

By the Committee on Natural Resources; and Senator Jones

312-1897-03

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" with respect to protection  
6           and restoration of lands and surface and ground  
7           waters; amending s. 376.3078, F.S.; exempting  
8           certain property owners from liability for  
9           damages arising from contamination by  
10          drycleaning solvents in certain circumstances;  
11          providing for retroactive application; amending  
12          s. 376.313, F.S.; revising provisions that  
13          provide nonexclusiveness of remedies and  
14          individual causes of action; providing an  
15          effective date.

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

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19           Section 1. Subsection (47) is added to section  
20 376.301, Florida Statutes, to read:

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22           376.301 Definitions of terms used in ss.  
23 376.30-376.319, 376.70, and 376.75.--When used in ss.  
24 376.30-376.319, 376.70, and 376.75, unless the context clearly  
25 requires otherwise, the term:

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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 facility or  
wholesale supply facility eligible for site rehabilitation  
under s. 376.3078(3) or from a drycleaning facility or

1 wholesale supply facility that is approved by the department  
2 for voluntary cleanup under s. 376.3078(11).

3 Section 2. Subsection (14) is added to section  
4 376.3078, Florida Statutes, to read:

5 376.3078 Drycleaning facility restoration; funds;  
6 uses; liability; recovery of expenditures.--

7 (14) PROPERTY DAMAGES TO A NEARBY REAL PROPERTY  
8 OWNER.--

9 (a) In accordance with the eligibility and voluntary  
10 cleanup provisions of this section, no person, who may be  
11 liable for drycleaning solvent contamination, including any  
12 real property owner, shall be liable for property damage  
13 claims of any kind from any person unless that person sells,  
14 transfers, or changes the land use of the contaminated  
15 property and demonstrates that an actual economic damage has  
16 occurred as a result of the contamination.

17 (b) At a minimum, any such claim shall be based on a  
18 bona fide valid appraisal that supports the claim and  
19 demonstrates the loss in fair market value to the contaminated  
20 property.

21 (c) Damages awarded for any such claim shall be the  
22 actual damage and shall not exceed the difference between the  
23 present value of the land and the value of the land if the  
24 pollution did not exist. Any actual or potential costs for  
25 site rehabilitation shall not be included in the damage award,  
26 if any.

27 (d) No person may be compensated more than once for  
28 the same loss.

29 (e) Notwithstanding any other provision of this  
30 chapter, this subsection applies to causes of action accruing  
31 on or after the effective date of this act and applies

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

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

7 376.313 Nonexclusiveness of remedies and individual  
8 cause of action for damages under ss. 376.30-376.319.--

9 (3) Except as provided in s. 376.3078(14)

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

26 (5)(a) In any civil action against the owner or  
27 operator of a drycleaning facility or a wholesale supply  
28 facility, or the owner of the real property on which such  
29 facility is located, if such facility is not eligible under s.  
30 376.3078(3) and is not involved in voluntary cleanup under s.  
31 376.3078(11), for damages arising from the discharge of

1 drycleaning solvents from a drycleaning facility or wholesale  
2 supply facility, the provisions of subsection (3) shall not  
3 apply if it can be proven that, at the time of the discharge  
4 the alleged damages resulted solely from a discharge from a  
5 drycleaning facility or wholesale supply facility that was in  
6 compliance with department rules regulating drycleaning  
7 facilities or wholesale supply facilities.

8 Section 4. This act shall take effect upon becoming a  
9 law.

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11 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
12 COMMITTEE SUBSTITUTE FOR  
13 Senate Bill 956

14 The committee substitute substantially changes the civil  
15 liability immunity provisions. The original bill provided for  
16 immunity from all property damage claims. The committee  
substitute permits property damage claims provided an actual  
economic loss can be proven.