

By Representative Ross

1 A bill to be entitled
 2 An act relating to liability under the
 3 drycleaning solvent cleanup program; amending
 4 s. 376.301, F.S.; defining the term "nearby
 5 real property owner"; redefining the terms
 6 "contaminated site" and "site rehabilitation";
 7 amending s. 376.3078, F.S.; exempting certain
 8 real property owners and others from claims for
 9 property damage arising from contamination by
 10 drycleaning solvents; amending s. 376.308,
 11 F.S.; revising provisions governing the
 12 statutory construction of immunity provisions;
 13 providing an effective date.

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

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 17 Section 1. Subsections (10) and (41) of section
 18 376.301, Florida Statutes, are amended, and subsection (47) is
 19 added to that section, to read:

20 376.301 Definitions of terms used in ss.
 21 376.30-376.319, 376.70, and 376.75.--When used in ss.
 22 376.30-376.319, 376.70, and 376.75, unless the context clearly
 23 requires otherwise, the term:

24 (10) "Contaminated site" means any contiguous land,
 25 sediment, surface water, or groundwater areas that contain
 26 contaminants, including, but not limited to, drycleaning
 27 solvents, which ~~that~~ may be harmful to human health or the
 28 environment.

29 (41) "Site rehabilitation" means the assessment of a
 30 contaminated site ~~contamination~~ and the remediation activities
 31 that reduce the levels of contaminants at a contaminated site

1 through accepted treatment methods to meet the cleanup target
2 levels established for that site. For purposes of sites
3 subject to the Resource Conservation and Recovery Act, as
4 amended, the term includes removal, decontamination, and
5 corrective action of releases of hazardous substances.

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

15 Section 2. Subsections (3) and (11) of section
16 376.3078, Florida Statutes, are amended to read:

17 376.3078 Drycleaning facility restoration; funds;
18 uses; liability; recovery of expenditures.--

19 (3) REHABILITATION LIABILITY.--(a) In accordance with
20 the eligibility provisions of this section, ~~a~~ no real property
21 owner or nearby real property owner or ~~no~~ person who owns or
22 operates, or who otherwise could be liable as a result of the
23 operation of, a drycleaning facility or a wholesale supply
24 facility is not liable for or shall be subject to:

25 1. Claims of any person, state, or local government
26 for property damages of any kind, including, but not limited
27 to, diminished value of real property or improvements, lost or
28 delayed rent, sale or use of real property or improvements, or
29 stigma to real property or improvements caused by
30 drycleaning-solvent contamination; or
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1 2. Administrative or judicial action brought by or on
2 behalf of any state or local government or agency thereof or
3 by or on behalf of any person to compel rehabilitation or pay
4 for the costs of rehabilitation of environmental contamination
5 resulting from the discharge of drycleaning solvents.

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7 Subject to the delays that may occur as a result of the
8 prioritization of sites under this section for any qualified
9 site, costs for activities described in paragraph (2)(b) shall
10 be absorbed at the expense of the drycleaning facility
11 restoration funds, without recourse to reimbursement or
12 recovery from the real property owner, nearby real property
13 owner, or the owner or operator of the drycleaning facility or
14 the wholesale supply facility.

15 (b) The real property owner shall provide upon request
16 from any nearby real property owner all reasonably available
17 documentation in the public records in reference to the
18 drycleaning-solvent contamination, including, but not limited
19 to, copies of any soil or groundwater tests and
20 site-assessment reports, and a copy of the department's order
21 of eligibility. The department shall assist the real property
22 owner to provide such documentation. Upon request by a nearby
23 real property owner, the real property owner shall, within 90
24 days after the request, furnish the nearby real property owner
25 with a sworn affidavit in recordable form which certifies:

26 1. That a drycleaning solvent has migrated through
27 soil or groundwater;

28 2. That the contaminated site is eligible for site
29 rehabilitation under this subsection or paragraph (1)(c); and

30 3. That the nearby property is eligible for site
31 rehabilitation.

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2 This affidavit is a predicate to the real property owner
3 receiving the defenses contained in subparagraph (a)1.
4 (c)~~(a)~~ With regard to drycleaning facilities or
5 wholesale supply facilities that have operated as drycleaning
6 facilities or wholesale supply facilities on or after October
7 1, 1994, any such drycleaning facility or wholesale supply
8 facility at which there exists contamination by drycleaning
9 solvents shall be eligible under this subsection regardless of
10 when the drycleaning contamination was discovered, provided
11 that the drycleaning facility or the wholesale supply
12 facility:
13 1. Has been registered with the department;
14 2. Is determined by the department to be in compliance
15 with the department's rules regulating drycleaning solvents,
16 drycleaning facilities, or wholesale supply facilities on or
17 after November 19, 1980;
18 3. Has not been operated in a grossly negligent manner
19 at any time on or after November 19, 1980;
20 4. Has not been identified to qualify for listing, nor
21 is listed, on the National Priority List pursuant to the
22 Comprehensive Environmental Response, Compensation, and
23 Liability Act of 1980 as amended by the Superfund Amendments
24 and Reauthorization Act of 1986, and as subsequently amended;
25 5. Is not under an order from the United States
26 Environmental Protection Agency pursuant to s. 3008(h) of the
27 Resource Conservation and Recovery Act as amended (42 U.S.C.A.
28 s. 6928(h)), or has not obtained and is not required to obtain
29 a permit for the operation of a hazardous waste treatment,
30 storage, or disposal facility, a postclosure permit, or a
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1 permit pursuant to the federal Hazardous and Solid Waste
2 Amendments of 1984;
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4 and provided that the real property owner or the owner or
5 operator of the drycleaning facility or the wholesale supply
6 facility has not willfully concealed the discharge of
7 drycleaning solvents and has remitted all taxes due pursuant
8 to ss. 376.70 and 376.75, has provided documented evidence of
9 contamination by drycleaning solvents as required by the rules
10 developed pursuant to this section, has reported the
11 contamination prior to December 31, 1998, and has not denied
12 the department access to the site.

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

21 1. Was not determined by the department, within a
22 reasonable time after the department's discovery, to have been
23 out of compliance with the department rules regulating
24 drycleaning solvents, drycleaning facilities, or wholesale
25 supply facilities implemented at any time on or after November
26 19, 1980;

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

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

1 Liability Act of 1980, as amended by the Superfund Amendments
2 and Reauthorization Act of 1986, and as subsequently amended;
3 and
4 4. Is not under an order from the United States
5 Environmental Protection Agency pursuant to s. 3008(h) of the
6 Resource Conservation and Recovery Act, as amended, or has not
7 obtained and is not required to obtain a permit for the
8 operation of a hazardous waste treatment, storage, or disposal
9 facility, a postclosure permit, or a permit pursuant to the
10 federal Hazardous and Solid Waste Amendments of 1984;
11
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, has provided documented evidence of
16 contamination by drycleaning solvents as required by the rules
17 developed pursuant to this section, has reported the
18 contamination prior to December 31, 1998, and has not denied
19 the department access to the site.
20 (e)~~(c)~~ For purposes of determining eligibility, a
21 drycleaning facility or wholesale supply facility was operated
22 in a grossly negligent manner if the department determines
23 that the owner or operator of the drycleaning facility or the
24 wholesale supply facility:
25 1. Willfully discharged drycleaning solvents onto the
26 soils or into the waters of the state after November 19, 1980,
27 with the knowledge, intent, and purpose that the discharge
28 would result in harm to the environment or to public health or
29 result in a violation of the law;
30 2. Willfully concealed a discharge of drycleaning
31 solvents with the knowledge, intent, and purpose that the

1 concealment would result in harm to the environment or to
2 public health or result in a violation of the law; or

3 3. Willfully violated a local, state, or federal law
4 or rule regulating the operation of drycleaning facilities or
5 wholesale supply facilities with the knowledge, intent, and
6 purpose that the act would result in harm to the environment
7 or to public health or result in a violation of the law.

8 (f)~~(d)~~1. With respect to eligible drycleaning solvent
9 contamination reported to the department as part of a
10 completed application as required by the rules developed
11 pursuant to this section by June 30, 1997, the costs of
12 activities described in paragraph (2)(b) shall be absorbed at
13 the expense of the drycleaning facility restoration funds,
14 less a \$1,000 deductible per incident, which shall be paid by
15 the applicant or current property owner. The deductible shall
16 be paid within 60 days after receipt of billing by the
17 department.

18 2. For contamination reported to the department as
19 part of a completed application as required by the rules
20 developed under this section, from July 1, 1997, through
21 September 30, 1998, the costs shall be absorbed at the expense
22 of the drycleaning facility restoration funds, less a \$5,000
23 deductible per incident. The deductible shall be paid within
24 60 days after receipt of billing by the department.

25 3. For contamination reported to the department as
26 part of a completed application as required by the rules
27 developed pursuant to this section from October 1, 1998,
28 through December 31, 1998, the costs shall be absorbed at the
29 expense of the drycleaning facility restoration funds, less a
30 \$10,000 deductible per incident. The deductible shall be paid
31 within 60 days after receipt of billing by the department.

1 4. For contamination reported after December 31, 1998,
2 no costs will be absorbed at the expense of the drycleaning
3 facility restoration funds.

4 (g)~~(e)~~ The provisions of this subsection shall not
5 apply to any site where the department has been denied site
6 access to implement the provisions of this section.

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

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

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

29 (k)~~(i)~~ Due to the value of Florida's potable water, it
30 is the intent of the Legislature that the department initiate
31 and facilitate as many cleanups as possible utilizing the

1 resources of the state, local governments, and the private
2 sector. The department is authorized to adopt necessary rules
3 and enter into contracts to carry out the intent of this
4 subsection and to limit or prevent future contamination from
5 the operation of drycleaning facilities and wholesale supply
6 facilities.

7 (l)~~(j)~~ It is not the intent of the Legislature that
8 the state become the owner or operator of a drycleaning
9 facility or wholesale supply facility by engaging in
10 state-conducted cleanup.

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

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1 determined by the department's decision to approve or deny
2 eligibility.

3 (n)~~(l)~~ Eligibility ~~under this subsection~~ applies to
4 the drycleaning facility or wholesale supply facility and
5 attendant site rehabilitation applies to such facilities and
6 to any place where drycleaning-solvent contamination from the
7 eligible facility is found to be located. A determination of
8 eligibility or ineligibility shall not be affected by any
9 conveyance of the ownership of the drycleaning facility,
10 wholesale supply facility, or the real property on which such
11 facility is located. Nothing contained in this chapter shall
12 be construed to allow a drycleaning facility or wholesale
13 supply facility which would not be eligible under this
14 subsection to become eligible as a result of the conveyance of
15 the ownership of the ineligible drycleaning facility or
16 wholesale supply facility to another owner.

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

20 (p)~~(n)~~1. The department shall have the authority to
21 cancel the eligibility of any drycleaning facility or
22 wholesale supply facility that submits fraudulent information
23 in the application package or that fails to continuously
24 comply with the conditions of eligibility set forth in this
25 subsection, or has not remitted all fees pursuant to s.
26 376.303(1)(d), or has not remitted the deductible payments
27 pursuant to paragraph (f)~~(d)~~.

28 2. If the program eligibility of a drycleaning
29 facility or wholesale supply facility is subject to
30 cancellation pursuant to this section, then the department
31 shall notify the applicant in writing of its intent to cancel

1 program eligibility and shall state the reason or reasons for
2 cancellation. The applicant shall have 45 days to resolve the
3 reason or reasons for cancellation to the satisfaction of the
4 department. If, after 45 days, the applicant has not resolved
5 the reason or reasons for cancellation to the satisfaction of
6 the department, the order of cancellation shall become final
7 and shall be subject to the provisions of chapter 120.

8 (g)~~(o)~~ A real property owner shall not be subject to
9 administrative or judicial action brought by or on behalf of
10 any person or local or state government, or agency thereof,
11 for gross negligence or violations of department rules prior
12 to January 1, 1990, which resulted from the operation of a
13 drycleaning facility, provided that the real property owner
14 demonstrates that:

15 1. The real property owner had ownership in the
16 property at the time of the gross negligence or violation of
17 department rules and did not cause or contribute to
18 contamination on the property;

19 2. The real property owner was a distinct and separate
20 entity from the owner and operator of the drycleaning
21 facility, and did not have an ownership interest in or share
22 in the profits of the drycleaning facility;

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

25 4. The real property owner complied with all discharge
26 reporting requirements, and did not conceal any contamination;
27 and

28 5. The department has not been denied access.

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

1 (r)~~(p)~~ A person whose property becomes contaminated
2 due to geophysical or hydrologic reasons from the operation of
3 a nearby drycleaning or wholesale supply facility and whose
4 property has never been occupied by a business that utilized
5 or stored drycleaning solvents or similar constituents is not
6 subject to administrative or judicial action brought by or on
7 behalf of another to compel the rehabilitation of or the
8 payment of the costs for the rehabilitation of sites
9 contaminated by drycleaning solvents, provided that the
10 person:

- 11 1. Does not own and has never held an ownership
12 interest in, or shared in the profits of, the drycleaning
13 facility operated at the source location;
- 14 2. Did not participate in the operation or management
15 of the drycleaning facility at the source location; and
- 16 3. Did not cause, contribute to, or exacerbate the
17 release or threat of release of any hazardous substance
18 through any act or omission.

19
20 The defense provided by this paragraph does not apply to any
21 liability under a federally delegated program.

22 (s)~~(q)~~ Nothing in this subsection precludes the
23 department from considering information and documentation
24 provided by private consultants, local government programs,
25 federal agencies, or any individual which is relevant to an
26 eligibility determination if the department provides the
27 applicant with reasonable access to the information and its
28 origin.

29 (11) VOLUNTARY CLEANUP.--A real property owner is
30 authorized to conduct site rehabilitation activities at any
31 time pursuant to department rules, either through agents of

1 the real property owner or through responsible response action
2 contractors or subcontractors, whether or not the facility has
3 been determined by the department to be eligible for the
4 drycleaning solvent cleanup program. A real property owner or
5 any other person who ~~that~~ conducts site rehabilitation may not
6 seek cost recovery from the department or the Water Quality
7 Assurance Trust Fund for any such rehabilitation activities. A
8 real property owner who ~~that~~ voluntarily conducts such site
9 rehabilitation, whether commenced before or on or after
10 October 1, 1995, shall be immune from and have no liability
11 for claims of any persons, state, or local government for
12 property damages of any kind, including, but not limited to,
13 diminished value of real property or improvements, lost or
14 delayed rent, sale or use of real property or improvements, or
15 stigma to real property or improvements caused by
16 drycleaning-solvent contamination or be subject to any
17 administrative or judicial action brought by or on behalf of
18 ~~liability to~~ any person, state or local government, or agency
19 thereof to compel or enjoin site rehabilitation or pay for the
20 cost of rehabilitation of environmental contamination, and ~~or~~
21 to pay any fines or penalties regarding rehabilitation, as
22 soon as the real property owner:

23 (a) Conducts contamination assessment and site
24 rehabilitation consistent with state and federal laws and
25 rules;

26 (b) Conducts such site rehabilitation in a timely
27 manner according to a rehabilitation schedule approved by the
28 department; and

29 (c) Does not deny the department access to the site.
30 Upon completion of such site rehabilitation activities in
31 accordance with the requirements of this subsection, the

1 department shall render a site rehabilitation completion
2 order.

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4 The immunity set forth in this subsection also applies to any
5 nearby real property owner. The real property owner shall
6 provide upon request from any nearby real property owner all
7 reasonably available documentation in the public records in
8 reference to the drycleaning-solvent contamination, including,
9 but not limited to, copies of any soil or groundwater tests
10 and site assessment reports and a copy of the department's
11 approved voluntary cleanup agreement. The department shall
12 assist the real property owner in providing such
13 documentation.This immunity shall continue to apply to any
14 real property owner who transfers, conveys, leases, or sells
15 property on which a drycleaning facility is located so long as
16 the voluntary cleanup activities continue.

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

19 376.308 Liabilities and defenses of facilities.--

20 (6) Nothing herein shall be construed to affect
21 cleanup program eligibility under ss. 376.305(6), 376.3071,
22 376.3072, 376.3078, and 376.3079. Except as otherwise
23 expressly provided in this chapter, nothing in this chapter
24 shall affect, void, or defeat any immunity of any real
25 property owner or nearby real property owner under s.
26 376.3078.

27 Section 4. This act shall take effect upon becoming a
28 law.

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SENATE SUMMARY

Exempts certain real property owners and others from
claims for property damage arising from contamination by
drycleaning solvents.