

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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The Committee on Judicial Oversight offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause

and insert:

Section 1. Subsection (47) of s. 376.301, Florida Statutes, is added to that section, to read:

Definitions of terms used in ss. 376.30-376.319, 376.70, and 376.75.--When used in ss. 376.30-376.319, 376.70, and 376.75, unless the context clearly requires otherwise, the term:

(47) "Nearby real property owner" means the individual or entity that is vested with ownership, dominion, or legal or rightful title to real property, or that has a ground lease in real property, onto which drycleaning solvent has migrated through soil or groundwater from a drycleaning or wholesale supply facility eligible for site rehabilitation under s. 376.3078(3) or from a drycleaning or wholesale supply facility that is approved by the department for voluntary cleanup pursuant to s. 376.3078(11).

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1 Section 2. Subsection (1), (3) and (11) of section
2 376.3078, Florida Statutes, are amended to read:

3 376.3078 Drycleaning facility restoration; funds;
4 uses; liability; recovery of expenditures.--

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

8 (a) Significant quantities of drycleaning solvents
9 have been discharged in the past at drycleaning facilities as
10 part of the normal operation of these facilities.

11 (b) Discharges of drycleaning solvents at such
12 drycleaning facilities have occurred and are occurring, and
13 pose a significant threat to the quality of the groundwaters
14 and inland surface waters of this state.

15 (c) Where contamination of the groundwater or surface
16 water has occurred, remedial measures have often been delayed
17 for long periods while determinations as to liability and the
18 extent of liability are made, and such delays result in the
19 continuation and intensification of the threat to the public
20 health, safety, and welfare; in greater damage to the
21 environment; and in significantly higher costs to contain and
22 remove the contamination.

23 (d) Adequate financial resources must be readily
24 available to provide for the expeditious supply of safe and
25 reliable alternative sources of potable water to affected
26 persons and to provide a means for investigation and
27 rehabilitation of contaminated sites without delay.

28 (e) It is the intent of the Legislature to encourage
29 real property owners to undertake the voluntary cleanup of
30 property contaminated with drycleaning solvents and that the
31 immunity provisions of this section and all other available

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1 defenses be construed in favor of real property owners.
2 (f) Strong public interests are served by the
3 provisions of subsections 376.3078(3) and (11) such as
4 improving the marketability and use of, and ability to borrow
5 funds as to, property contaminated by drycleaning solvents and
6 encouraging the voluntary remediation of contaminated sites.
7 The extent to which claims or rights are affected by
8 subsections 376.3078(3) and (11) is offset by the remedies
9 created in this section and the limitations imposed by these
10 subsections on such claims or rights are reasonable when
11 balanced against the public interests served. The claims or
12 right affected by subsections 376.3078(3) and (11) are
13 speculative and these subsections are intended to prevent
14 judicial interpretations allowing windfall awards that thwart
15 the public interest provisions of this section.

16 (3) REHABILITATION LIABILITY.--(a)In accordance with
17 the eligibility provisions of this section, no real property
18 owner or nearby real property owner or ~~no~~ person who owns or
19 operates, or who otherwise could be liable as a result of the
20 operation of, a drycleaning facility or a wholesale supply
21 facility shall be liable for or subject to:

22 1. Claims of any person, except for any governmental
23 entity, for property damages of any kind, including, but not
24 limited to, diminished value of real property or improvements,
25 lost or delayed rent or sale or use of real property or
26 improvements, or stigma to real property or improvements
27 caused by drycleaning solvent contamination, or

28 2. Administrative or judicial action brought by or on
29 behalf of any state or local government or agency thereof or
30 by or on behalf of any person to compel rehabilitation or pay
31 for the costs of rehabilitation of environmental contamination

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1 resulting from the discharge of drycleaning solvents.

2 Subject to the delays that may occur as a result of the
3 prioritization of sites under this section for any qualified
4 site, costs for activities described in paragraph (2)(b) shall
5 be absorbed at the expense of the drycleaning facility
6 restoration funds, without recourse to reimbursement or
7 recovery from the real property owner, nearby real property
8 owner, or the owner or operator of the drycleaning facility or
9 the wholesale supply facility. Notwithstanding any other
10 provisions of chapter 376 to the contrary, the provisions of
11 this subsection shall apply to causes of action accruing
12 before the effective date of this act, for which no lawsuit
13 has been filed.

14 (b) The real property owner shall provide the
15 following documents to any nearby real property owner upon
16 request:

17 1. An authentic copy of the department's Order of
18 Eligibility for the drycleaning solvent contamination,
19 suitable for recordation in the public records of any county;
20 and

21 2. All other reasonably available public records
22 regarding the drycleaning solvent contamination, including,
23 but not limited to, copies of any soil or groundwater tests
24 and site assessment reports.

25 The department shall assist the real property owner to
26 provide such documentation. The real property owner shall
27 record an authentic copy of the Order of Eligibility or other
28 documentation at the request of any nearby real property owner
29 in the appropriate public records for the nearby real
30 property.

31 (c)(a) With regard to drycleaning facilities or

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1 wholesale supply facilities that have operated as drycleaning
2 facilities or wholesale supply facilities on or after October
3 1, 1994, any such drycleaning facility or wholesale supply
4 facility at which there exists contamination by drycleaning
5 solvents shall be eligible under this subsection regardless of
6 when the drycleaning contamination was discovered, provided
7 that the drycleaning facility or the wholesale supply
8 facility:
9 1. Has been registered with the department;
10 2. Is determined by the department to be in compliance
11 with the department's rules regulating drycleaning solvents,
12 drycleaning facilities, or wholesale supply facilities on or
13 after November 19, 1980;
14 3. Has not been operated in a grossly negligent manner
15 at any time on or after November 19, 1980;
16 4. Has not been identified to qualify for listing, nor
17 is listed, on the National Priority List pursuant to the
18 Comprehensive Environmental Response, Compensation, and
19 Liability Act of 1980 as amended by the Superfund Amendments
20 and Reauthorization Act of 1986, and as subsequently amended;
21 5. Is not under an order from the United States
22 Environmental Protection Agency pursuant to s. 3008(h) of the
23 Resource Conservation and Recovery Act as amended (42 U.S.C.A.
24 s. 6928(h)), or has not obtained and is not required to obtain
25 a permit for the operation of a hazardous waste treatment,
26 storage, or disposal facility, a postclosure permit, or a
27 permit pursuant to the federal Hazardous and Solid Waste
28 Amendments of 1984;
29
30 and provided that the real property owner or the owner or
31 operator of the drycleaning facility or the wholesale supply

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1 facility has not willfully concealed the discharge of
2 drycleaning solvents and has remitted all taxes due pursuant
3 to ss. 376.70 and 376.75, has provided documented evidence of
4 contamination by drycleaning solvents as required by the rules
5 developed pursuant to this section, has reported the
6 contamination prior to December 31, 1998, and has not denied
7 the department access to the site.

8 (d)~~(b)~~ With regard to drycleaning facilities or
9 wholesale supply facilities that cease to be operated as
10 drycleaning facilities or wholesale supply facilities prior to
11 October 1, 1994, such facilities, at which there exists
12 contamination by drycleaning solvents, shall be eligible under
13 this subsection regardless of when the contamination was
14 discovered, provided that the drycleaning facility or
15 wholesale supply facility:

16 1. Was not determined by the department, within a
17 reasonable time after the department's discovery, to have been
18 out of compliance with the department rules regulating
19 drycleaning solvents, drycleaning facilities, or wholesale
20 supply facilities implemented at any time on or after November
21 19, 1980;

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

24 3. Has not been identified to qualify for listing, nor
25 is listed, on the National Priority List pursuant to the
26 Comprehensive Environmental Response, Compensation, and
27 Liability Act of 1980, as amended by the Superfund Amendments
28 and Reauthorization Act of 1986, and as subsequently amended;
29 and

30 4. Is not under an order from the United States
31 Environmental Protection Agency pursuant to s. 3008(h) of the

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1 Resource Conservation and Recovery Act, as amended, or has not
2 obtained and is not required to obtain a permit for the
3 operation of a hazardous waste treatment, storage, or disposal
4 facility, a postclosure permit, or a permit pursuant to the
5 federal Hazardous and Solid Waste Amendments of 1984;

6
7 and provided that the real property owner or the owner or
8 operator of the drycleaning facility or the wholesale supply
9 facility has not willfully concealed the discharge of
10 drycleaning solvents, has provided documented evidence of
11 contamination by drycleaning solvents as required by the rules
12 developed pursuant to this section, has reported the
13 contamination prior to December 31, 1998, and has not denied
14 the department access to the site.

15 (e)~~(c)~~ For purposes of determining eligibility, a
16 drycleaning facility or wholesale supply facility was operated
17 in a grossly negligent manner if the department determines
18 that the owner or operator of the drycleaning facility or the
19 wholesale supply facility:

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

25 2. Willfully concealed a discharge of drycleaning
26 solvents with the knowledge, intent, and purpose that the
27 concealment would result in harm to the environment or to
28 public health or result in a violation of the law; or

29 3. Willfully violated a local, state, or federal law
30 or rule regulating the operation of drycleaning facilities or
31 wholesale supply facilities with the knowledge, intent, and

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1 purpose that the act would result in harm to the environment
2 or to public health or result in a violation of the law.
3 ~~(f)(d)~~1. With respect to eligible drycleaning solvent
4 contamination reported to the department as part of a
5 completed application as required by the rules developed
6 pursuant to this section by June 30, 1997, the costs of
7 activities described in paragraph (2)(b) shall be absorbed at
8 the expense of the drycleaning facility restoration funds,
9 less a \$1,000 deductible per incident, which shall be paid by
10 the applicant or current property owner. The deductible shall
11 be paid within 60 days after receipt of billing by the
12 department.
13 2. For contamination reported to the department as
14 part of a completed application as required by the rules
15 developed under this section, from July 1, 1997, through
16 September 30, 1998, the costs shall be absorbed at the expense
17 of the drycleaning facility restoration funds, less a \$5,000
18 deductible per incident. The deductible shall be paid within
19 60 days after receipt of billing by the department.
20 3. For contamination reported to the department as
21 part of a completed application as required by the rules
22 developed pursuant to this section from October 1, 1998,
23 through December 31, 1998, the costs shall be absorbed at the
24 expense of the drycleaning facility restoration funds, less a
25 \$10,000 deductible per incident. The deductible shall be paid
26 within 60 days after receipt of billing by the department.
27 4. For contamination reported after December 31, 1998,
28 no costs will be absorbed at the expense of the drycleaning
29 facility restoration funds.
30 ~~(g)(e)~~ The provisions of this subsection shall not
31 apply to any site where the department has been denied site

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1 access to implement the provisions of this section.

2 (h)~~(f)~~ In order to identify those drycleaning
3 facilities and wholesale supply facilities that have
4 experienced contamination resulting from the discharge of
5 drycleaning solvents and to ensure the most expedient
6 rehabilitation of such sites, the owners and operators of
7 drycleaning facilities and wholesale supply facilities are
8 encouraged to detect and report contamination from drycleaning
9 solvents related to the operation of drycleaning facilities
10 and wholesale supply facilities. The department shall
11 establish reasonable guidelines for the written reporting of
12 drycleaning contamination and shall distribute forms to
13 registrants under s. 376.303(1)(d), and to other interested
14 parties upon request, to be used for such purpose.

15 (i)~~(g)~~ A report of drycleaning solvent contamination
16 at a drycleaning facility or wholesale supply facility made to
17 the department by any person in accordance with this
18 subsection, or any rules promulgated pursuant hereto, may not
19 be used directly as evidence of liability for such discharge
20 in any civil or criminal trial arising out of the discharge.

21 (j)~~(h)~~ The provisions of this subsection shall not
22 apply to drycleaning facilities owned or operated by the state
23 or Federal Government.

24 (k)~~(i)~~ Due to the value of Florida's potable water, it
25 is the intent of the Legislature that the department initiate
26 and facilitate as many cleanups as possible utilizing the
27 resources of the state, local governments, and the private
28 sector. The department is authorized to adopt necessary rules
29 and enter into contracts to carry out the intent of this
30 subsection and to limit or prevent future contamination from
31 the operation of drycleaning facilities and wholesale supply

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1 facilities.

2 ~~(l)(j)~~ It is not the intent of the Legislature that
3 the state become the owner or operator of a drycleaning
4 facility or wholesale supply facility by engaging in
5 state-conducted cleanup.

6 ~~(m)(k)~~ The owner, operator, and either the real
7 property owner or agent of the real property owner may apply
8 for the Drycleaning Contamination Cleanup Program by jointly
9 submitting a completed application package to the department
10 pursuant to the rules that shall be adopted by the department.
11 If the application cannot be jointly submitted, then the
12 applicant shall provide notice of the application to other
13 interested parties. After reviewing the completed application
14 package, the department shall notify the applicant in writing
15 as to whether the drycleaning facility or wholesale supply
16 facility is eligible for the program. If the department denies
17 eligibility for a completed application package, the notice of
18 denial shall specify the reasons for the denial, including
19 specific and substantive findings of fact, and shall
20 constitute agency action subject to the provisions of chapter
21 120. For the purposes of ss. 120.569 and 120.57, the real
22 property owner and the owner and operator of a drycleaning
23 facility or wholesale supply facility which is the subject of
24 a decision by the department with regard to eligibility shall
25 be deemed to be parties whose substantial interests are
26 determined by the department's decision to approve or deny
27 eligibility.

28 ~~(n)(l)~~ Eligibility under this subsection applies to
29 the drycleaning facility or wholesale supply facility, and
30 attendant site rehabilitation applies to such facilities and
31 to any place where drycleaning solvent contamination migrating

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1 from the eligible facility is found to be located. A
2 determination of eligibility or ineligibility shall not be
3 affected by any conveyance of the ownership of the drycleaning
4 facility, wholesale supply facility, or the real property on
5 which such facility is located. Nothing contained in this
6 chapter shall be construed to allow a drycleaning facility or
7 wholesale supply facility which would not be eligible under
8 this subsection to become eligible as a result of the
9 conveyance of the ownership of the ineligible drycleaning
10 facility or wholesale supply facility to another owner.

11 ~~(o)(m)~~ If funding for the drycleaning contamination
12 rehabilitation program is eliminated, the provisions of this
13 subsection shall not apply.

14 ~~(p)(n)~~1. The department shall have the authority to
15 cancel the eligibility of any drycleaning facility or
16 wholesale supply facility that submits fraudulent information
17 in the application package or that fails to continuously
18 comply with the conditions of eligibility set forth in this
19 subsection, or has not remitted all fees pursuant to s.
20 376.303(1)(d), or has not remitted the deductible payments
21 pursuant to paragraph ~~(f)(d)~~.

22 2. If the program eligibility of a drycleaning
23 facility or wholesale supply facility is subject to
24 cancellation pursuant to this section, then the department
25 shall notify the applicant in writing of its intent to cancel
26 program eligibility and shall state the reason or reasons for
27 cancellation. The applicant shall have 45 days to resolve the
28 reason or reasons for cancellation to the satisfaction of the
29 department. If, after 45 days, the applicant has not resolved
30 the reason or reasons for cancellation to the satisfaction of
31 the department, the order of cancellation shall become final

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1 and shall be subject to the provisions of chapter 120.

2 (q)~~(o)~~ A real property owner shall not be subject to
3 administrative or judicial action brought by or on behalf of
4 any person or local or state government, or agency thereof,
5 for gross negligence or violations of department rules prior
6 to January 1, 1990, which resulted from the operation of a
7 drycleaning facility, provided that the real property owner
8 demonstrates that:

9 1. The real property owner had ownership in the
10 property at the time of the gross negligence or violation of
11 department rules and did not cause or contribute to
12 contamination on the property;

13 2. The real property owner was a distinct and separate
14 entity from the owner and operator of the drycleaning
15 facility, and did not have an ownership interest in or share
16 in the profits of the drycleaning facility;

17 3. The real property owner did not participate in the
18 operation or management of the drycleaning facility;

19 4. The real property owner complied with all discharge
20 reporting requirements, and did not conceal any contamination;
21 and

22 5. The department has not been denied access.
23

24 The defense provided by this paragraph does not apply to any
25 liability under a federally delegated program.

26 (r)~~(p)~~ A person whose property becomes contaminated
27 due to geophysical or hydrologic reasons from the operation of
28 a nearby drycleaning or wholesale supply facility and whose
29 property has never been occupied by a business that utilized
30 or stored drycleaning solvents or similar constituents is not
31 subject to administrative or judicial action brought by or on

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- 1 behalf of another to compel the rehabilitation of or the
2 payment of the costs for the rehabilitation of sites
3 contaminated by drycleaning solvents, provided that the
4 person:
- 5 1. Does not own and has never held an ownership
6 interest in, or shared in the profits of, the drycleaning
7 facility operated at the source location;
 - 8 2. Did not participate in the operation or management
9 of the drycleaning facility at the source location; and
 - 10 3. Did not cause, contribute to, or exacerbate the
11 release or threat of release of any hazardous substance
12 through any act or omission.

13
14 The defense provided by this paragraph does not apply to any
15 liability under a federally delegated program.

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

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

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1 Assurance Trust Fund for any such rehabilitation activities. A
2 real property owner ~~who~~ voluntarily conducts such site
3 rehabilitation, whether commenced before or on or after
4 October 1, 1995, shall be immune from, and shall have no
5 liability for claims of any person, except for any
6 governmental entity, for property damages of any kind,
7 including, but not limited to, diminished value of real
8 property or improvements, lost or delayed rent or sale or use
9 of real property or improvements, or stigma to real property
10 or improvements caused by drycleaning solvent contamination or
11 ~~liability to~~ administrative or judicial action brought by or
12 on behalf of any person, state or local government, or agency
13 thereof to compel or enjoin site rehabilitation or pay for the
14 cost of rehabilitation of environmental contamination, or to
15 pay any fines or penalties regarding rehabilitation, as soon
16 as the real property owner:

17 (a) Conducts contamination assessment and site
18 rehabilitation consistent with state and federal laws and
19 rules;

20 (b) Conducts such site rehabilitation in a timely
21 manner according to a rehabilitation schedule approved by the
22 department; and

23 (c) Does not deny the department access to the site.
24 Upon completion of such site rehabilitation activities in
25 accordance with the requirements of this subsection, the
26 department shall render a site rehabilitation completion
27 order.

28 The immunity set forth in this subsection shall also
29 apply to any nearby real property owner. The real property
30 owner shall provide upon request from any nearby real property
31 owner all reasonably available documentation in the public

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1 records in reference to the drycleaning solvent contamination,
2 including, but nor limited to, copies of any soil or
3 groundwater tests and site assessment reports, and a copy of
4 the department's approved Voluntary Cleanup Agreement. The
5 department shall assist the real property owner to provide
6 such documentation. This immunity shall continue to apply to
7 any real property owner who transfers, conveys, leases, or
8 sells property on which a drycleaning facility is located so
9 long as the voluntary cleanup activities continue.
10 Notwithstanding any other provisions of chapter 376 to the
11 contrary, the provisions of this subsection shall apply to
12 causes of action accruing on or after the effective date of
13 this act, and shall apply retroactively to cause of action
14 accruing before the effective date of this act, for which no
15 lawsuit has been filed.

16 Section 3. Subsection (6) of s. 376.308, Florida
17 Statutes, is amended to read:

18 376.308 Liabilities and defenses of facilities.--

19 (6) Nothing herein shall be construed to affect
20 cleanup program eligibility under ss. 376.305(6), 376.3071,
21 376.3072, 376.3078, and 376.3079. Except as otherwise
22 expressly provided in this chapter, nothing in this chapter
23 shall affect, void, or defeat any immunity of any real
24 property owner or nearby real property owner under s.
25 376.3078.

26 Section 4. Subsections (3) and (5) of s. 376.313 are
27 amended to read:

28 376.313 Nonexclusiveness of remedies and individual
29 cause of action for damages under ss. 376.30-376.319.--

30 (3) ~~Notwithstanding any other provision of law~~ Except
31 as provided in ss. 376.3078(3) and 376.3078(11), nothing

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1 contained in ss. 376.30-376.319 prohibits any person from
2 bringing a cause of action in a court of competent
3 jurisdiction for all damages resulting from a discharge or
4 other condition of pollution covered by ss. 376.30-376.319.
5 Nothing in this chapter shall prohibit or diminish a party's
6 right to contribution from other parties jointly or severally
7 liable for a prohibited discharge of pollutants or hazardous
8 substances or other pollution conditions. Except as otherwise
9 provided in subsection (4) or subsection (5), in any such
10 suit, it is not necessary for such person to plead or prove
11 negligence in any form or manner. Such person need only plead
12 and prove the fact of the prohibited discharge or other
13 pollutive condition and that it has occurred. The only
14 defenses to such cause of action shall be those specified in
15 s. 376.308.

16 (5)(a) In any civil action against the owner or
17 operator of a drycleaning facility or a wholesale supply
18 facility, or the owner of the real property on which such
19 facility is located, if such facility is not eligible under s.
20 376.3078(3) and is not involved in voluntary cleanup pursuant
21 to s. 376.3078(11), for damages arising from the discharge of
22 drycleaning solvents from a drycleaning facility or wholesale
23 supply facility, the provisions of subsection (3) shall not
24 apply if it can be proven that, at the time of the discharge
25 the alleged damages resulted solely from a discharge from a
26 drycleaning facility or wholesale supply facility that was in
27 compliance with department rules regulating drycleaning
28 facilities or wholesale supply facilities.

29 (b) Any person bringing such an action must prove
30 negligence in order to recover damages under this subsection.
31 For the purposes of this subsection, noncompliance with s.

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1 376.303 or s. 376.3078, or any of the rules promulgated
2 pursuant thereto, or any applicable state or federal law or
3 regulation, as the same may hereafter be amended, shall be
4 prima facie evidence of negligence.

5 Section 5. This act shall take effect upon becoming
6 law.

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8
9 ===== T I T L E A M E N D M E N T =====

10 And the title is amended as follows:

11 On page 1, lines 5-13 ,
12 remove: all of said lines

13
14 and insert:

15 real property owner"; amending s. 376.3078,
16 F.S.; adding a statement of intent; exempting
17 certain real property owners and others from
18 claims for property damage arising from
19 contamination by drycleaning solvents; amending
20 s. 376.308, F.S.; revising provisions governing
21 the statutory construction of immunity
22 provisions; amending s. 376.313, F.S.; revising
23 provisions governing immunity; providing an
24 effective date.

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