



State of Tennessee

PUBLIC CHAPTER NO. 976

SENATE BILL NO. 332

By Bell

Substituted for: House Bill No. 788

By Matheny, Ragan

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 29 and Title 68, Chapter 217, relative to the drycleaner environmental response board.

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

SECTION 1. Tennessee Code Annotated, Section 68-217-102, is amended by deleting subdivision (2) in its entirety.

SECTION 2. Tennessee Code Annotated, Section 68-217-104, is amended by deleting the section in its entirety and substituting instead the following:

68-217-104.

(a) The drycleaner environmental response program is created within the department, in the division of remediation.

(b) From time to time the commissioner may appoint a drycleaners advisory committee that shall advise the commissioner on matters related to the drycleaner environmental response program, including, but not limited to, proposed rules and changes to fees. The commissioner may determine the identity and number of committee members and the term during which the committee will operate. When appointing members the commissioner shall consider the nature of the issues that are relevant to the charge given to the committee. The commissioner shall appoint persons from affected interests, which may include large and small drycleaners, facilities that use or have used dense non-aqueous solvent, facilities that use or have only used light non-aqueous solvent, property owners where drycleaners are located, and environmental interests. No member of the committee is entitled to a salary for duties performed as a member of the committee and no member of the committee is entitled to reimbursement for travel or other expenses incurred in the performance of the member's official duties.

SECTION 3. Tennessee Code Annotated, Section 68-217-105, is amended by deleting the section in its entirety and substituting instead the following:

68-217-105.

(a) The commissioner has the following duties and responsibilities:

(1) Develop and approve investigation and remediation strategies, including, but not limited to, presumptive remedial responses, establish a mechanism for approving contractors to perform investigation and remediation actions under this chapter, and establish a schedule of acceptable registration fees and costs for services rendered by approved contractors under this chapter;

(2) Oversee expenditures required to provide administrative support and maximize the funds available for cleanup and minimize the administrative expenditures of the department;

(3) Review and accept or deny the petition for entry into the program based on the standards set out in subdivision (a)(5), and prioritize petitions described in this chapter according to promulgated rules and established guidelines. In establishing guidelines for site prioritization, the commissioner

shall consider the degree of risk to human health and the environment and other factors as the commissioner may deem appropriate.

(4) Develop rules which establish a process for the owner or operator of a drycleaning facility or in-state wholesale distribution facility, the current or prior owner or operator of an abandoned drycleaning facility, or impacted third party to petition the commissioner for:

(A) Entry into the program;

(B) The expenditure of monies from the fund for reimbursement of approved investigative or remedial response costs;

(C) Scheduling investigatory and remedial measures; and

(D) Administrative review of the final actions of the commissioner.

(5) Once a drycleaning facility, in-state wholesale distribution facility, abandoned drycleaning facility, or impacted third party has petitioned the commissioner and has complied with all the requirements for entry into the program as established by this chapter, including the payment of necessary registration fees and, if applicable, surcharges on drycleaning solvents, then the commissioner shall accept the petition, inform the party of the decision to allow the site into the program established by this chapter, and inform the party of the priority ranking of the site. The commissioner may reject any petition and deny coverage under the chapter if the commissioner determines that the drycleaning facility, abandoned drycleaning facility, or in-state wholesale distribution facility has been in willful noncompliance with this chapter or the rules enacted under this chapter;

(6) Develop rules which establish a process for the commissioner to withdraw the grant of a petition after notice to the petitioning party and all impacted third parties and a reasonable opportunity to cure. The commissioner may withdraw any favorable determination concerning any petition previously granted if the commissioner determines that the petitioner is in willful noncompliance with this chapter or the rules enacted under this chapter. A determination of ineligibility against the petitioning party, due to conduct that occurred after the granting of the initial petition by the commissioner, shall not otherwise affect another eligible party's ability to obtain reimbursement from the fund;

(7) Authorize payments from the fund established by this chapter to a petitioner or its designee to reimburse the cost of an investigative or remedial response undertaken and approved pursuant to its rules. Sites which are high priority sites, as determined during the program entry process, will be reviewed by the commissioner, who will authorize the reimbursement of funds necessary for the cleanup of such sites with money available from the fund. Such authorization for payment from the fund to a petitioner or its designee shall be given prior to the expenditure of any fund monies;

(8) Develop rules that institute a process for certification of the completion of all necessary investigation and remedial work or further that no investigation and remediation is necessary with respect to a site; and

(9) Develop and promulgate regulations or guidelines establishing ongoing best management practices for the drycleaner industry in this state with respect to the handling of drycleaning solvent.

(b) The commissioner shall promulgate all rules and regulations necessary to implement this chapter, including, but not limited to, rules on the subjects specified above, and shall conduct all contested case proceedings in accordance with the Uniform Administrative Procedures Act. Judicial review of final orders of the commissioner in contested case proceedings shall be in the chancery court of Davidson County pursuant to the Uniform Administrative Procedures Act.

(c) The commissioner shall promulgate rules that establish a schedule of amounts of annual registration fees to be paid by drycleaning facilities that is based on the amount of drycleaning solvent purchased. The maximum annual registration

fee shall be one thousand five hundred dollars (\$1,500) and this is the amount that shall be paid by abandoned drycleaning facilities.

(d) The commissioner shall promulgate rules that establish three (3) categories of drycleaning facilities based on the amount of solvent used requiring payment of the different levels of deductible amounts stated in § 68-217-106.

SECTION 4. Tennessee Code Annotated, Section 68-217-106(c), is amended by deleting the word "board" and by substituting instead the word "commissioner".

SECTION 5. Tennessee Code Annotated, Section 68-217-106(d), is amended by deleting the word "board" wherever it appears and by substituting instead the word "commissioner".

SECTION 6. Tennessee Code Annotated, Section 68-217-106(k)(1), is amended by deleting the word "board" wherever it appears and by substituting instead the word "commissioner".

SECTION 7. Tennessee Code Annotated, Section 68-217-106, is amended by deleting subsection (m) in its entirety and by substituting instead the following:

(m) If the money in the fund exceeds ten million dollars (\$10,000,000) during any one (1) year, the department shall waive the payment of the solvent surcharges and collect only the registration fees for a period of one (1) year.

SECTION 8. Tennessee Code Annotated, Section 68-217-106(n), is amended by deleting the word "board" and by substituting instead the word "commissioner".

SECTION 9. Tennessee Code Annotated, Section 68-217-107, is amended by deleting the section in its entirety and substituting instead the following:

68-217-107.

(a) An owner or operator of a drycleaning facility, or in-state wholesale distribution facility, the current or prior owner or operator of an abandoned drycleaning facility, or an impacted third party may seek reimbursement from the fund for response costs above the applicable deductible set forth in § 68-217-106(k) incurred in connection with a release from a drycleaning facility, in-state wholesale distribution facility or abandoned drycleaning facility in accordance with regulations established by the commissioner.

(b) The commissioner may not authorize the expenditure of funds from the fund in excess of two hundred thousand dollars (\$200,000) per year for releases from any individual drycleaning facility, abandoned drycleaning facility, or in-state wholesale distribution facility, nor authorize a distribution of monies from the fund that would result in a diminution of the fund below a balance of one hundred thousand dollars (\$100,000) unless an emergency exists at a drycleaning facility, abandoned drycleaning facility, or in-state wholesale distribution facility that constitutes an imminent and substantial threat to human health or the environment. In the event of an emergency as described in this subsection (b), the commissioner shall approve the reimbursement of reasonable response costs to remove the imminent and substantial threat to human health or the environment.

(c) The commissioner shall not authorize distribution of fund monies to:

(1) Sites that are contaminated by solvents normally used in drycleaning operations where the contamination at such sites did not result from the operation of a drycleaning facility, abandoned drycleaning facility, or an in-state wholesale distribution facility;

(2) Sites that are not drycleaning facilities, in-state wholesale distribution facilities, or abandoned drycleaning facilities, that are contaminated by a release that results from drycleaning solvents being transported to or from a drycleaning facility or in-state distribution facility; or

(3) Any property contaminated by a release from a drycleaning facility, abandoned drycleaning facility, or in-state wholesale distribution facility, that has been identified by the United States environmental protection agency (EPA) as a federal superfund site pursuant to 40 CFR Part 300 et seq., except that the commissioner may authorize distribution of the required state match up to two hundred thousand dollars (\$200,000) per year per site; or

(4) Any drycleaning facility which has obtained a permit pursuant to the Resource Conservation and Recovery Act (RCRA), compiled in 42 U.S.C. § 6901 et seq.

SECTION 10. Tennessee Code Annotated, Section 68-217-109, is amended by deleting the section in its entirety and by substituting instead the following:

68-217-109. The fund shall be available to the commissioner for reasonable administrative expenditures associated with administering the fund.

SECTION 11. Tennessee Code Annotated, Section 68-217-110, is amended by deleting the first sentence in its entirety and substituting instead the following:

The commissioner shall promulgate, after public notice and an opportunity for comment, regulations to implement the duties and responsibilities as set forth in § 68-217-105, including, but not limited to, standards for evaluating releases of drycleaning solvent at or from affected drycleaning facilities, in-state wholesale distribution facilities, or abandoned drycleaning facilities and for determining what, if any, response action is necessary for any such release and standardized methods and techniques for responding to such releases and appropriate presumptive remedial responses.

SECTION 12. Tennessee Code Annotated, Section 68-217-111, is amended by deleting the word "board" wherever it appears and by substituting instead the word "commissioner".

SECTION 13. Tennessee Code Annotated, Section 68-217-113(1), is amended by deleting the language "and the board".

SECTION 14. All rules, regulations, orders and decisions heretofore issued or promulgated by the drycleaner environmental response board, together with any matters of the board that are pending on the effective date of this act shall hereafter be administered, enforced, modified or rescinded by the commissioner of environment and conservation.

SECTION 15. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 332

PASSED: April 17, 2014



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 22nd day of May 2014



BILL HASLAM, GOVERNOR