

PUBLIC CHAPTER NO. 794

SENATE BILL NO. 4200

By Kyle, Kilby, Berke

Substituted for: House Bill No. 4199

By Harmon, Odom, Hardaway

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 215, Part 1, relative to petroleum underground storage tanks.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-215-106(c), is amended by deleting the existing language in its entirety and substituting the following:

(c) For any petroleum underground storage tank for which any annual fees or penalties have not been paid when due or that is in violation of requirements of the rules as evidenced by an order issued pursuant to this part that has become final, the commissioner may take one or more of the following actions:

- (1) affix a notice to a dispenser;
- (2) affix a tag to a fill port; or
- (3) give notice on the department Web site.

(d) Removal of such notice or tag affixed pursuant to subsection (c) of this section shall be a Class C misdemeanor.

(e) It is unlawful for any person to place, or cause to be placed, petroleum substances in a petroleum underground storage tank or to dispense petroleum from a tank that has either had a physical notice or tag placed on the dispenser or fill port or has had a notice placed on the department Web site pursuant to subsection (c) of this section.

SECTION 2. Tennessee Code Annotated, Section 68-215-107(a), is amended by deleting it and substituting the following:

(a) The commissioner shall exercise general supervision over the placement and storage of petroleum substances in petroleum underground storage tanks, release prevention, release detection, release correction, closure, and, where applicable, post-closure care of petroleum underground storage tanks throughout the state. Such supervision shall apply to all features of the installation of the petroleum underground storage tanks, the standards for permissible petroleum underground storage tanks, petroleum delivery requirements, release prevention requirements, release detection requirements,

release correction requirements, facility financial responsibility requirements, facility closure requirements, and facility post-closure requirements which do or may affect the public health, safety or quality of the environment and which do or may affect the proper storage of petroleum substances.

SECTION 3. Tennessee Code Annotated, Section 68-215-107(e), is amended by adding the following language at the end of subdivision (e)(1), "or where petroleum contamination is or may be present for the purpose of conducting investigations or remediating the contamination caused by a release from a petroleum underground storage tank."

SECTION 4. Tennessee Code Annotated, Section 68-215-107(e), is amended by adding the following subdivision and redesignating, as necessary, the existing subdivisions:

() Issue subpoenas to compel attendance of witnesses or production of documents or data;

SECTION 5. Tennessee Code Annotated, Section 68-215-107(f), is amended by adding the words, "of petroleum delivery or" after "records" in subdivision (2).

SECTION 6. Tennessee Code Annotated, Section 68-215-109(f), is amended by deleting it in its entirety.

SECTION 7. Tennessee Code Annotated, Section 68-215-111(d), is amended by deleting it and substituting the following:

(d) The fund may be used for the administrative costs of the underground storage tank program and be included in the department's annual budget request to the general assembly.

SECTION 8. Tennessee Code Annotated, Section 68-215-111, is amended by deleting subsection (e) and substituting instead the following and by redesignating the remaining subsections as appropriate:

(e) The fund may be used to provide a mechanism to meet the financial responsibility requirements for owners and/or operators of petroleum underground storage tanks for cleanup of contamination and third-party claims due to bodily injury and/or property damage caused by releases from petroleum underground storage tanks.

(f) The fund may be used to provide for cleanup of contamination in accordance with conditions for eligibility and coverage of releases established in this part and in rules of the board.

(1) Petroleum underground storage tanks for which notification has been received by the commissioner are eligible for reimbursement from the fund for the costs of cleanup of contamination caused by releases from such tanks; however, before costs related to a particular release may be reimbursed, all of the applicable requirements of this part and the rules must be met.

(2) The board is authorized to promulgate rules that establish the following:

(A) The amount of the deductible that must be incurred by either the tank owner or operator or the owner of the petroleum site at the time of corrective action before the tank owner or operator or the owner of the petroleum site is eligible to receive reimbursement from the fund. Notwithstanding this authority, in no event shall the board set the amount of this required deductible at a level greater than thirty thousand dollars (\$30,000) per occurrence; and

(B) A system of incentives to provide for reduced required deductible amounts in order to encourage tank owners to use technologies or management practices that go beyond the minimum requirements related to release detection and prevention for tanks and piping. In order to qualify for such incentives, such technologies or management practices must be found by the board to be proven methods of significantly enhancing prevention of releases or reducing the detection timeframe for releases.

(3) The amount of such deductible that must be incurred by either the tank owner or operator or the owner of the petroleum site, before the tank owner or operator or the owner of the petroleum site is eligible to receive reimbursement from the fund for an occurrence reported to the department on or after July 1, 2005, shall be twenty thousand dollars (\$20,000) per occurrence; provided, however, that pursuant to subdivision (f)(2)(A), the board may promulgate rules raising the amount of the deductible to a maximum of thirty thousand dollars (\$30,000) per occurrence. In addition, the board is authorized to set the required deductible at lower amounts, if the board determines that the condition of the fund warrants setting it at lower amounts.

(4) The fund shall be responsible for up to a maximum of one million dollars (\$1,000,000) of cleanup costs. The sum of the deductible and the maximum reimbursement shall not exceed one million dollars (\$1,000,000). The fund shall be responsible for cleanup of contamination due to releases from petroleum underground storage tanks on a per site per occurrence basis.

(5) Unless it has been determined by the commissioner that the expenditure of fund dollars for removal, replacement, or repair of property improvements, including, but not limited to, petroleum dispensing equipment, canopies, signage, buildings and out buildings would result in a reduction of the total cost of cleanup activities at a petroleum site from what would be required otherwise, neither the fund nor the deductible for cleanup shall be used for the repair, replacement, or maintenance of petroleum underground storage tanks or property improvement on which the petroleum underground storage tanks are located, including, but not limited to:

- (A) Underground storage tank repair;
- (B) Underground storage tank replacement;
- (C) Repair or maintenance of associated lines; and
- (D) Replacement of asphalt or concrete.

(6) If there is evidence of a suspected or a confirmed release on or after July 1, 2004, in order for the tank owner, tank operator, or petroleum site owner to receive reimbursement from the fund, an application for fund eligibility shall be filed:

(A) within ninety (90) days of the discovery of evidence of a suspected release which is subsequently confirmed in accordance with the rules promulgated pursuant to this part; or

(B) within sixty (60) days of a release which was identified in any manner other than the process for confirmation of a suspected release stated in the rules promulgated pursuant to this part.

The tank owner or tank operator shall send notification to the petroleum site owner by certified mail, return receipt requested, within seven (7) days of confirmation of a release. Failure to comply with the applicable deadline of subdivision (f)(6)(A) or (f)(6)(B) shall make the release ineligible for reimbursement from the fund.

(7) On or after July 1, 2004, all applications for payment of costs of cleanup shall be received by the division within one (1) year of the performance of the task or tasks covered by that application in order to be eligible for payment from the fund.

(g) Petroleum underground storage tanks for which notification has been received by the commissioner are eligible for reimbursement from the fund for third-party claims involving bodily injury or property damage caused by releases from petroleum underground storage tanks; however, before payment for such claims related to a particular release may be paid, all of the applicable requirements of this part and the rules promulgated by the board must be met.

(1) The board is authorized to promulgate rules that establish the amount of the deductible for third-party claims for bodily injury or property damage that must be incurred by either the tank owner or operator or the owner of the petroleum site subject to the claim, before the amount of the claim in excess of the deductible may be paid by the fund. Notwithstanding this authority, in no event shall the board set the amount of this required deductible at a level greater than thirty thousand dollars (\$30,000) per occurrence.

(2) The amount of the deductible for such third-party claims for the tank owner or operator or the owner of any petroleum site for an

occurrence reported to the department on or after July 1, 2005, shall be twenty thousand dollars (\$20,000); provided, however, that pursuant to subdivision (g)(1), the board may promulgate rules setting the amounts of financial responsibility at greater amounts, up to a maximum of thirty thousand dollars (\$30,000) per occurrence. In addition, the board is authorized to set the required deductible at lower amounts, if the board determines that the condition of the fund warrants setting it at lower amounts.

(3) The fund shall be responsible for court awards involving third-party claims up to a maximum of one million dollars (\$1,000,000). The sum of the deductible and the maximum reimbursement shall not exceed one million dollars (\$1,000,000). The fund shall be responsible for third-party claims involving bodily injury and/or property damage caused by releases from petroleum underground storage tanks on a per site per occurrence basis. All claims against the fund for third-party damages must have been awarded in a court of suitable jurisdiction.

SECTION 9. Tennessee Code Annotated, Section 68-215-112(a), is amended by deleting subdivisions (4) and (8) and substituting the following:

(4) One (1) person with experience in the management of petroleum, who is the owner and/or operator of only one private petroleum underground storage tank facility that has no more than five (5) petroleum underground storage tanks and who is not affiliated with the Tennessee chamber of commerce and industry, the Tennessee petroleum council, the Tennessee oil marketers association, the Tennessee environmental council, or the Tennessee municipal league;

(8) Two (2) persons, to be appointed by the governor, who are consumers of petroleum products and who are not affiliated with the Tennessee chamber of commerce and industry, the Tennessee petroleum council, the Tennessee oil marketers association, the Tennessee environmental council, or the Tennessee municipal league;

SECTION 10. Tennessee Code Annotated, Section 68-215-113(e), is amended by deleting it and substituting the following:

(e) No member of the board shall participate in making any decision on a case in which the municipality or firm, which that member represents, or by which that member is employed, or in which that member has a direct substantial financial interest, is involved.

SECTION 11. Tennessee Code Annotated, Section 68-215-115, is amended by deleting subsection (a) and substituting the following:

(a) Making use of any and all appropriate existing state legal remedies, the commissioner may commence court action to recover the amount expended by the state from any and all responsible parties for each site investigated, identified, contained or cleaned up, or for which a third-party claim has been paid, either up to the limits of the deductible for owners and/or operators of petroleum underground storage tanks covered by the fund or the entire amount

from owners and/or operators of petroleum underground storage tanks not covered by the fund.

SECTION 12. Tennessee Code Annotated, Section 68-215-119, is amended by deleting subdivision (a)(2) in its entirety and redesignating the remaining subdivisions appropriately.

SECTION 13. Tennessee Code Annotated, Section 68-215-120, is amended by deleting subsection (c) in its entirety.

SECTION 14. Tennessee Code Annotated, Section 68-215-129, is amended by deleting the language, "and costs" in subdivision (a)(2).

SECTION 15. This act shall take effect on July 1, 2008, the public welfare requiring it, and the changes made by this act in regard to eligibility for fund reimbursement shall apply only to tanks that have not been permanently closed as of the effective date of this act.

PASSED: April 10, 2008



RON RAMSEY
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 23rd day of April 2008



PHIL BREDESEN, GOVERNOR