

Section 22-30D-1

Short title.

This chapter shall be known and cited as "The Alabama Drycleaning Environmental Response Trust Fund Act."

(Act 2000-740, p. 1624, §1.)

Section 22-30D-2**Legislative findings.**

(a) The Legislature of the State of Alabama makes the following findings and declarations:

(1) The soils, water, and air of this state constitute unique and delicately balanced resources.

(2) The protection of these resources is vital to the economy of this state.

(3) The preservation of waters of this state is a matter of the highest urgency and priority as these waters provide a primary source of potable water in this state and that such use can only be served effectively by maintaining the quality of waters in as close to a comparable previous condition as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests.

(b) The Legislature makes the following additional findings:

(1) Where contamination of soils, waters, or air has occurred, remedial measures have often been delayed for long periods while investigations of the extent of such contamination and determinations as to liability and the extent of liability are made.

(2) Such delays result in the continuation and intensification of the threat to the public health, safety, and welfare, in greater damages to the environment, and in significantly higher costs to contain or remediate the contamination.

(3) Adequate financial resources must be available to provide funding to investigate such contamination and, if necessary, promptly begin remedial measures.

(c) The Legislature makes the following additional findings:

(1) Drycleaning agents may have caused contamination in the past as part of the normal operation of drycleaning facilities and wholesale distribution facilities, and in many instances, such contamination may have occurred while such facilities were being operated in full compliance with laws existing at the time of such possible contamination.

(2) Such contamination, if any, which may have been caused by drycleaning agents at drycleaning facilities and wholesale distribution facilities may possibly pose a threat to the quality of the soils and waters of this state.

(3) Owners and operators of drycleaning facilities and wholesale distributors individually may lack the resources to investigate, assess, and, if necessary, remediate such contamination.

(4) Resources must be generated by the drycleaning industry as a whole to provide funds to establish and fund a drycleaning self-insurance program to provide funds to cover the cost to investigate, assess, and, if necessary, remediate sites contaminated by drycleaning agents.

(Act 2000-740, p. 1624, §2.)

Section 22-30D-3**Definitions.**

Unless otherwise defined in this chapter, the definitions of terms included in Section 22-30-3 shall be applicable to this chapter. For the purposes of this chapter, the following terms have the following meanings:

- (1) **ABANDONED DRYCLEANING FACILITY.** Any real property premises or individual leasehold space located in this state owned by any person in which a drycleaning facility or wholesale distribution facility formerly operated; provided, however, that any owner or operator or wholesale distributor who shall have elected not to be covered by the provisions of this chapter shall not be considered a person owning or leasing such a facility for the purposes of this chapter.
- (2) **ADJACENT LAND OWNER.** Any owner, lessor, or mortgagee of any real property onto which contamination from a drycleaning facility, abandoned drycleaning facility, or wholesale distribution facility of any owner or operator or wholesale distributor who shall have elected to be covered by the provisions of this chapter has migrated or is threatening to migrate; or any of the successors or assigns, predecessors-in-title, and successors-in-title of the foregoing.
- (3) **AHWMMA.** The Alabama Hazardous Waste Management and Minimization Act.
- (4) **BOARD.** The Alabama Drycleaning Environmental Response Trust Advisory Board created under Section 22-30D-8.
- (5) **CONTAMINATION.** The presence of drycleaning agent in soil, groundwater, surface water, or any other medium at or on a drycleaning facility, abandoned drycleaning facility, wholesale distribution facility, or any real property of any impacted third party.
- (6) **DEPARTMENT.** The Alabama Department of Environmental Management, or any successor department or agency of the state.
- (7) **DIRECTOR.** The Director of the Alabama Department of Environmental Management, or any successor department or agency of the state.
- (8) **DRYCLEANING AGENT.** Any non-hydrocarbon chlorine or hydrocarbon-based formulations or products used or to be used as a primary cleaning agent in the cleaning of garments, apparel, or household fabrics at a drycleaning facility and includes, but is not limited to, perchloroethylene, also known as tetrachloroethylene, other chemicals using CAS No. 127-18-4, solvent-charged detergent, spotting agents, glutone and any other chlorine or petroleum-based formulations or products and the substances into which any such formulations or products degrade.
- (9) **DRYCLEANING FACILITY.** A place of business, located at or on any real property premises or individual leasehold space located in this state which operates, or has operated in the past, in whole or in part, a commercial facility for the purpose of laundering or cleaning garments, apparel, or household fabrics for the general public using any process that involves the use of drycleaning agents. The term "drycleaning facility" specifically includes: All contiguous land, structures, and other appurtenances and improvements on the land used in connection with a drycleaning facility; tuxedo rental facilities renting to the general public which conduct drycleaning operations on the premises; and "route sales," "dry stores," "stores," or other facilities located in this state which do not engage in on-site laundering or drycleaning but which have laundering or drycleaning performed off-site by any person, including the

person owning the "route sales," "dry store," or "pick-up store". The following facilities are excepted from the definition of "drycleaning facility":

- a. A "stand-alone" coin-operated laundry or a coin-operated drycleaning facility.
- b. A facility located on a United States military base or owned by the United States, or any department or agency thereof.
- c. A facility owned or leased by the state, any county, city, town, or public or quasi-public organization of the state, any public subdivision thereof, or any agency or department thereof, or any body corporate or system of the state under the management or administration of a board of control or governing board established by the state.
- d. A facility primarily engaged in uniform service or linen supply.
- e. Prisons, hotels, motels, industrial launderers or drycleaners not providing services to the general public, hospitals, or nursing homes.
- f. Any facility owned or leased by any owner or operator who shall elect not to be covered by this chapter.

(10) FUND. Alabama Drycleaning Environmental Response Trust Fund created under Section 22-30D-5.

(11) IMPACTED THIRD PARTY. Any person who is or has been an owner, lessor, or mortgagee of real property on which is or has been located a drycleaning facility, abandoned drycleaning facility, or wholesale distribution facility of any owner or operator or wholesale distributor who has elected to be covered by this chapter or any of the successors or assigns, predecessors-in-title, and successors-in-title of the foregoing.

(12) OWNER or OPERATOR. Any person who owns or leases an active drycleaning facility and who is or has been responsible for operations at such drycleaning facility and who shall elect to be covered by this chapter.

(13) PERSON. An individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, association, or limited liability company. Person does not include any governmental organization.

(14) REGISTRATION FEE. Registration fees required to be paid pursuant to Section 22-30D-6 by each owner or operator of any drycleaning facility operating in this state who shall elect to be covered by this chapter and by each wholesale distributor selling to drycleaning facilities in this state who shall elect to be covered by this chapter.

(15) RELEASE. Any actual spilling, pouring, overfilling, leaking, leaching, emitting, discharging, or escaping of drycleaning agents at or from a drycleaning facility or wholesale distribution facility into the soils or waters of the state.

(16) REPORTABLE QUANTITY. A known release outside of containment of a drycleaning agent in excess of the federal reporting standards.

(17) SITE. Land on which a drycleaning facility, abandoned drycleaning facility, or wholesale distribution facility is or has been physically located.

(18) SMALL BUSINESS. Any person owning or leasing any drycleaning facility, wholesale distribution facility, or abandoned drycleaning facility in this state and having a net worth of two million dollars (\$2,000,000) or less each calendar year from the time of discovery of contamination through the present.

(19) STATE. The State of Alabama.

(20) WHOLESALE DISTRIBUTION FACILITY. A place of business located in this state of a wholesale distributor or any real property premises or individual leasehold space located in this state, occupied by a wholesale distributor who shall elect to be covered by this chapter.

(21) WHOLESALE DISTRIBUTOR. Any person whose primary business is selling drycleaning agents and supplies to drycleaning facilities and who shall elect to be covered by this chapter. "Primary business" as used in this definition means the percentage of the person's gross receipts from the sale of laundry and drycleaning agents and supplies equals or exceeds 20 percent of the total gross receipts of such person.

(Act 2000-740, p. 1624, §3.)

Section 22-30D-4**Election of coverage; administration of chapter; rules and regulations.**

(a)(1) All owners and operators and all wholesale distributors shall elect by May 24, 2001, to be covered or not to be covered by this chapter and shall do so by notifying the department in writing that such owner or operator or wholesale distributor elects to be covered or not to be covered by this chapter. Following May 24, 2001, any owner or operator or wholesale distributor who may have initially elected not to be covered by this chapter or who may have inadvertently failed to notify the department may notify the department that such owner or operator or wholesale distributor has reconsidered and desires to be covered by the fund, but any such owner or operator or wholesale distributor shall, with its notice of request for coverage, be required to pay to the Department of Revenue the registration fees which would otherwise have been due to the fund had such owner or operator or wholesale distributor elected to be covered by this chapter prior to May 24, 2001. Coverage by this chapter shall be effective on the date that a written notice of an election to be covered is received by the department. The department shall maintain a listing of all owners or operators or wholesale distributors who shall have elected to be covered or not to be covered by this chapter and shall advise the board from time to time of the names of those persons.

(2) Any owner or operator or wholesale distributor who shall elect not to be covered by this chapter or shall fail to notify the department that it has determined to reconsider within the times set forth above shall be relieved of any of the obligations imposed on owners or operators or wholesale distributors under this chapter, including any obligation to register or pay registration fees.

(3) Notwithstanding any provisions of this chapter to the contrary, any owner or operator or wholesale distributor who shall so elect not to be covered by this chapter or shall fail to notify the department that it has determined to reconsider within the times set forth above shall thereafter permanently and irrevocably waive and relinquish any benefit, coverage, protection, payment, or waiver of liability otherwise afforded by this chapter. An election not to be covered by the fund or a failure to reconsider by any owner or operator or wholesale distributor who shall be an individual, shall include and bind any relative by blood within the third degree of consanguinity or by marriage, and in the case of a corporation or other legal entity, any current or former subsidiary, division, stockholder, parent company, partner, member, successor or assign, or any predecessor-in-title or successor-in-title.

(4) If on May 31, 2002, the registration fees collected by the Department of Revenue from owners or operators and wholesale distributors who shall have elected to be covered by this chapter shall not have generated total receipts in excess of one million dollars (\$1,000,000), then in such event the fund shall terminate, the board shall refund to all owners or operators or wholesale distributors who shall have paid into the fund the pro rata portion of payments to such date, less expense of charges against the fund, and thereafter the provisions of this chapter shall be null and void and of no further force or effect of law.

(b) It is the intent of the Legislature that the monies in the fund will only be utilized to address contamination that is caused by drycleaning agents occurring at or on drycleaning facilities, abandoned drycleaning facilities, wholesale distribution facilities, or real property of impacted third parties or adjacent landowners, whether such contamination occurred or was discovered before or after May 24, 2000; provided that monies in the fund shall be used only for payment for costs of investigation, assessment, or remediation that are incurred after May 24, 2000; and further provided that this chapter and the fund created hereby shall benefit only those owners or operators, wholesale distributors, or persons owning abandoned drycleaning facilities who shall have elected to be covered by this chapter and impacted third parties and adjacent landowners impacted or adjacent to drycleaning facilities or wholesale distribution facilities of such owners or operators or wholesale distributors. The board and the

department shall jointly administer this chapter under the following criteria:

(1) The department shall allow owners or operators, persons owning abandoned drycleaning facilities, wholesale distributors, impacted third parties, and adjacent landowners, and their engineers and contractors to deal with contamination under the oversight of the department utilizing monies in the fund under the oversight of the board, including costs incurred for initial investigations in determining that contamination has actually occurred. The fund shall not be used to deal with contamination at any facilities other than drycleaning facilities, abandoned drycleaning facilities, wholesale distribution facilities, or the real property of impacted third parties or adjacent landowners.

(2) If the response actions to releases are conducted pursuant to C.F.R. 300 or pursuant to regulations adopted by the department under subsection (c), the department shall not require any owner or operator, person owning any abandoned drycleaning facility, wholesale distributor, impacted third party, or adjacent landowner to: Obtain any state permit or engage in closure, post-closure, or corrective action pursuant to AHWMMMA; establish or maintain any financial assurance or other financial requirement; or otherwise become obligated to pay for any costs, except for the deductible set forth in Section 22-30D-7, in connection with contamination occurring at any drycleaning facility, abandoned drycleaning facility, wholesale distribution facility, or at the real property of impacted third parties or adjacent landowners which may have failed to operate as a permitted treatment, storage or disposal facility as defined under AHWMMMA.

(3) To the fullest extent allowed by law, the department shall provide its oversight in such a manner that other units of federal, state, and local government, including the United States Environmental Protection Agency, do not become involved in contamination problems resulting from drycleaning facilities, abandoned drycleaning facilities, or wholesale distribution facilities.

(4) To the fullest extent allowed by law, the department shall make every reasonable effort to allow for such interim action as may be necessary to keep sites where contamination exists off of the national priorities list, as defined in 40 C.F.R. 300.5.

(5) The department shall not seek out contamination because of the existence of the fund or the other provisions of this chapter. Monies shall be made available by the board for the use as contamination is discovered, whether such discovery is made before or after May 24, 2000.

(6) Careful consideration shall be given by the department to remedial activities which may result in an overall reduction of risk to human health and the environment and in reduction of total costs of remediation. Such remedial activities should receive consideration by the department as a high priority.

(7) The department, in its discretion, may allow the use of innovative technology to perform remedial activities.

(c) In addition to the powers and duties specified in this chapter and in Sections 22-22A-1 to 22-22A-16, inclusive, the department shall adopt rules and regulations necessary to administer and enforce this chapter, it being the intent of the Legislature that contamination caused by drycleaning agents shall be managed solely in accordance with this chapter and the rules and regulations to be adopted. Consistent with these purposes, such rules and regulations shall, at a minimum, establish or adopt the following standards, schedule, and criteria:

(1) Establishing performance standards for drycleaning facilities and wholesale distribution facilities first brought into use on or after the effective date of regulations authorized by this subsection. Such

performance standards shall be effective when the rules and regulations adopted become final. The performance standards for new drycleaning facilities and wholesale distribution facilities shall allow the use of new technology as it becomes available and shall at a minimum include provisions which are at least as protective of human health and the environment as each of the following standards:

- a. A requirement that, notwithstanding any contrary provision of law, any person who generates a regulated waste at a drycleaning facility or wholesale distribution facility and which wastes contain any regulated quantity of drycleaning agent, shall ensure delivery of all such wastes to a facility that is legally authorized to manage or recycle wastes that contain drycleaning agents.
- b. A prohibition of the release of wastewater containing any quantity of drycleaning agent from drycleaning facilities to any sanitary sewer or septic tank, any land or ground application thereof, or any discharge to the waters of this state.
- c. A requirement of compliance with the national emission standards for hazardous air pollutants for perchloroethylene drycleaning facilities promulgated by the United States Environmental Protection Agency on September 22, 1993, including revisions and applicable regulations thereto.
- d. A requirement that all drycleaning agents or wastes containing drycleaning agents be stored in appropriate closed containers and handled so as to minimize the risk of spills or leaks.
- e. A requirement that dikes or other containment structures be installed around each drycleaning machine and each drycleaning agent or waste storage area, which structures shall be capable of containing a release of drycleaning agent.
- f. A requirement that those portions of all diked floor surfaces upon which any drycleaning agent may leak, spill, or otherwise be released be material impervious to drycleaning agents.
- g. A requirement that all drycleaning agents be delivered to each drycleaning machine or other storage container located within a drycleaning facility by means of closed, direct-coupled delivery systems, but only after such systems become generally available.
- h. A requirement for reporting of releases of a reportable quantity outside of containment of drycleaning agent occurring after May 24, 2000.

(2) Adopting a schedule requiring the retrofitting of drycleaning facilities and wholesale distribution facilities in existence on or before May 24, 2000, in order to conform the drycleaning facility to the rules and regulations authorized by subdivision (1) and to implement the performance standards established pursuant to subdivision (1). The schedule may phase in the standards authorized by this subdivision at different times but shall make all such standards effective no later than May 24, 2005. This subdivision requiring retrofitting shall not require an owner or operator of a drycleaning facility existing on or before May 24, 2000, to replace an existing drycleaning unit unless required to do so by federal laws or rules and regulations promulgated by the Environmental Protection Agency.

(3) Establishing criteria for prompt reporting of suspected contamination or the discovery of contamination at drycleaning facilities, abandoned drycleaning facilities, wholesale distribution facilities, or on real property of impacted third parties or adjacent landowners, whether discovered before or after May 24, 2000, and procedures for initial investigation of such contamination, if any, and determination of possible effects on or risk to human health or the environment and necessary or appropriate emergency action, to assure that human health or safety is not threatened by such

contamination.

(4) Establishing criteria to prioritize those sites at which contamination is reported to the department and which may require investigation, assessment, and, if necessary, remediation. The criteria shall include consideration of each of the following factors:

- a. The degree to which human health and the environment are actually affected by exposure to the contamination.
- b. The future risk to human health or the environment resulting from the contamination.
- c. The benefit to be derived from remediation compared to the cost of conducting such remediation.
- d. The present and future use of an affected aquifer or surface water.
- e. The possibility of no further action.
- f. The effect that interim or immediate remedial measures will have on future costs.
- g. The amount of monies available in the fund.
- h. Such additional factors as the director considers relevant or as required by other provisions of this chapter.

(5) Establishing requirements for investigation, assessment, and, if necessary, remediation of contamination in the order of priority established by the department.

(6) Establishing criteria under which a determination may be made by the department of the extent of contamination at which (i) no remediation is required at the site, or (ii) if remediation is necessary, the extent to which remediation shall be deemed completed, and (iii) that no further action is required. Criteria for determining completion of remediation shall include the factors set forth in subdivision (4). If contamination has or is suspected to have migrated from the site to real property of an adjacent landowner, investigation, assessment, and, if necessary, remediation of contamination will be determined under these criteria.

(Act 2000-740, p. 1624, §4.)

Section 22-30D-5**Alabama Drycleaning Environmental Response Trust Fund.**

(a) There is hereby created the Alabama Drycleaning Environmental Response Trust Fund, hereinafter referred to as the "fund." The fund as so created shall be administered and used by the board as a drycleaning industry self-insurance program for the benefit of those persons electing to be covered by this chapter within the time(s) specified in accordance with the provision of this chapter and as a revolving fund for carrying out the purposes of this chapter. To the fund shall be credited all registration fees collected by the Department of Revenue, which monies shall be credited to the fund pursuant to this chapter and invested as permitted by law by the State Treasurer for the benefit of the fund. Charges against the fund shall be made in accordance with this chapter. Use of the fund and participation in any remedial program by an adjacent landowner is voluntary. Nothing in this chapter requires participation by an adjacent landowner. Participation by the adjacent landowner is not required for use of monies in the fund to investigate, assess, or remediate contamination on the real property of adjacent landowners; provided that the adjacent landowner shall first register the site with the board and the department. The fund shall not be used to pay any costs incurred by any owner or operator or wholesale distributor who shall elect not to be covered by this chapter within the time(s) specified by this chapter nor shall the fund be used to pay any costs incurred at any real property of any impacted party or adjacent landowner impacted by or adjacent to any such owner or operator or wholesale distributor.

(b) Whenever contamination or suspected contamination is reported to the board and the department, the board shall, in accordance with procedures to be established by the board, obligate monies available in the fund to provide for payment for costs incurred after May 24, 2000, by owners or operators, persons owning any abandoned drycleaning facility, wholesale distributors, impacted third parties, or adjacent landowners covered by this chapter, for each of the following:

(1) Investigation and assessment of contamination or suspected contamination.

(2) Remediation, if necessary, of contamination pursuant to a remediation plan, which may consist of clean-up of affected soil and water, except that nothing herein shall be construed to authorize the board to obligate funds for payment of costs which are not integral to remediation of contamination.

(c) The board shall establish procedures for submitting requests to the board for payments from the fund for the costs of investigation, assessment, and remediation and for procedures for certification of engineers or contractors and establishment and approval of qualifications and fee or rate schedules for such engineers or contractors. Every such owner or operator, person owning any abandoned drycleaning facility, wholesale distributor, impacted third party, or adjacent landowner covered by this chapter shall submit to the board a nonbinding budget estimate of the cost expected to be incurred at the site, and shall revise the budget estimate and advise the board whenever the owner or operator, person owning any abandoned drycleaning facility, wholesale distributor, impacted third party, or adjacent landowner has reason to believe the budget estimate is inaccurate.

(d) If the unobligated principal of the fund equals or exceeds eight million dollars (\$8,000,000) on April 1 of any year, the registration fee imposed by Section 22-30D-6 shall not be collected on or after the next July 1 until April 1 of the following year. Thereafter, if the unobligated principal balance of the fund equals four million dollars (\$4,000,000) or less, the registration fee imposed by Section 22-30D-6 shall again be collected on and after the next July 1.

(e) Not later than April 5 of each year, the board shall report the amount of the unobligated balance of the fund on April 1 of such year. The board shall notify the public and the Department of Revenue if the

registration fee imposed by Section 22-30D-6 will be abated or be payable on the following July 1.

(f) The unobligated balance of the fund shall be invested by the State Treasurer, upon notification of the board, for the benefit of the fund.

(g) The fund shall be used for the purposes set forth in this chapter only and for no other governmental purpose, nor shall any portion hereof ever be appropriated to or be available to borrow from any branch of government; it being the intent of the Legislature that this fund and its increments shall remain intact and inviolate for the purposes set out in this chapter. Any interest or earnings on the fund shall be credited only to the fund.

(h) Nothing in this chapter shall establish or create any liability or responsibility on the part of the state to pay any costs of contamination from any source other than the fund created by this chapter, nor shall the state have any liability or responsibility to make payments for any such costs if the fund created herein is insufficient to do so. In the event the fund is insufficient to make the payments at the time the claims are filed, claims shall be paid in the order of filing or in terms of environmental needs as determined by the board and the department at such time as monies are paid into the fund.

(i) The fund shall be audited annually by the Department of Examiners of Public Accounts.

(j) All information secured by the Department of Revenue pursuant to this chapter shall be confidential, as prescribed by Section 40-2A-10, except that the Department of Revenue may provide such information to the department or the board as necessary for the proper administration of the duties of the department and the board relative to the fund.

(Act 2000-740, p. 1624, §5.)

Section 22-30D-6**Registration; fees.**

(a) No later than May 24, 2001, each owner or operator of a drycleaning facility located in this state who shall notify the department that it elects to be covered by this chapter shall also register each drycleaning facility owned or operated in the state by such owner or operator with the department on forms provided by the department. Each owner or operator electing to register pursuant to this subsection shall submit its registration forms to the Department of Revenue and the department. In addition, each owner or operator electing to be covered by this chapter shall pay to the Department of Revenue with its initial registration and each year thereafter a yearly drycleaning registration fee equal to two percent of the gross receipts earned by such owner or operator in the state during the prior calendar year, not to exceed a total registration fee of twenty-five thousand dollars (\$25,000) per year, regardless of the number of drycleaning facilities owned or operated by the owner or operator, as a self-insurance premium for coverage under the fund and for the benefits afforded by this chapter.

(b) Each new owner or operator coming into existence after May 24, 2000, who acquires an existing drycleaning facility after May 24, 2000, and who shall desire to be covered by the provisions of this chapter shall so notify the department and register each drycleaning facility acquired in Alabama with the department on forms provided by the department and shall submit the registration form to the Department of Revenue and the department and the board within 30 days of the acquisition. In addition, each new owner or operator who acquires an existing drycleaning facility after May 24, 2000, and who shall elect to be covered by the provisions of this chapter shall pay, for the first year the owner or operator owns or operates the acquired drycleaning facility, a registration fee equal to two percent of the gross receipts earned in the state by the prior owner or operator during the prior calendar year less whatever sum the prior owner or operator has paid as a registration fee for that same year. The registration fee provided for in this subsection shall be due and payable to the Department of Revenue as provided in this section.

(c) Each new owner or operator coming into existence after May 24, 2000, who establishes a new drycleaning facility after May 24, 2000, and who shall desire to be covered by the provisions of this chapter shall so notify the department and shall register each new drycleaning facility established in Alabama with the department on forms provided by the department and shall submit the registration form to the Department of Revenue and the department and the board within 30 days of opening a new facility. In addition, each new owner or operator who establishes one or more new drycleaning facilities in Alabama after May 24, 2000, and who shall elect to be covered by the provisions of this chapter shall pay a one-time registration fee equal to five thousand dollars (\$5,000) for the first year of operation and, for the second year of operation, shall pay an annual registration fee equal to the greater of five thousand dollars (\$5,000) or two percent of the gross receipts earned by the new owner or operator during the period of the first calendar year that the new owner or operator was in business. For each year thereafter, the new owner or operator shall pay the annual registration fee provided for in subsection (a). The registration fee provided for in this subsection for the first year shall be due and payable to the Department of Revenue within 30 days of the opening of the new facility. The registration fee provided for in this subsection for the second year and subsequent years shall be due and payable to the Department of Revenue as provided in this section.

(d) No later than May 24, 2001, each wholesale distributor selling drycleaning agents to drycleaning facilities in this state who shall notify the department that it elects to be covered by this chapter shall also register with the department on forms provided by the department. Each wholesale distributor required to register pursuant to this subsection shall submit its registration form to the Department of Revenue and the department. Each wholesale distributor who shall elect to be covered by this chapter

shall pay to the Department of Revenue with its initial registration and each year thereafter a yearly wholesale distributor registration fee of five thousand dollars (\$5,000) per year as a self-insurance premium for coverage under the fund and for the benefits afforded by this chapter.

(e) Certificates of registration for drycleaning facilities and wholesale distributors will be provided by the Department of Revenue and shall be conspicuously posted.

(f) At least 90 days before payment of the annual registration fee is due, the department shall notify and submit a registration fee payment form to each owner or operator or wholesale distributor. The registration fee payment form provided by the department shall accompany the registration fee payment to the Department of Revenue.

(g) For the purpose of this section, "gross receipts" shall mean all actual receipts, but excluding gross receipts derived from alterations, at a drycleaning facility, valued in money, without any deduction on account of the cost of such operation, the costs of materials used, labor or service cost, interest paid, or any other expenses whatsoever and without any deduction on account of losses including gross receipts derived from wholesale drycleaning and laundering of garments, apparel, or fabrics for other drycleaning facilities not owned by the owner or operator; but excluding any gross receipts derived from the drycleaning or laundering of garments, apparel, or fabrics owned by the owner or operator.

(h) The registration fee shall be paid quarterly by each owner or operator to the Department of Revenue, one-fourth (1/4) on April 1, one-fourth (1/4) on July 1, one-fourth (1/4) on October 1, and one-fourth (1/4) on January 1, and shall become delinquent on the 20th day of each said month. The registration fee shall be paid annually by each wholesale distributor to the Department of Revenue on April 1 and shall become delinquent on the 20th day of April.

(i) The Department of Revenue shall prescribe by administrative rule the procedure for the reporting, collection, and payment of registration fees required by this section. The Department of Revenue shall notify the board of any person who shall fail to pay or become delinquent in payment of registration fees.

(j) The registration fees imposed by this section shall be collected and administered by the Department of Revenue in accordance with the uniform revenue procedures set forth in Chapter 2A of Title 40, including, but not limited to, the procedures in Chapter 2A relative to maintenance of records, the entry of preliminary and final assessments, appeals from assessments, petitions for refund, the confidentiality of tax returns and tax information, the assessment of civil penalties, and the examination of records. The Department of Revenue also shall impose interest on any registration fees paid after the prescribed due date in accordance with Section 40-1-44.

(k) All penalties and interest imposed and collected by the Department of Revenue pursuant to subsection (j) shall be deposited into the fund.

(l) The Department of Revenue shall provide each person who pays a registration fee under this section with a receipt. The receipt or the copy of the receipt shall be produced for inspection at the request of any authorized representative of the department or the board.

(m) Any person, other than an owner or operator or wholesale distributor who shall elect not to be covered by this chapter, owning any abandoned drycleaning facility who, at any time, suspects contamination or discovers contamination at any abandoned drycleaning facility or any impacted third party who has reported contamination on its real property to the department, shall, prior to receipt of any

payment from the fund, first register the site with the department and the board and pay to the Department of Revenue a registration fee equal to five thousand dollars (\$5,000) per year per site as a self-insurance premium for coverage under the fund until such time as the site is subject to no further action by the department; provided, however, that the requirements of this subsection shall not apply to owners or operators or wholesale distributors who hold a valid and current certificate evidencing registration pursuant to this chapter. An adjacent landowner shall not be required to pay a one-time registration fee.

(n) Registration fees paid under this section shall be collected by the Department of Revenue and deposited into the fund. Registration fees paid under this section shall be a deductible expense under the income tax laws of the state.

(Act 2000-740, p. 1624, §6.)

Section 22-30D-7**Expenditure of funds.**

(a) Prior to the approval of an expenditure of any funds under this chapter with respect to payment for costs incurred for investigation, assessment, and, if necessary, remediation at a particular site, every owner or operator covered by this chapter, person owning any abandoned drycleaning facility eligible for coverage by this chapter, or impacted third party filing a request with the board for payment, shall accept responsibility for the first ten thousand dollars (\$10,000), as a deductible amount, of the actual costs to be incurred with that particular site. Each wholesale distributor covered by this chapter shall accept responsibility for the first fifty thousand dollars (\$50,000), as a deductible amount, of the actual cost to be incurred with a wholesale distribution facility. An adjacent landowner shall not be required to accept responsibility for any costs incurred at a site.

(b) Payments from the fund may be obtained from the board by complying with the following procedure:

(1) An owner or operator covered by this chapter, a person owning any abandoned drycleaning facility eligible for coverage by this chapter, or a wholesale distributor covered by this chapter may request payment from the fund for cost of investigation, assessment, and remediation above the applicable deductible set forth in subsection (a) incurred in connection with a contamination discovered before or after May 24, 2000, that has been reported to the board and the department by filing a request for reimbursement pursuant to the procedures established by the board; provided, however that no payment shall be made from the fund for cost of investigation, assessment, and remediation incurred prior to May 24, 2000. An impacted third party or adjacent landowner may seek payment from the fund for cost of investigation, assessment, or remediation above the applicable deductible(s) set forth in subsection (a) incurred in connection with contamination by filing a request for payment pursuant to the procedures established by the board; provided the board shall determine that (i) the owner or operator covered by this chapter, person owning any abandoned drycleaning facility eligible for coverage by this chapter, or wholesale distributor covered by this chapter has failed or refused to engage in investigation, assessment, or remediation in connection with the contamination, and (ii) that the director has made an initial determination that the impact to the impacted third party or adjacent landowner poses a threat to the environment or the public health, safety, or welfare which warrants investigation, assessment, or remedial action in accordance with criteria established by this chapter and the rules and regulations adopted by the director.

(2) The board shall not obligate the expenditure of funds from the fund in the amount in excess of two hundred fifty thousand dollars (\$250,000) per fiscal year of the fund for costs of investigation, assessment, and remediation of contamination at any particular site, unless upon request by any party, including the department, the board first determines that such excess expenditure is required to avoid an imminent and substantial endangerment to human health or the environment.

(3) The board shall not obligate a distribution of monies from the fund that at any time would result in the diminution of the fund below a balance of one million dollars (\$1,000,000) unless an emergency exists that the board has determined constitutes an imminent and substantial endangerment to human health or the environment. In the event of an emergency as described herein, the board shall approve the payment of reasonable response costs to remove the imminent and substantial endangerment to human health or the environment.

(4) The board shall not authorize distribution of fund monies to any of the following sites or facilities:

- a. Sites that are contaminated by drycleaning agents where the contamination at such sites did not result from the operation of a drycleaning facility, abandoned drycleaning facility, or wholesale distribution facility.
- b. Sites that are not drycleaning facilities, abandoned drycleaning facilities, wholesale distribution facilities, or the real property of impacted third parties or adjacent landowners, but are contaminated by a release that resulted from drycleaning agents being transported to or from a drycleaning facility, abandoned drycleaning facility, or wholesale distribution facility.
- c. Any drycleaning facility, abandoned drycleaning facility, wholesale distribution facility, or any property of any impacted third party or adjacent landowner that has been, or is in the future, identified by the United States Environmental Protection Agency as a federal superfund site pursuant to 40 C.F.R. Part 300 et seq.
- d. Any drycleaning facility, abandoned drycleaning facility, wholesale distribution facility, or any real property of any impacted third party or adjacent landowner which has obtained a treatment, storage, or disposal permit pursuant to the federal Resource Conservation and Recovery Act (RCRA) or AHWMA regulations.
- e. Any drycleaning facility, abandoned drycleaning facility, wholesale distribution facility, or any real property owned or leased by any owner or operator or wholesale distributor who shall elect not to be covered by the provisions of this chapter within the time(s) required by this chapter or any real property of any impacted third party or adjacent landowner impacted by or adjacent to any such owner or operator or wholesale distributor.
- f. Any owner or operator, wholesale distributor, owner of any abandoned drycleaning facility, or impacted third party who shall fail to pay or be delinquent in payment of the registration fees required by the provisions of this chapter.

(Act 2000-740, p. 1624, §7.)

Section 22-30D-8**Advisory board.**

(a) There is hereby created the Alabama Drycleaning Environmental Response Trust Fund Advisory Board consisting of seven persons who are residents of the state appointed by the Governor of the state and confirmed by the Senate of the state. The members of the board shall be composed of one individual to represent the interest of each of the following groups, organizations, and entities:

(1) Owners or operators of drycleaning facilities covered by this chapter that employ no more than 10 full-time employees.

(2) Owners or operators of drycleaning facilities covered by this chapter that employ 11 or more full-time employees but no more than 24 full-time employees.

(3) Owners or operators of drycleaning facilities covered by this chapter that employ 25 or more full-time employees.

(4) Wholesale distributors covered by this chapter of drycleaning agents with at least one operating in-state wholesale distribution facility.

(5) An environmental group with statewide membership.

(6) The environmental engineering community.

(7) The real estate community owning real property on which a drycleaning facility or abandoned drycleaning facility is or has been located.

(b) All initial members of the board shall be appointed by the Governor before November 21, 2000. The board shall hold its first meeting within 30 days after all appointments to the board are made by the Governor. The members' terms of office shall be three years and until their successors are selected and qualified; except that, of those first appointed, three shall have a term of one year; two shall have a term of two years; and two shall have a term of three years, all as designated by the Governor at the time of appointment. There is no limitation on the number of terms any appointed member may serve. If a vacancy occurs, the Governor shall appoint a replacement. Each member of the board shall have one vote concerning any matter coming before the board. Any board member may be removed by the Governor after notice and hearing for incompetence, neglect of duty, malfeasance in office, or moral turpitude.

(c) At the first meeting of the board, and annually thereafter, the members shall select from among themselves a chair and vice chair. The board shall hold at least four regular meetings each year and such additional meetings as the chair deems desirable at a place within the state and time to be fixed by the chair. Special meetings may be called by three or more members of the board upon delivery of written notice to each member of the board. Four members of the board shall constitute a quorum. All powers and duties conferred upon members of the board shall be exercised personally by the members and not by alternates or representatives. The members of the board shall receive the same per diem and travel allowance as paid to state employees for each day's attendance at an official meeting of the board.

(d) The board may hire or engage attorneys, consulting engineers, or other professional advisors as deemed necessary by the board to assist the board to carry out its activities and the board may pay, at its

sole discretion, such fees as it may determine for services of such attorneys, consulting engineers, or other professional advisors from monies in the fund.

(e) The State Health Officer, a representative of the department, and a representative of the Geological Survey of Alabama shall serve to advise the board as ex-officio members of the board, without a vote or compensation.

(f) No member of the board shall be liable to civil action for any act performed in good faith in the performance of his or her duty pursuant to this chapter.

(Act 2000-740, p. 1624, §8.)

Section 22-30D-9**Liability.**

(a)(1) Except as otherwise preempted or limited by applicable federal law, upon reporting to the department and the board of any contamination or suspected contamination, no owner or operator, wholesale distributor, impacted third party, adjacent landowner, or person owning any abandoned drycleaning facility who shall have elected to be covered by this chapter shall be liable to the state or any third party for costs incurred in the investigation or cleanup of, or equitable relief relating to, or resulting, in whole or in part, from a preexisting release of any drycleaning agent at, on, or from any drycleaning facility, wholesale distribution facility, or abandoned drycleaning facility or a new release of any drycleaning agent, unless such new release resulted from noncompliance with a department approved investigation, assessment, or remediation plan.

(2) Pursuant to the rules and regulations to be adopted by the department as required by Section 22-30D-4 for investigation, assessment, and remediation plans, relative to sites reported to the department and the board, such plans shall describe in sufficient detail those actions planned to develop information necessary to perform a risk assessment or identify applicable cleanup standards for the qualifying property utilizing risk-based corrective action principles through the appropriate implementation of applicable institutional controls and/or engineering controls.

(3) Upon the department's approval of the investigation, assessment, or remediation plan, it shall be the responsibility of the owner or operator, wholesale distributor, impacted third party, adjacent landowner, or person owning any abandoned drycleaning facility to implement said plans.

(b) The limitation of liability provided by subsection (a) shall be contingent upon the good faith implementation of the investigation, assessment, or remediation plan as approved by the department.

(c) The limitation of liability provided by subsection (a) shall not affect any right of indemnification which any person has or may acquire by contract against any other person; or apply to persons who intentionally, wantonly, or willfully violate federal or state regulations in the remediation process.

(d) The limitation of liability provided by subsection (a) shall extend to the heirs, assigns, successors, predecessors, and designees of the person to whom such limitation of liability is granted.

(e) No small business as defined in this chapter who shall have elected to be covered by the provisions of this chapter shall be liable to any impacted third party or adjacent landowner under any state law for any damages of any nature whatsoever to real or personal property of any impacted third party or adjacent landowner as a result of any contamination caused by or resulting from any contamination on, at, or from any drycleaning facility, abandoned drycleaning facility, or wholesale distribution facility.

(f) No person shall be liable to any other person under any state law for any damages of any nature whatsoever to real or personal property of such other person as a result of any contamination, except upon proof that a failure to exercise due care was the proximate cause of the contamination; provided, that substantial compliance with applicable laws in effect at the time the contamination occurred shall be prima facie evidence of the exercise of due care.

(g) Except as otherwise preempted or limited by applicable law, this section does not preclude claims for damages based upon personal injuries.

(Act 2000-740, p. 1624, §9.)

Section 22-30D-10**Administration allowance; disposition of revenues.**

(a) The department shall receive an administration allowance as set forth in Section 22-30D-11. Administration cost incurred by the board and actual costs of the department in rulemaking and oversight of all the provisions of this chapter shall be paid from the fund.

(b) After payment of the aforesaid expenses and the collection allowance to the Department of Revenue, the balance of the revenues collected under the provisions of this chapter shall be deposited in the fund as directed elsewhere in this chapter. Should the drycleaning registration fees abate as provided in Section 22-30D-5, the collection allowance to the Department of Revenue set forth in Section 22-30D-11 shall abate as well, and such allowance shall be reinstated when the drycleaning registration fees are reimposed as provided in Section 22-30D-5.

(Act 2000-740, p. 1624, §10.)

Section 22-30D-11**Appropriations.**

(a) There is hereby appropriated from the fund to the department for the fiscal year beginning in the 2001-2002 fiscal year, and for each following fiscal year, the sum of seventy-five thousand dollars (\$75,000). In addition, the department shall be entitled to be paid from the fund its actual cost of rulemaking and oversight, excluding any legal expenses incurred by the department in discharging its duties under the provisions of this chapter, which money shall be deducted and paid to the department from the revenues collected under the provisions of this chapter by the Department of Revenue.

(b) As a first charge against revenues collected under the provisions of this chapter, to offset its costs in administering such collections, there is hereby appropriated from the fund to the Department of Revenue for the 2001-2002 fiscal year, and for each following fiscal year, the sum of fifty thousand dollars (\$50,000).

(Act 2000-740, p. 1624, §11.)

Section 22-30D-12

Notification.

No later than August 23, 2000, the department shall notify owners and operators and wholesale distributors of the provisions of this chapter, the required timely payment of registration fees, the deadlines for payment thereof, and the manner in which late charges may be applied. This notification shall be accomplished by publication in newspapers of general statewide circulation.

(Act 2000-740, p. 1624, §12.)