

SENATE NO. 538

AN ACT TO FACILITATE HOMEOWNERS REMEDIATING HEATING OIL SPILLS

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Section 127B ½ of chapter 111 of the General Laws, as appearing in the 2002
2 Official Edition, is hereby amended by inserting after the word “from”, in line 3, the following
3 words:- contaminated media caused by leakage of home heating oil or natural gas from.

4 SECTION 2. Said section 127B ½ of said chapter 111, as so appearing, is hereby further
5 amended by inserting after the word “tank”, in lines 13 and 19, the following words:- removal
6 of contaminated media caused by leakage of home heating oil or natural gas.

7 SECTION 3. Chapter 148 of the General Laws, is hereby amended by inserting after section
8 38I, the following new section 38J:

9 Section 38J. Upgrading of liquid fuel supply and return lines for residential aboveground
10 storage tanks.

11 (a) All owners of residential property in the commonwealth utilizing one or more above
12 ground liquid fuel storage tanks for consumptive use on the premises with one or more fuel
13 supply lines in direct contact with concrete or earth shall enclose such fuel supply lines with a
14 continuous non metallic sleeve, or 2) replace any such supply line with a new line enclosed with
15 a continuous protective sleeve, or 3) have a listed oil safety valve installed at the tank end of the

16 fuel supply line in accordance with the manufacturer's instructions, or 4) employ any other leak
17 detection method approved by the board of fire prevention regulations within the department of
18 fire services, provided that such upgrades are not required if the burner is located above the fuel
19 storage tank and the entire fuel supply line is connected to, and above, the top of the tank. All
20 owners of residential property in the commonwealth utilizing an aboveground liquid fuel
21 storage tank for consumptive use on the premises of 1,100 gallons or less capacity with both a
22 fuel supply line and a fuel return line in direct contact with concrete or earth shall have such
23 lines replaced and enclosed with continuous non-metallic sleeves. Such upgrades shall be
24 completed in accordance with the latest manufacturers' standards.

25 (b) The requirements to upgrade fuel supply lines as set forth in subsection 38J(a) do not
26 apply to owners of residential property where the fuel supply lines were installed or upgraded
27 on or after January 1, 1990 in accordance with 527 CMR 4.00.

28 (c) All upgrades required by subsection 38J (a) shall be completed by June 30, 2010.

29 (d) Upgrades of fuel supply and return lines as required by this section 38J shall be
30 inspected by the head of the local fire department or his designee. A reasonable fee may be
31 charged for such inspection.

32 (e) The board of fire prevention regulations within the department of fire services, in
33 coordination with the department of public safety, shall adopt regulations to carry out the
34 purposes of this section. All such rules and regulations shall be filed with the joint committee
35 on public safety and homeland security not less than 60 days before their effective dates.

36 (f) For purposes of this section, “residential property” shall mean a 1 to 4- family
37 residence.

38 SECTION 4. Chapter 175 of the General Laws is hereby amended by inserting after section 4C
39 the following section:-

40 Section 4D. No insurer licensed to write and engaged in the writing of homeowners’
41 insurance, nor the joint underwriting association formed pursuant to chapter 175C, shall: (1) fail
42 to provide coverage for, exclude from coverage or deny coverage for response action costs
43 incurred under chapter 21E and the regulations promulgated pursuant thereto, incurred in
44 response to a release of liquid fuel from a residential liquid fuel storage tank or any piping, fuel
45 supply lines, equipment or systems connected thereto; (2) refuse to defend and indemnify a
46 policyholder from third party claims arising out of the release of liquid fuel into the
47 environment; (3) refuse to issue or renew a policy, cancel an existing policy, charge an
48 excessive premium or provide limits for all such coverage for escaped liquid fuel related
49 response costs, claims and liability that are less than \$50,000 per occurrence for first party
50 property and \$200,000 per occurrence for third party liability, in addition to legal defense costs,
51 subject to a reasonable deductible that shall be not greater than \$1,000 per claim; or (4)
52 otherwise discriminate in the availability, terms and conditions of a homeowner’s policy based
53 on the existence of a liquid fuel storage tank or any piping, fuel supply lines, equipment or
54 systems connected thereto at the insured’s property or in response to a claim of a release of
55 liquid fuel into the environment. For the purposes of this section, first party property coverage
56 shall include response action costs incurred to assess and remediate a liquid fuel release
57 impacting soil, indoor air or other environmental media on the insured’s own property and the
58 reimbursement of any associated personal property damage. Third party liability coverage shall

59 defend and indemnify the insured against any third party claims and shall include response
60 action costs incurred to address conditions on and off the insured's own property arising from a
61 liquid fuel release on the insured's property that has impacted or is likely to impact groundwater
62 or has migrated or is likely to migrate to a third party's property. First party and third party
63 liability coverage shall apply simultaneously and in addition to one another when both
64 coverages are applicable. This section shall apply to residential properties, as defined in
65 subsection (f) of section 38J of chapter 148. Insurers may charge reasonable premiums for such
66 coverage, with a loss cost multiplier not exceeding that for other coverages under the same
67 policy, and may charge higher premiums for residential properties currently served by
68 underground liquid fuel tanks than are charged for residential properties served by above-
69 ground liquid fuel tanks.

70 SECTION 5. Notwithstanding any general or special law to the contrary, the department
71 of environmental protection shall investigate and report to the joint committee on natural
72 resources and agriculture on the department's research and recommendations on liquid fuel
73 releases at and from residential properties, including the reduction of current annual fees billed
74 to residential sites listed under the Massachusetts Contingency Plan and measures to reduce the
75 burden on homeowners for complying with the Massachusetts Contingency Plan without
76 sacrificing the protection of public health, safety, welfare and the environment at such sites.
77 The report shall be filed not later than June 30, 2009.

78 SECTION 6. The board of fire prevention regulations shall adopt the initial regulations
79 required by subsection (e) of section 38J of chapter 148 of the General Laws, inserted by section
80 3 of this act, within 1 year after the effective date of this act.

81 SECTION 7. Notwithstanding section 4D of chapter 175 of the General Laws, effective
82 January 1, 2009, an insurer may refuse to provide coverage pursuant to said section 4D of said
83 chapter 175 with respect to residential property that has not completed any upgrades and
84 inspection required pursuant to section 38J of chapter 148 of the General Laws and any
85 regulations promulgated thereto; provided, however, that such coverage shall be provided once
86 the required upgrades and inspection have been completed and the insured provides evidence
87 thereof to the insurer.

88 SECTION 8. Section 4D of chapter 175 of the General Laws shall apply to all policies
89 written after January 1, 2009.

90 SECTION 9. Section 3 shall take effect on January 1, 2009.