

b. A person commits railroad vandalism in the second degree if the person intentionally commits railroad vandalism which results in serious injury to any person. Railroad vandalism in the second degree is a class "B" felony.

c. A person commits railroad vandalism in the third degree if the person intentionally commits railroad vandalism which results in bodily injury to any person or results in property damage which costs more than ten thousand dollars to replace, repair, or restore. Railroad vandalism in the third degree is a class "C" felony.

d. A person commits railroad vandalism in the fourth degree if the person intentionally commits railroad vandalism which results in property damage which costs ten thousand dollars or less but more than one thousand dollars to replace, repair, or restore. Railroad vandalism in the fourth degree is a class "D" felony.

e. A person commits railroad vandalism in the fifth degree if the person intentionally commits railroad vandalism which results in property damage which costs more than five hundred dollars but does not exceed one thousand dollars to replace, repair, or restore. Railroad vandalism in the fifth degree is an aggravated misdemeanor.

f. A person commits railroad vandalism in the sixth degree if the person intentionally commits railroad vandalism which results in property damage which costs more than one hundred dollars but does not exceed five hundred dollars to replace, repair, or restore. Railroad vandalism in the sixth degree is a serious misdemeanor.

g. A person commits railroad vandalism in the seventh degree if the person intentionally commits railroad vandalism which results in property damage which costs one hundred dollars or less to replace, repair, or restore. Railroad vandalism in the seventh degree is a simple misdemeanor.

3. For purposes of this section, "railway corporation" means a corporation, company, or person owning, leasing, or operating any railroad in whole or in part within the state.

For purposes of this section, "train component" means any locomotive, engine, tender, railroad car, passenger car, freight car, box car, tank car, hopper car, flatbed, container, work equipment, rail-mounted equipment, or any other railroad rolling stock.

For purposes of this section, "train" means a series of two or more train components which are coupled together in a line.

Approved April 9, 1998

CHAPTER 1068

UNDERGROUND STORAGE TANK INSURANCE FUND AND BOARD

H.F. 2490

AN ACT relating to the administration of the insurance account of the comprehensive petroleum underground storage tank fund, creating an underground storage tank insurance board, an underground storage tank insurance fund, and transferring assets and liabilities of the insurance account of the comprehensive petroleum underground storage tank fund.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 455G.2, subsection 4, Code 1997, is amended to read as follows:

4. "Claimant" means an owner or operator who has received assistance under the remedial account or who has coverage under the insurance ~~account~~ fund with respect to a release, or an installer or inspector who has coverage under the insurance ~~account~~ fund.

Sec. 2. Section 455G.2, Code 1997, is amended by adding the following new subsection: NEW SUBSECTION. 12A. "Insurance board" means the Iowa underground storage tank insurance board created under section 455G.11.

Sec. 3. Section 455G.3, subsection 3, paragraph c, Code 1997, is amended to read as follows:

c. To establish an insurance ~~account~~ fund for insurable underground storage tank risks within the state as provided by section 455G.11.

Sec. 4. Section 455G.3, subsection 4, Code 1997, is amended to read as follows:

4. The state, the general fund of the state, or any other fund of the state, other than the Iowa comprehensive petroleum underground storage tank fund, is not liable for a claim or cause of action in connection with a tank not owned or operated by the state, or agency of the state. All expenses incurred by the fund shall be payable solely from the fund and no liability or obligation shall be imposed upon the state. The liability of the fund is limited to the extent of coverage provided by the account or fund under which a claim is submitted, subject to the terms and conditions of that coverage. The liability of the fund is further limited by the moneys made available to the fund, and no remedy shall be ordered which would require the fund to exceed its then current funding limitations to satisfy an award or which would restrict the availability of moneys for higher priority sites. The state is not liable for a claim presented against the fund.

Sec. 5. Section 455G.4, subsection 3, Code 1997, is amended to read as follows:

3. RULES AND EMERGENCY RULES.

a. The board shall adopt rules regarding its practice and procedures, develop underwriting standards, establish premiums for insurance ~~account~~ fund coverage and risk factors, procedures for investigating and settling claims made against the fund, determine appropriate deductibles or retentions in coverages or benefits offered, and otherwise implement and administer this chapter.

b. The board may adopt administrative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to implement this subsection for one year after May 5, 1989.

c. Rules necessary for the implementation and collection of the environmental protection charge shall be adopted on or before June 1, 1989.

d. Rules necessary for the implementation and collection of insurance ~~account~~ fund premiums shall be adopted prior to offering insurance to an owner or operator of a petroleum underground storage tank or other person.

e. Rules related to the establishment of the insurance ~~account~~ fund and the terms and conditions of coverage shall be adopted as soon as practicable to permit owners and operators to meet their applicable compliance date with federal financial responsibility regulations.

f. Rules to facilitate and encourage the use of community remediation whenever possible shall be adopted.

g. The board shall adopt rules relating to appeal procedures which shall require the administrator to deliver notice of appeal to the affected parties within fifteen days of receipt of notice, require that the hearing be held within one hundred eighty days of the filing of the petition unless good cause is shown for the delay, and require that a final decision be issued no later than one hundred twenty days following the close of the hearing. The time restrictions in this paragraph may be waived by mutual agreement of the parties.

Sec. 6. Section 455G.8, subsection 4, Code 1997, is amended to read as follows:

4. INSURANCE PREMIUMS. Insurance premium income as provided by section 455G.11 shall be credited to the insurance ~~account~~ fund.

Sec. 7. Section 455G.11, subsections 1 through 6, Code 1997, are amended to read as follows:

0A. UNDERGROUND STORAGE TANK INSURANCE FUND.

a. An Iowa underground storage tank insurance fund is created as a separate fund in the state treasury on the effective date of this Act consisting of all moneys held in the insurance account of the comprehensive petroleum underground storage tank fund.

Notwithstanding section 8.33, moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the underground storage tank insurance fund. Notwithstanding section 12C.7, interest or earnings on moneys in the fund shall be credited to the fund in addition to any other income specifically allocated to the underground storage tank insurance fund.

b. Amounts in the underground storage tank insurance fund shall not be subject to appropriation for any purpose by the general assembly, but shall be used only for the purposes set forth in this section. The treasurer of state shall act as custodian of the fund and disperse moneys contained in it as directed by the board. The treasurer of state is authorized to invest the moneys deposited in the fund at the discretion of the board. The income from such investments shall be credited to and deposited in the fund. The fund shall be administered by the board which shall make expenditures from the fund consistent with the purposes of the programs provided for in this chapter without further appropriation.

c. No later than July 1, 2004, all moneys in the fund shall be transferred to the insurance board when restructured as an independent nonprofit entity organized to provide an allowable mechanism to demonstrate financial responsibility as required in 40 C.F.R. pts. 280 and 281, owned and operated by insureds, as determined by the comprehensive petroleum underground storage tank fund board.

0B. UNDERGROUND STORAGE TANK INSURANCE BOARD.

a. An underground storage tank insurance board is established and shall consist of the following members:

(1) The treasurer of state or the treasurer of state's designee serving for a two-year term. The treasurer of state or the treasurer of state's designee shall serve as a nonvoting member of the insurance board.

(2) The auditor of state or the auditor of state's designee serving for a three-year term. The auditor of state or the auditor of state's designee shall serve as a nonvoting member of the insurance board.

(3) A representative of a governmental subdivision which owns an underground storage tank system which is insured through the insurance account and was insured through the insurance account of the comprehensive petroleum underground storage tank fund beginning on or before October 26, 1990, appointed by the governor and serving a six-year term.

(4) Two owners or operators appointed by the governor who have been petroleum systems insureds through the insurance account and were insured through the insurance account of the comprehensive petroleum underground storage tank fund on or before October 26, 1990. The insurance board members appointed under this subparagraph shall serve a term of six years and shall be eligible to serve subsequent terms pursuant to paragraph "b".

b. After the initial terms served by the insurance board members designated in paragraph "a", subparagraphs (1), (2), (3), and (4), all subsequent insurance board members shall be a part of and elected by the population of private insureds who have been petroleum systems insureds through the underground storage tank insurance fund and were insured through the insurance account of the comprehensive petroleum underground storage tank fund. The subsequent insurance board members elected pursuant to this paragraph shall serve for three-year terms and are eligible to serve an unlimited number of terms.

c. Members of the insurance board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties within the limits of the moneys appropriated to the insurance board or made available to the fund.

d. Members of the insurance board shall elect a voting chairperson from among the members who are privately insured owners and operators.

0C. RECOMMENDATIONS FOR RESTRUCTURING. Prior to the restructuring of the

insurance board as an independent nonprofit entity, the insurance board shall provide recommendations to the comprehensive petroleum underground storage tank fund board relating to all of the following:

a. Relating to rules, practices, procedures, underwriting criteria, premium determinations, organizational structure, procedures for investigating and settling claims, determining appropriate deductibles, benefits offered, and otherwise implementing and administering the underground storage tank insurance fund.

b. Confirming that the insurance board has established a process to independently provide the following:

(1) Long-term insurability based upon competitive rates for insureds who are in compliance with technical regulatory requirements.

(2) Elimination of any lapse in coverage between state insurance coverage and private insurance coverage.

(3) Ease in transition from state underwriting criteria, application process, claims handling, and premium determinations.

(4) Participation of insureds in establishing underwriting, application, claims, and premium determinations.

(5) Continued approval as an acceptable financial assurance mechanism as required in 40 C.F.R. pts. 280 and 281.

c. Determining a date specific upon which all assets and liabilities of the insurance fund will be transferred to the insurance board as an independent nonprofit entity organized to provide an allowable mechanism to provide financial responsibility as required by 40 C.F.R. pts. 280 and 281, owned and operated by insureds, on or before July 1, 2004.

0D. TRANSFER OF INSURANCE BOARD MONEYS.

a. If the insurance board dissolves or ceases to function as an acceptable financial assurance mechanism as required in 40 C.F.R. pts. 280 and 281, any unencumbered and unobligated moneys transferred to the insurance board pursuant to subsection 0A, paragraph "c", shall be transferred to the comprehensive petroleum underground storage tank fund, or if the comprehensive petroleum underground storage tank fund is no longer in existence, the unencumbered and unobligated moneys shall be transferred to the general fund of the state.

b. If a person or persons purchase the ownership rights of the assets of the underground storage tank insurance board, any unencumbered and unobligated moneys transferred to the insurance board pursuant to subsection 0A, paragraph "c", shall be transferred to the comprehensive petroleum underground storage tank fund, or if the comprehensive petroleum underground storage tank fund is no longer in existence, the unencumbered and unobligated moneys shall be transferred to the general fund of the state.

1. INSURANCE ACCOUNT FUND AS A FINANCIAL ASSURANCE MECHANISM. The insurance ~~account~~ fund shall offer financial assurance for a qualified owner or operator under the terms and conditions provided for under this section. Coverage may be provided to the owner or the operator, or to each separately. The board is not required to resolve whether the owner or operator, or both are responsible for a release under the terms of any agreement between the owner and operator.

The source of funds for the insurance ~~account~~ fund shall be from the following:

a. Moneys allocated to the board or moneys allocated to the account by the board according to the fund budget approved by the board.

b. Moneys collected as an insurance premium including service fees, if any, and investment income attributed to the account by the board.

2. LIMITS OF COVERAGE AVAILABLE. An owner or operator required to maintain proof of financial responsibility may purchase coverage up to the federally required levels for that owner or operator subject to the terms and conditions under this section and those adopted by the board.

3. ELIGIBILITY OF OWNERS AND OPERATORS FOR INSURANCE ACCOUNT COVERAGE. An owner or operator, subject to underwriting requirements and such terms

and conditions deemed necessary and convenient by the board, may purchase insurance coverage from the insurance ~~account~~ fund to provide proof of financial responsibility provided that a tank to be insured satisfies one of the following conditions:

a. Satisfies performance standards for new underground storage tank systems as specified by the federal environmental protection agency in 40 C.F.R. § 280.20, as amended through January 1, 1989.

b. Has satisfied on or before the date of the application standards for upgraded underground storage tank systems as specified by the federal environmental protection agency in 40 C.F.R. § 280.21, as amended through January 1, 1989.

~~e. The applicant certifies in writing to the board that the tank to be insured will be brought into compliance with either paragraph "a" or "b", on or before December 22, 1998, provided that prior to the provision of insurance account coverage, the tank site tests release free. An owner or operator who fails to comply as certified to the board on or before December 22, 1998, shall not insure that tank through the insurance account unless and until the tank satisfies the requirements of paragraph "a" or "b". An owner or operator who fails to comply with either paragraph "a" or "b" by October 26, 1993, or who fails to enter into a contract on or before October 26, 1993, which, upon completion, will bring the owner or operator into compliance with either paragraph "a" or "b" by December 22, 1998, may be eligible for financial assurance under this section but shall be subject to an additional surcharge of eight hundred dollars per tank in addition to payment of a premium that is equal to two times the cost of the premium required under subsection 4, paragraph "g", per insured time period.~~

d. The applicant either:

(1) Is maintaining financial responsibility pursuant to current or previously applicable federal or state financial responsibility requirements on petroleum underground storage tanks within the state.

(2) Complies with the applicable following date for financial responsibility:

(a) On or before April 26, 1990, for a petroleum marketing firm owning at least thirteen, but no more than ninety-nine petroleum underground storage tanks.

(b) On or before October 26, 1990, for an owner or operator not described in subparagraph subdivision (a), and not currently or previously required to maintain financial responsibility by federal or state law on tanks within the state.

~~4. ACTUARIALY SOUND PREMIUMS BASED ON RISK FACTOR ADJUSTMENTS AFTER FIVE YEARS.~~ The annual premium for insurance coverage shall be:

a. For the year July 1, 1989, through June 30, 1990, one hundred dollars per tank.

b. For the year July 1, 1990, through June 30, 1991, one hundred fifty dollars per tank.

c. For the year July 1, 1991, through June 30, 1992, two hundred dollars per tank.

d. For the year July 1, 1992, through June 30, 1993, two hundred fifty dollars per tank.

e. For the year July 1, 1993, through June 30, 1994, in accordance with the following:

(1) For a tank satisfying subsection 3, paragraph "a" or "b", three hundred dollars per tank.

(2) For a tank qualifying under subsection 3, paragraph "c", six hundred dollars per tank.

f. For the period from July 1, 1994, through December 31, 1994, in accordance with the following:

(1) For a tank satisfying subsection 3, paragraph "a" or "b", three hundred fifty dollars per tank.

(2) For a tank qualifying under subsection 3, paragraph "c", seven hundred dollars per tank.

c. Is in compliance with all technical requirements of the department.

4. INSURANCE ACCOUNT PREMIUMS.

~~g. For subsequent time periods, an An~~ owner or operator applying for coverage shall pay an annually adjusted insurance premium for coverage by the insurance ~~account~~ fund. The board may only approve fund coverage through the payment of a premium established on an

actuarially sound basis. Risk factors shall be taken into account in establishing premiums. It is the intent of the general assembly that an actuarially sound premium reflect the risk to the insurance ~~account~~ fund presented by the insured. Risk factor adjustments should reflect the range of risk presented by the variety of tank systems, monitoring systems, and risk management practices in the general insurable tank population. Premium adjustments for risk factors should at minimum take into account lifetime costs of a tank and monitoring system and insurance ~~account~~ fund premiums for that tank system so as to provide a positive economic incentive to the owner or operator to install the more environmentally safe option so as to reduce the exposure of the insurance ~~account~~ fund to loss. Actuarially sound is not limited in its meaning to fund premium revenue equaling or exceeding fund expenditures for the general tank population.

~~Tanks receiving financial assurance pursuant to subsection 3, paragraph "c", shall not be included in the general tank population for purposes of determining actuarially sound premiums under this paragraph.~~

If coverage is purchased for any part of a year the purchaser shall pay the full annual premium.

h. The insurance ~~account~~ fund may offer, at the buyer's option, a range of deductibles. A ten thousand dollar deductible policy shall be offered.

5. FUTURE REPEAL. The future repeal of this section shall not terminate the following obligations or authorities necessary to administer the obligations until these obligations are satisfied:

a. The payment of claims filed prior to the effective date of any future repeal, against the insurance ~~account~~ fund until moneys in the ~~account~~ fund are exhausted. Upon exhaustion of the moneys in the ~~account~~ fund, any remaining claims shall be invalid.

b. The resolution of a cost recovery action filed prior to the effective date of the repeal.

6. INSTALLER'S AND INSPECTOR'S INSURANCE COVERAGE.

a. COVERAGE. The board shall may offer insurance coverage under the fund's insurance ~~account~~ fund to installers and inspectors of certified underground storage tank installations within the state for an environmental hazard arising in connection with a certified installation as provided in this subsection. Coverage shall be limited to environmental hazard coverage for both corrective action and third-party liability for a certified tank installation within the state in connection with a release from that tank.

b. ANNUAL PREMIUMS. The annual premium shall be:

(1) For the year July 1, 1991, through June 30, 1992, two hundred dollars per insured tank.

(2) For the year July 1, 1992, through June 30, 1993, two hundred fifty dollars per insured tank.

(3) For the year July 1, 1993, through June 30, 1994, three hundred dollars per insured tank.

(4) For the period from July 1, 1994, through December 31, 1994, three hundred fifty dollars per insured tank.

(5) For subsequent time periods, installers and inspectors shall pay an annually adjusted insurance premium to maintain coverage on each tank previously installed or newly insured by the insurance ~~account~~ fund. The board may only approve fund coverage through the payment of a premium established on an actuarially sound basis. The premium paid shall be fully earned and is not subject to refund or cancellation. If coverage is purchased for any part of a year the purchaser shall pay the full annual premium.

(6) The board may offer coverage at rates based on sales if the qualifying installer or inspector cannot be rated on a per tank basis, or if the work the installer or inspector performs involves more than tank installation. The rates to develop premiums shall be based on the premium charged per tank under subparagraphs (1), (2), (3), and (4).

c. LIMITS OF COVERAGE AVAILABLE. Installers and inspectors may purchase coverage up to one million dollars per occurrence and two million dollars aggregate, subject to the terms and conditions under this section and those adopted by the board.

d. DEDUCTIBLE. The insurance ~~account fund~~ may offer, at the buyer's option, a range of deductibles. A ten thousand dollar deductible policy shall be offered.

e. EXCESS COVERAGE. Installers and inspectors may purchase excess coverage of up to five million dollars upon such terms and conditions as determined by the board.

f. CERTIFICATION OF TANK INSTALLATIONS. The board shall adopt certification rules requiring certification of a new tank installation as a precondition to offering insurance to an owner or operator or an installer or inspector. The board shall set in the rule the effective date for the certification requirement. Certification rules shall at minimum require that an installation be personally inspected by an independent licensed engineer, local fire marshal, state fire marshal's designee, or other person who is unaffiliated with the tank owner, operator, installer or inspector, who is qualified and authorized by the board to perform the required inspection and that the tank and installation of the tank comply with applicable technical standards and manufacturer's instructions and warranty conditions. An inspector may be an owner or operator of a tank, or an employee of an owner, operator, or installer.

g. The board may cease offering insurance coverage under this subsection if the board determines that competitive private market alternatives exist.

Sec. 8. Section 455G.11, subsection 8, Code 1997, is amended to read as follows:

8. ACCOUNT EXPENDITURES. Moneys in the insurance ~~account fund~~ may be expended to take corrective action for and to compensate a third party for damages, including but not limited to payment of a judgment for bodily injury or property damage caused by a release from a tank, where coverage has been provided to the owner or operator from the insurance ~~account fund~~, up to the limits of coverage extended. A personal injury is not a compensable third-party liability damage.

Sec. 9. Section 455G.11, subsection 10, Code 1997, is amended by striking the subsection.

Sec. 10. Section 455G.11, subsection 11, Code 1997, is amended to read as follows:

~~11.~~ 10. LIMITATIONS ON THIRD-PARTY LIABILITY. To the extent that coverage under this section includes third-party liability, third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

Sec. 11. Section 455G.11, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 11. The board may cease offering insurance coverage under this subsection if the board determines that competitive private market alternatives exist and if the board determines that all of the following conditions are met:

a. Long-term insurability based upon competitive rates for insureds who are in compliance with technical regulatory requirements.

b. Elimination of any lapse in coverage between state insurance coverage and private insurance coverage.

c. Ease in transition from state underwriting criteria, application process, claims handling, and premium determinations.

d. Participation of insureds in establishing underwriting, application, claims, and premium determinations.

e. Continued approval as an acceptable financial assurance mechanism as required in 40 C.F.R. pts. 280 and 281.

Sec. 12. Section 455G.13, subsection 2, paragraph b, Code 1997, is amended to read as follows:

b. An owner or operator's liability for a release for which coverage is admitted under the insurance ~~account fund~~ shall not exceed the amount of the deductible.

Sec. 13. Section 455G.13, subsection 12, Code 1997, is amended to read as follows:

12. RECOVERY OR SUBROGATION — INSTALLERS AND INSPECTORS. Notwithstanding any other provision contained in this chapter, the board or a person insured under the insurance ~~account~~ fund has no right of recovery or right of subrogation against an installer or an inspector insured by the fund for the tank giving rise to the liability other than for recovery of any deductibles paid.

Sec. 14. Section 455G.14, Code 1997, is amended to read as follows:

455G.14 FUND NOT SUBJECT TO REGULATION.

The fund, including but not limited to insurance coverage offered by the insurance ~~account~~ fund, is not subject to regulation under chapter 502 or title XIII, subtitle 1.

Approved April 9, 1998

CHAPTER 1069

MEDICAL ASSISTANCE REIMBURSEMENT FOR CERTAIN PROVIDERS

H.F. 2523

AN ACT relating to the reimbursement of certain providers of services under the medical assistance program.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 249A.18 COST-BASED REIMBURSEMENT — RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CLINICS.

Rural health clinics and federally qualified health clinics shall receive cost-based reimbursement for the provision of services to recipients of medical assistance, subject to limitations and exclusions based on federal law and regulations as determined by the director.

Approved April 9, 1998

CHAPTER 1070

CHILD CUSTODY AND VISITATION — MISCELLANEOUS PROVISIONS

H.F. 677

AN ACT relating to child custody and visitation including the consideration of parent's criminal history in the awarding of visitation rights and including an exception from mandatory participation in a course by parties to an action involving child custody or visitation.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 598.19A, subsection 1, Code 1997, is amended to read as follows:

1. The court shall order the parties to any action which involves the issues of child custody or visitation ~~shall~~ to participate in a court-approved course to educate and sensitize the