AN ACT concerning health and environment; relating to the Kansas storage tank act; extending the existence of the underground fund and aboveground fund and increasing the maximum liability thereof; amending K.S.A. 65-34,118, 65-34,120 and 65-34,123 and repealing the existing sections.

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

Section 1. K.S.A. 65-34,118 is hereby amended to read as follows:

65-34,118. (a) Whenever the secretary has reason to believe that there is or has been a release into the environment from a petroleum storage tank and has reason to believe that such release poses a danger to human health or the environment, the secretary shall obtain corrective action for such release from the owner or operator, or both, or from any past owner or operator who has contributed to such release. Such corrective action shall be performed in accordance with a plan approved by the secretary. Upon approval of such plan, the owner or operator shall obtain and submit to the secretary at least three bids from persons qualified to perform the corrective action except that, the secretary may waive this requirement upon a showing that the owner or operator has made a good faith effort but has not been able to obtain three bids from qualified bidders.

(b) If the owner or operator is unable or unwilling to perform corrective action as provided for in subsection (a) or no owner or operator can be found, the secretary may undertake appropriate corrective action utilizing funds from the underground fund, if the release was from an underground petroleum storage tank, or from the aboveground fund, if the release was from an aboveground petroleum storage tank. Costs incurred by the secretary in taking a corrective action, including administrative and legal expenses, are recoverable from the owner or operator and may be recovered in a civil action in district court brought by the secretary. Corrective action costs recovered under this section shall be deposited in the underground fund, if the release was from an underground petroleum storage tank, or from in the aboveground fund, if the release was from an aboveground petroleum storage tank. Corrective action taken by the secretary under this subsection need not be completed in order to seek recovery of corrective action costs, and an action to recover such costs may be commenced at any stage of a corrective action.
(c) An owner or operator shall be liable for all costs of corrective action incurred by the state of Kansas as a result of a release from a petroleum storage tank, unless the owner or operator, or both, enter into a consent agreement with the secretary in the name of the state within a reasonable period of time, which Such time period may be specified by rules and regulations. At a minimum, the owner or operator, or both, must agree that:

1. The owner or operator shall be liable for the appropriate amounts pursuant to K.S.A. 65-34,119, and amendments thereto;
2. the state of Kansas and the respective fund are relieved of all liability to an owner or operator for any loss of business, damages and taking of property associated with the corrective action;
3. the department or its contractors may enter upon the property of the owner or operator, at such time and in such manner as deemed necessary, to monitor and provide oversight for the necessary corrective action to protect human health and the environment;
4. the owner or operator shall be fully responsible for removal, replacement or retrofitting of petroleum storage tanks and the cost thereof shall not be reimbursable from the respective fund;
5. the owner or operator shall effectuate corrective action according to a plan approved by the secretary pursuant to subsection (a);
6. the liability of the state and the respective fund shall not exceed $1,000,000, less the deductible amount, for any release from a petroleum storage tank; and
7. such other provisions as are deemed appropriate by the secretary to ensure adequate protection of human health and the environment.

(d) For purposes of this act, corrective action costs shall include the actual costs incurred for the following:

1. Removal of petroleum products from petroleum storage tanks, surface waters, groundwater or soil;
2. investigation and assessment of contamination caused by a release from a petroleum storage tank;
3. preparation of corrective action plans approved by the secretary;
4. removal of contaminated soils;
5. soil treatment and disposal;
6. environmental monitoring;
7. lease, purchase and maintenance of corrective action equipment;
8. restoration of a private or public potable water supply, where possible, or replacement thereof, if necessary; and
9. other costs identified by the secretary as necessary for proper investigation, corrective action planning and corrective action activities to meet the requirements of this act.

Sec. 2. K.S.A. 65-34,120 is hereby amended to read as follows: 65-
34,120. (a) Nothing in this act shall establish or create any liability or responsibility on the part of the secretary, the department or its agents or employees, or the state of Kansas to pay any corrective action costs from any source other than the respective fund created by this act.

(b) In no event shall the underground fund be liable for the payment of corrective action costs in an amount in excess of the following, less any applicable deductible amounts of the owner or operator:

1. For costs incurred in response to any one release from an underground petroleum storage tank, $1,000,000 to $2,000,000;
2. Subject to the provisions of subsection (a)(4), for an owner or operator of 100 or fewer underground petroleum storage tanks, an annual aggregate of $1,000,000; and
3. Subject to the provisions of subsection (a)(4), for an owner or operator of more than 100 underground petroleum storage tanks, an annual aggregate of $2,000,000.

(c) In no event shall the aboveground fund be liable for the payment of corrective action costs in an amount in excess of the following, less the deductible amounts of the owner or operator:

1. For costs incurred in response to any one release from an aboveground petroleum storage tank, $1,000,000 to $2,000,000;
2. For an owner or operator of 100 or fewer aboveground petroleum storage tanks, an annual aggregate of $1,000,000; and
3. For an owner or operator of more than 100 aboveground petroleum storage tanks, an annual aggregate of $2,000,000.

(d) This act is intended to assist an owner or operator only to the extent provided for in this act, and it is in no way intended to relieve the owner or operator of any liability that cannot be satisfied by the provisions of this act.

(e) Neither the secretary nor the state of Kansas shall have any liability or responsibility to make any payments for corrective action if the respective fund created herein is insufficient to do so. In the event the respective fund is insufficient to make the payments at the time the claim is filed, such claims shall be paid in the order of filing at such time as moneys are paid into the respective fund.

(f) No common-law liability, and no statutory liability which that is provided in a statute other than in this act, for damages resulting from a release from a petroleum storage tank is affected by this act. The authority, power and remedies provided in this act are in addition to any authority, power or remedy provided in any statute other than a section of this act or provided at common law.

(g) If a person conducts a corrective action activity in response to a release from a petroleum storage tank, whether or not the person files a claim against the respective fund under this act, the claim and corrective
Sec. 3. K.S.A. 65-34,123 is hereby amended to read as follows: 65-34,123. The underground fund and the aboveground fund shall be and are hereby abolished on July 1, 2034.

Sec. 4. K.S.A. 65-34,118, 65-34,120 and 65-34,123 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.