

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 387**  
**93RD GENERAL ASSEMBLY**

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Reported from the Committee on Small Business March 17, 2005 with recommendation that House Committee Substitute for House Bill No. 387 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

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**AN ACT**

To repeal sections 260.900, 260.905, 260.925, 260.935, 260.940, and 260.960, RSMo, and to enact in lieu thereof seven new sections relating to hazardous waste, with an emergency clause.

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

- Section A. Sections 260.900, 260.905, 260.925, 260.935, 260.940, and 260.960, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 260.900, 260.905, 260.925, 260.935, 260.940, 260.960, and 260.965, to read as follows:
- 260.900. As used in sections 260.900 to 260.960, unless the context clearly indicates otherwise, the following terms mean:
- (1) "Abandoned dry-cleaning facility", any real property premises or individual leasehold space in which a dry-cleaning facility formerly operated;
  - (2) "Active dry-cleaning facility", any real property premises or individual leasehold space in which a dry-cleaning facility currently operates;
  - (3) "Chlorinated dry-cleaning solvent", any dry-cleaning solvent which contains a compound which has a molecular structure containing the element chlorine;
  - (4) "Commission", the hazardous waste management commission created in section 260.365;
  - (5) "Corrective action", those activities described in subsection 1 of section 260.925;
  - (6) "Corrective action plan", a plan approved by the director to perform corrective action at a dry-cleaning facility;

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 (7) "Department", the Missouri department of natural resources;
- 15 (8) "Director", the director of the Missouri department of natural resources;
- 16 (9) "Dry-cleaning facility", a commercial establishment that operates, or has operated  
17 in the past in whole or in part for the purpose of cleaning garments or other fabrics on site  
18 utilizing a process that involves any use of dry-cleaning solvents. Dry-cleaning facility includes  
19 all contiguous land, structures and other appurtenances and improvements on the land used in  
20 connection with a dry-cleaning facility but does not include prisons, governmental entities,  
21 hotels, motels or industrial laundries. Dry-cleaning facility does include coin-operated  
22 dry-cleaning facilities;
- 23 (10) "Dry-cleaning solvent", any and all nonaqueous solvents used or to be used in the  
24 cleaning of garments and other fabrics at a dry-cleaning facility and includes but is not limited  
25 to perchloroethylene, also known as tetrachloroethylene, [and petroleum-based solvents]  
26 **chlorinated dry-cleaning**, and the products into which such solvents degrade;
- 27 (11) "Dry-cleaning unit", a machine or device which utilizes dry- cleaning solvents to  
28 clean garments and other fabrics and includes any associated piping and ancillary equipment and  
29 any containment system;
- 30 (12) "Environmental response surcharge", either the active dry-cleaning facility  
31 registration surcharge or the dry-cleaning solvent surcharge;
- 32 (13) "Fund", the dry-cleaning environmental response trust fund created in section  
33 260.920;
- 34 (14) "Immediate response to a release", containment and control of a known release in  
35 excess of a reportable quantity and notification to the department of any known release in excess  
36 of a reportable quantity;
- 37 (15) "Operator", any person who is or has been responsible for the operation of  
38 dry-cleaning operations at a dry-cleaning facility;
- 39 (16) "Owner", any person who owns the real property where a dry- cleaning facility is  
40 or has operated;
- 41 (17) "Person", an individual, trust, firm, joint venture, consortium, joint-stock company,  
42 corporation, partnership, association or limited liability company. Person does not include any  
43 governmental organization;
- 44 (18) "Release", any spill, leak, emission, discharge, escape, leak or disposal of  
45 dry-cleaning solvent from a dry-cleaning facility into the soils or waters of the state;
- 46 (19) "Reportable quantity", a known release of a dry-cleaning solvent deemed reportable  
47 by applicable federal or state law or regulation.

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

purposes and provisions of sections 260.900 to 260.960. Prior to the promulgation of such rules, the commission shall meet with representatives of the dry-cleaning industry and other interested parties. The commission, thereafter, shall promulgate and adopt additional rules and regulations or change existing rules and regulations when necessary to carry out the purposes and provisions of sections 260.900 to 260.960.

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

(1) Establishing requirements that owners who close dry-cleaning facilities remove dry-cleaning solvents and wastes from such facilities in order to prevent any future releases;

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

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

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

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

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

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

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

(a) Individual site characteristics including natural remediation processes;

(b) Applicable state water quality standards;

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

(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 contamination resulting from releases of dry-cleaning solvents as provided in sections 260.900 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.

260.935. 1. Every active dry-cleaning facility shall pay, in addition to any other  
2 environmental response surcharges, an annual dry-cleaning facility registration surcharge as  
3 follows:

4 (1) Five hundred dollars for facilities which use no more than one hundred forty gallons  
5 of chlorinated solvents [and no more than one thousand four hundred gallons of petroleum,  
6 nonchlorinated solvents per year];

7 (2) One thousand dollars for facilities which use more than one hundred forty gallons  
8 of chlorinated solvents [or more than one thousand four hundred gallons of petroleum,  
9 nonchlorinated solvents per year] and less than three hundred sixty gallons of chlorinated  
10 solvents [and less than three thousand six hundred gallons of petroleum, nonchlorinated solvents]  
11 per year; and

12 (3) Fifteen hundred dollars for facilities which use at least three hundred sixty gallons  
13 of chlorinated solvents [or at least three thousand six hundred gallons of petroleum,  
14 nonchlorinated solvents] per year.

15 2. The active dry-cleaning facility registration surcharge imposed by this section shall  
16 be reported and paid to the department on an annual basis. The commission shall prescribe by  
17 administrative rule the procedure for the report and payment required by this section.

18 3. The department shall provide each person who pays a dry-cleaning facility registration  
19 surcharge pursuant to this section with a receipt. The receipt or the copy of the receipt shall be  
20 produced for inspection at the request of any authorized representative of the department.

21 4. All moneys collected or received by the department pursuant to this section shall be  
22 transmitted to the department of revenue for deposit in the state treasury to the credit of the  
23 dry-cleaning environmental response trust fund created in section 260.920. Following each  
24 annual reporting date, the state treasurer shall certify the amount deposited in the fund to the  
25 department.

26 5. If any person does not pay the active dry-cleaning facility registration surcharge or any  
27 portion of the active dry-cleaning facility registration surcharge imposed by this section by the  
28 date prescribed for such payment, the department shall impose and such person shall pay, in  
29 addition to the active dry-cleaning facility registration surcharge owed by such person, a penalty  
30 of fifteen percent of the active dry-cleaning facility registration surcharge. Such penalty shall  
31 be deposited in the dry-cleaning environmental response trust fund.

32           6. If any person does not pay the active dry-cleaning facility registration surcharge or any  
33 portion of the active dry-cleaning facility registration surcharge imposed by this section by the  
34 date prescribed for such payment, the department shall also impose interest upon the unpaid  
35 amount at the rate of ten percent per annum from the date prescribed for the payment of such  
36 surcharge and penalties until payment is actually made. Such interest shall be deposited in the  
37 dry-cleaning environmental response trust fund.

          260.940. 1. Every seller or provider of dry-cleaning solvent for use in this state shall  
2 pay, in addition to any other environmental response surcharges, a dry-cleaning solvent surcharge  
3 on the sale or provision of dry-cleaning solvent.

4           2. The amount of the dry-cleaning solvent surcharge imposed by this section on each  
5 gallon of dry-cleaning solvent shall be an amount equal to the product of the solvent factor for  
6 the dry-cleaning solvent and the rate of eight dollars per gallon.

7           3. The solvent factor for each dry-cleaning solvent is as follows:

8           (1) For perchloroethylene, the solvent factor is 1.00;

9           (2) For 1,1,1-trichloroethane, the solvent factor is 1.00; **and**

10          (3) For other chlorinated dry-cleaning solvents, the solvent factor is 1.00[; and

11          (4) For any nonchlorinated dry-cleaning solvent, the solvent factor is 0.05].

12          4. In the case of a fraction of a gallon, the dry-cleaning solvent surcharge imposed by this  
13 section shall be the same fraction of the fee imposed on a whole gallon.

14          5. The dry-cleaning solvent surcharge required in this section shall be paid to the  
15 department by the seller or provider of the dry-cleaning solvent, regardless of the location of such  
16 seller or provider.

17          6. The dry-cleaning solvent surcharge required in this section shall be paid by the seller  
18 or provider on a quarterly basis and shall be paid to the department for the previous quarter. The  
19 commission shall prescribe by administrative rule the procedure for the payment required by this  
20 section.

21          7. The department shall provide each person who pays a dry-cleaning solvent surcharge  
22 pursuant to this section with a receipt. The receipt or the copy of the receipt shall be produced  
23 for inspection at the request of any authorized representative of the department.

24          8. All moneys collected or received by the department pursuant to this section shall be  
25 transmitted to the department of revenue for deposit in the state treasury to the credit of the  
26 dry-cleaning environmental response trust fund created in section 260.920. Following each  
27 annual or quarterly reporting date, the state treasurer shall certify the amount deposited to the  
28 department.

29          9. If any seller or provider of dry-cleaning solvent fails or refuses to pay the dry-cleaning  
30 solvent surcharge imposed by this section, the department shall impose and such seller or



31 provider shall pay, in addition to the dry-cleaning solvent surcharge owed by the seller or  
32 provider, a penalty of fifteen percent of the dry-cleaning solvent surcharge. Such penalty shall  
33 be deposited in the dry-cleaning environmental response trust fund.

34 10. If any person does not pay the dry-cleaning solvent surcharge or any portion of the  
35 dry-cleaning solvent surcharge imposed by this section by the date prescribed for such payment,  
36 the department shall impose and such person shall pay interest upon the unpaid amount at the  
37 rate of ten percent per annum from the date prescribed for the payment of such surcharge and  
38 penalties until payment is actually made. Such interest shall be deposited in the dry-cleaning  
39 environmental response trust fund.

40 11. An operator of a dry-cleaning facility shall not purchase or obtain solvent from a  
41 seller or provider who does not pay the dry-cleaning solvent charge, as provided in this section.  
42 Any operator of a dry- cleaning facility who fails to obey the provisions of this section shall be  
43 required to pay the dry-cleaning solvent surcharge as provided in subsections 2, 3 and 4 of this  
44 section for any dry-cleaning solvent purchased or obtained from a seller or provider who fails  
45 to pay the proper dry-cleaning solvent surcharge as determined by the department. Any operator  
46 of a dry-cleaning facility who fails to follow the provisions of this subsection shall also be  
47 charged a penalty of fifteen percent of the dry-cleaning solvent surcharge owed. Any operator  
48 of a dry-cleaning facility who fails to obey the provisions of this subsection shall also be subject  
49 to the interest provisions of subsection 10 of this section. If a seller or provider of dry-cleaning  
50 solvent charges the operator of a dry- cleaning facility the dry-cleaning solvent surcharge  
51 provided for in this section when the solvent is purchased or obtained by the operator and the  
52 operator can prove that the operator made full payment of the surcharge to the seller or provider  
53 but the seller or provider fails to pay the surcharge to the department as required by this section,  
54 then the operator shall not be liable pursuant to this subsection for interest, penalties or the  
55 seller's or provider's unpaid surcharge. Such surcharges, penalties and interest shall be collected  
56 by the department, and all moneys collected pursuant to this subsection shall be deposited in the  
57 dry-cleaning environmental response trust fund.

260.960. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,  
2 that is created under the authority delegated in this section shall become effective only if it  
3 complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable,  
4 section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of  
5 the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay  
6 the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then  
7 the grant of rulemaking authority and any rule proposed or adopted after [August 28, 2000,]  
8 **January 1, 2006**, shall be invalid and void.

**260.965. The provisions of sections 260.900 to 260.965 shall expire August 28, 2012.**

Section B. Because immediate action is necessary to enable the promulgation of  
2 regulations to implement this act and to preserve the environment, section A of this act is  
3 deemed necessary for the immediate preservation of the public health, welfare, peace and safety,  
4 and is hereby declared to be an emergency act within the meaning of the constitution, and section  
5 A of this act shall be in full force and effect upon its passage and approval.