

State of Arizona
Senate
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 206

SENATE BILL 1338

AN ACT

REPEALING SECTION 49-1017, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2000, CHAPTER 131, SECTION 3; AMENDING SECTION 49-1054, ARIZONA REVISED STATUTES; RELATING TO UNDERGROUND STORAGE TANKS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Repeal

3 Section 49-1017, Arizona Revised Statutes, as amended by Laws 2000,
4 chapter 131, section 3, is repealed.

5 Sec. 2. Section 49-1054, Arizona Revised Statutes, is amended to read:
6 49-1054. Extent of coverage; insurance

7 A. The department shall provide coverage from the assurance account
8 for ninety per cent of the reasonable and necessary costs of eligible
9 activities pursuant to section 49-1052, subsection A. Ninety per cent of the
10 reasonable and necessary costs shall be the extent of coverage, except that
11 owners and operators are eligible for coverage from the assurance account for
12 only fifty per cent of the reasonable and necessary costs of corrective
13 actions pertaining to soil and groundwater remediation for releases reported
14 after June 30, 2000 from underground storage tanks that are not permanently
15 closed, not temporarily closed or not upgraded in accordance with the rules
16 adopted pursuant to section 49-1014. The owner or operator shall pay the
17 remaining costs of the eligible activities pursuant to section 49-1052,
18 subsection A. The maximum amount that is subject to coverage is five hundred
19 thousand dollars. An owner or operator is eligible for additional coverage
20 from the assurance account up to a maximum of one million dollars if the
21 owner or operator meets both of the following conditions:

22 1. The owner or operator has submitted certification to the department
23 that the owner or operator has submitted a claim against any applicable
24 insurance coverage and has certified to the department the amount of any
25 benefits or reimbursement that the owner or operator has received or will
26 receive from any insurance coverage that might apply to the costs of the
27 corrective action. The owner or operator is eligible for payment from the
28 department to the extent that the corrective action costs have not been
29 reimbursed by insurance and within the coverage limits prescribed by this
30 paragraph. The department may compel the production of documents to
31 determine the existence, amount and type of coverage available. An owner or
32 operator shall report to the department any subsequent payment or
33 reimbursement for claims made for corrective actions costs. The owner or
34 operator shall remit to the department within thirty days any amounts that
35 were previously paid to the owner or operator from the underground storage
36 tank revolving fund assurance account and that have also been recovered from
37 insurance.

38 2. The owner or operator has utilized to the maximum extent possible
39 any alternative financial assurance mechanisms required for coverage pursuant
40 to section 49-1052, subsection F, paragraph 5. The department may compel the
41 production of documents to determine the existence, amount and type of
42 alternative coverage available. An owner or operator shall report to the
43 department any payment of corrective actions costs through these alternative
44 mechanisms. The owner or operator shall remit to the department within

1 thirty days any amounts that were recovered by the owner or operator from the
2 underground storage tank revolving fund assurance account and that have also
3 been recovered from any alternative mechanisms.

4 B. The department shall not disburse more than the maximum amounts
5 prescribed by subsection A of this section from the assurance account for
6 corrective action costs associated with an occurrence regardless of the
7 number of persons who are eligible for coverage.

8 C. The department shall pay eligible costs that are reasonable and
9 were actually incurred. Reasonableness of corrective actions shall be
10 determined based on the law and the facts available to the owner, operator
11 or person described in section 49-1052, subsection I at the time the
12 technical decision was made. Corrective action costs that are preapproved by
13 the department or corrective actions that are performed at the written
14 request or written instruction of the department are deemed reasonable,
15 necessary and reimbursable. ~~The department's review of corrective action~~
16 ~~costs that were preapproved is limited to determining whether the corrective~~
17 ~~actions were actually performed and whether the corrective actions and costs~~
18 ~~conform to the preapproval. The department shall pay all conforming~~
19 ~~corrective actions and costs without further review.~~ At least every three
20 years, the department shall establish schedules of corrective action costs
21 which the department considers reasonable. For those years that the
22 department does not establish a cost schedule, all costs shall be adjusted
23 annually in accordance with the percentage change in the bureau of labor
24 statistics annual number for the final producer price index for finished
25 goods less food and energy not seasonally adjusted. These cost schedules
26 shall be task-based costs relating to the phases of corrective action. The
27 department may establish additional cost schedules for incremental costs that
28 are necessary to supplement the task-based costs to reflect limited site
29 specific conditions. No other cost schedules shall be established and all
30 eligible work shall be reviewed and paid based on the task-based costs and
31 incremental costs when necessary. The department shall not require costs
32 associated with a given task to include details on time and materials if the
33 total costs claimed for that task do not exceed the amount for that task in
34 the schedule of corrective action costs as established pursuant to this
35 section. The department shall pay the costs that are associated with a given
36 task and that do not exceed the amount for that task in the applicable cost
37 schedule. Payments to an owner or operator shall be based on the schedule
38 of corrective action costs in effect on the date a contract for corrective
39 action work was entered into by the owner or operator, or if that date cannot
40 be determined, the date work associated with the corrective action was
41 performed. The cost schedules apply to all corrective action costs submitted
42 for payment from the assurance account, including any costs incurred by the
43 department in taking corrective actions after May 27, 1998 and to the
44 recovery of those corrective action costs by the department pursuant to

1 sections 49-1017, 49-1017.01 and 49-1022. THE DEPARTMENT SHALL PAY FOR WORK
2 ITEM COSTS AS IF THE WORK WAS SPECIFIED WITHIN A PREAPPROVED WORK PLAN IF THE
3 WORK IS WITHIN THE WORK OBJECTIVES OF A PREAPPROVED WORK PLAN, AND IF EITHER
4 OF THE FOLLOWING APPLY:

5 1. THE COST IS FOR A WORK ITEM THAT IS SUBSTITUTED FOR A WORK ITEM
6 THAT WAS SET FORTH IN THE PREAPPROVED WORK PLAN, IF THE COST DOES NOT EXCEED
7 BOTH OF THE FOLLOWING:

8 (a) THE COST SCHEDULE FOR THE WORK ITEM SUBMITTED IN SUBSTITUTION.

9 (b) THE COST OF THE WORK ITEM ORIGINALLY PREAPPROVED.

10 2. THE COST IS FOR REASONABLE AND NECESSARY WORK THAT IS NOT SPECIFIED
11 WITHIN THE PREAPPROVED WORK PLAN AS A WORK ITEM, AND IS NOT A SUBSTITUTED
12 WORK ITEM, IF THE COST DOES NOT RESULT IN BOTH OF THE FOLLOWING:

13 (a) PAYMENTS UNDER THE PREAPPROVED WORK PLAN TO EXCEED THE TOTAL
14 PREAPPROVED AMOUNT.

15 (b) PAYMENTS TO EXCEED THE COST SCHEDULE FOR THAT WORK ITEM.

16 IF PAYMENT FOR THE COSTS PURSUANT TO PARAGRAPH 2 OF THIS SUBSECTION WOULD
17 CAUSE AN EXCEEDANCE OF THE TOTAL PREAPPROVED AMOUNT IN THE WORK PLAN, THAT
18 EXCESS AMOUNT FOR THE WORK THAT IS EQUAL TO OR LESS THAN THE APPLICABLE COST
19 SCHEDULES SHALL BE PRIORITIZED FOR PAYMENT AS PRESCRIBED BY SECTION 49-1052,
20 SUBSECTION G.

21 D. The department shall allow upgrade and replacement costs incurred
22 at the time of corrective action for compliance with 40 Code of Federal
23 Regulations section 280.21 regarding corrosion protection and spill and
24 overfill prevention to be applied on a dollar for dollar basis not to exceed
25 ten per cent of the reasonable and necessary costs of corrective actions as
26 calculated pursuant to subsection A of this section.

27 E. An owner or operator shall not receive payment from the department
28 until after the owner or operator has submitted certification to the
29 department that the owner or operator has submitted a claim against any
30 applicable insurance coverage and has certified to the department the amount
31 of any benefits or reimbursement that the owner or operator has received or
32 will receive from any insurance coverage that might apply to the costs of the
33 corrective action. The owner or operator is eligible for payment from the
34 department to the extent that the corrective action costs have not been and
35 will not be reimbursed by insurance and within the coverage limits prescribed
36 by this section. An owner or operator shall report to the department whether
37 it has insurance coverage available and shall comply with all applicable
38 financial responsibility requirements. The department may compel the
39 production of documents to determine the existence, amount and type of
40 coverage available. An owner or operator shall report to the department any
41 subsequent payment or reimbursement for claims made for corrective actions
42 costs. The owner or operator shall remit to the department within thirty
43 days any amounts that were previously paid to the owner or operator from the

1 underground storage tank revolving fund assurance account and that have also
2 been recovered from insurance.

3 F. Appeals fees and costs payable pursuant to section 49-1091.01 shall
4 be paid in the next regular round of payment without being subject to ranking
5 and in the order received by the department.

APPROVED BY THE GOVERNOR MAY 9, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 9, 2002.

Passed the House April 29, 20 02

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

Passed the Senate March 27, 20 02

by the following vote: 29 Ayes,

1 Nays, 0 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

S.B. 1338

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate May 7, 2002

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

Randall Grant
President of the Senate

Charmine Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

7 day of May, 2002

at 4:30 o'clock P M.

Sandra Chaney
Secretary to the Governor

Approved this 9 day of

May, 2002,

at 12:47 o'clock P M.

Janice Lee Hull
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 9 day of May, 2002

at 3:27 o'clock P M.

Betsy Boyles
Secretary of State