

By the Committee on Judiciary; and Senator Laurent

308-2107-02

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"; amending s. 376.3078,  
6           F.S.; providing additional findings; exempting  
7           certain real property owners and others from  
8           claims for property damage arising from  
9           contamination by drycleaning solvents;  
10          providing for retroactive application; amending  
11          s. 376.308, F.S.; revising provisions governing  
12          the statutory construction of immunity  
13          provisions; amending s. 376.313, F.S.; revising  
14          provisions governing remedies and actions for  
15          damages; amending s. 376.3079, F.S.; revising  
16          the definition of the term "third-party  
17          liability"; providing an effective date.

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

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21           Section 1. Subsection (47) is added to section  
22 376.301, Florida Statutes, to read:

23           376.301 Definitions of terms used in ss.  
24 376.30-376.319, 376.70, and 376.75.--When used in ss.  
25 376.30-376.319, 376.70, and 376.75, unless the context clearly  
26 requires otherwise, the term:

27           (47) "Nearby real property owner" means the individual  
28 or entity that is vested with ownership, dominion, or legal or  
29 rightful title to real property, or that has a ground lease in  
30 real property, onto which drycleaning solvent has migrated  
31 through soil or groundwater from a drycleaning or

1 wholesale-supply facility eligible for site rehabilitation  
2 under s. 376.3078(3) or from a drycleaning or wholesale-supply  
3 facility that is approved by the department for voluntary  
4 cleanup under s. 376.3078(11).

5 Section 2. Subsections (1), (3) and (11) of section  
6 376.3078, Florida Statutes, are amended to read:

7 376.3078 Drycleaning facility restoration; funds;  
8 uses; liability; recovery of expenditures.--

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

12 (a) Significant quantities of drycleaning solvents  
13 have been discharged in the past at drycleaning facilities as  
14 part of the normal operation of these facilities.

15 (b) Discharges of drycleaning solvents at such  
16 drycleaning facilities have occurred and are occurring, and  
17 pose a significant threat to the quality of the groundwaters  
18 and inland surface waters of this state.

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

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

1 (e) It is the intent of the Legislature to encourage  
2 real property owners to undertake the voluntary cleanup of  
3 property contaminated with drycleaning solvents and that the  
4 immunity provisions of this section and all other available  
5 defenses be construed in favor of real property owners.

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

19 (3) REHABILITATION LIABILITY.--

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

26 1. Claims of any person, except for any governmental  
27 entity, for property damages of any kind, including, but not  
28 limited to, diminished value of real property or improvements,  
29 lost or delayed rent, sale or use of real property or  
30 improvements, or stigma to real property or improvements  
31 caused by drycleaning-solvent contamination; or

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.

6  
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. Notwithstanding any other  
15 provisions of this chapter, this subsection applies to causes  
16 of action accruing on or after the effective date of this act  
17 and applies retroactively to causes of action accruing before  
18 the effective date of this act, for which a lawsuit has not  
19 been filed.

20           (b) The real property owner shall provide the  
21 following documents to any nearby real property owner upon  
22 request:

23           1. A certified copy of the department's Order of  
24 Eligibility for the drycleaning solvent contamination,  
25 suitable for recordation in the public records of any county;  
26 and

27           2. A statement, either obtained from the department or  
28 prepared by the real property owner, that the real property  
29 owner's property contains a drycleaning facility or a  
30 wholesale-supply facility eligible for site rehabilitation as  
31 provided in this section and that contamination resulting from

1 such facility, including any contamination which has migrated  
2 onto the nearby real property owner's property, will be  
3 cleaned up under the provisions of this section. The  
4 department shall prepare such statements when requested by the  
5 real property owner and shall assist the real property owner  
6 in providing such information to the nearby real property  
7 owner.

8 3. The real property owner's failure to provide the  
9 documents described in this paragraph within 60 days after a  
10 request from the nearby real property owner shall waive the  
11 protections for the real property owner of the immunity  
12 provisions of subparagraph (a)1. only as to the nearby real  
13 property owner's claims described in subparagraph (a)1., if  
14 any.

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

- 24 1. Has been registered with the department;
- 25 2. Is determined by the department to be in compliance  
26 with the department's rules regulating drycleaning solvents,  
27 drycleaning facilities, or wholesale supply facilities on or  
28 after November 19, 1980;
- 29 3. Has not been operated in a grossly negligent manner  
30 at any time on or after November 19, 1980;

31

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

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

14  
15 and provided that the real property owner or the owner or  
16 operator of the drycleaning facility or the wholesale supply  
17 facility has not willfully concealed the discharge of  
18 drycleaning solvents and has remitted all taxes due pursuant  
19 to ss. 376.70 and 376.75, has provided documented evidence of  
20 contamination by drycleaning solvents as required by the rules  
21 developed pursuant to this section, has reported the  
22 contamination prior to December 31, 1998, and has not denied  
23 the department access to the site.

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

1           1. Was not determined by the department, within a  
2 reasonable time after the department's discovery, to have been  
3 out of compliance with the department rules regulating  
4 drycleaning solvents, drycleaning facilities, or wholesale  
5 supply facilities implemented at any time on or after November  
6 19, 1980;

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

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

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

22  
23 and provided that the real property owner or the owner or  
24 operator of the drycleaning facility or the wholesale supply  
25 facility has not willfully concealed the discharge of  
26 drycleaning solvents, has provided documented evidence of  
27 contamination by drycleaning solvents as required by the rules  
28 developed pursuant to this section, has reported the  
29 contamination prior to December 31, 1998, and has not denied  
30 the department access to the site.

31

1           ~~(e)~~(e) For purposes of determining eligibility, a  
2 drycleaning facility or wholesale supply facility was operated  
3 in a grossly negligent manner if the department determines  
4 that the owner or operator of the drycleaning facility or the  
5 wholesale supply facility:

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

11           2. Willfully concealed a discharge of drycleaning  
12 solvents with the knowledge, intent, and purpose that the  
13 concealment would result in harm to the environment or to  
14 public health or result in a violation of the law; or

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

20           ~~(f)~~(d)1. With respect to eligible drycleaning solvent  
21 contamination reported to the department as part of a  
22 completed application as required by the rules developed  
23 pursuant to this section by June 30, 1997, the costs of  
24 activities described in paragraph (2)(b) shall be absorbed at  
25 the expense of the drycleaning facility restoration funds,  
26 less a \$1,000 deductible per incident, which shall be paid by  
27 the applicant or current property owner. The deductible shall  
28 be paid within 60 days after receipt of billing by the  
29 department.

30           2. For contamination reported to the department as  
31 part of a completed application as required by the rules



1 developed under this section, from July 1, 1997, through  
2 September 30, 1998, the costs shall be absorbed at the expense  
3 of the drycleaning facility restoration funds, less a \$5,000  
4 deductible per incident. The deductible shall be paid within  
5 60 days after receipt of billing by the department.

6 3. For contamination reported to the department as  
7 part of a completed application as required by the rules  
8 developed pursuant to this section from October 1, 1998,  
9 through December 31, 1998, the costs shall be absorbed at the  
10 expense of the drycleaning facility restoration funds, less a  
11 \$10,000 deductible per incident. The deductible shall be paid  
12 within 60 days after receipt of billing by the department.

13 4. For contamination reported after December 31, 1998,  
14 no costs will be absorbed at the expense of the drycleaning  
15 facility restoration funds.

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

19 (h)~~(f)~~ In order to identify those drycleaning  
20 facilities and wholesale supply facilities that have  
21 experienced contamination resulting from the discharge of  
22 drycleaning solvents and to ensure the most expedient  
23 rehabilitation of such sites, the owners and operators of  
24 drycleaning facilities and wholesale supply facilities are  
25 encouraged to detect and report contamination from drycleaning  
26 solvents related to the operation of drycleaning facilities  
27 and wholesale supply facilities. The department shall  
28 establish reasonable guidelines for the written reporting of  
29 drycleaning contamination and shall distribute forms to  
30 registrants under s. 376.303(1)(d), and to other interested  
31 parties upon request, to be used for such purpose.

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

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

10           (k)~~(i)~~ Due to the value of Florida's potable water, it  
11 is the intent of the Legislature that the department initiate  
12 and facilitate as many cleanups as possible utilizing the  
13 resources of the state, local governments, and the private  
14 sector. The department is authorized to adopt necessary rules  
15 and enter into contracts to carry out the intent of this  
16 subsection and to limit or prevent future contamination from  
17 the operation of drycleaning facilities and wholesale supply  
18 facilities.

19           (l)~~(j)~~ It is not the intent of the Legislature that  
20 the state become the owner or operator of a drycleaning  
21 facility or wholesale supply facility by engaging in  
22 state-conducted cleanup.

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

1 as to whether the drycleaning facility or wholesale supply  
2 facility 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 (n)~~(l)~~ Eligibility under this subsection applies to  
15 the drycleaning facility or wholesale supply facility and  
16 attendant site rehabilitation applies to such facilities and  
17 to any place where drycleaning-solvent contamination migrating  
18 from the eligible facility is found to be located. A  
19 determination of eligibility or ineligibility shall not be  
20 affected by any conveyance of the ownership of the drycleaning  
21 facility, wholesale supply facility, or the real property on  
22 which such facility is located. Nothing contained in this  
23 chapter shall be construed to allow a drycleaning facility or  
24 wholesale supply facility which would not be eligible under  
25 this subsection to become eligible as a result of the  
26 conveyance of the ownership of the ineligible drycleaning  
27 facility or wholesale supply facility to another owner.

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

31

1           (p)~~(n)~~1. The department shall have the authority to  
2 cancel the eligibility of any drycleaning facility or  
3 wholesale supply facility that submits fraudulent information  
4 in the application package or that fails to continuously  
5 comply with the conditions of eligibility set forth in this  
6 subsection, or has not remitted all fees pursuant to s.  
7 376.303(1)(d), or has not remitted the deductible payments  
8 pursuant to paragraph(f)~~(d)~~.

9           2. If the program eligibility of a drycleaning  
10 facility or wholesale supply facility is subject to  
11 cancellation pursuant to this section, then the department  
12 shall notify the applicant in writing of its intent to cancel  
13 program eligibility and shall state the reason or reasons for  
14 cancellation. The applicant shall have 45 days to resolve the  
15 reason or reasons for cancellation to the satisfaction of the  
16 department. If, after 45 days, the applicant has not resolved  
17 the reason or reasons for cancellation to the satisfaction of  
18 the department, the order of cancellation shall become final  
19 and shall be subject to the provisions of chapter 120.

20           (q)~~(o)~~ A real property owner shall not be subject to  
21 administrative or judicial action brought by or on behalf of  
22 any person or local or state government, or agency thereof,  
23 for gross negligence or violations of department rules prior  
24 to January 1, 1990, which resulted from the operation of a  
25 drycleaning facility, provided that the real property owner  
26 demonstrates that:

27           1. The real property owner had ownership in the  
28 property at the time of the gross negligence or violation of  
29 department rules and did not cause or contribute to  
30 contamination on the property;

31

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

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

7           4. The real property owner complied with all discharge  
8 reporting requirements, and did not conceal any contamination;  
9 and

10          5. The department has not been denied access.

11  
12 The defense provided by this paragraph does not apply to any  
13 liability under a federally delegated program.

14          (r)~~(p)~~ A person whose property becomes contaminated  
15 due to geophysical or hydrologic reasons from the operation of  
16 a nearby drycleaning or wholesale supply facility and whose  
17 property has never been occupied by a business that utilized  
18 or stored drycleaning solvents or similar constituents is not  
19 subject to administrative or judicial action brought by or on  
20 behalf of another to compel the rehabilitation of or the  
21 payment of the costs for the rehabilitation of sites  
22 contaminated by drycleaning solvents, provided that the  
23 person:

24           1. Does not own and has never held an ownership  
25 interest in, or shared in the profits of, the drycleaning  
26 facility operated at the source location;

27           2. Did not participate in the operation or management  
28 of the drycleaning facility at the source location; and

29           3. Did not cause, contribute to, or exacerbate the  
30 release or threat of release of any hazardous substance  
31 through any act or omission.

1  
2 The defense provided by this paragraph does not apply to any  
3 liability under a federally delegated program.

4        (s)~~(q)~~ Nothing in this subsection precludes the  
5 department from considering information and documentation  
6 provided by private consultants, local government programs,  
7 federal agencies, or any individual which is relevant to an  
8 eligibility determination if the department provides the  
9 applicant with reasonable access to the information and its  
10 origin.

11        (11) VOLUNTARY CLEANUP.--A real property owner is  
12 authorized to conduct site rehabilitation activities at any  
13 time pursuant to department rules, either through agents of  
14 the real property owner or through responsible response action  
15 contractors or subcontractors, whether or not the facility has  
16 been determined by the department to be eligible for the  
17 drycleaning solvent cleanup program. A real property owner or  
18 any other person who ~~that~~ conducts site rehabilitation may not  
19 seek cost recovery from the department or the Water Quality  
20 Assurance Trust Fund for any such rehabilitation activities. A  
21 real property owner who ~~that~~ voluntarily conducts such site  
22 rehabilitation, whether commenced before or on or after  
23 October 1, 1995, shall be immune from and have no liability  
24 for claims of any person, except for any governmental entity,  
25 for property damages of any kind, including, but not limited  
26 to, diminished value of real property or improvements, lost or  
27 delayed rent, sale or use of real property or improvements, or  
28 stigma to real property or improvements caused by  
29 drycleaning-solvent contamination or be subject to any  
30 administrative or judicial action brought by or on behalf of  
31 ~~liability to~~ any person, state or local government, or agency

1 | thereof to compel or enjoin site rehabilitation or pay for the  
2 | cost of rehabilitation of environmental contamination, and ~~or~~  
3 | to pay any fines or penalties regarding rehabilitation, as  
4 | soon as the real property owner:

5 |       (a) Conducts contamination assessment and site  
6 | rehabilitation consistent with state and federal laws and  
7 | rules;

8 |       (b) Conducts such site rehabilitation in a timely  
9 | manner according to a rehabilitation schedule approved by the  
10 | department; and

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

16 |  
17 | The immunity set forth in this subsection also applies to any  
18 | nearby real property owner. The real property owner shall  
19 | provide upon request from any nearby real property owner all  
20 | reasonably available documentation in the public records in  
21 | reference to the drycleaning-solvent contamination, including,  
22 | but not limited to, copies of any soil or groundwater tests  
23 | and site assessment reports and a copy of the department's  
24 | approved voluntary cleanup agreement. The department shall  
25 | assist the real property owner in providing such  
26 | documentation.This immunity shall continue to apply to any  
27 | real property owner who transfers, conveys, leases, or sells  
28 | property on which a drycleaning facility is located so long as  
29 | the voluntary cleanup activities continue. Notwithstanding any  
30 | other provision of this chapter, this subsection applies to  
31 | causes of action accruing on or after the effective date of

1 this act and applies retroactively to causes of action  
2 accruing before the effective date of this act, for which a  
3 lawsuit has not been filed.

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

6 376.308 Liabilities and defenses of facilities.--

7 (6) Nothing herein shall be construed to affect  
8 cleanup program eligibility under ss. 376.305(6), 376.3071,  
9 376.3072, 376.3078, and 376.3079. Except as otherwise  
10 expressly provided in this chapter, nothing in this chapter  
11 shall affect, void, or defeat any immunity of any real  
12 property owner or nearby real property owner under s.  
13 376.3078.

14 Section 4. Subsection (3) and paragraph (a) of  
15 subsection (5) of section 376.313, Florida Statutes, are  
16 amended to read:

17 376.313 Nonexclusiveness of remedies and individual  
18 cause of action for damages under ss. 376.30-376.319.--

19 (3) Except as provided in s. 376.3078(3) and (11),  
20 ~~Notwithstanding any other provision of law~~ nothing contained  
21 in ss. 376.30-376.319 prohibits any person from bringing a  
22 cause of action in a court of competent jurisdiction for all  
23 damages resulting from a discharge or other condition of  
24 pollution covered by ss. 376.30-376.319. Nothing in this  
25 chapter shall prohibit or diminish a party's right to  
26 contribution from other parties jointly or severally liable  
27 for a prohibited discharge of pollutants or hazardous  
28 substances or other pollution conditions. Except as otherwise  
29 provided in subsection (4) or subsection (5), in any such  
30 suit, it is not necessary for such person to plead or prove  
31 negligence in any form or manner. Such person need only plead



1 and prove the fact of the prohibited discharge or other  
2 pollutive condition and that it has occurred. The only  
3 defenses to such cause of action shall be those specified in  
4 s. 376.308.

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

18 Section 5. Subsection (3) of section 376.3079, Florida  
19 Statutes, is amended to read:

20 376.3079 Third-party liability insurance.--

21 (3) For purposes of this section and s. 376.3078, the  
22 term:

23 (a) "Third-party liability" means the insured's  
24 liability, other than for site rehabilitation costs and  
25 property damage, for bodily injury ~~or property damage~~ caused  
26 by an incident of contamination related to the operation of a  
27 drycleaning facility or wholesale supply facility.

28 (b) "Incident" means any sudden or gradual discharge  
29 of drycleaning solvents arising from the operation of a  
30 drycleaning facility or wholesale supply facility that results  
31 in a need for site rehabilitation or results in bodily injury

1 or property damage neither expected nor intended by the  
2 drycleaning facility owner or operator or wholesale supply  
3 facility.

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

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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                                    COMMITTEE SUBSTITUTE FOR  
3                                    Senate Bill 2124

- 4   --    Removes from the bill changes to the definitions of the  
5           following terms in s. 376.301, F.S.: "contaminated  
6           site"; and "site rehabilitation".
- 7   --    Removes commercial leaseholders from the definition of  
8           the term "nearby real property owner".
- 9   --    Adds a new paragraph (f) to s. 376.3078, F.S., which  
10          contains legislative findings pertaining to the  
11          Drycleaning Solvent Cleanup Program, to provide findings  
12          that the bill's immunity provisions preserve strong  
13          public policy interests.
- 14   --    Modifies the bill's immunity provisions in subsections  
15          (3) and (11) of s. 376.3078, F.S., to provide that the  
16          immunity from claims for property damage does not apply  
17          to such claims brought by governmental entities.
- 18   --    Modifies the bill's immunity provisions in subsections  
19          (3) and (11) of s. 376.3078, F.S., by adding effective  
20          date clauses that provide for retroactive application of  
21          the respective immunity provisions to all causes of  
22          action accruing before the effective date of the act,  
23          except those for which a lawsuit has been filed.
- 24   --    Changes the provisions pertaining to the real property  
25          owner's duties to a nearby real property owner. Upon  
26          request of the nearby real property owner, the real  
27          property owner must provide a statement that the real  
28          property owner's property is eligible for site  
29          rehabilitation under the Drycleaning Solvent Cleanup  
30          Program and that any contamination which has migrated  
31          onto the nearby real property owner's property will also  
32          be cleaned up. The statement must be obtained from the  
33          Department of Environmental Protection or prepared by  
34          the real property owner. If the real property owner  
35          fails to provide the requested documentation, then the  
36          real property owner will not be immune from any claims  
37          by the nearby real property owner for property damage.
- 38   --    Adds a section to the bill that amends the definition of  
39          the term "third-party liability" in s. 376.3079(3)(a),  
40          F.S., to provide that "third-party liability" means the  
41          insured's liability, other than for site rehabilitation  
42          costs and property damage, for bodily injury caused by  
43          an incident of contamination related to the operation of  
44          a drycleaning facility or wholesale supply facility.