

SECOND REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 907

94TH GENERAL ASSEMBLY

2008

3580L.06T

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## AN ACT

To repeal sections 49.292, 260.1003, 319.109, 319.129, 319.131, 319.133, and 414.072, RSMo, and to enact in lieu thereof ten new sections relating to the regulation of motor fuel tanks and equipment.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 49.292, 260.1003, 319.109, 319.129, 319.131, 319.133, 2 and 414.072, RSMo, are repealed and ten new sections enacted in lieu thereof, to 3 be known as sections 49.292, 260.1003, 319.109, 319.129, 319.131, 319.133, 4 319.136, 414.036, 414.072, and 442.558, to read as follows:

49.292. 1. Notwithstanding any other law to the contrary, the county 2 commission of any county may reject the transfer of title of real property to the 3 county by donation or dedication if the commission determines that such rejection 4 is in the public interest of the county.

5 2. No transfer of title of real property to the county commission or any 6 other political subdivision by donation or dedication authorized to be recorded in 7 the office of the recorder of deeds shall be valid unless it has been proved or 8 acknowledged. The preparer of the document relating to subsection 1 of this 9 section shall not submit a document to the recorder of deeds for recording unless 10 the acceptance thereof of the grantee named in the document has been proved or 11 acknowledged. **No water or sewer line easement shall be construed as a 12 transfer of title of real property under this subsection.**

260.1003. As used in sections 260.1000 to 260.1039, the following terms 2 shall mean:

3 (1) "Activity and use limitations", restrictions or obligations with respect 4 to real property created under sections 260.1000 to 260.1039;

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

5 (2) "Department", the Missouri department of natural resources or any  
6 other state or federal department that determines or approves the environmental  
7 response project under which the environmental covenant is created;

8 (3) "Common interest community", a condominium, cooperative, or other  
9 real property with respect to which a person, by virtue of the person's ownership  
10 of a parcel of real property, is obligated to pay property taxes, insurance  
11 premiums, maintenance, or improvement of other real property described in a  
12 recorded covenant that creates the common interest community;

13 (4) "Environmental covenant", a servitude arising under an environmental  
14 response project that imposes activity and use limitations;

15 (5) "Environmental response project", a plan or work performed for  
16 environmental remediation of real property and conducted:

17 (a) Under a federal or state program governing environmental remediation  
18 of real property, including but not limited to the Missouri hazardous waste  
19 management law as specified in this chapter;

20 (b) Incident to closure of a solid or hazardous waste management unit, if  
21 the closure is conducted with approval of the department; or

22 (c) Under a state voluntary cleanup program authorized in the Missouri  
23 hazardous waste management law as specified in this chapter.

24 **"Environmental response project" shall not include plans or work**  
25 **performed for environmental remediation of releases from aboveground**  
26 **storage tanks or underground storage tanks as defined in section**  
27 **319.100, RSMo;**

28 (6) "Holder", the grantee of an environmental covenant as specified in  
29 section 260.1006;

30 (7) "Person", an individual, corporation, business trust, estate, trust,  
31 partnership, limited liability company, association, joint venture, public  
32 corporation, government, governmental subdivision, department, or  
33 instrumentality, or any other legal or commercial entity;

34 (8) "Record", information that is inscribed on a tangible medium or that  
35 is stored in an electronic or other medium and is retrievable in perceivable form;

36 (9) "State", a state of the United States, the District of Columbia, Puerto  
37 Rico, the United States Virgin Islands, or any territory or insular possession  
38 subject to the jurisdiction of the United States.

319.109. The department shall establish requirements for the reporting  
2 of any releases and corrective action taken in response to a release from an  
3 underground storage tank, including the specific quantity of a regulated  
4 substance, which if released, requires reporting and corrective action. In so  
5 doing, the department shall use risk-based corrective standards which take into

6 account the level of risk to public health and the environment associated with  
7 site-specific conditions and future land usage. The hazardous waste management  
8 commission is authorized to promulgate rules to implement this section, in  
9 accordance with section 319.137. **By February 13, 2009, the hazardous**  
10 **waste management commission shall propose rules to implement the**  
11 **provisions of this section.** To the extent there is a conflict between this  
12 section and section 644.143, RSMo, or 644.026, RSMo, this section shall prevail.

319.129. 1. There is hereby created a special trust fund to be known as  
2 the "Petroleum Storage Tank Insurance Fund" within the state treasury which  
3 shall be the successor to the underground storage tank insurance fund. Moneys  
4 in such special trust fund shall not be deemed to be state funds. Notwithstanding  
5 the provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall  
6 not be transferred to general revenue at the end of each biennium.

7 2. The owner or operator of any underground storage tank, including the  
8 state of Missouri and its political subdivisions and public transportation systems,  
9 in service on August 28, 1989, shall submit to the department a fee of one  
10 hundred dollars per tank on or before December 31, 1989. The owner or operator  
11 of any underground storage tank who seeks to participate in the petroleum  
12 storage tank insurance fund, including the state of Missouri and its political  
13 subdivisions and public transportation systems, and whose underground storage  
14 tank is brought into service after August 28, 1998, shall transmit one hundred  
15 dollars per tank to the board with his or her initial application. Such amount  
16 shall be a one-time payment, and shall be in addition to the payment required by  
17 section 319.133. The owner or operator of any aboveground storage tank  
18 regulated by this chapter, including the state of Missouri and its political  
19 subdivisions and public transportation systems, who seeks to participate in the  
20 petroleum storage tank insurance fund, shall transmit one hundred dollars per  
21 tank to the board with his or her initial application. Such amount shall be a  
22 one-time payment and shall be in addition to the payment required by section  
23 319.133. Moneys received pursuant to this section shall be transmitted to the  
24 director of revenue for deposit in the petroleum storage tank insurance fund.

25 3. The state treasurer may deposit moneys in the fund in any of the  
26 qualified depositories of the state. All such deposits shall be secured in a manner  
27 and upon the terms as are provided by law relative to state deposits. Interest  
28 earned shall be credited to the petroleum storage tank insurance fund.

29 4. The general administration of the fund and the responsibility for the  
30 proper operation of the fund, including all decisions relating to payments from the  
31 fund, are hereby vested in a board of trustees. The board of trustees shall consist  
32 of the commissioner of administration or the commissioner's designee, the director

33 of the department of natural resources or the director's designee, the director of  
34 the department of agriculture or the director's designee, and eight citizens  
35 appointed by the governor with the advice and consent of the senate. Three of  
36 the appointed members shall be owners or operators of retail petroleum storage  
37 tanks, including one tank owner or operator of greater than one hundred tanks;  
38 one tank owner or operator of less than one hundred tanks; and one aboveground  
39 storage tank owner or operator. One appointed trustee shall represent a financial  
40 lending institution, and one appointed trustee shall represent the insurance  
41 underwriting industry. One appointed trustee shall represent industrial or  
42 commercial users of petroleum. The two remaining appointed citizens shall have  
43 no petroleum-related business interest, and shall represent the nonregulated  
44 public at large. The members appointed by the governor shall serve four-year  
45 terms except that the governor shall designate two of the original appointees to  
46 be appointed for one year, two to be appointed for two years, two to be appointed  
47 for three years and two to be appointed for four years. Any vacancies occurring  
48 on the board shall be filled in the same manner as provided in this section.

49 5. The board shall meet in Jefferson City, Missouri, within thirty days  
50 following August 28, 1996. Thereafter, the board shall meet upon the written call  
51 of the chairman of the board or by the agreement of any six members of the  
52 board. Notice of each meeting shall be delivered to all other trustees in person  
53 or by registered mail not less than six days prior to the date fixed for the  
54 meeting. The board may meet at any time by unanimous mutual consent. There  
55 shall be at least one meeting in each quarter.

56 6. Six trustees shall constitute a quorum for the transaction of business,  
57 and any official action of the board shall be based on a majority vote of the  
58 trustees present.

59 7. The trustees shall serve without compensation but shall receive from  
60 the fund their actual and necessary expenses incurred in the performance of their  
61 duties for the board.

62 8. **[All] The board of trustees shall be a type III agency and shall**  
63 **appoint an executive director and other employees as needed, who shall**  
64 **be state employees and be eligible for all corresponding benefits. The**  
65 **executive director shall have charge of the offices, operations, records,**  
66 **and other employees of the board, subject to the direction of the**  
67 **board. Employees of the board shall receive such salaries and**  
68 **necessary expenses as shall be fixed by the board.**

69 9. Staff resources for the Missouri petroleum storage tank insurance fund  
70 [shall] may be provided by the department of natural resources or another state  
71 agency as otherwise specifically determined by the board. The fund shall

72 compensate the department of natural resources or other state agency for all costs  
73 of providing staff required by this subsection. Such compensation shall be made  
74 pursuant to contracts negotiated between the board and the department of  
75 natural resources or other state agency.

76 [9.] 10. In order to carry out the fiduciary management of the fund, the  
77 board may select and employ, or may contract with, persons experienced in  
78 insurance underwriting, accounting, the servicing of claims and rate making, and  
79 legal counsel to defend third-party claims, who shall serve at the board's  
80 pleasure. Invoices for such services shall be presented to the board in sufficient  
81 detail to allow a thorough review of the costs of such services.

82 [10.] 11. At the first meeting of the board, the board shall elect one of its  
83 members as chairman. The chairman shall preside over meetings of the board  
84 and perform such other duties as shall be required by action of the board.

85 [11.] 12. The board shall elect one of its members as vice chairman, and  
86 the vice chairman shall perform the duties of the chairman in the absence of the  
87 latter or upon the chairman's inability or refusal to act.

88 [12.] 13. The board shall determine and prescribe all rules and  
89 regulations as they relate to fiduciary management of the fund, pursuant to the  
90 purposes of sections 319.100 to 319.137. In no case shall the board have  
91 oversight regarding environmental cleanup standards for petroleum storage  
92 tanks.

93 [13.] 14. No trustee or staff member of the fund shall receive any gain  
94 or profit from any moneys or transactions of the fund. This shall not preclude  
95 any eligible trustee from making a claim or receiving benefits from the petroleum  
96 storage tank insurance fund as provided by sections 319.100 to 319.137.

97 [14.] 15. The board may reinsure all or a portion of the fund's  
98 liability. Any insurer who sells environmental liability insurance in this state  
99 may, at the option of the board, reinsure some portion of the fund's liability.

100 [15.] 16. The petroleum storage tank insurance fund shall expire on  
101 December 31, [2010, or upon revocation of federal regulation 40 CFR Parts 280  
102 and 285, whichever occurs first] **2020**, unless extended by action of the general  
103 assembly. After December 31, [2010] **2020**, the board of trustees may continue  
104 to function for the sole purpose of completing payment of claims made prior to  
105 December 31, [2010] **2020**.

106 [16.] 17. The board shall annually commission an independent financial  
107 audit of the petroleum storage tank insurance fund. The board shall biennially  
108 commission an actuarial analysis of the petroleum storage tank insurance  
109 fund. The results of the financial audit and the actuarial analysis shall be made  
110 available to the public. The board may contract with third parties to carry out

111 the requirements of this subsection.

319.131. 1. Any owner or operator of one or more petroleum storage tanks  
2 may elect to participate in the petroleum storage tank insurance fund to  
3 [partially] meet the financial responsibility requirements of sections [319.100 to  
4 319.137] **319.114 and 414.036, RSMo.** Subject to regulations of the board of  
5 trustees, owners or operators may elect to continue their participation in the fund  
6 subsequent to the transfer of their property to another party. Current or former  
7 refinery sites or petroleum pipeline or marine terminals are not eligible for  
8 participation in the fund.

9 2. The board shall establish an advisory committee which shall be  
10 composed of insurers [and], owners and operators of petroleum storage tanks,  
11 **and other interested parties.** The advisory committee established pursuant  
12 to this subsection shall report to the board. The committee shall monitor the  
13 fund and recommend statutory and administrative changes as may be necessary  
14 to assure efficient operation of the fund. The committee, in consultation with the  
15 board and the department of insurance, shall [annually] report **every two years**  
16 to the general assembly on the availability and affordability of the private  
17 insurance market as a viable method of meeting the financial responsibilities  
18 required by state and federal law in lieu of the petroleum storage tank insurance  
19 fund.

20 3. (1) Except as otherwise provided by this section, any person seeking  
21 to participate in the insurance fund shall submit an application to the board of  
22 trustees and shall certify that the petroleum tanks meet or exceed and are in  
23 compliance with all technical standards established by the United States  
24 Environmental Protection Agency, except those standards and regulations  
25 pertaining to spill prevention control and counter-measure plans, and rules  
26 established by the Missouri department of natural resources and the Missouri  
27 department of agriculture. The applicant shall submit proof that the applicant  
28 has a reasonable assurance of the tank's integrity. Proof of tank integrity may  
29 include but not be limited to any one of the following: tank tightness test,  
30 electronic leak detection, monitoring wells, daily inventory reconciliation, vapor  
31 test or any other test that may be approved by the director of the department of  
32 natural resources or the director of the department of agriculture. The applicant  
33 shall submit evidence that the applicant can meet all applicable financial  
34 responsibility requirements of this section.

35 (2) A creditor, specifically a person who, without participating in and not  
36 otherwise primarily engaged in petroleum production, refining, and marketing,  
37 holds indicia of ownership primarily for the purpose of, or in connection with,  
38 securing payment or performance of a loan or to protect a security interest in or

39 lien on the tank or the property where the tank is located, or serves as trustee or  
40 fiduciary upon transfer or receipt of the property, may be a successor in interest  
41 to a debtor pursuant to this section, provided that the creditor gives notice of the  
42 interest to the insurance fund by certified mail, return receipt requested. Part  
43 of such notice shall include a copy of the lien, including but not limited to a  
44 security agreement or a deed of trust as appropriate to the property. The term  
45 "successor in interest" as provided in this section means a creditor to the debtor  
46 who had qualified real property in the insurance fund prior to the transfer of title  
47 to the creditor, and the term is limited to access to the insurance fund. The  
48 creditor may cure any of the debtor's defaults in payments required by the  
49 insurance fund, provided the specific real property originally qualified pursuant  
50 to this section. The creditor, or the creditor's subsidiary or affiliate, who  
51 forecloses or otherwise obtains legal title to such specific real property held as  
52 collateral for loans, guarantees or other credit, and which includes the debtor's  
53 aboveground storage tanks or underground storage tanks, or both such tanks  
54 shall provide notice to the fund of any transfer of creditor to subsidiary or  
55 affiliate. Liability pursuant to sections 319.100 to 319.137 shall be confined to  
56 such creditor or such creditor's subsidiary or affiliate. A creditor shall apply for  
57 a transfer of coverage and shall present evidence indicating a lien, contractual  
58 right, or operation of law permitting such transfer, and may utilize the creditor's  
59 affiliate or subsidiary to hold legal title to the specific real property taken in  
60 satisfaction of debts. Creditors may be listed as insured or additional insured on  
61 the insurance fund, and not merely as mortgagees, and may assign or otherwise  
62 transfer the debtor's rights in the insurance fund to the creditor's affiliate or  
63 subsidiary, notwithstanding any limitations in the insurance fund on assignments  
64 or transfer of the debtor's rights.

65 (3) Any person participating in the fund shall annually submit an amount  
66 established pursuant to subsection 1 of section 319.133 which shall be deposited  
67 to the credit of the petroleum storage tank insurance fund.

68 4. Any person making a claim pursuant to this section and sections  
69 319.129 and 319.133 shall be liable for the first ten thousand dollars of the cost  
70 of cleanup associated with a release from a petroleum storage tank without  
71 reimbursement from the fund. The petroleum storage tank insurance fund shall  
72 assume all costs, except as provided in subsection 5 of this section, which are  
73 greater than ten thousand dollars but less than one million dollars per occurrence  
74 or two million dollars aggregate per year. The liability of the petroleum storage  
75 tank insurance fund is not the liability of the state of Missouri. The provisions  
76 of sections 319.100 to 319.137 shall not be construed to broaden the liability of  
77 the state of Missouri beyond the provisions of sections 537.600 to 537.610, RSMo,

78 nor to abolish or waive any defense which might otherwise be available to the  
79 state or to any person. The presence of existing contamination at a site where a  
80 person is seeking insurance in accordance with this section shall not affect that  
81 person's ability to participate in this program, provided the person meets all  
82 other requirements of this section. Any person who qualifies pursuant to sections  
83 319.100 to 319.137 and who has requested approval of a project for remediation  
84 from the fund, which request has not yet been decided upon shall annually be  
85 sent a status report including an estimate of when the project may expect to be  
86 funded and other pertinent information regarding the request.

87         5. The fund shall provide coverage for third-party claims involving  
88 property damage or bodily injury caused by leaking petroleum storage tanks  
89 whose owner or operator is participating in the fund at the time the release  
90 occurs or is discovered. [Coverage for third-party bodily injury shall not exceed  
91 one million dollars per occurrence.] Coverage for third-party property damage **or**  
92 **bodily injury shall be in addition to the coverage described in**  
93 **subsection 4 of this section but the total liability of the petroleum**  
94 **storage tank insurance fund for all cleanup costs, property damage, and**  
95 **bodily injury shall not exceed one million dollars per occurrence or two**  
96 **million dollars aggregate per year.** The fund shall not compensate an owner  
97 or operator for repair of damages to property beyond that required to contain and  
98 clean up a release of a regulated substance or compensate an owner or operator  
99 or any third party for loss or damage to other property owned or belonging to the  
100 owner or operator, or for any loss or damage of an intangible nature, including,  
101 but not limited to, loss or interruption of business, pain and suffering of any  
102 person, lost income, mental distress, loss of use of any benefit, or punitive  
103 damages.

104         6. The fund shall, within limits specified in this section, assume costs of  
105 third-party claims and cleanup of contamination caused by releases from  
106 petroleum storage tanks. The fund shall provide the defense of eligible  
107 third-party claims including the negotiations of any settlement.

108         7. Nothing contained in sections 319.100 to 319.137 shall be construed to  
109 abrogate or limit any right, remedy, causes of action, or claim by any person  
110 sustaining personal injury or property damage as a result of any release from any  
111 type of petroleum storage tank, nor shall anything contained in sections 319.100  
112 to 319.137 be construed to abrogate or limit any liability of any person in any way  
113 responsible for any release from a petroleum storage tank or any damages for  
114 personal injury or property damages caused by such a release.

115         8. (1) The fund shall provide moneys for cleanup of contamination caused  
116 by releases from petroleum storage tanks, the owner or operator of which is



117 participating in the fund or the owner or operator of which has made application  
118 for participation in the fund by December 31, 1997, regardless of when such  
119 release occurred, provided that those persons who have made application are  
120 ultimately accepted into the fund. Applicants shall not be eligible for fund  
121 benefits until they are accepted into the fund. This section shall not preclude the  
122 owner or operator of petroleum storage tanks coming into service after December  
123 31, 1997, from making application to and participating in the petroleum storage  
124 tank insurance fund.

125 (2) Notwithstanding the provisions of section 319.100 and the provisions  
126 of subdivision (1) of this section, the fund shall provide moneys for cleanup of  
127 contamination caused by releases from petroleum storage tanks owned by school  
128 districts all or part of which are located in a county of the third classification  
129 without a township form of government and having a population of more than ten  
130 thousand seven hundred but less than eleven thousand inhabitants, and which  
131 make application for participation in the fund by August 28, 1999, regardless of  
132 when such release occurred. Applicants shall not be eligible for fund benefits  
133 until they are accepted into the fund, and costs incurred prior to that date shall  
134 not be eligible expenses.

135 9. (1) The fund shall provide moneys for cleanup of contamination caused  
136 by releases from underground storage tanks which contained petroleum and  
137 which have been taken out of use prior to December 31, 1997, provided such sites  
138 have been documented by or reported to the department of natural resources prior  
139 to December 31, 1997, and provided further that the fund shall make no  
140 reimbursements for expenses incurred prior to August 28, 1995. The fund shall  
141 also provide moneys for cleanup of contamination caused by releases from  
142 underground storage tanks which contained petroleum and which have been  
143 taken out of use prior to December 31, 1985, if the current owner of the real  
144 property where the tanks are located purchased such property before December  
145 31, 1985, provided such sites are reported to the fund on or before June 30,  
146 2000. The fund shall make no payment for expenses incurred at such sites prior  
147 to August 28, 1999. Nothing in sections 319.100 to 319.137 shall affect the  
148 validity of any underground storage tank fund insurance policy in effect on  
149 August 28, 1996.

150 (2) An owner or operator who submits a request as provided in this  
151 subsection is not required to bid the costs and expenses associated with  
152 professional environmental engineering services. The board may disapprove all  
153 or part of the costs and expenses associated with the environmental engineering  
154 services if the costs are excessive based upon comparable service costs or current  
155 market value of similar services. The owner or operator shall solicit bids for

156 actual remediation and cleanup work as provided by rules of the board.

157 **(3) After December 31, 2017, the current legal owner of the site**  
158 **shall be the responsible party for corrective action, pursuant to section**  
159 **319.109, of any releases from underground storage tanks described in**  
160 **this subsection, provided the creditor, who is a successor in interest as**  
161 **provided in subdivision (2) of subsection 3 of this section, is subject to**  
162 **no greater or lesser responsibility for corrective action than such**  
163 **successor in interest would have on or before December 31,**  
164 **2017. Nothing in this subdivision shall in any way be construed to**  
165 **alter, alleviate, or modify in any manner any liabilities that the fund**  
166 **has to pay for in cleaning up the site.**

167 10. (1) The fund shall provide moneys for cleanup of contamination  
168 caused by releases from aboveground storage tanks utilized for the sale of  
169 products regulated by chapter 414, RSMo, which have been taken out of use prior  
170 to December 31, 1997, provided such sites have been documented by or reported  
171 to the department of natural resources prior to December 31, 1997, and provided  
172 further that the fund shall make no reimbursements for expenses incurred prior  
173 to July 1, 1997.

174 **(2) After December 31, 2017, the current legal owner of the site**  
175 **shall be the responsible party for corrective action of any releases from**  
176 **aboveground storage tanks described in this subsection, provided the**  
177 **creditor, who is a successor in interest as provided in subdivision (2)**  
178 **of subsection 3 of this section, is subject to no greater or lesser**  
179 **responsibility for corrective action than such successor in interest**  
180 **would have on or before December 31, 2017. Nothing in this subdivision**  
181 **shall in any way be construed to alter, alleviate, or modify in any**  
182 **manner any liabilities that the fund has to pay for in cleaning up the**  
183 **site.**

319.133. 1. The board shall, in consultation with the advisory committee  
2 established pursuant to subsection 2 of section 319.131, establish, by rule, the  
3 amount which each owner or operator who participates in the fund shall pay  
4 annually into the fund, but such amount shall not exceed the limits established  
5 in this section.

6 2. Each participant shall annually pay an amount which shall be at least  
7 one hundred dollars per year but not more than [three] five hundred dollars per  
8 year for any tank, as established by the board by rule.

9 3. No new registration fee is required for a change of ownership of a  
10 petroleum storage tank.

11 4. The board shall establish procedures where persons owning fifty or

12 more petroleum storage tanks may pay any fee established pursuant to subsection  
13 1 of this section in installments.

14 5. All rules applicable to the former underground storage tank insurance  
15 fund not inconsistent with the provisions of sections 319.100 to 319.137 shall  
16 apply to the petroleum storage tank insurance fund as of August 28, 1996.

17 6. **The board may require any new applicant, who has not**  
18 **previously held private insurance or other form of financial**  
19 **responsibility for the petroleum storage tank for which application to**  
20 **the fund is made, to conduct a site assessment before participating in**  
21 **the fund. The board also may require such new applicants to pay a**  
22 **surcharge per year per tank from the date the tank was eligible for**  
23 **coverage under the fund, provided that each year's surcharge shall not**  
24 **exceed the surcharge that was actually in effect for that particular**  
25 **year.**

26 7. Any rule or portion of a rule, as that term is defined in section  
27 536.010, RSMo, that is created under the authority delegated in this  
28 section shall become effective only if it complies with and is subject to  
29 all of the provisions of chapter 536, RSMo, and, if applicable, section  
30 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable  
31 and if any of the powers vested with the general assembly pursuant to  
32 chapter 536, RSMo, to review, to delay the effective date, or to  
33 disapprove and annul a rule are subsequently held unconstitutional,  
34 then the grant of rulemaking authority and any rule proposed or  
35 adopted after August 28, 2008, shall be invalid and void.

319.136. 1. An underground storage tank shall be ineligible for  
2 delivery, deposit, or acceptance of petroleum if the underground  
3 storage tank meets one or more of the following conditions:

4 (1) Required spill prevention equipment is not installed;  
5 (2) Required overfill protection equipment is not installed;  
6 (3) Required leak detection equipment is not installed; or  
7 (4) Required corrosion protection equipment is not  
8 installed. This subdivision shall not apply to a buried metal flexible  
9 connector.

10 2. Upon the discovery of a violation of this section, the  
11 department shall, within fourteen days, notify the owner or operator in  
12 writing of such violation and affix a red violation tag stating the  
13 underground storage tank is in violation and is ineligible to receive  
14 petroleum to the fill pipe of the noncompliant underground storage  
15 tank using a tamper-resistant strap or straps, fill pipe bag, or any

16 combination thereof so the tag is visible to any person attempting to  
17 deliver petroleum to the underground storage tank.

18 3. Notwithstanding the provisions of subsection 1 of this section  
19 to the contrary, the department may authorize delivery, deposit, or  
20 acceptance of petroleum to an ineligible underground storage tank in  
21 the following circumstances:

22 (1) In an emergency situation; or

23 (2) If such activity is necessary to test or calibrate the  
24 underground storage tank or dispenser system.

25 In either case, the department may authorize delivery, deposit, or  
26 acceptance of petroleum to an otherwise ineligible underground  
27 storage tank for up to one hundred eighty days. If the department  
28 grants a waiver pursuant to this subdivision, no red violation tag, as  
29 required under subsection 1 of this section, shall be affixed to the fill  
30 pipe for the length of the waiver.

31 4. A violation of this section causes the individual tank in  
32 violation to become ineligible to receive petroleum, but shall not cause  
33 other tanks at such facility to become ineligible to receive petroleum.

34 5. The owner or operator shall not allow petroleum to be  
35 deposited into an underground storage tank that has a red violation tag  
36 affixed to its fill pipe.

37 6. No person shall deface, alter, or otherwise tamper with a red  
38 violation tag so that the information contained on the tag is not  
39 legible. Removal of a red violation tag shall only be allowed pursuant  
40 to subsection 7 of this section.

41 7. Upon notification by the owner or operator to the department  
42 documenting that the violation has been corrected, the department  
43 shall immediately, unless an inspection is required, provide  
44 authorization to the owner or operator to remove the red violation tag.  
45 If the department requires an inspection to determine the violation has  
46 been corrected, such inspection shall be conducted within twenty-four  
47 hours after receiving notification from the owner or operator. If the  
48 department does not conduct the inspection within twenty-four hours  
49 after receiving notification from the owner or operator, the owner or  
50 operator may remove the red violation tag and immediately place the  
51 system and underground storage tank back into operation pending the  
52 inspection. A red violation tag that has been removed by the owner or  
53 operator shall be returned to the department within five business days  
54 in a postage paid envelope provided by the department.

55           8. Notwithstanding the provisions of section 621.250, RSMo, to  
56 the contrary, when the department has affixed a red violation tag to  
57 make a noncompliant underground storage tank ineligible to receive  
58 petroleum, the owner or operator of that tank may, in addition to all  
59 administrative appeals and remedies, appeal the department's action  
60 to the circuit court in the county where the tank is located within ten  
61 business days of the department's action.

          414.036. 1. After December 31, 2010, the owner or operator of an  
2 aboveground storage tank defined in subsection 2 of this section shall  
3 maintain evidence of financial responsibility in an amount equal to or  
4 greater than one million dollars per occurrence and two million dollars  
5 annual aggregate for the costs of taking corrective action and  
6 compensating third parties for bodily injury and property damage  
7 caused by sudden and nonsudden accidental releases arising from the  
8 operation of the tank.

9           2. For the purposes of this section, "aboveground storage tank"  
10 is defined as any one or a combination of tanks, including pipes  
11 connected thereto, used to contain an accumulation of petroleum and  
12 the volume of which, including the volume of the aboveground pipes  
13 connected thereto, is ninety percent or more above the surface of the  
14 ground, which is utilized for the sale of products regulated by this  
15 chapter. The term does not include those tanks described in  
16 paragraphs (a) to (k) of subdivision (16) of section 319.100, RSMo, nor  
17 does it include aboveground storage tanks at refineries, petroleum  
18 pipeline terminals, or marine terminals.

19           3. Owners and operators may meet the requirements of this  
20 section by participating in the petroleum storage tank insurance fund  
21 created in section 319.129, RSMo, or by any other method approved by  
22 the department.

23           4. The department shall promulgate rules to implement the  
24 provisions of this section. Any rule or portion of a rule, as that term is  
25 defined in section 536.010, RSMo, that is created under the authority  
26 delegated in this section shall become effective only if it complies with  
27 and is subject to all of the provisions of chapter 536, RSMo, and, if  
28 applicable, section 536.028, RSMo. This section and chapter 536, RSMo,  
29 are nonseverable and if any of the powers vested with the general  
30 assembly pursuant to chapter 536, RSMo, to review, to delay the  
31 effective date, or to disapprove and annul a rule are subsequently held  
32 unconstitutional, then the grant of rulemaking authority and any rule

33 **proposed or adopted after August 28, 2008, shall be invalid and void.**

414.072. 1. At least every six months, the director shall test and inspect  
2 the measuring devices used by any person selling an average of two hundred or  
3 more gallons of gasoline, gasoline-alcohol blends, diesel fuel, heating oil,  
4 kerosene, or aviation turbine fuel per month at either retail or wholesale in this  
5 state, except marine installations, which shall be tested and inspected at least  
6 once per year.

7 2. When the director finds that any measuring device does not correctly  
8 and accurately register and measure the monetary cost, if applicable, or the  
9 volume sold, he shall require the correction, removal, or discontinuance of the  
10 same.

11 3. **Notwithstanding any other law or rule to the contrary, it has**  
12 **been and continues to be the public policy of this state to prohibit**  
13 **gasoline and diesel motor fuel in a retail sale transaction from being**  
14 **dispensed by any measuring device or equipment that is not approved**  
15 **by the department of agriculture or the National Type Evaluation**  
16 **Program (NTEP).**

442.558. 1. As used in this section, the following terms shall  
2 mean:

3 (1) "Transfer", the sale, gift, conveyance, assignment, inheritance,  
4 or other transfer of ownership interest in real property located in this  
5 state;

6 (2) "Transfer fee", a fee or charge payable upon the transfer of an  
7 interest in real property, or payable for the right to make or accept  
8 such transfer, regardless of whether the fee or charge is a fixed amount  
9 or is determined as a percentage of the value of the property, the  
10 purchase price, or other consideration given for the transfer. Transfer  
11 fee shall not include the following:

12 (a) Any consideration payable by the grantee to the grantor for  
13 the interest in real property being transferred;

14 (b) Any commission payable to a licensed real estate broker for  
15 the transfer of real property under an agreement between the broker  
16 and the grantor or the grantee;

17 (c) Any interest, charges, fees, or other amounts payable by a  
18 borrower to a lender under a loan secured by a mortgage against real  
19 property, including but not limited to any fee payable to the lender for  
20 consenting to an assumption of the loan or a transfer of the real  
21 property subject to the mortgage, any fees or charges payable to the  
22 lender for estoppel letters or certificates, and any other consideration

23 allowed by law and payable to the lender in connection with the loan;

24 (d) Any rent, reimbursement, charge, fee, or other amount  
25 payable by a lessee to a lessor under a lease, including but not limited  
26 to any fee payable to the lessor for consenting to an assignment,  
27 subletting, encumbrance, or transfer of the lease;

28 (e) Any consideration payable to the holder of an option to  
29 purchase an interest in real property or the holder of a right of first  
30 refusal or first offer to purchase an interest in real property for  
31 waiving, releasing, or not exercising the option or right upon the  
32 transfer of the property to another person;

33 (f) Any tax, fee, charge, assessment, fine, or other amount  
34 payable to or imposed by a governmental authority;

35 (3) "Transfer fee covenant", a declaration or covenant purporting  
36 to affect real property which requires or purports to require the  
37 payment of a transfer fee to the declarant or other person specified in  
38 the declaration or covenant or to their successors or assigns upon a  
39 subsequent transfer of an interest in the real property.

40 2. A transfer fee covenant recorded in this state on or after  
41 September 1, 2008, shall not run with the title to real property and is  
42 not binding on or enforceable at law or in equity against any  
43 subsequent owner, purchaser, or mortgagee of any interest in real  
44 property as an equitable servitude or otherwise. Any lien purporting  
45 to secure the payment of a transfer fee under a transfer fee covenant  
46 recorded in this state on or after September 1, 2008, is void and  
47 unenforceable.

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