

PUBLIC CHAPTER NO. 903

SENATE BILL NO. 3854

By Kyle, Barnes, Marrero

Substituted for: House Bill No. 3842

By Maddox, Mike Turner, Coley, Hardaway, Shaw

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 68-215-111(a), is amended by deleting the subsection in its entirety and by substituting instead the following:

(a) The fund shall be available to the board and the commissioner for expenditures for the purposes of providing for the investigation, identification, and for the reasonable and safe cleanup, including monitoring and maintenance, of petroleum sites and locations from which underground storage tank systems have been removed within the state as provided in this chapter.

SECTION 2. Tennessee Code Annotated, Section 68-215-103(17), is amended by deleting subdivision (C) in its entirety and by substituting instead the following:

(C) Any person whose intentional actions directly cause the release of petroleum at a petroleum site;

(D) Any person other than an employee, officer, director, principal, or shareholder of the owner or operator of the underground storage tank system or of the owner of the petroleum site, whose negligent actions directly cause the release of petroleum at a petroleum site; or

(E) A responsible party does not include a unit of state or local government which becomes an owner or operator of a petroleum site by acquiring ownership or control through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless such governmental entity has otherwise owned or operated a petroleum underground storage tank on the site or has caused or contributed to the release or threatened release from such a tank;

SECTION 3. Tennessee Code Annotated, Section 68-215-104, is amended by adding the following language as a new, appropriately designated subdivision:

(_) Submit to the department any document, in written or electronic format, known to be false or known to contain any materially false, fictitious or fraudulent statement or entry; knowingly make any materially false, fictitious, or

fraudulent statement or representation; or knowingly falsify, conceal, or cover up a material fact.

SECTION 4. Tennessee Code Annotated, Section 68-215-114, is amended by deleting the section in its entirety and by substituting instead the following:

Section 68-215-114.

(a) When the commissioner finds upon investigation that any provisions of this chapter are not being carried out, and that effective measures are not being taken to comply with provisions of this chapter, the commissioner may issue an order for correction to the responsible party, and this order shall be complied with within the time limit specified in the order. The commissioner may issue an order to a responsible party to close the UST system under its ownership or control or use the petroleum underground storage tank fund to permanently close the UST system and seek cost recovery if the commissioner determines:

(1) That the tank system has not been brought into compliance within 6 months of being prohibited from receiving petroleum pursuant to Section 68-215-106(c); or

(2) That all fees, penalties, and interest have not been paid on a tank at the time tank fees for the following year are payable.

(b) Such order shall be made by personal service or shall be sent by certified mail. Investigations made in accordance with this section may be made on the initiative of the commissioner, including any violation of this chapter or regulations promulgated pursuant to this chapter. Prior to the issuance of any order or the execution of any other enforcement action, the commissioner may request the presence of an alleged violator of this chapter to a meeting to show cause why enforcement action ought not be taken by the department. Any person may request a meeting with the department to discuss matters pertaining to petroleum underground storage tanks.

(c) Responsible parties shall be liable to the state for costs of investigation, identification, containment and cleanup, including monitoring and maintenance, as provided in this chapter. Owners and/or operators of petroleum underground storage tanks with respect to releases eligible for fund reimbursement shall be liable for all costs not covered by the fund. Petroleum site owners with respect to releases eligible for fund reimbursement shall be secondarily liable for all costs not covered by the fund. All other owners and/or operators of petroleum underground storage tanks and petroleum site owners shall be liable for all costs, as provided in this chapter. Notwithstanding the foregoing, nothing in this section shall prevent the reimbursement of expenditures for investigation, identification, containment and cleanup, including monitoring and maintenance incurred by tank owners and operators or petroleum site owners pursuant to § 68-215-111.

SECTION 5. Tennessee Code Annotated, Section 68-215-115, is amended by deleting the section in its entirety and by substituting instead the following:

Section 68-215-115.

(a) Whenever the commissioner expends money for the investigation, identification, containment or cleanup of a particular site under this part, the commissioner may issue an order to any responsible party, other than an owner or operator of an underground storage tank system or a petroleum site owner if the release at such system or site is covered by the fund, to recover the amount expended or to assess that party's apportioned share of all costs expended or to be expended. Notwithstanding the commissioner's rights under this section, nothing herein shall prevent the reimbursement of expenditures for investigation, identification, containment and cleanup, including monitoring and maintenance incurred by tank owners and operators or petroleum site owners pursuant to § 68-215-111. Service of such an order shall be made by either personally serving the responsible party or by certified mail.

(b)(1) In assessing a responsible party's apportioned share, the commissioner may consider equitable factors, including, but not limited to, the following:

(A) Any monetary or other benefit accruing to each responsible party from the release of petroleum at the site;

(B) The culpability of each responsible party in regard to the release of petroleum at the site;

(C) Efforts of each responsible party to remediate the land, water, or other aspects of the site and any other affected property and to cooperate with the department in its work to investigate, contain or clean up the release of petroleum at the site; and

(D) Any expenditures required by the provisions of this part made by a responsible party shall be credited toward that party's share of the cost.

(2) Any person against whom an assessment is issued may secure a review of the propriety or amount of such assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the objection and asking for a hearing before the petroleum underground storage tank board. Any such assessment shall become final and not subject to review unless the person named therein files such a petition within thirty (30) days after it is received.

(3) In no event shall the total monies recovered from the responsible party or parties exceed the total expenditure from the fund for such site, except that the commissioner may assess civil

penalties as provided in § 68-215-121. No tank owners and operators or petroleum site owners that are eligible to be reimbursed expenses pursuant to § 68-215-111 shall be liable to any other responsible party for contribution or cost recovery actions, related to any amounts recovered by the commissioner pursuant to this section under any law, including any common law claim, or for other similar third-party claims.

(4) The fund shall pay any portion of the total expenditure in excess of the aggregate amount of costs or expenditures apportioned pursuant to this section. All monies recovered from the responsible parties pursuant to this section shall be deposited in the fund.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 22, 2010



RON RAMSEY
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 11th day of May 2010



PHIL BREDESEN, GOVERNOR