

CHAPTER NO. 925

HOUSE BILL NO. 3496

By Representatives McMillan, Maddox, Head

Substituted for: Senate Bill No. 3413

By Senators Crutchfield, Cooper

AN ACT to amend Title 68, Chapter 215 and Title 67, Chapter 3, relative to petroleum underground storage tanks.

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

SECTION 1. Tennessee Code Annotated Subsection 68-215-103, is amended by adding the following , new, appropriately designated subdivision:

() "Local Government Agency" means those government agencies as defined by 67-3-103(35) other than agencies of state or federal governments.

SECTION 2. Tennessee Code Annotated Section 68-215-104, is amended by deleting the words and punctuation ", including the annual fee per tank," in subdivision (3), by deleting the word, "or" at the end of that subdivision, by adding the following as new subdivisions (4) and (5), and renumbering the remaining subsection accordingly:

(4) Receive, or to attempt to receive reimbursement from the fund in a fraudulent manner;

(5) Refuse or fail to comply with any order of the commissioner or the board that has become final; or

SECTION 3. Tennessee Code Annotated Subsection 68-215-106(c)(1), is amended by inserting the language, "and paid all outstanding fees, interest, and penalties" at the end of the first sentence, after the word, "forms".

SECTION 4. Tennessee Code Annotated Subsection 68-215-106(c)(2), is amended by adding the following at the end of the existing subdivision:

The commissioner may also affix a notice or tag to a dispenser and/or fill port and/or give notice on the department web site for any tank that does not have a current certificate. Removal of such tag or notice shall be a class C misdemeanor.

SECTION 5. Tennessee Code Annotated Subsection 68-215-109(b), is amended by deleting the subsection in its entirety and substituting instead the following:

In addition to the fee provided in subsection (a), there shall be a fund maintenance fee to be paid by or on behalf of the petroleum underground storage tank owner or operator only for the fiscal year 2004-2005. The fund maintenance fee shall be assessed upon the owners or operators of all petroleum underground storage tanks as follows:

Category	Annual Fee per Tank
1 to 5 tanks, all located at one facility	\$400
1 to 5 tanks, located at more than one facility	\$710
Local government agency	\$710
6 tanks or more	\$710.

SECTION 6. Tennessee Code Annotated Subsection 68-215-109(c), is amended by deleting the subdivision in its entirety and substituting instead the following:

Upon failure or refusal of any person to pay a fee assessed under this part within a reasonable time allowed by the commissioner, the commissioner may proceed in the chancery court of Davidson County to obtain judgment and seek execution of such judgment.

SECTION 7. Tennessee Code Annotated Subsection 68-215-111(g), is amended by deleting the subsection in its entirety.

SECTION 8. Tennessee Code Annotated Subsection 68-215-111(e), is amended by adding the following as appropriately designated subdivisions:

(5) 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.

A tank owner or tank operator shall send notification to the petroleum site owner by certified return receipt mail within seven (7) days of confirmation of a release. Failure to comply with the applicable deadline of subdivision (5)(A) or (5)(B) as provided in this section shall make the release ineligible for reimbursement from the fund.

(6) 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(s) covered by that application in order to be eligible for payment from the fund.

SECTION 9. Tennessee Code Annotated Subsection 68-215-120, is amended by deleting the section in its entirety and by substituting instead the following:

(a) Any person violating or failing, neglecting, or refusing to comply with any of the provisions of Section 68-215-104, commits a Class C misdemeanor. Each day upon which such violation occurs constitutes a separate offense.


(b) Any person who knowingly causes or allows a release of petroleum into the environment in violation of this chapter, rules, regulations or orders of the commissioner or board commits a Class E felony, punishable by fine only, provided however that if such release results in an expenditure for cleanup by any other person or from the fund, the offense shall be graded for such expenditure in the same manner as theft under Tennessee Code Annotated, §39-14-105 (2) through (5), but shall be punishable only by fine.

(c) In addition to such penalties, the department, court or board may suspend the certificate to store petroleum substances in a petroleum underground storage tank at the petroleum site at which the violations occurred if the owner of such site has been convicted of two (2) misdemeanors as defined in subsection (a) within a three (3)-year period or one (1) felony as defined in subsection (b). No person who has had such person's certificate suspended pursuant to this subsection shall be eligible to apply for another certificate at the same site until the period of time for which the certificate was suspended has expired. Nothing in this subsection shall preclude the suspension, revocation, or withdrawal of a certificate by the commissioner or board when such action is authorized by any other law.

SECTION 10. There is hereby established a Tennessee Petroleum Underground Storage Tank Advisory Committee to advise the commissioner concerning the petroleum underground storage tank fund. By June 1, 2004, the commissioner shall appoint the members of the committee in such a manner as to provide representation of stakeholders that have an interest in the fund, including gasoline station owners as well as other tank owners, oil marketers, local government, environmental interests and the public. In making these appointments, the commissioner shall assure that the committee has substantial experience in accounting, insurance and finance. The committee shall report its recommendations concerning the revenues to the fund and the expenditures from the fund by December 1, 2004, to the commissioner. The committee shall terminate and cease to exist on June 30, 2005.

SECTION 11. This act shall take effect on July 1, 2004, the public welfare requiring it.

PASSED: May 19, 2004


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 8th day of June 2004


PHIL BREDEESEN, GOVERNOR