
shall file written notice of the proposed rule with the 177  
chairperson of the state fire council, and, within sixty days 178  
after notice is filed, the council may file responses to or 179  
comments on and may recommend alternative or supplementary rules 180  
to the state fire marshal. At the end of the sixty-day period or 181  
upon the filing of responses, comments, or recommendations by 182  
the council, the state fire marshal may adopt the rule filed 183  
with the council or any alternative or supplementary rule 184  
recommended by the council. 185

(C) The state fire council may recommend courses of action 186  
to be taken by the state fire marshal in carrying out the state 187  
fire marshal's duties under this section. The council shall file 188  
its recommendations in the office of the state fire marshal, 189  
and, within sixty days after the recommendations are filed, the 190  
state fire marshal shall file with the chairperson of the 191  
council comments on, and proposed action in response to, the 192

recommendations. 193

(D) For the purpose of sections 3737.87 to 3737.89 of the 194  
Revised Code, the state fire marshal shall adopt, and may amend 195  
and rescind, rules identifying or listing hazardous substances. 196  
The rules shall be consistent with and equivalent in scope, 197  
coverage, and content to regulations identifying or listing 198  
hazardous substances adopted under the "Comprehensive 199  
Environmental Response, Compensation, and Liability Act of 200  
1980," 94 Stat. 2779, 42 U.S.C.A. 9602, as amended, except that 201  
the state fire marshal shall not identify or list as a hazardous 202  
substance any hazardous waste identified or listed in rules 203  
adopted under division (A) of section 3734.12 of the Revised 204  
Code. 205

(E) Except as provided in division (A) (3) of this section, 206  
the state fire marshal shall have exclusive jurisdiction to 207  
regulate the storage, treatment, and disposal of petroleum 208  
contaminated soil generated from corrective actions undertaken 209  
in response to releases of petroleum from underground storage 210  
tank systems. The state fire marshal may adopt, amend, or 211  
rescind such rules as the state fire marshal considers to be 212  
necessary or appropriate to regulate the storage, treatment, or 213  
disposal of petroleum contaminated soil so generated. 214

(F) The state fire marshal shall adopt, amend, and rescind 215  
rules under sections 3737.88 to 3737.883 of the Revised Code in 216  
accordance with Chapter 119. of the Revised Code. 217

(G) (1) No insurer authorized under Title XXXIX of the 218  
Revised Code to conduct business in this state shall deny 219  
payment for a claim on the basis that an underground storage 220  
tank, underground storage tank system, or associated dispensing 221  
equipment that stores or dispenses motor fuel is not compatible 222



with that motor fuel if, in accordance with the rules adopted 223  
under division (A) of this section, the state fire marshal has 224  
determined that the tank, system, or equipment is compatible 225  
with that motor fuel. 226

(2) As used in division (G) (1) of this section, "motor 227  
fuel" has the same meaning as in section 2305.52 of the Revised 228  
Code. 229

**Section 2.** That existing sections 2307.75 and 3737.88 of 230  
the Revised Code are hereby repealed. 231