

1 A bill to be entitled
 2 An act relating to contaminated drycleaning facilities;
 3 amending s. 376.3078, F.S.; providing that a drycleaning
 4 facility where an accident caused or exacerbated
 5 contamination is eligible for an exemption from liability;
 6 defining the term "accident"; providing an effective date.

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

9
 10 Section 1. Subsection (3) of section 376.3078, Florida
 11 Statutes, is amended to read:

12 376.3078 Drycleaning facility restoration; funds; uses;
 13 liability; recovery of expenditures.--

14 (3) REHABILITATION LIABILITY.--

15 (a) In accordance with the eligibility provisions of this
 16 section, a real property owner, nearby real property owner, or
 17 person who owns or operates, or who otherwise could be liable as
 18 a result of the operation of, a drycleaning facility or a
 19 wholesale supply facility is not liable for or subject to
 20 administrative or judicial action brought by or on behalf of any
 21 state or local government or agency thereof or by or on behalf
 22 of any person to compel rehabilitation or pay for the costs of
 23 rehabilitation of environmental contamination resulting from the
 24 discharge of drycleaning solvents. Subject to the delays that
 25 may occur as a result of the prioritization of sites under this
 26 section for any qualified site, costs for activities described
 27 in paragraph (2) (b) shall be absorbed at the expense of the
 28 drycleaning facility restoration funds, without recourse to

29 reimbursement or recovery from the real property owner, nearby
30 real property owner, or owner or operator of the drycleaning
31 facility or the wholesale supply facility. Notwithstanding any
32 other provision of this chapter, this subsection applies to
33 causes of action accruing on or after the effective date of this
34 act and applies retroactively to causes of action accruing
35 before the effective date of this act for which a lawsuit has
36 not been filed before the effective date of this act.

37 (b) With regard to drycleaning facilities or wholesale
38 supply facilities that have operated as drycleaning facilities
39 or wholesale supply facilities on or after October 1, 1994, any
40 such drycleaning facility or wholesale supply facility at which
41 there exists contamination by drycleaning solvents shall be
42 eligible under this subsection regardless of when the
43 drycleaning contamination was discovered, provided that the
44 drycleaning facility or the wholesale supply facility:

- 45 1. Has been registered with the department;
- 46 2. Is determined by the department to be in compliance
47 with the department's rules regulating drycleaning solvents,
48 drycleaning facilities, or wholesale supply facilities on or
49 after November 19, 1980;
- 50 3. Has not been operated in a grossly negligent manner at
51 any time on or after November 19, 1980;
- 52 4. Has not been identified to qualify for listing, nor is
53 listed, on the National Priority List pursuant to the
54 Comprehensive Environmental Response, Compensation, and
55 Liability Act of 1980 as amended by the Superfund Amendments and
56 Reauthorization Act of 1986, and as subsequently amended;

57 | 5. Is not under an order from the United States
58 | Environmental Protection Agency pursuant to s. 3008(h) of the
59 | Resource Conservation and Recovery Act as amended (42 U.S.C.A.
60 | s. 6928(h)), or has not obtained and is not required to obtain a
61 | permit for the operation of a hazardous waste treatment,
62 | storage, or disposal facility, a postclosure permit, or a permit
63 | pursuant to the federal Hazardous and Solid Waste Amendments of
64 | 1984;

65 |
66 | and provided that the real property owner or the owner or
67 | operator of the drycleaning facility or the wholesale supply
68 | facility has not willfully concealed the discharge of
69 | drycleaning solvents and has remitted all taxes due pursuant to
70 | ss. 376.70 and 376.75, has provided documented evidence of
71 | contamination by drycleaning solvents as required by the rules
72 | developed pursuant to this section, has reported the
73 | contamination prior to December 31, 1998, and has not denied the
74 | department access to the site.

75 | (c) With regard to drycleaning facilities or wholesale
76 | supply facilities that cease to be operated as drycleaning
77 | facilities or wholesale supply facilities prior to October 1,
78 | 1994, such facilities, at which there exists contamination by
79 | drycleaning solvents, shall be eligible under this subsection
80 | regardless of when the contamination was discovered, provided
81 | that the drycleaning facility or wholesale supply facility:

82 | 1. Was not determined by the department, within a
83 | reasonable time after the department's discovery, to have been
84 | out of compliance with the department rules regulating

85 drycleaning solvents, drycleaning facilities, or wholesale
86 supply facilities implemented at any time on or after November
87 19, 1980;

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

90 3. Has not been identified to qualify for listing, nor is
91 listed, on the National Priority List pursuant to the
92 Comprehensive Environmental Response, Compensation, and
93 Liability Act of 1980, as amended by the Superfund Amendments
94 and Reauthorization Act of 1986, and as subsequently amended;
95 and

96 4. Is not under an order from the United States
97 Environmental Protection Agency pursuant to s. 3008(h) of the
98 Resource Conservation and Recovery Act, as amended, or has not
99 obtained and is not required to obtain a permit for the
100 operation of a hazardous waste treatment, storage, or disposal
101 facility, a postclosure permit, or a permit pursuant to the
102 federal Hazardous and Solid Waste Amendments of 1984;

103
104 and provided that the real property owner or the owner or
105 operator of the drycleaning facility or the wholesale supply
106 facility has not willfully concealed the discharge of
107 drycleaning solvents, has provided documented evidence of
108 contamination by drycleaning solvents as required by the rules
109 developed pursuant to this section, has reported the
110 contamination prior to December 31, 1998, and has not denied the
111 department access to the site.

112 (d) For purposes of determining eligibility, a drycleaning
113 facility or wholesale supply facility was operated in a grossly
114 negligent manner if the department determines that the owner or
115 operator of the drycleaning facility or the wholesale supply
116 facility:

117 1. Willfully discharged drycleaning solvents onto the
118 soils or into the waters of the state after November 19, 1980,
119 with the knowledge, intent, and purpose that the discharge would
120 result in harm to the environment or to public health or result
121 in a violation of the law;

122 2. Willfully concealed a discharge of drycleaning solvents
123 with the knowledge, intent, and purpose that the concealment
124 would result in harm to the environment or to public health or
125 result in a violation of the law; or

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

131 (e)1. With respect to eligible drycleaning solvent
132 contamination reported to the department as part of a completed
133 application as required by the rules developed pursuant to this
134 section by June 30, 1997, the costs of activities described in
135 paragraph (2)(b) shall be absorbed at the expense of the
136 drycleaning facility restoration funds, less a \$1,000 deductible
137 per incident, which shall be paid by the applicant or current
138 property owner. The deductible shall be paid within 60 days
139 after receipt of billing by the department.

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

147 3. For contamination reported to the department as part of
148 a completed application as required by the rules developed
149 pursuant to this section from October 1, 1998, through December
150 31, 1998, the costs shall be absorbed at the expense of the
151 drycleaning facility restoration funds, less a \$10,000
152 deductible per incident. The deductible shall be paid within 60
153 days after receipt of billing by the department.

154 4. For contamination reported after December 31, 1998, no
155 costs will be absorbed at the expense of the drycleaning
156 facility restoration funds.

157 (f) ~~The provisions of~~ This subsection does ~~shall~~ not apply
158 to any site where the department has been denied site access to
159 implement the provisions of this section.

160 (g) In order to identify those drycleaning facilities and
161 wholesale supply facilities that have experienced contamination
162 resulting from the discharge of drycleaning solvents and to
163 ensure the most expedient rehabilitation of such sites, the
164 owners and operators of drycleaning facilities and wholesale
165 supply facilities are encouraged to detect and report
166 contamination from drycleaning solvents related to the operation
167 of drycleaning facilities and wholesale supply facilities. The

168 department shall establish reasonable guidelines for the written
 169 reporting of drycleaning contamination and shall distribute
 170 forms to registrants under s. 376.303(1)(d), and to other
 171 interested parties upon request, to be used for such purpose.

172 (h) A report of drycleaning solvent contamination at a
 173 drycleaning facility or wholesale supply facility made to the
 174 department by any person in accordance with this subsection, or
 175 any rules promulgated pursuant hereto, may not be used directly
 176 as evidence of liability for such discharge in any civil or
 177 criminal trial arising out of the discharge.

178 (i) A drycleaning facility at which contamination by
 179 drycleaning solvents exists and which was damaged by accident
 180 prior to January 1, 1975, is eligible under this subsection,
 181 regardless of whether an application for eligibility was filed
 182 on or before December 31, 1998. As used in this paragraph, the
 183 term "accident" means an unplanned and unanticipated occurrence
 184 beyond the control of the owner or operator of a drycleaning
 185 facility which resulted in physical damage to the facility when
 186 the actions of responders to such occurrence could reasonably be
 187 determined to have caused or exacerbated contamination by
 188 drycleaning solvents at such facility.

189 (j)-(i) ~~The provisions of~~ This subsection does ~~shall~~ not
 190 apply to drycleaning facilities owned or operated by the state
 191 or Federal Government.

192 (k)-(j) Due to the value of Florida's potable water, it is
 193 the intent of the Legislature that the department initiate and
 194 facilitate as many cleanups as possible utilizing the resources
 195 of the state, local governments, and the private sector. The

196 department is authorized to adopt necessary rules and enter into
197 contracts to carry out the intent of this subsection and to
198 limit or prevent future contamination from the operation of
199 drycleaning facilities and wholesale supply facilities.

200 (1)~~(k)~~ It is not the intent of the Legislature that the
201 state become the owner or operator of a drycleaning facility or
202 wholesale supply facility by engaging in state-conducted
203 cleanup.

204 (m)~~(l)~~ The owner, operator, and either the real property
205 owner or agent of the real property owner may apply for the
206 Drycleaning Contamination Cleanup Program by jointly submitting
207 a completed application package to the department pursuant to
208 the rules that shall be adopted by the department. If the
209 application cannot be jointly submitted, then the applicant
210 shall provide notice of the application to other interested
211 parties. After reviewing the completed application package, the
212 department shall notify the applicant in writing as to whether
213 the drycleaning facility or wholesale supply facility is
214 eligible for the program. If the department denies eligibility
215 for a completed application package, the notice of denial shall
216 specify the reasons for the denial, including specific and
217 substantive findings of fact, and shall constitute agency action
218 subject to the provisions of chapter 120. For the purposes of
219 ss. 120.569 and 120.57, the real property owner and the owner
220 and operator of a drycleaning facility or wholesale supply
221 facility which is the subject of a decision by the department
222 with regard to eligibility shall be deemed to be parties whose

223 | substantial interests are determined by the department's
 224 | decision to approve or deny eligibility.

225 | (n)~~(m)~~ Eligibility under this subsection applies to the
 226 | drycleaning facility or wholesale supply facility, and attendant
 227 | site rehabilitation applies to such facilities and to any place
 228 | where drycleaning-solvent contamination migrating from the
 229 | eligible facility is found. A determination of eligibility or
 230 | ineligibility shall not be affected by any conveyance of the
 231 | ownership of the drycleaning facility, wholesale supply
 232 | facility, or the real property on which such facility is
 233 | located. Nothing contained in this chapter shall be construed
 234 | to allow a drycleaning facility or wholesale supply facility
 235 | which would not be eligible under this subsection to become
 236 | eligible as a result of the conveyance of the ownership of the
 237 | ineligible drycleaning facility or wholesale supply facility to
 238 | another owner.

239 | (o)~~(n)~~ If funding for the drycleaning contamination
 240 | rehabilitation program is eliminated, the provisions of this
 241 | subsection shall not apply.

242 | (p)~~(e)~~1. The department shall have the authority to cancel
 243 | the eligibility of any drycleaning facility or wholesale supply
 244 | facility that submits fraudulent information in the application
 245 | package or that fails to continuously comply with the conditions
 246 | of eligibility set forth in this subsection, or has not remitted
 247 | all fees pursuant to s. 376.303(1)(d), or has not remitted the
 248 | deductible payments pursuant to paragraph (e).

249 | 2. If the program eligibility of a drycleaning facility or
 250 | wholesale supply facility is subject to cancellation pursuant to

251 | this section, then the department shall notify the applicant in
252 | writing of its intent to cancel program eligibility and shall
253 | state the reason or reasons for cancellation. The applicant
254 | shall have 45 days to resolve the reason or reasons for
255 | cancellation to the satisfaction of the department. If, after 45
256 | days, the applicant has not resolved the reason or reasons for
257 | cancellation to the satisfaction of the department, the order of
258 | cancellation shall become final and shall be subject to the
259 | provisions of chapter 120.

260 | (q)~~(p)~~ A real property owner shall not be subject to
261 | administrative or judicial action brought by or on behalf of any
262 | person or local or state government, or agency thereof, for
263 | gross negligence or violations of department rules prior to
264 | January 1, 1990, which resulted from the operation of a
265 | drycleaning facility, provided that the real property owner
266 | demonstrates that:

267 | 1. The real property owner had ownership in the property
268 | at the time of the gross negligence or violation of department
269 | rules and did not cause or contribute to contamination on the
270 | property;

271 | 2. The real property owner was a distinct and separate
272 | entity from the owner and operator of the drycleaning facility,
273 | and did not have an ownership interest in or share in the
274 | profits of the drycleaning facility;

275 | 3. The real property owner did not participate in the
276 | operation or management of the drycleaning facility;

277 4. The real property owner complied with all discharge
 278 reporting requirements, and did not conceal any contamination;
 279 and

280 5. The department has not been denied access.
 281

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

284 (r)~~(e)~~ A person whose property becomes contaminated due to
 285 geophysical or hydrologic reasons from the operation of a nearby
 286 drycleaning or wholesale supply facility and whose property has
 287 never been occupied by a business that utilized or stored
 288 drycleaning solvents or similar constituents is not subject to
 289 administrative or judicial action brought by or on behalf of
 290 another to compel the rehabilitation of or the payment of the
 291 costs for the rehabilitation of sites contaminated by
 292 drycleaning solvents, provided that the person:

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

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

298 3. Did not cause, contribute to, or exacerbate the release
 299 or threat of release of any hazardous substance through any act
 300 or omission.
 301

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

304 (s)~~(r)~~ Nothing in this subsection precludes the department
305 from considering information and documentation provided by
306 private consultants, local government programs, federal
307 agencies, or any individual which is relevant to an eligibility
308 determination if the department provides the applicant with
309 reasonable access to the information and its origin.

310 Section 2. This act shall take effect upon becoming a law.