

By Representative Burroughs

1 A bill to be entitled
2 An act relating to dry cleaning solvent
3 cleanup; amending s. 376.3078, F.S.; providing
4 legislative intent; clarifying certain
5 rehabilitation liability provisions; providing
6 additional criteria for determining eligibility
7 for rehabilitation; providing additional
8 authority for the Department of Environmental
9 Protection to consider certain information in
10 determining rehabilitation eligibility;
11 providing for continuing application of certain
12 immunity for real property owners; amending s.
13 376.308, F.S.; protecting certain immunity for
14 real property owners; amending s. 376.313,
15 F.S.; correcting a cross reference; providing
16 an effective date.

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18 Be It Enacted by the Legislature of the State of Florida:

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20 Section 1. Paragraph (e) is added to subsection (1)
21 and paragraph (p) is added to subsection (3) of section
22 376.3078, Florida Statutes, 1996 Supplement, and paragraphs
23 (a), (b), (c), and (k) of subsection (3) and subsection (9) of
24 said section are amended, to read:

25 376.3078 Drycleaning facility restoration; funds;
26 uses; liability; recovery of expenditures.--

27 (1) FINDINGS.--In addition to the legislative findings
28 set forth in s. 376.30, the Legislature finds and declares
29 that:

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1 (a) Significant quantities of drycleaning solvents
2 have been discharged in the past at drycleaning facilities as
3 part of the normal operation of these facilities.

4 (b) Discharges of drycleaning solvents at such
5 drycleaning facilities have occurred and are occurring, and
6 pose a significant threat to the quality of the groundwaters
7 and inland surface waters of this state.

8 (c) Where contamination of the groundwater or surface
9 water has occurred, remedial measures have often been delayed
10 for long periods while determinations as to liability and the
11 extent of liability are made, and such delays result in the
12 continuation and intensification of the threat to the public
13 health, safety, and welfare; in greater damage to the
14 environment; and in significantly higher costs to contain and
15 remove the contamination.

16 (d) Adequate financial resources must be readily
17 available to provide for the expeditious supply of safe and
18 reliable alternative sources of potable water to affected
19 persons and to provide a means for investigation and
20 rehabilitation of contaminated sites without delay.

21 (e) It is the intent of ss. 376.301-376.75 to
22 encourage real property owners to undertake the voluntary
23 cleanup of property contaminated with drycleaning solvents and
24 that the immunity provisions of this section and all other
25 available defenses shall be construed in favor of real
26 property owners.

27 (3) REHABILITATION LIABILITY.--In accordance with the
28 eligibility provisions of this section, no real property owner
29 or no person who owns or operates, or who otherwise could be
30 liable as a result of the operation of, a drycleaning facility
31 or a wholesale supply facility shall be subject to

1 administrative or judicial action brought by or on behalf of
2 any state or local government or agency thereof or by or on
3 behalf of any person to compel rehabilitation or pay for the
4 costs of rehabilitation of environmental contamination
5 resulting from the discharge of drycleaning solvents. Subject
6 to the delays that may occur as a result of the prioritization
7 of sites under this section for any qualified site, costs for
8 activities described in paragraph (2)(b) shall be absorbed at
9 the expense of the drycleaning facility restoration funds,
10 without recourse to reimbursement or recovery from the real
11 property owner or the owner or operator of the drycleaning
12 facility or the wholesale supply facility.

13 (a) With regard to drycleaning facilities or wholesale
14 supply facilities that have operated as drycleaning facilities
15 or wholesale supply facilities on or after October 1, 1994,
16 any such drycleaning facility or wholesale supply facility at
17 which there exists contamination by drycleaning solvents shall
18 be eligible under this subsection regardless of when the
19 drycleaning contamination was discovered, provided that the
20 drycleaning facility or the wholesale supply facility:

21 1. Has been registered with the department;
22 2. Is determined by the department to be in compliance
23 with the department's rules regulating drycleaning solvents,
24 drycleaning facilities, or wholesale supply facilities on or
25 after November 19, 1980;

26 3. Was ~~Has~~ not ~~been~~ operated in a grossly negligent
27 manner at any time on or after November 19, 1980;

28 4. Has not been identified to qualify for listing, nor
29 is listed, on the National Priority List pursuant to the
30 Comprehensive Environmental Response, Compensation, and
31

1 Liability Act of 1980 as amended by the Superfund Amendments
2 and Reauthorization Act of 1986, and as subsequently amended;
3 5. Is not under an order from the United States
4 Environmental Protection Agency pursuant to s. 3008(h) of the
5 Resource Conservation and Recovery Act as amended (42 U.S.C.A.
6 s. 6928(h)), or has not obtained and is not required to obtain
7 a permit for the operation of a hazardous waste treatment,
8 storage, or disposal facility, a postclosure permit, or a
9 permit pursuant to the federal Hazardous and Solid Waste
10 Amendments of 1984;

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12 and provided that the real property owner or the owner or
13 operator of the drycleaning facility or the wholesale supply
14 facility has not willfully concealed the discharge of
15 drycleaning solvents and has remitted all taxes due pursuant
16 to ss. 376.70 and 376.75, has provided documented evidence of
17 contamination by drycleaning solvents as required by the rules
18 developed pursuant to this section, has reported the
19 contamination prior to December 31, 2005, and has not denied
20 the department access to the site.

21 (b) With regard to drycleaning facilities or wholesale
22 supply facilities that cease to be operated as drycleaning
23 facilities or wholesale supply facilities prior to October 1,
24 1994, such facilities, at which there exists contamination by
25 drycleaning solvents, shall be eligible under this subsection
26 regardless of when the contamination was discovered, provided
27 that the drycleaning facility or wholesale supply facility:

28 1. Was not determined by the department, within a
29 reasonable time after the department's discovery, to have been
30 out of compliance with the department rules regulating
31 drycleaning solvents, drycleaning facilities, or wholesale

1 ~~supply facilities implemented which were in effect at the time~~
2 ~~of operation~~ at any time on or after November 19, 1980;

3 2. Was not operated in a grossly negligent manner at
4 any time on or after November 19, 1980;

5 3. Has not been identified to qualify for listing, nor
6 is listed, on the National Priority List pursuant to the
7 Comprehensive Environmental Response, Compensation, and
8 Liability Act of 1980, as amended by the Superfund Amendments
9 and Reauthorization Act of 1986, and as subsequently amended;
10 and

11 4. Is not under an order from the United States
12 Environmental Protection Agency pursuant to s. 3008(h) of the
13 Resource Conservation and Recovery Act, as amended, or has not
14 obtained and is not required to obtain a permit for the
15 operation of a hazardous waste treatment, storage, or disposal
16 facility, a postclosure permit, or a permit pursuant to the
17 federal Hazardous and Solid Waste Amendments of 1984;

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19 and provided that the real property owner or the owner or
20 operator of the drycleaning facility or the wholesale supply
21 facility has not willfully concealed the discharge of
22 drycleaning solvents, has provided documented evidence of
23 contamination by drycleaning solvents as required by the rules
24 developed pursuant to this section, has reported the
25 contamination prior to December 31, 2005, and has not denied
26 the department access to the site.

27 (c) For purposes of determining eligibility, a
28 drycleaning facility or wholesale supply facility was operated
29 in a grossly negligent manner if the department determines
30 that the owner or operator of the drycleaning facility or the
31 wholesale supply facility:

1 1. Willfully discharged drycleaning solvents onto the
2 soils or into the waters of the state after November 19, 1980,
3 with the knowledge, intent, and purpose that the discharge
4 would result in harm to the environment or to public health or
5 result in a violation of the law;

6 2. Willfully concealed a discharge of drycleaning
7 solvents with the knowledge, intent, and purpose that the
8 concealment would result in harm to the environment or to
9 public health or result in a violation of the law; or

10 3. Willfully violated a local, state, or federal law
11 or rule regulating the operation of drycleaning facilities or
12 wholesale supply facilities with the knowledge, intent, and
13 purpose that the act would result in harm to the environment
14 or to public health.~~For purposes of this subsection, the~~
15 ~~willful discharge of drycleaning solvents onto the soils or~~
16 ~~into the waters of the state after November 19, 1980, or the~~
17 ~~willful concealment of a discharge of drycleaning solvents, or~~
18 ~~a willful violation of local, state, or federal law or rule~~
19 ~~regulating the operation of drycleaning facilities or~~
20 ~~wholesale supply facilities shall be construed to be gross~~
21 ~~negligence in the operation of a drycleaning facility or~~
22 ~~wholesale supply facility.~~

23 (k) The owner, operator, and real property owner, or
24 agent of the real property owner, may apply for the
25 Drycleaning Contamination Cleanup Program by jointly
26 submitting a completed application package to the department
27 pursuant to the rules adopted by the department. If the
28 application cannot be jointly submitted, then the applicant
29 shall provide notice of the application to other interested
30 parties. After reviewing the completed application package,
31 the department shall notify the applicant in writing as to

1 whether the drycleaning facility or wholesale supply facility
2 is eligible for the program. If the department denies
3 eligibility for a completed application package, the notice of
4 denial shall specify the reasons for the denial, including
5 specific and substantive findings of fact, and shall
6 constitute agency action subject to the provisions of chapter
7 120. For the purposes of ss. 120.569 and 120.57, the real
8 property owner and the owner and operator of a drycleaning
9 facility or wholesale supply facility which is the subject of
10 a decision by the department with regard to eligibility shall
11 be deemed to be parties whose substantial interests are
12 determined by the department's decision to approve or deny
13 eligibility.

14 (p) Nothing in this subsection precludes the
15 department from considering information and documentation
16 provided by private consultants, local government programs,
17 federal agencies, or any individual which is relevant to an
18 eligibility determination if the department provides the
19 applicant with reasonable access to the information and its
20 origin.

21 (9) A real property owner is authorized to conduct
22 site rehabilitation activities at any time pursuant to
23 department rules, either through agents of the real property
24 owner or through responsible response action contractors or
25 subcontractors, whether or not the facility has been
26 determined by the department to be eligible for the
27 drycleaning solvent cleanup program. A real property owner or
28 any other person ~~party~~ that conducts site rehabilitation may
29 not seek cost recovery from the department or the Water
30 Quality Assurance Trust Fund for any such rehabilitation
31 activities. A real property owner that voluntarily conducts

1 such site rehabilitation, whether commenced before or on or
2 after October 1, 1995, shall be immune from liability to any
3 person, state or local government, or agency thereof to compel
4 or enjoin site rehabilitation or pay for the cost of
5 rehabilitation of environmental contamination, or to pay any
6 fines or penalties regarding rehabilitation, as soon ~~so long~~
7 as the real property owner:

8 (a) Conducts contamination assessment and site
9 rehabilitation consistent with state and federal laws and
10 rules;

11 (b) Conducts such site rehabilitation in a timely
12 manner according to a rehabilitation schedule approved by the
13 department; and

14 (c) Does not deny the department access to the site.
15 Upon completion of such site rehabilitation activities in
16 accordance with the requirements of this subsection, the
17 department shall render a site rehabilitation completion
18 order.

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20 This immunity shall continue to apply to any real property
21 owner who transfers, conveys, leases, or sells property on
22 which a drycleaning facility is located so long as the
23 voluntary cleanup activities continue.

24 Section 2. Subsection (6) of section 376.308, Florida
25 Statutes, 1996 Supplement, is amended to read:

26 376.308 Liabilities and defenses of facilities.--

27 (6) Nothing herein shall be construed to affect
28 cleanup program eligibility under ss. 376.305(6), 376.3071,
29 376.3072, 376.3078, and 376.3079. Except as otherwise
30 expressly provided in this chapter, nothing in this chapter
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1 shall affect, void, or defeat any immunity of any real
2 property owner under s. 376.3078.

3 Section 3. Paragraph (a) of subsection (5) of section
4 376.313, Florida Statutes, is amended to read:

5 376.313 Nonexclusiveness of remedies and individual
6 cause of action for damages under ss. 376.30-376.319.--

7 (5)(a) In any civil action against the owner or
8 operator of a drycleaning facility or a wholesale supply
9 facility, or the owner of the real property on which such
10 facility is located, if such facility is not eligible under s.
11 376.3078(3)~~376.3978(3)~~, for damages arising from the
12 discharge of drycleaning solvents from a drycleaning facility
13 or wholesale supply facility, the provisions of subsection (3)
14 shall not apply if it can be proven that, at the time of the
15 discharge the alleged damages resulted solely from a discharge
16 from a drycleaning facility or wholesale supply facility that
17 was in compliance with department rules regulating drycleaning
18 facilities or wholesale supply facilities.

19 Section 4. This act shall take effect upon becoming a
20 law.

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23 HOUSE SUMMARY

24 Clarifies provisions relating to the drycleaning solvent
25 cleanup program. Protects real property owner's immunity
26 from liability for specified costs, fines, and penalties.