

## CHAPTER 105

( HB 465 )

AN ACT relating to brownfield redevelopment.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *A Brownfield Redevelopment Program is established and shall be administered by the cabinet.*
- (2) *In addition to any other defenses provided by law, a person that owns real property where a release of petroleum governed by KRS 224.01-405 or a release of a hazardous substance, pollutant, or contaminant governed by KRS 224.01-400 has occurred shall not be liable for performing characterization, correcting the effects of the release on the environment, or performing corrective action of the release if:*
  - (a) *The person certifies to the cabinet and the cabinet finds that:*
    1. *The release occurred prior to the property owner's acquisition of the property;*
    2. *The property owner made all appropriate inquiries into previous ownership and uses of the property in accordance with generally accepted practices;*
    3. *The property owner or a responsible party has provided all legally required notices under this chapter with respect to hazardous substances, pollutants, contaminants, petroleum, or petroleum products found at the property;*
    4. *The property owner is in compliance with all land use restrictions and will not impede the effectiveness or integrity of any institutional control required for the property;*
    5. *The property owner complied with any information requests by the cabinet under this chapter;*
    6. *The property owner is not and has not been affiliated with any person who is potentially liable for the release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224.01-400 or 224.01-405 or Section 2 of this Act through:*
      - a. *Direct or indirect familial relationship;*
      - b. *Any contractual, corporate, or financial relationship, excluding relationships created by instruments conveying or financing title or by contracts for sale of goods or services; or*
      - c. *Reorganization of a business entity that was potentially liable; and*
    7. *The property owner has not caused or contributed to the release;*
  - (b) *The cabinet concurs in writing that the intended future use of the property will not interfere with remediation of the release as required by the cabinet, increase the impacts of the release on human health or the environment, or expose the public and environment to unacceptable harm; and*
  - (c) *The person provides any person conducting characterization, correcting of the effect of the release on the environment, or undertaking corrective or remedial action, as well as the cabinet, with access to the property so necessary remediation activities can be completed.*
- (3) *The nonliability provided in this section shall not apply to any real property for which a false certification is made to the cabinet.*
- (4) *The cabinet may, by administrative regulation, establish procedures for the implementation of this section and Sections 2 and 3 of this Act, which may include administrative forms, technical standards, and fees to cover the cost of the cabinet's reviews.*

➔Section 2. KRS 224.60-135 is amended to read as follows:

- (1) *As required under administrative regulations of the cabinet, a petroleum storage tank owner or operator shall commence, or contract for, corrective action for a release into the environment from a petroleum storage tank. A property owner who is not also the petroleum storage tank owner or operator shall have no obligation to perform corrective action for a release into the environment from a petroleum storage tank.*

- (2) If a petroleum storage tank owner or operator fails or refuses to take corrective action, the cabinet may draw funds from the unobligated balance of the fund to initiate, or contract for, corrective action pursuant to KRS 224.60-105 to 224.60-160 in accordance with subsection (3) of the section.
- (3) Except as provided in subsection (4) of this section, before initiating, or contracting for, corrective action, the cabinet shall make a reasonable effort to notify and provide to the petroleum storage tank owner or operator an opportunity to comply with the requirements of this section.
- (4) The cabinet may draw funds from the unobligated balance of the fund to undertake, or contract for, corrective action necessary to prevent or remedy an emergency situation threatening public health, safety, or the environment, resulting from a release into the environment from a petroleum storage tank, unless a petroleum storage tank owner or operator is taking appropriate action to abate emergency situations in accordance with administrative regulations of the cabinet.
- (5) Within six (6) months from April 9, 1990, the state fire marshal shall promulgate administrative regulations which require any person or organization who installs, repairs, closes, or removes an underground storage tank for a petroleum storage tank owner or operator to demonstrate financial capability, including the maintenance of pollution liability insurance, and technical competency and proficiency.

➔Section 3. KRS 224.60-138 is amended to read as follows:

- (1) If corrective action for a release from or closure of a petroleum storage tank reduces levels of contamination to less than the standards established pursuant to the administrative regulations adopted under KRS 224.60-137, then the cabinet shall approve the corrective action or closure and issue a notice to the owner or operator that no further action is required to address the petroleum contamination. *This notice shall indicate that the property is not subject to any additional actions under KRS 224.01-400 or 224.01-405.*
- (2) A person who submits a corrective action proposal to the cabinet may request in writing a final determination on the proposal no sooner than thirty (30) days after its submission. When a final determination on the proposal is requested, the cabinet shall make its final determination within sixty (60) working days from the date the request is received by the cabinet. After a final determination has been made, the person requesting the final determination may request a hearing pursuant to the provisions of KRS 224.10-420. Nothing in this subsection shall relieve any person of any obligations imposed by law during an environmental emergency, nor shall it require the cabinet to approve a proposal which would violate this chapter or the administrative regulations promulgated pursuant thereto.

**Signed by Governor April 11, 2012.**