

FIRST REGULAR SESSION

[CORRECTED]

HOUSE BILL NO. 387

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BYRD (Sponsor), BURNETT AND GOODMAN (Co-sponsors).

Read 1st time January 27, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0449L.01I

AN ACT

To repeal sections 260.905 and 260.925, RSMo, and to enact in lieu thereof three new sections relating to the dry-cleaning environmental response trust.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 260.905 and 260.925, RSMo, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 260.905, 260.925, and 260.965, to read as
3 follows:

260.905. 1. The commission shall promulgate and adopt such initial rules and
2 regulations, effective no later than July 1, [2002] **2007**, as shall be necessary to carry out the
3 purposes and provisions of sections 260.900 to 260.960. Prior to the promulgation of such rules,
4 the commission shall meet with representatives of the dry-cleaning industry and other interested
5 parties. The commission, thereafter, shall promulgate and adopt additional rules and regulations
6 or change existing rules and regulations when necessary to carry out the purposes and provisions
7 of sections 260.900 to 260.960.

8 2. Any rule or regulation adopted pursuant to sections 260.900 to 260.960 shall be
9 reasonably necessary to protect human health, to preserve, protect and maintain the water and
10 other natural resources of this state and to provide for prompt corrective action of releases from
11 dry-cleaning facilities. Consistent with these purposes, the commission shall adopt rules and
12 regulations, effective no later than July 1, [2002] **2007**:

13 (1) Establishing requirements that owners who close dry-cleaning facilities remove

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 dry-cleaning solvents and wastes from such facilities in order to prevent any future releases;

15 (2) Establishing criteria to prioritize the expenditure of funds from the dry-cleaning
16 environmental response trust fund. The criteria shall include consideration of:

17 (a) The benefit to be derived from corrective action compared to the cost of conducting
18 such corrective action;

19 (b) The degree to which human health and the environment are actually affected by
20 exposure to contamination;

21 (c) The present and future use of an affected aquifer or surface water;

22 (d) The effect that interim or immediate remedial measures will have on future costs; and

23 (e) Such additional factors as the commission considers relevant;

24 (3) Establishing criteria under which a determination may be made by the department
25 of the level at which corrective action shall be deemed completed. Criteria for determining
26 completion of corrective action shall be based on the factors set forth in subdivision (2) of this
27 subsection and:

28 (a) Individual site characteristics including natural remediation processes;

29 (b) Applicable state water quality standards;

30 (c) Whether deviation from state water quality standards or from established criteria is
31 appropriate, based on the degree to which the desired remediation level is achievable and may
32 be reasonably and cost effectively implemented, subject to the limitation that where a state water
33 quality standard is applicable, a deviation may not result in the application of standards more
34 stringent than that standard; and

35 (d) Such additional factors as the commission considers relevant.

260.925. 1. On and after July 1, 2002, moneys in the fund shall be utilized to address
2 contamination resulting from releases of dry-cleaning solvents as provided in sections 260.900
3 to 260.960. Whenever a release poses a threat to human health or the environment, the
4 department, consistent with rules and regulations adopted by the commission pursuant to
5 subdivisions (2) and (3) of subsection 2 of section 260.905, shall expend moneys available in the
6 fund to provide for:

7 (1) Investigation and assessment of a release from a dry-cleaning facility, including costs
8 of investigations and assessments of contamination which may have moved off of the
9 dry-cleaning facility;

10 (2) Necessary or appropriate emergency action, including but not limited to treatment,
11 restoration or replacement of drinking water supplies, to assure that the human health or safety
12 is not threatened by a release or potential release;

13 (3) Remediation of releases from dry-cleaning facilities, including contamination which
14 may have moved off of the dry-cleaning facility, which remediation shall consist of the

15 preparation of a corrective action plan and the cleanup of affected soil, groundwater and surface
16 waters, using an alternative that is cost-effective, technologically feasible and reliable, provides
17 adequate protection of human health and environment and to the extent practicable minimizes
18 environmental damage;

19 (4) Operation and maintenance of corrective action;

20 (5) Monitoring of releases from dry-cleaning facilities including contamination which
21 may have moved off of the dry-cleaning facility;

22 (6) Payment of reasonable costs incurred by the director in providing field and laboratory
23 services;

24 (7) Reasonable costs of restoring property as nearly as practicable to the condition that
25 existed prior to activities associated with the investigation of a release or cleanup or remediation
26 activities;

27 (8) Removal and proper disposal of wastes generated by a release of a dry-cleaning
28 solvent; and

29 (9) Payment of costs of corrective action conducted by the department or by entities
30 other than the department but approved by the department, whether or not such corrective action
31 is set out in a corrective action plan; except that, there shall be no reimbursement for corrective
32 action costs incurred before August 28, 2000.

33 2. Nothing in subsection 1 of this section shall be construed to authorize the department
34 to obligate moneys in the fund for payment of costs that are not integral to corrective action for
35 a release of dry-cleaning solvents from a dry-cleaning facility. Moneys from the fund shall not
36 be used:

37 (1) For corrective action at sites that are contaminated by solvents normally used in
38 dry-cleaning operations where the contamination did not result from the operation of a
39 dry-cleaning facility;

40 (2) For corrective action at sites, other than dry-cleaning facilities, that are contaminated
41 by dry-cleaning solvents which were released while being transported to or from a dry-cleaning
42 facility;

43 (3) To pay any fine or penalty brought against a dry-cleaning facility operator under state
44 or federal law;

45 (4) To pay any costs related to corrective action at a dry-cleaning facility that has been
46 included by the United States Environmental Protection Agency on the national priorities list;

47 (5) For corrective action at sites with active dry-cleaning facilities where the owner or
48 operator is not in compliance with sections 260.900 to 260.960, rules and regulations adopted
49 pursuant to sections 260.900 to 260.960, orders of the director pursuant to sections 260.900 to
50 260.960, or any other applicable federal or state environmental statutes, rules or regulations; or

51 (6) For corrective action at sites with abandoned dry-cleaning facilities that have been
52 taken out of operation prior to July 1, [2004] **2009**, and not documented by or reported to the
53 department by July 1, [2004] **2009**. Any person reporting such a site to the department shall
54 include any available evidence that the site once contained a dry-cleaning facility.

55 3. Nothing in sections 260.900 to 260.960 shall be construed to restrict the department
56 from temporarily postponing completion of corrective action for which moneys from the fund
57 are being expended whenever such postponement is deemed necessary in order to protect public
58 health and the environment.

59 4. At any multisource site, the department shall utilize the moneys in the fund to pay for
60 the proportionate share of the liability for corrective action costs which is attributable to a release
61 from one or more dry-cleaning facilities and for that proportionate share of the liability only.

62 5. At any multisource site, the director is authorized to make a determination of the
63 relative liability of the fund for costs of corrective action, expressed as a percentage of the total
64 cost of corrective action at a site, whether known or unknown. The director shall issue an order
65 establishing such percentage of liability. Such order shall be binding and shall control the
66 obligation of the fund until or unless amended by the director. In the event of an appeal from
67 such order, such percentage of liability shall be controlling for costs incurred during the
68 pendency of the appeal.

69 6. Any authorized officer, employee or agent of the department, or any person under
70 order or contract with the department, may enter onto any property or premises, at reasonable
71 times and with reasonable advance notice to the operator, to take corrective action where the
72 director determines that such action is necessary to protect the public health or environment. If
73 consent is not granted by the operator regarding any request made by any officer, employee or
74 agent of the department, or any person under order or contract with the department, under the
75 provisions of this section, the director may issue an order directing compliance with the request.
76 The order may be issued after such notice and opportunity for consultation as is reasonably
77 appropriate under the circumstances.

78 7. Notwithstanding any other provision of sections 260.900 to 260.960, in the discretion
79 of the director, an operator may be responsible for up to one hundred percent of the costs of
80 corrective action attributable to such operator if the director finds, after notice and an opportunity
81 for a hearing in accordance with chapter 536, RSMo, that:

82 (1) Requiring the operator to bear such responsibility will not prejudice another owner,
83 operator or person who is eligible, pursuant to the provisions of sections 260.900 to 260.960, to
84 have corrective action costs paid by the fund; and

85 (2) The operator:

86 (a) Caused a release in excess of a reportable quantity by willful or wanton actions and

87 such release was caused by operating practices in violation of existing laws and regulations at
88 the time of the release; or

89 (b) Is in arrears for moneys owed pursuant to sections 260.900 to 260.960, after notice
90 and an opportunity to correct the arrearage; or

91 (c) Materially obstructs the efforts of the department to carry out its obligations pursuant
92 to sections 260.900 to 260.960; except that, the exercise of legal rights shall not constitute a
93 substantial obstruction; or

94 (d) Caused or allowed a release in excess of a reportable quantity because of a willful
95 material violation of sections 260.900 to 260.960 or the rules and regulations adopted by the
96 commission pursuant to sections 260.900 to 260.960.

97 8. For purposes of subsection 7 of this section, unless a transfer is made to take
98 advantage of the provisions of subsection 7 of this section, purchasers of stock or other indicia
99 of ownership and other successors in interest shall not be considered to be the same owner or
100 operator as the seller or transferor of such stock or indicia of ownership even though there may
101 be no change in the legal identity of the owner or operator. To the extent that an owner or
102 operator is responsible for corrective action costs pursuant to subsection 7 of this section, such
103 owner or operator shall not be entitled to the exemption provided in subsection 5 of section
104 260.930.

105 9. The fund shall not be liable for the payment of costs in excess of one million dollars
106 at any one contaminated dry-cleaning site. Additionally, the fund shall not be liable for the
107 payment of costs for any one site in excess of twenty-five percent of the total moneys in the fund
108 during any fiscal year. For purposes of this subsection, "contaminated dry-cleaning site" means
109 the areal extent of soil or ground water contaminated with dry-cleaning solvents.

110 10. The owner or operator of an active dry-cleaning facility shall be liable for the first
111 twenty-five thousand dollars of corrective action costs incurred because of a release from an
112 active dry-cleaning facility. The owner of an abandoned dry-cleaning facility shall be liable for
113 the first twenty-five thousand dollars of corrective action costs incurred because of a release from
114 an abandoned dry-cleaning facility. Nothing in this subsection shall be construed to prohibit the
115 department from taking corrective action because the department cannot obtain the deductible.

**260.965. The provisions of sections 260.900 to 260.960, and this section terminate
2 on August 28, 2012.**