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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.; providing
8 additional legislative findings with respect to
9 drycleaning facility restoration; exempting
10 certain real property owners and nearby real
11 property owners from liability for damages
12 arising from contamination by drycleaning
13 solvents in certain circumstances; providing
14 for retroactive application; amending s.
15 376.30781, F.S.; conforming a cross-reference;
16 amending s. 376.3079, F.S.; redefining the term
17 "third-party liability" with respect to
18 third-party liability insurance; amending s.
19 376.308, F.S.; revising applicability of
20 provisions that set out liabilities and
21 defenses of facilities; amending s. 376.313,
22 F.S.; revising provisions that provide
23 nonexclusiveness of remedies and individual
24 causes of action; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Subsection (47) is added to section
29 376.301, Florida Statutes, to read:

30 376.301 Definitions of terms used in ss.
31 376.30-376.319, 376.70, and 376.75.--When used in ss.

1 376.30-376.319, 376.70, and 376.75, unless the context clearly
2 requires otherwise, the term:

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

12 Section 2. Subsections (1), (3), and (11) of section
13 376.3078, Florida Statutes, are amended to read:

14 376.3078 Drycleaning facility restoration; funds;
15 uses; liability; recovery of expenditures.--

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

19 (a) Significant quantities of drycleaning solvents
20 have been discharged in the past at drycleaning facilities as
21 part of the normal operation of these facilities.

22 (b) Discharges of drycleaning solvents at such
23 drycleaning facilities have occurred and are occurring, and
24 pose a significant threat to the quality of the groundwaters
25 and inland surface waters of this state.

26 (c) Where contamination of the groundwater or surface
27 water has occurred, remedial measures have often been delayed
28 for long periods while determinations as to liability and the
29 extent of liability are made, and such delays result in the
30 continuation and intensification of the threat to the public
31 health, safety, and welfare; in greater damage to the

1 environment; and in significantly higher costs to contain and
2 remove the contamination.

3 (d) Adequate financial resources must be readily
4 available to provide for the expeditious supply of safe and
5 reliable alternative sources of potable water to affected
6 persons and to provide a means for investigation and
7 rehabilitation of contaminated sites without delay.

8 (e) It is the intent of the Legislature to encourage
9 real property owners to undertake the voluntary cleanup of
10 property contaminated with drycleaning solvents and that the
11 immunity provisions of this section and all other available
12 defenses be construed in favor of real property owners.

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

27 (3) REHABILITATION LIABILITY.--

28 (a) In accordance with the eligibility provisions of
29 this section, a ~~no~~ real property owner, nearby real property
30 owner, or ~~no~~ person who owns or operates, or who otherwise
31 could be liable as a result of the operation of, a drycleaning

1 facility or a wholesale supply facility is not liable for or
2 ~~shall be~~ subject to administrative or judicial action brought
3 by or on behalf of any state or local government or agency
4 thereof or by or on behalf of any person to compel
5 rehabilitation or pay for the costs of rehabilitation of
6 environmental contamination resulting from the discharge of
7 drycleaning solvents.

8
9 Subject to the delays that may occur as a result of the
10 prioritization of sites under this section for any qualified
11 site, costs for activities described in paragraph (2)(b) shall
12 be absorbed at the expense of the drycleaning facility
13 restoration funds, without recourse to reimbursement or
14 recovery from the real property owner, nearby real property
15 owner, or the owner or operator of the drycleaning facility or
16 the wholesale supply facility. Notwithstanding any other
17 provision of this chapter, this subsection applies to causes
18 of action accruing on or after the effective date of this act
19 and applies retroactively to causes of action accruing before
20 the effective date of this act for which a lawsuit has not
21 been filed before the effective date of this act.

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

31 1. Has been registered with the department;

1 2. Is determined by the department to be in compliance
2 with the department's rules regulating drycleaning solvents,
3 drycleaning facilities, or wholesale supply facilities on or
4 after November 19, 1980;

5 3. Has not been operated in a grossly negligent manner
6 at any time on or after November 19, 1980;

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

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

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

30 (c)~~(b)~~ With regard to drycleaning facilities or
31 wholesale supply facilities that cease to be operated as

1 drycleaning facilities or wholesale supply facilities prior to
2 October 1, 1994, such facilities, at which there exists
3 contamination by drycleaning solvents, shall be eligible under
4 this subsection regardless of when the contamination was
5 discovered, provided that the drycleaning facility or
6 wholesale supply facility:

7 1. Was not determined by the department, within a
8 reasonable time after the department's discovery, to have been
9 out of compliance with the department rules regulating
10 drycleaning solvents, drycleaning facilities, or wholesale
11 supply facilities implemented at any time on or after November
12 19, 1980;

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

15 3. Has not been identified to qualify for listing, nor
16 is listed, on the National Priority List pursuant to the
17 Comprehensive Environmental Response, Compensation, and
18 Liability Act of 1980, as amended by the Superfund Amendments
19 and Reauthorization Act of 1986, and as subsequently amended;
20 and

21 4. 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, or has not
24 obtained and is not required to obtain a permit for the
25 operation of a hazardous waste treatment, storage, or disposal
26 facility, a postclosure permit, or a permit pursuant to the
27 federal Hazardous and Solid Waste Amendments of 1984;

28
29 and provided that the real property owner or the owner or
30 operator of the drycleaning facility or the wholesale supply
31 facility has not willfully concealed the discharge of

1 drycleaning solvents, has provided documented evidence of
2 contamination by drycleaning solvents as required by the rules
3 developed pursuant to this section, has reported the
4 contamination prior to December 31, 1998, and has not denied
5 the department access to the site.

6 (d)~~(c)~~ For purposes of determining eligibility, a
7 drycleaning facility or wholesale supply facility was operated
8 in a grossly negligent manner if the department determines
9 that the owner or operator of the drycleaning facility or the
10 wholesale supply facility:

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

16 2. Willfully concealed a discharge of drycleaning
17 solvents with the knowledge, intent, and purpose that the
18 concealment would result in harm to the environment or to
19 public health or result in a violation of the law; or

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

25 (e)~~(d)~~1. With respect to eligible drycleaning solvent
26 contamination reported to the department as part of a
27 completed application as required by the rules developed
28 pursuant to this section by June 30, 1997, the costs of
29 activities described in paragraph (2)(b) shall be absorbed at
30 the expense of the drycleaning facility restoration funds,
31 less a \$1,000 deductible per incident, which shall be paid by

1 the applicant or current property owner. The deductible shall
2 be paid within 60 days after receipt of billing by the
3 department.

4 2. For contamination reported to the department as
5 part of a completed application as required by the rules
6 developed under this section, from July 1, 1997, through
7 September 30, 1998, the costs shall be absorbed at the expense
8 of the drycleaning facility restoration funds, less a \$5,000
9 deductible per incident. The deductible shall be paid within
10 60 days after receipt of billing by the department.

11 3. For contamination reported to the department as
12 part of a completed application as required by the rules
13 developed pursuant to this section from October 1, 1998,
14 through December 31, 1998, the costs shall be absorbed at the
15 expense of the drycleaning facility restoration funds, less a
16 \$10,000 deductible per incident. The deductible shall be paid
17 within 60 days after receipt of billing by the department.

18 4. For contamination reported after December 31, 1998,
19 no costs will be absorbed at the expense of the drycleaning
20 facility restoration funds.

21 (f)~~(e)~~ The provisions of this subsection shall not
22 apply to any site where the department has been denied site
23 access to implement the provisions of this section.

24 (g)~~(f)~~ In order to identify those drycleaning
25 facilities and wholesale supply facilities that have
26 experienced contamination resulting from the discharge of
27 drycleaning solvents and to ensure the most expedient
28 rehabilitation of such sites, the owners and operators of
29 drycleaning facilities and wholesale supply facilities are
30 encouraged to detect and report contamination from drycleaning
31 solvents related to the operation of drycleaning facilities

1 and wholesale supply facilities. The department shall
2 establish reasonable guidelines for the written reporting of
3 drycleaning contamination and shall distribute forms to
4 registrants under s. 376.303(1)(d), and to other interested
5 parties upon request, to be used for such purpose.

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

12 (i)~~(h)~~ The provisions of this subsection shall not
13 apply to drycleaning facilities owned or operated by the state
14 or Federal Government.

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

24 (k)~~(j)~~ It is not the intent of the Legislature that
25 the state become the owner or operator of a drycleaning
26 facility or wholesale supply facility by engaging in
27 state-conducted cleanup.

28 (l)~~(k)~~ The owner, operator, and either the real
29 property owner or agent of the real property owner may apply
30 for the Drycleaning Contamination Cleanup Program by jointly
31 submitting a completed application package to the department

1 pursuant to the rules that shall be adopted by the department.
2 If the application cannot be jointly submitted, then the
3 applicant shall provide notice of the application to other
4 interested parties. After reviewing the completed application
5 package, the department shall notify the applicant in writing
6 as to whether the drycleaning facility or wholesale supply
7 facility is eligible for the program. If the department denies
8 eligibility for a completed application package, the notice of
9 denial shall specify the reasons for the denial, including
10 specific and substantive findings of fact, and shall
11 constitute agency action subject to the provisions of chapter
12 120. For the purposes of ss. 120.569 and 120.57, the real
13 property owner and the owner and operator of a drycleaning
14 facility or wholesale supply facility which is the subject of
15 a decision by the department with regard to eligibility shall
16 be deemed to be parties whose substantial interests are
17 determined by the department's decision to approve or deny
18 eligibility.

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

3 (n)~~(m)~~ If funding for the drycleaning contamination
4 rehabilitation program is eliminated, the provisions of this
5 subsection shall not apply.

6 (o)~~(n)~~1. The department shall have the authority to
7 cancel the eligibility of any drycleaning facility or
8 wholesale supply facility that submits fraudulent information
9 in the application package or that fails to continuously
10 comply with the conditions of eligibility set forth in this
11 subsection, or has not remitted all fees pursuant to s.
12 376.303(1)(d), or has not remitted the deductible payments
13 pursuant to paragraph(e)~~(d)~~.

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

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

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

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

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

11 4. The real property owner complied with all discharge
12 reporting requirements, and did not conceal any contamination;
13 and

14 5. The department has not been denied access.
15

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

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

28 1. Does not own and has never held an ownership
29 interest in, or shared in the profits of, the drycleaning
30 facility operated at the source location;
31

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

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

6
7 The defense provided by this paragraph does not apply to any
8 liability under a federally delegated program.

9 ~~(r)(c)~~ Nothing in this subsection precludes the
10 department from considering information and documentation
11 provided by private consultants, local government programs,
12 federal agencies, or any individual which is relevant to an
13 eligibility determination if the department provides the
14 applicant with reasonable access to the information and its
15 origin.

16 (11) VOLUNTARY CLEANUP.--A real property owner is
17 authorized to conduct site rehabilitation activities at any
18 time pursuant to department rules, either through agents of
19 the real property owner or through responsible response action
20 contractors or subcontractors, whether or not the facility has
21 been determined by the department to be eligible for the
22 drycleaning solvent cleanup program. A real property owner or
23 any other person who ~~that~~ conducts site rehabilitation may not
24 seek cost recovery from the department or the Water Quality
25 Assurance Trust Fund for any such rehabilitation activities. A
26 real property owner who ~~that~~ voluntarily initiates ~~conducts~~
27 such site rehabilitation, whether commenced before or on or
28 after October 1, 1995, shall upon initiation of such site
29 rehabilitation be immune from and have no liability for claims
30 of any person, for property damages of any kind, including,
31 but not limited to, diminished value of real property or

1 improvements; lost or delayed rent, sale, or use of real
2 property or improvements; or stigma to real property or
3 improvements caused by drycleaning-solvent contamination or be
4 subject to any administrative or judicial action brought by or
5 on behalf of ~~to~~ any person, state or local government, or
6 agency thereof to compel or enjoin site rehabilitation or pay
7 for the cost of rehabilitation of environmental contamination,
8 and ~~or~~ to pay any fines or penalties regarding rehabilitation,
9 as soon as the real property owner:

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

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

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

21
22 The immunity set forth in this subsection also applies to any
23 nearby real property owner. This immunity shall continue to
24 apply to any real property owner who transfers, conveys,
25 leases, or sells property on which a drycleaning facility is
26 located so long as the voluntary cleanup activities continue.
27 Notwithstanding any other provision of this chapter, this
28 subsection applies to causes of action accruing on or after
29 the effective date of this act and applies retroactively to
30 causes of action accruing before the effective date of this
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1 act for which a lawsuit has not been filed before the
2 effective date of this act.

3 Section 3. Subsection (4) of section 376.30781,
4 Florida Statutes, is amended to read:

5 376.30781 Partial tax credits for rehabilitation of
6 drycleaning-solvent-contaminated sites and brownfield sites in
7 designated brownfield areas; application process; rulemaking
8 authority; revocation authority.--

9 (4) To claim the credit, each applicant must apply to
10 the Department of Environmental Protection for an allocation
11 of the \$2 million annual credit by December 31 on a form
12 developed by the Department of Environmental Protection in
13 cooperation with the Department of Revenue. The form shall
14 include an affidavit from each applicant certifying that all
15 information contained in the application, including all
16 records of costs incurred and claimed in the tax credit
17 application, are true and correct. If the application is
18 submitted pursuant to subparagraph (2)(a)2., the form must
19 include an affidavit signed by the real property owner stating
20 that it is not, and has never been, the owner or operator of
21 the drycleaning facility where the contamination exists.
22 Approval of partial tax credits must be accomplished on a
23 first-come, first-served basis based upon the date complete
24 applications are received by the Division of Waste Management.
25 An applicant shall submit only one application per site per
26 year. To be eligible for a tax credit the applicant must:

27 (a) Have entered into a voluntary cleanup agreement
28 with the Department of Environmental Protection for a
29 drycleaning-solvent-contaminated site or a Brownfield Site
30 Rehabilitation Agreement, as applicable; and

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1 (b) Have paid all deductibles pursuant to s.
2 376.3078(3)(e)~~s. 376.3078(3)(d)~~ for eligible
3 drycleaning-solvent-cleanup program sites.

4 Section 4. Subsection (3) of section 376.3079, Florida
5 Statutes, is amended to read:

6 376.3079 Third-party liability insurance.--

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

9 (a) "Third-party liability" means the insured's
10 liability, other than for site rehabilitation costs and
11 property damage as applied to sites utilizing the provisions
12 of s. 378.3078(3) and (11), for bodily injury ~~or property~~
13 ~~damage~~ caused by an incident of contamination related to the
14 operation of a drycleaning facility or wholesale supply
15 facility.

16 (b) "Incident" means any sudden or gradual discharge
17 of drycleaning solvents arising from the operation of a
18 drycleaning facility or wholesale supply facility that results
19 in a need for site rehabilitation or results in bodily injury
20 or property damage neither expected nor intended by the
21 drycleaning facility owner or operator or wholesale supply
22 facility.

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

25 376.308 Liabilities and defenses of facilities.--

26 (6) This section may not ~~Nothing herein shall~~ be
27 construed to affect cleanup program eligibility under ss.
28 376.305(6), 376.3071, 376.3072, 376.3078, and 376.3079. Except
29 as otherwise expressly provided in this chapter, nothing in
30 this chapter shall affect, void, or defeat any immunity of any
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1 real property owner or nearby real property owner under s.
2 376.3078.

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

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

8 (3) Except as provided in s. 376.3078(3) and (11)
9 ~~Notwithstanding any other provision of law~~, nothing contained
10 in ss. 376.30-376.319 prohibits any person from bringing a
11 cause of action in a court of competent jurisdiction for all
12 damages resulting from a discharge or other condition of
13 pollution covered by ss. 376.30-376.319. Nothing in this
14 chapter shall prohibit or diminish a party's right to
15 contribution from other parties jointly or severally liable
16 for a prohibited discharge of pollutants or hazardous
17 substances or other pollution conditions. Except as otherwise
18 provided in subsection (4) or subsection (5), in any such
19 suit, it is not necessary for such person to plead or prove
20 negligence in any form or manner. Such person need only plead
21 and prove the fact of the prohibited discharge or other
22 pollutive condition and that it has occurred. The only
23 defenses to such cause of action shall be those specified in
24 s. 376.308.

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

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

7 Section 7. This act shall take effect upon becoming a
8 law.

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