

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

.
.
.



1 Representative Evers offered the following:

2

3 **Amendment (with title amendment)**

4 Between lines 344 and 345, insert:

5 Section 2. Subsection (3) of section 376.3078, Florida
6 Statutes, is amended to read:

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

9 (3) REHABILITATION LIABILITY.--

10 (a) In accordance with the eligibility provisions of this
11 section, a real property owner, nearby real property owner, or
12 person who owns or operates, or who otherwise could be liable as
13 a result of the operation of, a drycleaning facility or a
14 wholesale supply facility is not liable for or subject to
15 administrative or judicial action brought by or on behalf of any

244565

Amendment No. (for drafter's use only)

16 state or local government or agency thereof or by or on behalf
17 of any person to compel rehabilitation or pay for the costs of
18 rehabilitation of environmental contamination resulting from the
19 discharge of drycleaning solvents. Subject to the delays that
20 may occur as a result of the prioritization of sites under this
21 section for any qualified site, costs for activities described
22 in paragraph (2)(b) shall be absorbed at the expense of the
23 drycleaning facility restoration funds, without recourse to
24 reimbursement or recovery from the real property owner, nearby
25 real property owner, or owner or operator of the drycleaning
26 facility or the wholesale supply facility. Notwithstanding any
27 other provision of this chapter, this subsection applies to
28 causes of action accruing on or after the effective date of this
29 act and applies retroactively to causes of action accruing
30 before the effective date of this act for which a lawsuit has
31 not been filed before the effective date of this act.

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

- 40 1. Has been registered with the department;
- 41 2. Is determined by the department to be in compliance
- 42 with the department's rules regulating drycleaning solvents,

244565

4/28/2005 1:54:26 PM

Amendment No. (for drafter's use only)

43 drycleaning facilities, or wholesale supply facilities on or
44 after November 19, 1980;

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

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

52 5. Is not under an order from the United States
53 Environmental Protection Agency pursuant to s. 3008(h) of the
54 Resource Conservation and Recovery Act as amended (42 U.S.C.A.
55 s. 6928(h)), or has not obtained and is not required to obtain a
56 permit for the operation of a hazardous waste treatment,
57 storage, or disposal facility, a postclosure permit, or a permit
58 pursuant to the federal Hazardous and Solid Waste Amendments of
59 1984; and provided that the real property owner or the owner or
60 operator of the drycleaning facility or the wholesale supply
61 facility has not willfully concealed the discharge of
62 drycleaning solvents and has remitted all taxes due pursuant to
63 ss. 376.70 and 376.75, has provided documented evidence of
64 contamination by drycleaning solvents as required by the rules
65 developed pursuant to this section, has reported the
66 contamination prior to December 31, 1998, and has not denied the
67 department access to the site.

68 (c) With regard to drycleaning facilities or wholesale
69 supply facilities that cease to be operated as drycleaning

244565

4/28/2005 1:54:26 PM

Amendment No. (for drafter's use only)

70 facilities or wholesale supply facilities prior to October 1,
71 1994, such facilities, at which there exists contamination by
72 drycleaning solvents, shall be eligible under this subsection
73 regardless of when the contamination was discovered, provided
74 that the drycleaning facility or wholesale supply facility:

75 1. Was not determined by the department, within a
76 reasonable time after the department's discovery, to have been
77 out of compliance with the department rules regulating
78 drycleaning solvents, drycleaning facilities, or wholesale
79 supply facilities implemented at any time on or after November
80 19, 1980;

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

83 3. Has not been identified to qualify for listing, nor is
84 listed, on the National Priority List pursuant to the
85 Comprehensive Environmental Response, Compensation, and
86 Liability Act of 1980, as amended by the Superfund Amendments
87 and Reauthorization Act of 1986, and as subsequently amended;
88 and

89 4. Is not under an order from the United States
90 Environmental Protection Agency pursuant to s. 3008(h) of the
91 Resource Conservation and Recovery Act, as amended, or has not
92 obtained and is not required to obtain a permit for the
93 operation of a hazardous waste treatment, storage, or disposal
94 facility, a postclosure permit, or a permit pursuant to the
95 federal Hazardous and Solid Waste Amendments of 1984; and
96 provided that the real property owner or the owner or operator

244565

4/28/2005 1:54:26 PM

Amendment No. (for drafter's use only)

97 of the drycleaning facility or the wholesale supply facility has
98 not willfully concealed the discharge of drycleaning solvents,
99 has provided documented evidence of contamination by drycleaning
100 solvents as required by the rules developed pursuant to this
101 section, has reported the contamination prior to December 31,
102 1998, and has not denied the department access to the site.

103 (d) For purposes of determining eligibility, a drycleaning
104 facility or wholesale supply facility was operated in a grossly
105 negligent manner if the department determines that the owner or
106 operator of the drycleaning facility or the wholesale supply
107 facility:

108 1. Willfully discharged drycleaning solvents onto the
109 soils or into the waters of the state after November 19, 1980,
110 with the knowledge, intent, and purpose that the discharge would
111 result in harm to the environment or to public health or result
112 in a violation of the law;

113 2. Willfully concealed a discharge of drycleaning solvents
114 with the knowledge, intent, and purpose that the concealment
115 would result in harm to the environment or to public health or
116 result in a violation of the law; or

117 3. Willfully violated a local, state, or federal law or
118 rule regulating the operation of drycleaning facilities or
119 wholesale supply facilities with the knowledge, intent, and
120 purpose that the act would result in harm to the environment or
121 to public health or result in a violation of the law.

122 (e)1. With respect to eligible drycleaning solvent
123 contamination reported to the department as part of a completed

244565

Amendment No. (for drafter's use only)

124 application as required by the rules developed pursuant to this
125 section by June 30, 1997, the costs of activities described in
126 paragraph (2)(b) shall be absorbed at the expense of the
127 drycleaning facility restoration funds, less a \$1,000 deductible
128 per incident, which shall be paid by the applicant or current
129 property owner. The deductible shall be paid within 60 days
130 after receipt of billing by the department.

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

138 3. For contamination reported to the department as part of
139 a completed application as required by the rules developed
140 pursuant to this section from October 1, 1998, through December
141 31, 1998, the costs shall be absorbed at the expense of the
142 drycleaning facility restoration funds, less a \$10,000
143 deductible per incident. The deductible shall be paid within 60
144 days after receipt of billing by the department.

145 4. For contamination reported after December 31, 1998, no
146 costs will be absorbed at the expense of the drycleaning
147 facility restoration funds.

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

244565

4/28/2005 1:54:26 PM

Amendment No. (for drafter's use only)

151 (g) In order to identify those drycleaning facilities and
152 wholesale supply facilities that have experienced contamination
153 resulting from the discharge of drycleaning solvents and to
154 ensure the most expedient rehabilitation of such sites, the
155 owners and operators of drycleaning facilities and wholesale
156 supply facilities are encouraged to detect and report
157 contamination from drycleaning solvents related to the operation
158 of drycleaning facilities and wholesale supply facilities. The
159 department shall establish reasonable guidelines for the written
160 reporting of drycleaning contamination and shall distribute
161 forms to registrants under s. 376.303(1)(d), and to other
162 interested parties upon request, to be used for such purpose.

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

169 (i) A drycleaning facility at which contamination by
170 drycleaning solvents exists and which was damaged by accident
171 prior to January 1, 1975, is eligible under this subsection,
172 regardless of whether an application for eligibility was filed
173 on or before December 31, 1998. As used in this paragraph, the
174 term "accident" means an unplanned and unanticipated occurrence
175 beyond the control of the owner or operator of a drycleaning
176 facility which resulted in physical damage to the facility when
177 the actions of responders to such occurrence could reasonably be

244565

4/28/2005 1:54:26 PM

Amendment No. (for drafter's use only)

178 determined to have caused or exacerbated contamination by
179 drycleaning solvents at such facility.

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

183 (k)(j) Due to the value of Florida's potable water, it is
184 the intent of the Legislature that the department initiate and
185 facilitate as many cleanups as possible utilizing the resources
186 of the state, local governments, and the private sector. The
187 department is authorized to adopt necessary rules and enter into
188 contracts to carry out the intent of this subsection and to
189 limit or prevent future contamination from the operation of
190 drycleaning facilities and wholesale supply facilities.

191 (l)(k) It is not the intent of the Legislature that the
192 state become the owner or operator of a drycleaning facility or
193 wholesale supply facility by engaging in state-conducted
194 cleanup.

195 (m)(l) The owner, operator, and either the real property
196 owner or agent of the real property owner may apply for the
197 Drycleaning Contamination Cleanup Program by jointly submitting
198 a completed application package to the department pursuant to
199 the rules that shall be adopted by the department. If the
200 application cannot be jointly submitted, then the applicant
201 shall provide notice of the application to other interested
202 parties. After reviewing the completed application package, the
203 department shall notify the applicant in writing as to whether
204 the drycleaning facility or wholesale supply facility is

244565

4/28/2005 1:54:26 PM

Amendment No. (for drafter's use only)

205 eligible for the program. If the department denies eligibility
206 for a completed application package, the notice of denial shall
207 specify the reasons for the denial, including specific and
208 substantive findings of fact, and shall constitute agency action
209 subject to the provisions of chapter 120. For the purposes of
210 ss. 120.569 and 120.57, the real property owner and the owner
211 and operator of a drycleaning facility or wholesale supply
212 facility which is the subject of a decision by the department
213 with regard to eligibility shall be deemed to be parties whose
214 substantial interests are determined by the department's
215 decision to approve or deny eligibility.

216 (n)~~(m)~~ Eligibility under this subsection applies to the
217 drycleaning facility or wholesale supply facility, and attendant
218 site rehabilitation applies to such facilities and to any place
219 where drycleaning-solvent contamination migrating from the
220 eligible facility is found. A determination of eligibility or
221 ineligibility shall not be affected by any conveyance of the
222 ownership of the drycleaning facility, wholesale supply
223 facility, or the real property on which such facility is
224 located. Nothing contained in this chapter shall be construed
225 to allow a drycleaning facility or wholesale supply facility
226 which would not be eligible under this subsection to become
227 eligible as a result of the conveyance of the ownership of the
228 ineligible drycleaning facility or wholesale supply facility to
229 another owner.

244565

4/28/2005 1:54:26 PM

Amendment No. (for drafter's use only)

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

233 ~~(p)(e)~~1. The department shall have the authority to cancel
234 the eligibility of any drycleaning facility or wholesale supply
235 facility that submits fraudulent information in the application
236 package or that fails to continuously comply with the conditions
237 of eligibility set forth in this subsection, or has not remitted
238 all fees pursuant to s. 376.303(1)(d), or has not remitted the
239 deductible payments pursuant to paragraph (e).

240 2. If the program eligibility of a drycleaning facility or
241 wholesale supply facility is subject to cancellation pursuant to
242 this section, then the department shall notify the applicant in
243 writing of its intent to cancel program eligibility and shall
244 state the reason or reasons for cancellation. The applicant
245 shall have 45 days to resolve the reason or reasons for
246 cancellation to the satisfaction of the department. If, after 45
247 days, the applicant has not resolved the reason or reasons for
248 cancellation to the satisfaction of the department, the order of
249 cancellation shall become final and shall be subject to the
250 provisions of chapter 120.

251 ~~(q)(p)~~ A real property owner shall not be subject to
252 administrative or judicial action brought by or on behalf of any
253 person or local or state government, or agency thereof, for
254 gross negligence or violations of department rules prior to
255 January 1, 1990, which resulted from the operation of a

244565

4/28/2005 1:54:26 PM

Amendment No. (for drafter's use only)

256 drycleaning facility, provided that the real property owner
257 demonstrates that:

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

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

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

268 4. The real property owner complied with all discharge
269 reporting requirements, and did not conceal any contamination;
270 and

271 5. The department has not been denied access.

272
273 The defense provided by this paragraph does not apply to any
274 liability under a federally delegated program.

275 ~~(r)~~~~(q)~~ A person whose property becomes contaminated due to
276 geophysical or hydrologic reasons from the operation of a nearby
277 drycleaning or wholesale supply facility and whose property has
278 never been occupied by a business that utilized or stored
279 drycleaning solvents or similar constituents is not subject to
280 administrative or judicial action brought by or on behalf of
281 another to compel the rehabilitation of or the payment of the

244565

4/28/2005 1:54:26 PM

Amendment No. (for drafter's use only)

282 costs for the rehabilitation of sites contaminated by
283 drycleaning solvents, provided that the person:

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

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

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

292

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

295 ~~(s)~~ Nothing in this subsection precludes the department
296 from considering information and documentation provided by
297 private consultants, local government programs, federal
298 agencies, or any individual which is relevant to an eligibility
299 determination if the department provides the applicant with
300 reasonable access to the information and its origin.

301

302

303 ===== T I T L E A M E N D M E N T =====

304 Remove line 7 and insert:

305 amending s. 376.3078, F.S.; providing that a drycleaning
306 facility where an accident caused or exacerbated
307 contamination is eligible for an exemption from liability;
308 defining the term "accident"; providing an effective date.

244565

4/28/2005 1:54:26 PM