**South Carolina General Assembly**

120th Session, 2013-2014

**A30, R41, H3097**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Bales

Document Path: l:\council\bills\nbd\11029vr13.docx

Introduced in the House on January 8, 2013

Introduced in the Senate on March 7, 2013

Last Amended on April 23, 2013

Passed by the General Assembly on May 14, 2013

Governor's Action: May 21, 2013, Signed

Summary: Drycleaning Facility Restoration Trust Fund

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/11/2012 House Prefiled

12/11/2012 House Referred to Committee on **Agriculture, Natural Resources and Environmental Affairs**

1/8/2013 House Introduced and read first time ([House Journal‑page 82](file:///h:\HJ%20Archive\2013\01-08-13.docx))

1/8/2013 House Referred to Committee on **Agriculture, Natural Resources and Environmental Affairs** ([House Journal‑page 82](file:///h:\HJ%20Archive\2013\01-08-13.docx))

2/28/2013 House Committee report: Favorable **Agriculture, Natural Resources and Environmental Affairs** ([House Journal‑page 5](file:///h:\HJ%20Archive\2013\02-28-13.docx))

3/6/2013 House Read second time ([House Journal‑page 82](file:///h:\HJ%20Archive\2013\03-06-13.docx))

3/6/2013 House Roll call Yeas‑105 Nays‑0 ([House Journal‑page 82](file:///h:\HJ%20Archive\2013\03-06-13.docx))

3/7/2013 House Read third time and sent to Senate ([House Journal‑page 24](file:///h:\HJ%20Archive\2013\03-07-13.docx))

3/7/2013 Senate Introduced and read first time ([Senate Journal‑page 10](file:///h:\SJ%20Archive\2013\03-07-13.docx))

3/7/2013 Senate Referred to Committee on **Medical Affairs** ([Senate Journal‑page 10](file:///h:\SJ%20Archive\2013\03-07-13.docx))

4/18/2013 Senate Committee report: Favorable with amendment **Medical Affairs** ([Senate Journal‑page 12](file:///h:\SJ%20Archive\2013\04-18-13.docx))

4/23/2013 Senate Committee Amendment Adopted ([Senate Journal‑page 45](file:///h:\SJ%20Archive\2013\04-23-13.docx))

4/30/2013 Senate Read second time ([Senate Journal‑page 35](file:///h:\SJ%20Archive\2013\04-30-13.docx))

4/30/2013 Senate Roll call Ayes‑37 Nays‑2 ([Senate Journal‑page 35](file:///h:\SJ%20Archive\2013\04-30-13.docx))

5/2/2013 Senate Read third time and returned to House with amendments ([Senate Journal‑page 28](file:///h:\SJ%20Archive\2013\05-02-13.docx))

5/14/2013 House Concurred in Senate amendment and enrolled ([House Journal‑page 25](file:///h:\HJ%20Archive\2013\05-14-13.docx))

5/14/2013 House Roll call Yeas‑96 Nays‑0 ([House Journal‑page 26](file:///h:\HJ%20Archive\2013\05-14-13.docx))

5/15/2013 Ratified R 41

5/21/2013 Signed By Governor

5/23/2013 Effective date 05/21/13

5/28/2013 Act No. 30

**VERSIONS OF THIS BILL**

[12/11/2012](file:///p:\pprever\2013-14\3097_20121211.docx)

[2/28/2013](file:///p:\pprever\2013-14\3097_20130228.docx)

[4/18/2013](file:///p:\pprever\2013-14\3097_20130418.docx)

[4/23/2013](file:///p:\pprever\2013-14\3097_20130423.docx)

(A30, R41, H3097)

**AN ACT TO AMEND ARTICLE 4, CHAPTER 56, TITLE 44, CODE OF LAWS, 1976, RELATING TO THE DRYCLEANING FACILITY RESTORATION TRUST FUND, SO AS TO SPECIFY THE USE AND PURPOSE OF THE FUND, AUTHORIZE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO EXPEND MONIES FROM THE FUND FOR ASSESSMENT OF POTENTIAL SITES PRIOR TO OBTAINING EVIDENCE OF CONTAMINATION AT THE SITE, AND CLARIFY WHAT FACILITIES ARE EXCLUDED FROM PARTICIPATING IN THE FUND AND THE EFFECT OF PARTICIPATING IN THE FUND IF A FACILITY IS SEEKING EXEMPTION FROM THE FUND; AND TO DELETE OBSOLETE PROVISIONS, REORGANIZE PROVISIONS, AND MAKE TECHNICAL CORRECTIONS.**

Be it enacted by the General Assembly of the State of South Carolina:

**Drycleaning restoration trust fund revised**

SECTION 1. Article 4, Chapter 56, Title 44 of the 1976 Code is amended to read:

“Article 4

Drycleaning Facility Restoration Trust Fund

Section 44‑56‑405. The purpose of the South Carolina Drycleaning Facility Restoration Trust Fund is to collect and manage funds for the investigation and remediation of environmental contamination arising from the operation of eligible drycleaning facilities and eligible wholesale supply facilities. The Department of Revenue shall collect, and enforce the payment of surcharges and fees, which constitute the fund, as required by this article. The Department of Health and Environmental Control shall administer the fund to ensure that the sites that pose the greatest threat to human health and the environment are remediated first and that the remediation is accomplished in compliance with this article.

Section 44‑56‑410. As used in this article:

(1) ‘Contaminated site’ means any drycleaning facility or wholesale supply facility and surrounding area where drycleaning solvent has been deposited, stored, disposed of, released, placed, or otherwise come to be located; but does not include any consumer product in consumer use or any container. In order for a site to be a contaminated site it must have documented evidence of contamination from drycleaning solvent.

(2) ‘Department’ means the Department of Health and Environmental Control.

(3) ‘Drycleaning facility’ means a professional commercial establishment located in this State for the purpose of cleaning clothing and other fabrics utilizing a process that involves the use of drycleaning solvent. In the case of a retail establishment, the establishment is one that operates or has at sometime in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics for members of the public, other drycleaning facilities, and dry drop‑off facilities. In the case of a wholesale establishment, the establishment is one that operates or has at sometime in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics for other drycleaning facilities or dry drop‑off facilities. ‘Drycleaning facility’ includes laundry facilities that are using or have used drycleaning solvent as part of their cleaning process but does not include textile mills, uniform rental and linen supply facilities, or drycleaning facilities owned or operated by a local, state, or federal government.

(4) ‘Drycleaning solvent’ means nonaqueous solvents used in the cleaning of clothing and other fabrics and includes halogenated drycleaning fluids and nonhalogenated drycleaning fluids, and their breakdown products. ‘Drycleaning solvent’ includes solvent that has been recycled for use at a drycleaning facility and applies only to those solvents used at a drycleaning facility or handled by a wholesale supply facility.

(5) ‘Dry drop‑off facility’ means a commercial retail business (including routes) that receives clothing and other fabrics, from customers, for drycleaning or laundering at an off‑site drycleaning facility.

(6) ‘Employee’ means a natural person employed and paid by the owner of a drycleaning facility for thirty‑five or more hours a week for forty‑five or more weeks a year and on whose behalf the owner contributes payments to the South Carolina Department of Employment and Workforce or Department of Revenue as required by law. Excluded from the meaning of the term ‘employee’ are owners of drycleaning facilities and family members of owners, regardless of the level of consanguinity, if the family members are not employed and not compensated pursuant to the definition of the term ‘employee’ contained in this item. Part‑time employees who are employed and paid for fewer than thirty‑five hours a week for fewer than forty‑five weeks a year must not be deemed to be employees unless their hours and weeks of employment, when combined with the hours and weeks of employment of another or other part‑time employee or employees, total thirty‑five or more hours a week for forty‑five or more weeks a year.

(7) ‘Existing drycleaning facility’ means a drycleaning facility that started operation before November 24, 2004.

(8) ‘Former drycleaning facility’ means a drycleaning facility that ceased to be operated as a drycleaning facility before July 1, 1995.

(9) ‘Fund’ means Drycleaning Facility Restoration Trust Fund.

(10) ‘Halogenated drycleaning fluid’ means any nonaqueous solvent formulated, in whole or in part, with ten percent or more by volume of any of the halogenated compounds including, but not limited to, chlorine, bromine, fluorine, or iodine. Halogenated drycleaning fluids include, but are not limited to, the known solvents perchloroethylene (also known as tetrachloroethylene or perc), n‑propyl bromide, and any breakdown components of them.

(11) ‘New drycleaning facility’ means a drycleaning facility that started operation on or after November 24, 2004.

(12) ‘Nonaqueous solvent’ means any cleaning formulation designed to minimize swelling of fabric fibers and containing less than fifty‑one percent of water by volume.

(13) ‘Nonhalogenated drycleaning fluid’ means any nonaqueous solvent used in a drycleaning facility that contains less than ten percent by volume of any halogenated drycleaning fluid. Nonhalogenated drycleaning fluid includes petroleum based drycleaning solvents and any breakdown components of them.

(14) ‘Person’ means an individual, partnership, corporation, association, trust, estate, receiver, company, limited liability company, or another entity or group.

(15) ‘Property owner’ means a person who is vested with ownership, dominion, or legal or rightful title to the real property or who has a ground lease interest in the real property on which a drycleaning or wholesale supply facility is or has ever been located.

(16) ‘Release’ means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of drycleaning solvent.

(17) ‘Route’ means a commercial business that receives by mobile means clothing and other fabrics, from customers, for drycleaning or laundering at an off‑site drycleaning facility.

(18) ‘Wholesale supply facility’ means a commercial establishment that supplies drycleaning solvent to drycleaning facilities.

Section 44‑56‑420. (A) There is created in the state treasury a separate and distinct account called the ‘Drycleaning Facility Restoration Trust Fund’, revenue for which must be collected and enforced by the Department of Revenue, and the fund must be administered by the department and expended for the purposes of this article. However, the department may contract for the administration of the fund or any part of the administration of the fund. Judgments, recoveries, reimbursements, loans, surcharges and fees imposed and collected pursuant to this article except for administrative costs retained by the Department of Revenue, and other fees and charges related to the implementation of this article must be credited to the fund. Payments made out of the fund must be made in accordance with the provisions of this article. The State accepts no financial responsibility as a result of the creation of the fund. The creation of the fund creates no burden upon the State to provide monies for the fund by any mechanisms other than as provided in this article. The State may recover to the fund any disbursements from the fund which were not utilized in accordance with this article.

(B) The board of the Department of Health and Environmental Control shall establish a moratorium on administrative and judicial actions by the department concerning drycleaning facilities and wholesale supply facilities resulting from the release of drycleaning solvent to soil or waters of the State. This moratorium applies only to those sites deemed eligible as defined in Section 44‑56‑470. The board may review and determine the appropriateness of the moratorium as needed. The review by the board must include, but is not limited to, consideration of these factors:

(1) the solvency of the fund as described in this article;

(2) prioritization of the sites;

(3) public health concerns related to the sites;

(4) eligibility of the sites; and

(5) corrective action plans submitted to the department. After review, the board may suspend all or a portion of the moratorium if necessary.

(C) If incidents of contamination by drycleaning solvent related to the operation of an eligible contaminated site pose a threat to the environment or the public health, safety, or welfare, the department may expend monies available in the fund to provide for:

(1) the prompt investigation and assessment of the contaminated sites; however, the owner or operator of a drycleaning facility or wholesale supply facility or a property owner shall pay for the cost of the investigation and assessment up to the amount of the owner’s, operator’s, or property owner’s deductible, and the department only shall provide monies that exceed the owner’s, operator’s, or property owner’s deductible;

(2) the expeditious treatment, restoration, or replacement of potable water supplies;

(3) the remediation including the operation maintenance and monitoring of eligible contaminated sites, which consist of remediation of affected soil, groundwater, and surface waters, using the most cost‑effective alternative that is reliable and feasible technologically and that provides adequate protection of the public health, safety, and welfare and minimizes environmental damage in accordance with the site selection;

(4) the expenses of administering the fund by the department including the employment of department staff to carry out the department’s duties described in this article; however, the department may exclude five percent of the average annual collections of the fund or the amount required to fund four employees and the administrative costs associated with these employees, whichever is greater.

(D) The fund may not be used to:

(1) pay for activities in subsection (C) if the activities at a site are or were not related to the operation of a drycleaning facility or wholesale supply facility;

(2) pay for activities in subsection (C) if the activities are for a contaminated site that is proposed for listing or is listed on the State Priority List or on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, or any site that is required to obtain a permit pursuant to the Resource Conservation and Recovery Act, as amended;

(3) pay any costs associated with a fine, penalty, or action brought against the owner or operator of a drycleaning facility or wholesale supply facility or a property owner under local, state, or federal law;

(4) pay for activities in subsection (C) if the costs were incurred before July 1, 1995;

(5) pay any costs to landscape or otherwise artificially improve a contaminated site;

(6) pay for activities in subsection (C) where the costs were incurred before the actual date of the first payment of registration fees for the site pursuant to Section 44‑56‑440(B);

(7) pay any costs for work not approved by the department in accordance with this article or regulations promulgated pursuant to this article;

(8) pay for activities in subsection (C) at sites that are uniform rental and linen supply facilities unless the site was operated on or after July 1, 1995, as a drycleaning facility for garments or fabrics belonging to the public and has participated in the fund;

(9) pay for activities in subsection (C) at sites that are no longer operated as drycleaning facilities or coin‑operated drycleaning facilities unless they qualify pursuant to Section 44‑56‑470(C);

(10) pay any costs that may be associated with, but are not integral to, site assessment and/or remediation; and

(11) pay for activities in subsection (C) at a drycleaning facility that has been contaminated as a result of a release by a wholesale supplier during the delivery of drycleaning solvent until it has first been remediated by the full amount of the wholesale supplier’s insurance.

Section 44‑56‑425. (A) Notwithstanding another provision of this article, this article does not apply to a drycleaning facility that possesses a drycleaning facility exemption certificate issued by the Department of Revenue on or after July 1, 2009. A drycleaning facility exemption certificate may be issued by the Department of Revenue only if the drycleaning facility meets all of the following requirements:

(1) the drycleaning facility was in existence on July 1, 1995;

(2)(a) the drycleaning facility has only drycleaned with nonhalogenated drycleaning fluids; or

(b) the drycleaning facility drycleaned with halogenated drycleaning fluids and nonhalogenated drycleaning fluids and elected to remove the site from the requirements of this article by notification made to the Department of Revenue before October 1, 1995;

(3)(a) the drycleaning facility never participated in the fund through payment of any surcharges or fees imposed pursuant to this article; or

(b) paid an initial registration fee in 1995 and operated as an exempt drycleaning facility the following year and subsequent years up until 2009. A drycleaning facility described pursuant to subsection (A)(3)(b) of this section shall have any payments made after July 1, 2009, refunded by the Department of Revenue;

(4) the drycleaning facility requested a drycleaning facility exemption certificate from the Department of Revenue by December 31, 2009; and

(5) the department has verified that the drycleaning facility has met the requirements contained in items (1) through (4) for the issuance of the drycleaning facility exemption certificate to the drycleaning facility.

(B) If the ownership or operation of a drycleaning facility that possesses a drycleaning facility exemption certificate is transferred to another person after December 31, 2009, the new owner or operator shall request and must be provided an updated drycleaning facility exemption certificate from the Department of Revenue; otherwise the certificate remains current.

(C) The drycleaning facility exemption certificate authorized pursuant to this section only applies to the physical location at which the drycleaning took place and is not transferable to any other physical location.

(D)(1) This article does not apply to dry drop‑off facilities where the clothing or other fabrics are cleaned only by a drycleaning facility that meets all of the following conditions:

(a) the drycleaning facility is owned or operated by the same person that owns or operates the dry drop‑off facility and the drycleaning facility has been issued a drycleaning facility exemption certificate pursuant to this section;

(b) the owner or operator of the drycleaning facility, or related entity, does not own or operate a drycleaning facility that is required to participate in the fund through payment of surcharges or fees imposed pursuant to this article; and

(c) the owner or operator of the drycleaning facility, or related entity, does not own any property on which a drycleaning facility is protected by the moratorium pursuant to Section 44‑56‑420(B).

(2) This article does not apply to dry drop‑off facilities where the clothing or other fabrics are cleaned only by a drycleaning facility that complies with subsection (D)(1), and the dry drop‑off facility is not being operated at a property on which a drycleaning facility is protected by the moratorium pursuant to Section 44‑56‑420(B).

(3) If an owner or operator of a drycleaning facility, or related entity, who complies with subsection (D)(1), purchases the business of a drycleaning facility that participates in the fund, and the owner or operator uses that location only as a dry drop‑off facility, this article will not apply to that dry drop‑off facility if the drycleaning business was closed and not operating when it was purchased.

(E) A drycleaning facility that is in possession of a drycleaning facility exemption certificate is permanently barred from receiving monies from the fund, and the moratorium provided for in Section 44‑56‑420(B) does not apply.

(F) The department may direct the Department of Revenue in writing to allow a property owner to register if the property owner can demonstrate to the department that they have not been notified pursuant to Section 44‑56‑435(A) and did not have reason to know of this article for more than ninety days prior to requesting registration. The property owner registering pursuant to this subsection is liable for payment of all taxes or fees, including interest, from the later of July 1, 1995, or the date the drycleaning facility began operating; however, the registering property owner is not liable for penalties.

Section 44‑56‑430. (A) The department is required to report each January fifteenth the current financial position of the fund to the General Assembly. In addition, the department shall include projected information that would enable the General Assembly to determine the solvency of the fund. At a minimum this must include a five‑year budget projection. This report also must review and comment on the adequacy of the current program in resolving contamination problems at both operating and closed drycleaning facilities and wholesale supply facilities in this State.

(B) The department shall promulgate regulations to establish priorities for assessment and remediation at eligible contaminated sites. The department shall provide for the assessment and remediation of eligible contaminated sites consistent with these regulations and other provisions of this article.

(C) The department shall administer the assessment and remediation portions of the program through direct payments to contractors actually accomplishing the site assessment and remediation and not through reimbursement to drycleaning or wholesale supply facility owners, operators, or property owners. All services related to site assessment and remediation must be preapproved by the department before performance in order to receive payment for services rendered.

(D) The department may not expend more than five hundred fifty thousand dollars from the fund annually to pay for the costs at any one contaminated site for the activities described in Section 44‑56‑420(C).

(E) The department in its sole discretion may use other funds to pay the cost of a cleanup if the department declares a contaminated site is an emergency and if the committed money in the fund exceeds the current balance or the amount committed to a contaminated site has reached the maximum allowable expenditure as required in subsection (D). However, once the fund has an available uncommitted balance, the department’s other sources of money that paid for the approved emergency cleanup may be reimbursed for the costs incurred through annual payments that may not exceed five percent of the total fund’s average annual balance. The fund may not obligate itself for more than it is estimated to generate through surcharges and fees.

(F) Nothing in this article subjects the department to liability for any action that may be required of the owner, operator, or person by a private party or a local, state, or federal governmental entity.

(G) Nothing in this article may restrict the department from temporarily postponing rehabilitation work on a site in order to make funds available to perform work on another contaminated site with a higher priority.

Section 44‑56‑435. (A) The Department of Revenue shall distribute registration forms to owners and operators of drycleaning and wholesale supply facilities and to property owners. The Department of Revenue shall use reasonable efforts to identify and notify owners, operators, and property owners of drycleaning and wholesale supply facilities of the registration requirements by certified mail, return receipt requested. The Department of Revenue shall provide to the department a copy of each applicant’s registration materials within thirty working days of the receipt of the materials.

(B) The Department of Revenue shall administer, collect, and enforce the surcharges and fees in Sections 44‑56‑440, 44‑56‑450, and 44‑56‑460 in the manner that the sales and use taxes are administered, collected, and enforced under Chapter 36, Title 12, except that no timely payment discount or exemptions or exclusions are allowed. The provisions of Title 12 apply to the collection and enforcement of the surcharges and fees by the Department of Revenue.

(C) The Department of Revenue shall retain funds for the costs incurred to collect and enforce the fund that may include a part‑time employee with the related expenses for audit purposes. The funds withheld must not exceed the actual costs to administer, collect, and enforce the fund. The proceeds of the registration fee and surcharges, after deducting the costs incurred by the Department of Revenue in auditing, collecting, distributing, and enforcing payment of the registration fee and the surcharges, must be remitted to the State Treasurer and credited to the fund. For the purposes of this article, the proceeds of the registration fee and the surcharges include all funds collected and received by the Department of Revenue, including interest and penalties on delinquent fees and surcharges.

(D) The Department of Revenue may establish audit procedures and assess delinquent registration fees and surcharges.

(E) The Department of Revenue, in addition to all other penalties authorized by this article and in addition to the provisions of Section 12‑54‑90, may revoke one or more certificates of registration of any owner or operator of a drycleaning facility for failure to remit any taxes, surcharges, or fees due by the owner or operator pursuant to this article or Title 12 or when the owner or operator fails, neglects, violates, or refuses to comply with the provisions of Section 44‑56‑440.

(F) The Department of Revenue shall create and update an annual report of all drycleaning facilities in the State. This report must identify those that have a drycleaning facility exemption certificate and must provide the status of the annual certificates of registration for those in the fund. The Department of Revenue shall publicize the report and distribute it as widely as practical on October thirtieth of each year to interested parties including, but not limited to, wholesale suppliers, dry cleaners, the department, and other interested parties.

Section 44‑56‑440. (A)(1) The owner or operator of a drycleaning facility shall register with and pay initial registration fees to the Department of Revenue for each drycleaning facility in operation, and pay annual or quarterly renewal registration fees as established by the Department of Revenue. The fee must be accompanied by a notarized certification from the owner or operator of the drycleaning facility, on a form provided by the Department of Revenue, certifying the number of employees employed by the owner or operator of the drycleaning facility for the twelve‑month period preceding payment of the fee.

(2)(a) The property owner of the drycleaning facility may register the site if the owner or operator of the drycleaning facility does not register a site under the provisions of this section. Upon registration by the property owner, the owner or operator of the drycleaning facility must be notified by the Department of Revenue of the registration, and the owner or operator of the drycleaning facility shall comply with all applicable provisions of this article, including the payment of subsequent renewal fees imposed under subsection (B).

(b) The property owner shall obtain a notarized certification from the owner or operator of the drycleaning facility, on a form provided by the Department of Revenue, certifying the number of employees employed by the owner or operator of the drycleaning facility and his dry drop‑off facilities for the twelve‑month period preceding payment of the fee and shall remit the fee imposed pursuant to subsection (B). If the property owner is unable to obtain information as to the number of employees at the site, the property owner shall remit the fee imposed pursuant to subsection (B)(3) in order to register the site.

(B) An initial and annual registration fee for each drycleaning facility with:

(1) up to four employees is seven hundred fifty dollars;

(2) five to ten employees is one thousand five hundred dollars;

(3) eleven or more employees is two thousand two hundred fifty dollars.

A drycleaning facility that possesses a drycleaning facility exemption certificate issued pursuant to Section 44‑56‑425 is exempt from the fee imposed pursuant to this section.

(C) Each drycleaning facility registered in accordance with this section must be issued an annual drycleaner’s certificate of registration by the Department of Revenue. The certificate of registration authorized pursuant to this section is valid beginning the first day of October following the registration and ending on the last day of the following September. In the case of a new drycleaning facility registered in accordance with this section, the certificate of registration authorized pursuant to this section is valid beginning on the day it is issued and ending on the last day of the following September.

(D) In order to purchase or receive drycleaning solvent from a wholesale supply facility or another drycleaning facility, a drycleaning facility shall provide the supplier of drycleaning solvent a copy of its current certificate of registration or drycleaning facility exemption certificate issued pursuant to Section 44‑56‑425, whichever is applicable.

(E) Drycleaning solvent only must be purchased from a solvent supplier who is registered pursuant to Section 44‑56‑460(B).

(1) A wholesale supply facility is prohibited from selling or transferring drycleaning solvent to any drycleaning facility not in possession of a current certificate of registration or a drycleaning facility exemption certificate issued pursuant to Section 44‑56‑425.

(2) A drycleaning facility is prohibited from selling or transferring drycleaning solvent to any other drycleaning facility not in possession of a current certificate of registration or a drycleaning facility exemption certificate issued pursuant to Section 44‑56‑425. This prohibition applies even if the same person owns or operates both drycleaning facilities.

(3) A drycleaning facility not in possession of a current certificate of registration or a drycleaning facility exemption certificate issued pursuant to Section 44‑56‑425, is prohibited from purchasing or receiving drycleaning solvent.

Section 44‑56‑450. (A)(1) An environmental surcharge equal to one percent of the gross proceeds of sales of laundering and drycleaning services is imposed upon every owner or operator of a retail drycleaning facility or a dry drop‑off facility.

Exempt from the environmental surcharge imposed in this section are:

(a) drycleaning facilities that possess a drycleaning facility exemption certificate issued pursuant to Section 44‑56‑425;

(b) dry drop‑off facilities exempt pursuant to Section 44‑56‑425(D); and

(c) wholesale sales of drycleaning services provided to another drycleaning facility or a dry drop‑off facility.

(2) At any time the uncommitted balance of the fund account exceeds five million dollars, the one percent of the gross proceeds of sales of drycleaning surcharge is suspended until that time the uncommitted balance of the trust fund account becomes less than one million dollars. The department is responsible for notifying the Department of Revenue when these amounts have been reached. The suspension of the environmental surcharge occurs at the end of the month in which the Department of Revenue is notified by the department. The lifting of the suspension occurs on the first day of the month following the month in which the Department of Revenue is notified by the department.

(B) The surcharge imposed by this section is due and payable on the twentieth day of each month for the preceding month. The Department of Revenue may authorize the quarterly, semiannual, or annual payment of this surcharge. The surcharge must be reported on forms and in the manner determined by the Department of Revenue.

Section 44‑56‑460. (A) Beginning July 1, 1995, an environmental surcharge is assessed on the privilege of producing in, importing into, or causing to be imported into the State drycleaning solvent. A surcharge of ten dollars per gallon on halogenated drycleaning fluid and two dollars per gallon on nonhalogenated drycleaning fluid is levied on each gallon to be used for drycleaning purposes when imported into or produced in the State. Nonhalogenated drycleaning fluids purchased, produced, or transported in a nonliquid physical state must be assessed a surcharge of twenty cents per pound. Exempt from the surcharge imposed pursuant to this section are sales or distributions to, or purchases or receipts by, drycleaning facilities that possess a drycleaning facility exemption certificate issued pursuant to Section 44‑56‑425.

(B) A person producing in, importing into, or causing to be imported into this State drycleaning solvent for sale, use, or otherwise shall register with the Department of Revenue and become licensed for the purposes of remitting the surcharge pursuant to this section. The person shall register as a producer or importer of drycleaning solvent. Persons operating as a producer or importer of drycleaning solvent at more than one location only are required to have a single registration. The fee for registration is thirty dollars.

(C) The surcharge imposed by this section is due and payable on or before the twentieth day of the month succeeding the month of production, importation, or removal from a storage site. The surcharge must be reported on forms and in the manner determined by the Department of Revenue. The surcharge report must include the name, address, and quantity of solvent sold to each drycleaning facility during the month. This information is not subject to the Freedom of Information Act and is not available for distribution to the Drycleaning Advisory Council.

(D) All drycleaning solvent to be used for drycleaning purposes which are imported, produced, or sold in this State are presumed to be subject to the surcharge imposed by this section. An owner or operator of a drycleaning facility participating in the fund who has purchased drycleaning solvent for use, consumption, resale, or distribution in this State shall document that the surcharge imposed by this section has been paid or shall pay the surcharge directly to the Department of Revenue in accordance with subsection (C). The solvent dealer may pass the costs of the surcharge to any owner or operator of a drycleaning facility who has purchased drycleaning solvent for use, consumption, resale, or distribution in this State, except no surcharge may be imposed on drycleaning solvent supplied to a drycleaning facility that possesses a drycleaning facility exemption certificate issued pursuant to Section 44‑56‑425.

(E) The surcharge imposed by this section must be remitted to the Department of Revenue. The payment must be accompanied by the forms prescribed by the Department of Revenue.

(F) Drycleaning solvent exported out of State from the storage site at which the producer or importer holds it in this State is exempt from the surcharge authorized pursuant to this section. Anyone exporting drycleaning solvent on which the surcharge has been paid may apply for a refund or credit. A person who sells drycleaning solvent that is exempt from the collection of the surcharge pursuant to subsection (D) may apply for a credit or refund. The Department of Revenue may require information it considers necessary in order to approve the refund or credit.

(G) The Department of Revenue may authorize:

(1) a quarterly return and payment when the surcharge remitted by the licensee for the preceding quarter did not exceed one hundred dollars;

(2) a semiannual return and payment when the surcharge remitted by the licensee for the preceding six months did not exceed two hundred dollars;

(3) an annual return and payment when the surcharge remitted by the licensee for the preceding twelve months did not exceed four hundred dollars.

Section 44‑56‑470. (A) In order for the department to expend fund money, a wholesale supply facility or drycleaning facility must be deemed eligible under this section and stay in compliance with this article and regulations promulgated pursuant to this section to remain eligible. In order for the department to determine eligibility, the owner, operator, or the property owner shall submit a timely application on forms developed by the department for this purpose.

(B) A wholesale supply facility, new drycleaning facility, or existing drycleaning facility is deemed eligible under this section only if:

(1) the owner, operator, or property owner of the drycleaning facility, has registered with and has paid all annual fees, surcharges, and solvent fees as required by the Department of Revenue;

(2) the wholesale supply facility or drycleaning facility, is determined by the department to be in compliance with this article and department regulations governing drycleaning facilities or wholesale supply facilities;

(3) the drycleaning facility is covered by third‑party liability insurance when and if the insurance becomes available at a reasonable cost, as determined by the Department of Insurance, and if the insurance covers liability for contamination that occurred both before and after the effective date of the policy;

(4) the owner, operator, or property owner of the wholesale supply facility or drycleaning facility submitted an application for determination of eligibility;

(5) the wholesale supply facility or drycleaning facility has not been operated in a grossly negligent manner at any time after November 18, 1980; and

(6) the owner, operator, or property owner of the wholesale supply facility or drycleaning facility submits documented evidence of contamination to the department within six months of discovery if discovery was after November 24, 2004.

(C) A former drycleaning facility is deemed eligible under this section when:

(1) the owner or operator submitting an application for determination of eligibility has an operating drycleaning facility in the fund and every drycleaning facility under their control since July 1, 1995, meets the requirements of subsection (B); and

(2) the owner or operator submits documented evidence of contamination to the department within six months of discovery.

(D) Deductibles will be set as follows:

(1) When an owner, operator, or property owner of a wholesale supply facility, existing drycleaning facility, or former drycleaning facility submits an application for determination of eligibility:

(a) by November 24, 2005, the deductible is one thousand dollars;

(b) after November 24, 2005 and before December 31, 2014, the deductible is twenty‑five thousand dollars; and

(c) on or after December 31, 2014, no applications will be accepted.

(2) When an owner, operator, or property owner of a new drycleaning facility submits an application for determination of eligibility, the deductible is twenty‑five thousand dollars.

(E) The department shall review the application for determination of eligibility and request any additional information within ninety days of the date of receipt of the application. The department shall notify the applicant regarding the department’s determination of eligibility status within one hundred eighty days of the date the department deems the application complete.

(F) Eligibility under this section applies to the site where the drycleaning facility or wholesale supply facility is located. Eligibility is not affected by the subsequent conveyance of the ownership of the business or the property on which the business is located. The new owner or operator shall remain in compliance with this article and department regulations governing drycleaning facilities or wholesale supply facilities to maintain eligibility.

(G) A drycleaning facility or wholesale supply facility is permanently barred from receiving monies from the fund, and the moratorium described in Section 44‑56‑420(B) does not apply if:

(1) the owner, operator, or the property owner does not submit an application for determination of eligibility in accordance with subsection (B) or subsection (C);

(2) the owner, operator, or the property owner does not provide documented evidence of contamination to the department within six months of discovery if the discovery was after November 24, 2004;

(3) the owner, operator, or the property owner of a drycleaning facility or wholesale supply facility denies the department access to the property; or

(4) the owner, operator, or the property owner of a drycleaning facility misrepresents the number of employees upon which the registration fee described in Section 44‑56‑440 is based.

(H) A report of drycleaning solvent contamination at a drycleaning facility made to the department by a person in accordance with this article or department regulations governing drycleaning facilities may not be used directly as evidence of liability for the release in a civil or criminal trial arising out of the release.

Section 44‑56‑480. (A) Owners or operators of existing drycleaning facilities shall install dikes or other containment structures around each machine or item of equipment in which drycleaning solvent is used and around an area in which solvents or waste containing solvents are stored. Owners or operators of new drycleaning facilities shall install containment structures before the commencement of operations and before delivery of any drycleaning solvent to the drycleaning facility. Owners or operators of operating drycleaning facilities shall maintain all containment structures while the drycleaning facility remains in operation and shall certify every five years, that the conditions at their drycleaning facility meet the requirements of subsection (A) by completing a certification form as required by the department. The containment must meet the following criteria:

(1) dikes or containment structures around machines:

(a) for existing drycleaning facilities the dikes or containment structures must be capable of containing one‑third of the total tank capacity of each machine that does not have a rigid and impermeable containment vessel capable of containing one hundred percent of the volume of the largest single tank in the machine or piece of equipment or one‑third of the total tank capacity of each machine, whichever is greater;

(b) for new drycleaning facilities, the owners or operators shall install beneath each machine or item of equipment in which drycleaning solvent is used a rigid and impermeable containment vessel capable of containing one hundred percent of the volume of the largest single tank in the machine or piece of equipment or one‑third of the total tank capacity of each machine, whichever is greater;

(2) dikes or containment structures around areas used for storage of solvents or waste containing solvents must be capable of containing one hundred percent of the volume of the largest container stored or retained in the containment structure;

(3) all diked containment areas must be sealed or otherwise made impervious to the drycleaning solvent in use at the drycleaning facility, including floor surfaces, floor drains, floor joints, and inner dike walls;

(4) to the extent practicable, an owner or operator of a drycleaning facility or property owner shall seal or otherwise render impervious those portions of all floor surfaces upon which any drycleaning solvent may leak, spill, or otherwise be released;

(5) containment devices must provide for the temporary containment of accidental spills or leaks until appropriate response actions are taken by the owner/operator to abate the source of the spill and remove the product from all areas on which the product has accumulated; and

(6) materials used in constructing the containment structure or sealing the floors must be capable of withstanding permeation by drycleaning solvent in use at the drycleaning facility for not less than seventy‑two hours.

(B) The property owner or the owner or operator of a drycleaning facility or wholesale supply facility at which there is a spill of more than the federally mandated reportable quantity of drycleaning solvent outside of a containment structure, after July 1, 1995, shall report the spill to the department immediately upon the discovery of the spill and comply with existing emergency response regulations.

(C) Effective January 1, 2010, all halogenated solvents must be delivered by a closed‑loop delivery system.

(D) Failure to comply with the requirements of this section constitutes gross negligence that may permanently bar the drycleaning facility from receiving monies from the fund, and the moratorium provided for in Section 44‑56‑420(B) does not apply to this drycleaning facility.

Section 44‑56‑485. The department may promulgate regulations to carry out the provisions of this article.

Section 44‑56‑490. (A) If the department finds that a person is in violation of a provision of this article or a regulation promulgated pursuant to this article, the department may issue an order requiring the person to comply with this article or regulation promulgated pursuant to this article or the department may bring civil action for injunctive relief in an appropriate court of competent jurisdiction.

(B) A person who violates a provision of this article, a regulation promulgated pursuant to this article, or an order of the department issued pursuant to this article or regulation promulgated pursuant to this article is subject to a civil penalty not to exceed ten thousand dollars for each day of violation.

(C) A person who wilfully violates a provision of this article, a regulation promulgated pursuant to this article, or an order of the department issued pursuant to this article is guilty of a misdemeanor and, upon conviction, may be fined not more than twenty‑five thousand dollars for each day of violation or imprisoned for not more than one year, or both.

(D) A wholesale supply facility selling or providing drycleaning solvent in violation of the provisions of Section 44‑56‑440 is subject to a civil penalty of up to ten thousand dollars for each violation. Each sale or transfer constitutes a separate violation.

(E) A drycleaning facility selling or providing solvent to another drycleaning facility in violation of the provisions of Section 44‑56‑440 is subject to a civil penalty of up to ten thousand dollars for each violation. Each sale or transfer constitutes a separate violation.

(F) A drycleaning facility purchasing or receiving drycleaning solvent in violation of the provisions of Section 44‑56‑440 is subject to a civil penalty of up to ten thousand dollars for each violation. Each purchase or receipt constitutes a separate violation.

(G) Failure to register as a producer or importer of drycleaning solvent pursuant to Section 44‑56‑460(B) before importing or producing drycleaning solvent into this State is a misdemeanor and, upon conviction, the person may be fined up to twenty‑five thousand dollars or imprisoned up to thirty days.

Section 44‑56‑495. (A) There is created the Drycleaning Advisory Council to advise the department on matters relating to regulations and standards that affect drycleaning and related industries.

(B) The council is composed of the following members:

(1) eight owners or operators of drycleaning facilities who are participating in this article;

(2) one representative of a wholesale supply facility;

(3) one representative of the drycleaners who have a Drycleaning Exemption Certificate issued by the Department of Revenue; and

(4) one representative from the department, who is an administrator.

(C) Members enumerated in subsections (B)(1) through (B)(3) are appointed by the board of the Department of Health and Environmental Control and shall serve terms of two years and until their successors are appointed. The chairman of the council is elected by the members of the council at the first meeting of each new term.

(D) An employee of the Department of Revenue shall attend meetings of the council to provide the council informal assistance as to matters involving the surcharges and fees that are imposed pursuant to this article and which are administered and collected by the Department of Revenue.

(E) The Department of Revenue may disclose to the department information on a return filed with the Department of Revenue pursuant to the provisions of Section 44‑56‑450.

The Department of Revenue and the department may not disclose to the members enumerated in subsections (B)(1) through (B)(3) or to the public specific information on a return filed with the Department of Revenue pursuant to the provisions of Section 44‑56‑450; however, the Department of Revenue and the department may provide these members available statistical information concerning the surcharge imposed pursuant to Section 44‑56‑450.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15th day of May, 2013.

Approved the 21st day of May, 2013.

\_\_\_\_\_\_\_\_\_\_