

Bill No. CS for SB 2510

Barcode 692782

CHAMBER ACTION

Senate

House

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Senator Peaden moved the following amendment:

Senate Amendment (with title amendment)

On page 18, between lines 21 and 22,

insert:

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

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

(3) REHABILITATION LIABILITY.--

(a) In accordance with the eligibility provisions of this section, a real property owner, nearby real property owner, or person who owns or operates, or who otherwise could be liable as a result of the operation of, a drycleaning facility or a wholesale supply facility is not liable for or subject to administrative or judicial action brought by or on behalf of any state or local government or agency thereof or by or on behalf of any person to compel rehabilitation or pay for the costs of rehabilitation of environmental contamination resulting from the discharge of drycleaning solvents. Subject

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

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

- 22 1. Has been registered with the department;
- 23 2. Is determined by the department to be in compliance
 24 with the department's rules regulating drycleaning solvents,
 25 drycleaning facilities, or wholesale supply facilities on or
 26 after November 19, 1980;
- 27 3. Has not been operated in a grossly negligent manner
 28 at any time on or after November 19, 1980;
- 29 4. Has not been identified to qualify for listing, nor
 30 is listed, on the National Priority List pursuant to the
 31 Comprehensive Environmental Response, Compensation, and

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1 Liability Act of 1980 as amended by the Superfund Amendments
2 and Reauthorization Act of 1986, and as subsequently amended;

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

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

21 (c) With regard to drycleaning facilities or wholesale
22 supply facilities that cease to be operated as drycleaning
23 facilities or wholesale supply facilities prior to October 1,
24 1994, such facilities, at which there exists contamination by
25 drycleaning solvents, shall be eligible under this subsection
26 regardless of when the contamination was discovered, provided
27 that the drycleaning facility or wholesale supply facility:

28 1. Was not determined by the department, within a
29 reasonable time after the department's discovery, to have been
30 out of compliance with the department rules regulating
31 drycleaning solvents, drycleaning facilities, or wholesale

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1 supply facilities implemented at any time on or after November
2 19, 1980;

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

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

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

18
19 and provided that the real property owner or the owner or
20 operator of the drycleaning facility or the wholesale supply
21 facility has not willfully concealed the discharge of
22 drycleaning solvents, has provided documented evidence of
23 contamination by drycleaning solvents as required by the rules
24 developed pursuant to this section, has reported the
25 contamination prior to December 31, 1998, and has not denied
26 the department access to the site.

27 (d) For purposes of determining eligibility, a
28 drycleaning facility or wholesale supply facility was operated
29 in a grossly negligent manner if the department determines
30 that the owner or operator of the drycleaning facility or the
31 wholesale supply facility:

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

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

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

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

25 2. For contamination reported to the department as
 26 part of a completed application as required by the rules
 27 developed under this section, from July 1, 1997, through
 28 September 30, 1998, the costs shall be absorbed at the expense
 29 of the drycleaning facility restoration funds, less a \$5,000
 30 deductible per incident. The deductible shall be paid within
 31 60 days after receipt of billing by the department.

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1 3. For contamination reported to the department as
 2 part of a completed application as required by the rules
 3 developed pursuant to this section from October 1, 1998,
 4 through December 31, 1998, the costs shall be absorbed at the
 5 expense of the drycleaning facility restoration funds, less a
 6 \$10,000 deductible per incident. The deductible shall be paid
 7 within 60 days after receipt of billing by the department.

8 4. For contamination reported after December 31, 1998,
 9 no costs will be absorbed at the expense of the drycleaning
 10 facility restoration funds.

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

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

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

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1 civil or criminal trial arising out of the discharge.

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

13 (j)(i) The provisions of This subsection does shall
14 not apply to drycleaning facilities owned or operated by the
15 state or Federal Government.

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

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

29 (m)(l) The owner, operator, and either the real
30 property owner or agent of the real property owner may apply
31 for the Drycleaning Contamination Cleanup Program by jointly

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

20 (n)~~(m)~~ Eligibility under this subsection applies to
21 the drycleaning facility or wholesale supply facility, and
22 attendant site rehabilitation applies to such facilities and
23 to any place where drycleaning-solvent contamination migrating
24 from the eligible facility is found. A determination of
25 eligibility or ineligibility shall not be affected by any
26 conveyance of the ownership of the drycleaning facility,
27 wholesale supply facility, or the real property on which such
28 facility is located. Nothing contained in this chapter shall
29 be construed to allow a drycleaning facility or wholesale
30 supply facility which would not be eligible under this
31 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 ~~(o)(n)~~ If funding for the drycleaning contamination
4 rehabilitation program is eliminated, the provisions of this
5 subsection shall not apply.

6 ~~(p)(o)~~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).

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 ~~(g)(p)~~ 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:

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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 ~~(r)(q)~~ 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 2. Did not participate in the operation or management

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1 of the drycleaning facility at the source location; and

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

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

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

15
16 (Redesignate subsequent sections.)

17
18
19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 On page 1, line 20, after the semicolon,

22
23 insert:

24 amending s. 376.3078, F.S.; providing that a
25 drycleaning facility where an accident caused
26 or exacerbated contamination is eligible for an
27 exemption from liability; defining the term
28 "accident";

29
30
31