

By the Committee on Judiciary; and Senator Peadar

590-2347-05

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

9
10 Be It Enacted by the Legislature of the State of Florida:

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

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

16 (3) REHABILITATION LIABILITY.--

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

1 | property owner, nearby real property owner, or owner or
2 | operator of the drycleaning facility or the wholesale supply
3 | facility. Notwithstanding any other provision of this chapter,
4 | this subsection applies to causes of action accruing on or
5 | after the effective date of this act and applies retroactively
6 | to causes of action accruing before the effective date of this
7 | act for which a lawsuit has not been filed before the
8 | effective date of this act.

9 | (b) With regard to drycleaning facilities or wholesale
10 | supply facilities that have operated as drycleaning facilities
11 | or wholesale supply facilities on or after October 1, 1994,
12 | any such drycleaning facility or wholesale supply facility at
13 | which there exists contamination by drycleaning solvents shall
14 | be eligible under this subsection regardless of when the
15 | drycleaning contamination was discovered, provided that the
16 | drycleaning facility or the wholesale supply facility:

- 17 | 1. Has been registered with the department;
- 18 | 2. Is determined by the department to be in compliance
19 | with the department's rules regulating drycleaning solvents,
20 | drycleaning facilities, or wholesale supply facilities on or
21 | after November 19, 1980;
- 22 | 3. Has not been operated in a grossly negligent manner
23 | at any time on or after November 19, 1980;
- 24 | 4. Has not been identified to qualify for listing, nor
25 | is listed, on the National Priority List pursuant to the
26 | Comprehensive Environmental Response, Compensation, and
27 | Liability Act of 1980 as amended by the Superfund Amendments
28 | and Reauthorization Act of 1986, and as subsequently amended;
- 29 | 5. Is not under an order from the United States
30 | Environmental Protection Agency pursuant to s. 3008(h) of the
31 | Resource Conservation and Recovery Act as amended (42 U.S.C.A.

1 s. 6928(h)), or has not obtained and is not required to obtain
2 a permit for the operation of a hazardous waste treatment,
3 storage, or disposal facility, a postclosure permit, or a
4 permit pursuant to the federal Hazardous and Solid Waste
5 Amendments of 1984;

6
7 and provided that the real property owner or the owner or
8 operator of the drycleaning facility or the wholesale supply
9 facility has not willfully concealed the discharge of
10 drycleaning solvents and has remitted all taxes due pursuant
11 to ss. 376.70 and 376.75, has provided documented evidence of
12 contamination by drycleaning solvents as required by the rules
13 developed pursuant to this section, has reported the
14 contamination prior to December 31, 1998, and has not denied
15 the department access to the site.

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

23 1. Was not determined by the department, within a
24 reasonable time after the department's discovery, to have been
25 out of compliance with the department rules regulating
26 drycleaning solvents, drycleaning facilities, or wholesale
27 supply facilities implemented at any time on or after November
28 19, 1980;

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

31

1 3. 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 and

7 4. Is not under an order from the United States
8 Environmental Protection Agency pursuant to s. 3008(h) of the
9 Resource Conservation and Recovery Act, as amended, or has not
10 obtained and is not required to obtain a permit for the
11 operation of a hazardous waste treatment, storage, or disposal
12 facility, a postclosure permit, or a permit pursuant to the
13 federal Hazardous and Solid Waste 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, has provided documented evidence of
19 contamination by drycleaning solvents as required by the rules
20 developed pursuant to this section, has reported the
21 contamination prior to December 31, 1998, and has not denied
22 the department access to the site.

23 (d) For purposes of determining eligibility, a
24 drycleaning facility or wholesale supply facility was operated
25 in a grossly negligent manner if the department determines
26 that the owner or operator of the drycleaning facility or the
27 wholesale supply facility:

28 1. Willfully discharged drycleaning solvents onto the
29 soils or into the waters of the state after November 19, 1980,
30 with the knowledge, intent, and purpose that the discharge
31

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

3 | 2. Willfully concealed a discharge of drycleaning
4 | solvents with the knowledge, intent, and purpose that the
5 | concealment would result in harm to the environment or to
6 | public health or result in a violation of the law; or

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

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

22 | 2. For contamination reported to the department as
23 | part of a completed application as required by the rules
24 | developed under this section, from July 1, 1997, through
25 | September 30, 1998, the costs shall be absorbed at the expense
26 | of the drycleaning facility restoration funds, less a \$5,000
27 | deductible per incident. The deductible shall be paid within
28 | 60 days after receipt of billing by the department.

29 | 3. For contamination reported to the department as
30 | part of a completed application as required by the rules
31 | developed pursuant to this section from October 1, 1998,

1 through December 31, 1998, the costs shall be absorbed at the
2 expense of the drycleaning facility restoration funds, less a
3 \$10,000 deductible per incident. The deductible shall be paid
4 within 60 days after receipt of billing by the department.

5 4. For contamination reported after December 31, 1998,
6 no costs will be absorbed at the expense of the drycleaning
7 facility restoration funds.

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

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

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

30 (i) A drycleaning facility at which contamination by
31 drycleaning solvents exists and which was damaged by accident

1 prior to January 1, 1975, is eligible under this subsection,
2 regardless of whether an application for eligibility was filed
3 on or before December 31, 1998. As used in this paragraph, the
4 term "accident" means an unplanned and unanticipated
5 occurrence beyond the control of the owner or operator of a
6 drycleaning facility which resulted in physical damage to the
7 facility when the actions of responders to such occurrence
8 could reasonably be determined to have caused or exacerbated
9 contamination by drycleaning solvents at such facility.

10 ~~(j)(i)~~ ~~The provisions of~~ This subsection does ~~shall~~
11 not apply to drycleaning facilities owned or operated by the
12 state or Federal Government.

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

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

26 ~~(m)(l)~~ The owner, operator, and either the real
27 property owner or agent of the real property owner may apply
28 for the Drycleaning Contamination Cleanup Program by jointly
29 submitting a completed application package to the department
30 pursuant to the rules that shall be adopted by the department.
31 If the application cannot be jointly submitted, then the

1 applicant shall provide notice of the application to other
2 interested parties. After reviewing the completed application
3 package, the department shall notify the applicant in writing
4 as to whether the drycleaning facility or wholesale supply
5 facility is eligible for the program. If the department denies
6 eligibility for a completed application package, the notice of
7 denial shall specify the reasons for the denial, including
8 specific and substantive findings of fact, and shall
9 constitute agency action subject to the provisions of chapter
10 120. For the purposes of ss. 120.569 and 120.57, the real
11 property owner and the owner and operator of a drycleaning
12 facility or wholesale supply facility which is the subject of
13 a decision by the department with regard to eligibility shall
14 be deemed to be parties whose substantial interests are
15 determined by the department's decision to approve or deny
16 eligibility.

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

31

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

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

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

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

30 1. The real property owner had ownership in the
31 property at the time of the gross negligence or violation of

1 department rules and did not cause or contribute to
2 contamination on the property;

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

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

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

12 5. The department has not been denied access.
13

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

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

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

29 2. Did not participate in the operation or management
30 of the drycleaning facility at the source location; and
31

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

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

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

14 Section 2. This act shall take effect upon becoming a
15 law.
16

17 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
18 COMMITTEE SUBSTITUTE FOR
19 Senate Bill 1664

20 The committee substitute makes the following change to the
21 underlying bill:

22 -- Specifies that a drycleaning facility that was damaged as
23 the result of an accident prior to January 1, 1975, is
24 eligible for cleanup under the Drycleaning Solvent
25 Cleanup Program.
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