

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1773

By: Smaligo

AS INTRODUCED

An Act relating to environment; amending 27A O.S. 2001, Sections 2-11-402, as amended by Section 1, Chapter 185, O.S.L. 2004, 2-11-403, as amended by Section 1, Chapter 502, O.S.L. 2002, 2-11-405, as last amended by Section 2, Chapter 185, O.S.L. 2004, 2-11-406, as amended by Section 3, Chapter 185, O.S.L. 2004, 2-11-408, as amended by Section 3, Chapter 502, O.S.L. 2002 (27A O.S. Supp. 2004, Sections 2-11-402, 2-11-403, 2-11-405, 2-11-406 and 2-11-408), which relate to the Oklahoma Waste Tire Recycling Act; modifying definitions; modifying fees; modifying allocation of certain funds; modifying compensation; modifying mode of delivery; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 27A O.S. 2001, Section 2-11-402, as amended by Section 1, Chapter 185, O.S.L. 2004 (27A O.S. Supp. 2004, Section 2-11-402), is amended to read as follows:

Section 2-11-402. As used in the Oklahoma Waste Tire Recycling Act:

1. "Department" means the Department of Environmental Quality;
2. "Priority cleanup list" means a list of unpermitted waste dumps which:
 - a. did not exist when the owner took possession of the property where the tires are located, and were created without the consent of or benefit to the owner of the property, and
 - b. such other tire dumps designated by the Department pursuant to Section 2-11-406 of this title;
3. "Tire" means any solid or air-filled covering for motor vehicle wheels;

4. "Tire dealer" means any person engaged in the business of selling new and used tires to final consumers, not for resale;

5. "Waste tire facility" means any place which is permitted as a solid waste disposal site, in accordance with the Oklahoma Solid Waste Management Act, at which waste tires are collected or deposited for processing ~~by shredding or other technology, except baling, which alters the form of at least five percent (5%) of the tires collected by weight,~~ for the purpose of facilitating the future extraction of useful materials for recycling, reuse, energy or fuel recovery; and

6. "Waste tire processing" means the preparation of waste tires to facilitate use for recycling, reuse, energy or fuel recovery, including the cleaning, sorting and delivery of whole tires, in a ready-to-use condition, to businesses that utilize processed tires for energy or fuel recovery.

SECTION 2. AMENDATORY 27A O.S. 2001, Section 2-11-403, as amended by Section 1, Chapter 502, O.S.L. 2002 (27A O.S. Supp. 2004, Section 2-11-403), is amended to read as follows:

Section 2-11-403. A. 1. Except as otherwise provided by this section, the following assessments shall be made for tires for use on motor vehicles as such term is defined by Section 1-134 of Title 47 of the Oklahoma Statutes.

a. At the time any tire:

- (1) with a rim diameter of seventeen and one-half (17 1/2) inches rim diameter or less is sold by a tire dealer, there shall be assessed a waste tire recycling fee of One Dollar (\$1.00) per tire,
- (2) with a rim diameter greater than seventeen and one-half (17 1/2) inches is sold by a tire dealer, there shall be assessed a waste tire recycling fee of Three Dollars and fifty cents (\$3.50) per tire, and

(3) is sold by a tire dealer for use on a motorcycle, minibike, motor-driven cycle or motorized bicycle as defined in Sections 1-135, 1-133.1, 1-136 and 1-136.1 of Title 47 of the Oklahoma Statutes, there shall be assessed a waste tire recycling fee of One Dollar (\$1.00) per tire.

b. At any time a motor vehicle with a tire rim diameter of seventeen and one-half (17 1/2) inches or less is first registered in this state, there shall be assessed a waste tire recycling fee of One Dollar (\$1.00) per tire.

c. At any time a motor vehicle with a tire rim diameter of greater than seventeen and one-half (17 1/2) inches is first registered in this state, there shall be assessed, except as otherwise provided by subparagraph d of this paragraph, a waste tire recycling fee of Three Dollars and fifty cents (\$3.50) per tire.

d. At any time a motorcycle, minibike, motor-driven cycle or motorized bicycle is first registered in this state, there shall be assessed a waste tire recycling fee of One Dollar (\$1.00) per tire.

2. Motor vehicles registered pursuant to Section 1120 of Title 47 of the Oklahoma Statutes shall be exempt from the provisions of this subsection.

3. ~~No fee~~ Fees shall be assessed by a tire dealer for used tires or retreaded tires ~~for which~~ unless the tire dealer can document that the recycling fee has been previously paid pursuant to this section.

B. 1. The tire dealer and motor license agent shall remit such fee to the Oklahoma Tax Commission in the same manner as provided by Section 1365 of Title 68 of the Oklahoma Statutes. At the time of filing any report as required by the Oklahoma Tax Commission, the tire dealer shall remit therewith to the Tax Commission, except as

otherwise provided by this section, ninety-seven and three-quarters percent (97.75%) of the fee due pursuant to this section.

2. Motor license agents shall remit all but One Dollar (\$1.00) of the fee assessed on each vehicle registered. The fees authorized to be retained by motor license agents pursuant to this paragraph shall not be considered compensation but may be retained in addition to the maximum sum of compensation authorized by Section 1143 of Title 47 of the Oklahoma Statutes.

3. Failure to remit such fee at the time of filing the returns shall cause the fee to become delinquent. If the fee becomes delinquent the tire dealer or motor license agent forfeits any claim to the discount authorized by this section and shall remit to the Tax Commission one hundred percent (100%) of the amount of the fee due plus any penalty due.

C. If any amount of fee imposed or levied by subsection A of this section, or any part of such amount, is not paid before such fee becomes delinquent, there shall be collected on the total delinquent fee interest at the rate of one and one-quarter percent (1 1/4%) per month from the date of the delinquency until paid.

D. If any fee due under subsection A of this section, or any part thereof, is not paid within fifteen (15) days after such fee becomes delinquent, a penalty of ten percent (10%) on the total amount of fee due and delinquent shall be added thereto, collected and paid.

E. All penalties or interest imposed by this section shall be recoverable by the Tax Commission as a part of the fee imposed and all penalties and interest will be apportioned as provided for the apportionment of the fee on which such penalties or interest are collected.

SECTION 3. AMENDATORY 27A O.S. 2001, Section 2-11-405, as last amended by Section 2, Chapter 185, O.S.L. 2004 (27A O.S. Supp. 2004, Section 2-11-405), is amended to read as follows:

Section 2-11-405. A. 1. Of the monies accruing annually to the Waste Tire Recycling Indemnity Fund, three and one-half percent (3.5%) thereof shall be available to the Oklahoma Tax Commission and three and one-half percent (3.5%) thereof shall be available to the Department of Environmental Quality for the purpose of administering the requirements of the Oklahoma Waste Tire Recycling Act.

2. In addition, an amount not to exceed:

- a. Fifty Thousand Dollars (\$50,000.00) per required audit shall be available to the State Auditor and Inspector for the purpose of conducting audits of the Oklahoma Waste Tire Recycling Program pursuant to Section 2-11-411 of this title, and
- b. until July 1, 2006, one percent (1%) shall be available to the State Auditor and Inspector for a pilot program for random compliance audits of the Oklahoma Waste Tire Recycling Program.

B. Of the ~~ninety two percent (92%)~~ of the remaining monies in the Waste Tire Recycling Indemnity Fund, ~~ten percent (10%)~~ after allocations pursuant to subsection A of this section, funds shall first be allocated to businesses located in Oklahoma who manufacture new products or derive energy benefits from waste tires which have been processed according to the requirements of the Oklahoma Waste Tire Recycling Act. Such businesses shall be eligible for compensation in a total amount not to exceed one hundred percent (100%) of their capital investment in equipment necessary to utilize processed waste tires purchased on or after January 1, 1995, at a rate of Twenty Dollars (\$20.00) per ton of processed waste tires consumed in the manufacturing or energy recovery process. ~~Funds shall be awarded based on a proportionate share of the funds available and based on the relative amount of tons of processed waste tires consumed.~~ Such businesses may apply for compensation monthly to the Tax Commission, and shall supply any information

required by the Tax Commission to document compliance with the provisions of the Oklahoma Waste Tire Recycling Act.

C. The After compensation for capital investment is distributed pursuant to subsection B of this section, the balance of the monies remaining in the Waste Tire Recycling Indemnity Fund shall be allocated pursuant to the provisions of the Oklahoma Waste Tire Recycling Act to waste tire facilities or persons, corporations or other legal entities authorized by the provisions of the Oklahoma Waste Tire Recycling Act to receive reimbursement which, through the filing of appropriate applications, reports, and other documentation that may be required by the Department of Environmental Quality pursuant to the Oklahoma Waste Tire Recycling Act, demonstrate that such facilities or legal entities have successfully processed ~~discarded,~~ collected, transported or used for energy or fuel recovery waste vehicle tires pursuant to the Oklahoma Waste Tire Recycling Act.

~~D. Businesses~~ 1. Up to thirty-nine percent (39%) of the balance of the monies remaining in the Waste Tire Recycling Indemnity Fund pursuant to this subsection shall be allocated to waste tire facilities located in Oklahoma that process tires.

2. Up to thirty-eight percent (38%) of the balance of the monies remaining in the Waste Tire Recycling Indemnity Fund pursuant to this subsection shall be allocated to waste tire facilities located in Oklahoma that collect and transport waste tires.

3. Up to twenty-three percent (23%) of the balance of the monies remaining in the Waste Tire Recycling Indemnity Fund pursuant to this subsection, shall be allocated to businesses located in Oklahoma that use processed tires for energy or fuel recovery ~~shall be eligible for compensation from the fund at a rate not to exceed Twenty-nine Dollars (\$29.00) per ton of processed tires to be used for energy or fuel recovery. The business shall demonstrate the~~

~~utilization through the application and submission of required documentation to the Tax Commission.~~

SECTION 4. AMENDATORY 27A O.S. 2001, Section 2-11-406, as amended by Section 3, Chapter 185, O.S.L. 2004 (27A O.S. Supp. 2004, Section 2-11-406), is amended to read as follows:

Section 2-11-406. A. 1. Waste tire facilities meeting the requirements of the Oklahoma Waste Tire Recycling Act shall be eligible for compensation from the Waste Tire Recycling Indemnity Fund to the extent that funds are therein contained for processing waste tires collected from this state at a rate not to exceed the lesser of Forty-nine Dollars (\$49.00) per ton of processed tire material or the amount specified in paragraph 1 of subsection C of Section 2-11-405 of this title.

2. The waste tire facility shall demonstrate the processing or utilization through the application and submission of required documentation to the Oklahoma Tax Commission.

- a. In addition to other requirements of the Oklahoma Waste Tire Recycling Act, in order to qualify for such compensation, the applicant shall demonstrate that over the life of the facility prior to each request for compensation, at least five percent (5%) of the tires processed by the waste tire facility were collected from tire dumps or landfills as identified through placement on the priority cleanup list by the Department of Environmental Quality or community-wide cleanup events approved by the Department.
- b. In developing the priority cleanup list required by this section and Section 2-11-407.1 of this title, the Department shall prioritize those dumps where the landowner was a victim of illegal dumping. Any other tire dump may be placed on the priority cleanup list

in cases where the administrative enforcement process has been exhausted.

- c. For those illegal tire dumps placed on the list where administrative enforcement has been exhausted, the Department may provide for the cleanup of such dumps pursuant to Section 2-11-413 of this title.
- d. From the effective date of this act for a period of one (1) year, the requirement to collect waste tires from tire dumps or landfills identified by the Department according to the provisions of subparagraph a of this paragraph shall be suspended unless an applicant is requested to make such a collection by the Department.

B. 1. In addition to the compensation authorized by subsection A of this section, any waste tire facility that is in good standing with the Department shall be eligible for compensation at the rate not to exceed the lesser of:

- a. Forty-eight Dollars (\$48.00) per ton of processed tire material for the collection and transportation of waste tires obtained from dealers, automotive dismantlers, parts recyclers, solid waste landfill sites, and dumps certified by the Department's priority cleanup list, and delivering such tires to the waste tire facility, or
- b. the amount specified in paragraph 2 of subsection C of Section 2-11-405 of this title.

- 2. a. The collection and transportation of waste tires shall be on a statewide basis and shall be provided by the waste tire facility at no additional cost.
- b. No tire dealer shall charge any customer any additional fee for the management, recycling, or

disposal of any waste tire upon which the waste tire recycling fee has been remitted to the Tax Commission.

- c. For customers who choose not to leave a waste tire upon which the waste tire recycling fee has been remitted to the Tax Commission, the tire dealer shall issue a receipt which will entitle the customer to deliver the waste tire to the dealer at a later date.
- d. The Department shall not require a waste tire facility to collect less than three hundred discarded vehicle tires at any one location.
- e. Compensation shall not be paid pursuant to this section until the collected and transported tires have been accepted for recycling, reuse, energy or fuel recovery at a facility located in Oklahoma.

3. To be eligible for compensation pursuant to this subsection, the waste tire facility shall:

- a. demonstrate to the satisfaction of the Department that such facility is regularly engaged in the collection, transportation and delivery of waste tires to a waste tire facility, on a statewide basis, and from each county of the state, and
- b. provide documentation to the Tax Commission, signed by a participating dealer at the time of collection, which certifies the total amount of waste tire recycling fees, itemized by month, remitted by the dealer since the date the dealer's waste tires were last collected.

C. An approved facility located in Oklahoma which is in good standing with the Department shall be eligible for compensation at the lesser of Twenty-nine Dollars (\$29.00) per ton of processed tire material or the amount specified in paragraph 3 of subsection C of Section 2-11-405 of this title for energy or fuel recovery. For

purposes of this section, "good standing" means the business shall document utilization of waste tires for energy or fuel recovery by submitting an application and required documentation to the Oklahoma Tax Commission. Compensation shall not be paid pursuant to this subsection until the tires have been consumed for energy or fuel recovery at a facility located in Oklahoma.

D. Compensation pursuant to this section shall be payable only for the tires collected ~~and~~, transported, processed, reused, recycled or used for energy or fuel recovery in accordance with the purposes of the Oklahoma Waste Tire Recycling Act and as authorized by the Department pursuant thereto. In lieu of proof of remitted tire recycling fees, the waste tire facility shall accept proof of purchase of a salvage vehicle registered in Oklahoma by an automotive dismantler and parts recycler, licensed pursuant to the Automotive Dismantlers and Parts Recycler Act, for the collection and transportation of up to five waste tires per salvage vehicle purchased on or after January 1, 1996. The Environmental Quality Board shall promulgate rules to ensure proper verification and proof of purchase information.

SECTION 5. AMENDATORY 27A O.S. 2001, Section 2-11-408, as amended by Section 3, Chapter 502, O.S.L. 2002 (27A O.S. Supp. 2004, Section 2-11-408), is amended to read as follows:

Section 2-11-408. A. Upon reviewing completed applications and upon determining that there are sufficient monies in the Waste Tire Recycling Indemnity Fund, the Oklahoma Tax Commission shall compensate waste tire facilities and any person, corporation or other legal entity authorized to receive reimbursement pursuant to Sections 2-11-405, 2-11-406 and 2-11-407.1 of this title as applicable for:

1. Processing the ~~number~~ quantity of tires documented in the application at the rate of ~~Forty nine Dollars (\$49.00) per ton of tire material processed by shredding or processed~~ specified in

subsection A of Section 2-11-406 of this title by cleaning, sorting and delivery to businesses that utilize processed tires for energy or fuel recovery. This amount shall not be paid until the tires have actually been delivered to a facility located in Oklahoma that processes, recycles, reuses or uses the waste tires for energy or fuel recovery;

2. The collection and transportation of waste tires to a waste tire facility documented in the application at the rate of ~~Forty-eight Dollars (\$48.00) per ton of processed tire material~~ specified in subsection B of Section 2-11-406 of this title. This amount shall not be payable, however, unless and until such tires have been actually processed according to the facility's solid waste permit and recycle or reused, or delivered to a facility located in Oklahoma that uses the tires for energy or fuel recovery;

3. Collecting, processing and utilizing tires for erosion control, bank stabilization or other conservation projects pursuant to Section 2-11-407.1 of this title documented in the application at the rate of Two Dollars and eighty cents (\$2.80) each for tires having a tire rim diameter greater than seventeen and one-half (17 1/2) inches or at a rate of eighty cents (\$0.80) each for tires having a rim diameter equal to or less than seventeen and one-half (17 1/2) inches. This amount shall not be payable unless and until such tires have been actually processed by utilization in the erosion control, bank stabilization or other conservation project, and the legal entity has otherwise complied with the provisions of Section 2-11-407.1 of this title; and

4. Utilization of processed tires for energy or fuel recovery ~~pursuant to Section 2-11-405 of this title~~ documented in the application at the rate of ~~Twenty-nine Dollars (\$29.00) per ton of processed tires utilized for energy or fuel recovery~~ specified in subsection C of Section 2-11-406 of this title. This amount shall

not be payable until the tires have been used for energy or fuel recovery at a facility located in Oklahoma.

B. If the Indemnity Fund contains insufficient funds in any month, then the Oklahoma Tax Commission shall apportion the payments, pursuant to Section 2-11-405 of this title, among all the qualifying applicants according to the percentage of tires collected, transported, delivered ~~or~~, processed, or used for energy or fuel recovery.

C. The Department shall evaluate each waste tire facility and legal entity authorized to receive reimbursement pursuant to Section 2-11-407.1 of this title every three (3) years. Upon completion of the evaluation, the Department of Environmental Quality shall recertify for compensation only those waste tire facilities or other legal entities which have provided for recycling, reuse or energy recovery from waste tires.

SECTION 6. This act shall become effective November 1, 2005.

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