

# Bill Text for SB2404 of 2007-2008 Session

## Relative to facilitating homeowner heating oil spill remediation.

Prime sponsor: **Joint Committee on Environment, Natural Resources & Agriculture**

COMMONWEALTH OF MASSACHUSETTS 2008

AUTHOR: JOINT COMMITTEE ENVIRONMENT NATURAL RESOURCES AND AGRICULTURE

SB2404

Chapter 453 of the Acts of 2008

AN ACT RELATIVE TO HOMEOWNER HEATING SAFETY.

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

SECTION 1. Section 127B½ of chapter 111 of the General Laws as appearing in the 2006 Official Edition is hereby amended by striking out in line 3 the words "a residential underground fuel storage tank or" and inserting in place thereof the following words:- contaminated media caused by a release of home heating oil or from.

SECTION 2. Said section 127B½ of said chapter 111 as so appearing is hereby further amended by inserting after the word "tank" in lines 13 and 19 the following words:- removal of contaminated media caused by a release of home heating oil.

SECTION 3. Chapter 148 of the General Laws is hereby amended by inserting after section 38I the following section:-

Section 38J. (a) As used in this section the following words shall unless the context clearly requires otherwise have the following meanings:-

"Board" the board of fire prevention regulations within the department.

"Fuel supply line" a line from a tank to a burner in which oil is supplied to the burner.

"Fuel return line" a line that returns unused fuel oil back to the tank.

"Oil burner" a device for burning oil in heating appliances including but not limited to boilers furnaces water heaters or ranges.

"Oil safety valve" a device that prevents the flow of oil if a fuel supply line breaks.

"Residential property" a 1- to 4-unit dwelling used for living or sleeping.

"Tank" a liquid fuel tank in which heating oil is stored and from which heating oil is delivered or pumped through a fuel supply line to an oil burner whether located within a dwelling or other structure including tanks installed at or below grade level or located outdoors but excluding underground tanks wherever located.

(b) An owner of residential property utilizing a heating oil tank for consumptive use on the premises with 1 or more fuel supply lines or return lines in direct contact with concrete earth or other floor surfaces shall: (1) enclose any fuel supply line with a continuous non-metallic sleeve; (2) cause an oil safety valve to be installed at the tank end of any fuel supply line in accordance with the manufacturer's instructions; or (3) employ any other release prevention method approved by the board; provided however that the upgrades described in clauses (1) to (3) inclusive shall not be required if the burner is located above the fuel storage tank and the entire fuel supply line is connected to and above the top of the tank.

(c) The provisions of subsection (b) shall not apply to any tank for which fuel supply lines or an oil safety valve were installed or upgraded on or after January 1 1990; provided however that such installation or upgrade complies with 527 CMR 4.03 and 527 CMR 4.04 and has been inspected and certified to be in compliance with said regulations by a licensed oil burner technician on a form prescribed by the department of fire services and submitted to the head of the local fire department or his designee.

(d) An inspection of upgrades of fuel supply lines and the installation of oil safety valves for compliance with subsection (b) or (c) and any regulations promulgated relevant thereto shall be conducted by a licensed oil burner technician. Upgrades that comply with said subsection (b) or (c) and any regulations promulgated relevant thereto shall be certified by such technician on a form prescribed by the department of fire services and the owner shall submit the certification to the head of the local fire department or his designee.

(e) Each local fire department shall forward to the department of fire services a copy of any certification filed pursuant to subsection (d) and the department of fire services shall maintain such records and annually forward a copy of those records to the department of environmental

protection.

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

Section 4D. (a) As used in this section unless the context clearly requires otherwise "residential property" shall mean a 1- to 4-unit dwelling used for living or sleeping.

(b) The joint underwriting association formed pursuant to chapter 175C and each insurer licensed to write and engaged in the writing of homeowners' insurance shall make the following coverage available to residential owners: (1) first-party property coverage for response action costs incurred under chapters 21E or 21K or regulations promulgated pursuant thereto in response to a release of heating oil from a residential liquid fuel tank or any piping fuel supply lines equipment or systems connected thereto; and (2) liability coverage for third-party claims arising out of a release of heating oil into the environment. Minimum coverage of \$50000 per occurrence for first-party property minimum coverage of \$200000 per occurrence for third-party liability and for legal defense costs shall be made available subject to a reasonable deductible not to exceed \$1000 per claim. For the purposes of this section first-party property coverage shall include response action costs incurred to assess and remediate a heating oil release impacting soil indoor air or other environmental media on the insured's property and the reimbursement of any associated personal property damage. Third-party liability coverage shall defend and indemnify the insured against any third-party claims and shall include response action costs incurred to address conditions on and off the insured's property arising from a heating oil release on the insured's property that has impacted or is likely to impact groundwater or has migrated to or is likely to migrate to a third party's property. First-party and third-party liability coverage shall apply simultaneously and in addition to one another when both coverages are applicable. Insurers may charge reasonable premiums for such coverage.

(c) Notwithstanding subsection (b) an insurer and the joint underwriting association may require that an owner supply proof that subsection (b) or (c) of section 38J of chapter 148 and any regulations promulgated relevant thereto have been met as a precondition to the issuance of a policy for the coverage described in subsection (b).

SECTION 5. The joint underwriting association and each insurance company selling homeowners' insurance policies in the commonwealth shall report to the division of insurance annually the number of liquid fuel endorsements to homeowners' insurance policies that are sold in the commonwealth and the rates of such endorsements. The division of insurance shall maintain records of such information and make the information available to the department of environmental protection.

SECTION 6. Notwithstanding any general or special law to the contrary the department of environmental protection shall investigate the issues posed by heating oil releases at and from residential properties. The department of environmental protection shall submit a report of its investigation and recommendations including the reduction of current annual fees billed to residential sites listed under the Massachusetts Contingency Plan as provided in 310 CMR 40.0000 and measures to consider for reduction of the burden on homeowners for complying with said plan without compromising the protection of the public health safety welfare or the environment at such sites to the joint committee on environment natural resources and agriculture not later than June 30 2010.

SECTION 7. The department of environmental protection in consultation with the board of fire prevention shall prepare a fact sheet describing the risks posed by the release of home heating oil into the environment the benefits of preventive measures the preventive measures required by this act and the availability of insurance coverage for such risks in accordance with this act. The fact sheet shall be updated by the department of environmental protection and the department of fire services periodically as necessary for distribution annually to fuel oil retailers by their industry trade association to insurance agents and producers and any additional parties identified by the department of environmental protection. The division of insurance shall annually forward to the department of environmental protection the data required to be collected by section 5 and the department of environmental protection shall report its findings on the number of home heating oil releases reported in the previous year the number of upgrades completed and certified in accordance with this act in the previous year and the number of liquid fuel endorsements purchased by homeowners in the previous year and any recommendations of the department relative to home heating oil releases in an annual report to the joint committee on environment natural resources and agriculture; provided however that the department of environmental protection shall file its first report not later than July 1 2011.

SECTION 8. Notwithstanding any general or special law to the contrary the board of fire prevention regulations within the department of fire services in coordination with the department of public safety shall adopt regulations to carry out section 38J of chapter 148 of the General Laws not later than April 30 2010. Said board of fire prevention regulations in coordination with said department of public safety may also adopt regulations which pertain solely to homeowner fuel oil system upgrades for above-ground liquid fuel tanks located outside of any dwelling or other structure. Such regulations shall be filed with the joint committee on public safety and homeland security not less than 60 days before the effective date thereof.

SECTION 9. Sections 3 and 4 shall take effect on July 1 2010.

Approved January 5 2009.