

2003 Senate Bill 324

Date of enactment: **April 22, 2004**

Date of publication\*: **May 6, 2004**

## 2003 WISCONSIN ACT 312

**AN ACT to repeal** 77.9961 (4) and 292.65 (3) (am) 3.; **to renumber and amend** 77.9961 (1); **to amend** 25.48, 77.9961 (title), 77.9961 (2), 77.9961 (3), 77.9964 (2), 292.65 (1) (i) 3. b., 292.65 (3) (am) 1., 292.65 (3) (am) 2., 292.65 (4) (k), 292.65 (4) (m), 292.65 (7) (c) 1., 292.65 (8) (a) (intro.), 292.65 (8) (a) 4m., 292.65 (8) (c), 292.65 (8) (d) 7., 292.65 (8) (e) (intro.), 292.65 (8) (j) 2., 292.65 (8) (j) 4., 292.65 (8m) and 292.65 (11); and **to create** 77.996 (6), 77.996 (7), 77.9961 (1) (b), 77.9961 (1) (c), 77.9961 (1) (d), 77.9961 (1) (e), 77.9961 (1m), 292.65 (1) (gv), 292.65 (1) (h) 4., 292.65 (7) (b) and 292.65 (8) (j) 3m. of the statutes; **relating to:** the Dry Cleaner Environmental Response Program and the administration of dry cleaning license fees.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1g.** 25.48 of the statutes is amended to read:  
**25.48 Dry cleaner environmental response fund.**

There is established a separate nonlapsible trust fund designated as the dry cleaner environmental response fund, to consist of the moneys required under s. 77.9964 (3) to be deposited in the fund and moneys collected under ss. 292.65 (8) (j), (8m), and (9) (c).

**SECTION 1m.** 77.996 (6) of the statutes is created to read:

77.996 (6) “Gross receipts” has the meaning given in s. 77.51 (4) (a), (b) 1. and 5., (c) 1. to 4., and (d). “Gross receipts” does not include the license fee imposed under s. 77.9661 (1m) that is passed on to customers.

**SECTION 2.** 77.996 (7) of the statutes is created to read:

77.996 (7) “Launder” means to use water and detergent as the main process for cleaning apparel or household fabrics.

**SECTION 3.** 77.9961 (title) of the statutes is amended to read:

**77.9961 (title) License and fee.**

**SECTION 4.** 77.9961 (1) of the statutes is renumbered 77.9661 (1) (a) and amended to read:

77.9661 (1) (a) No person may operate a dry cleaning facility in this state unless the person completes and submits to the department an application for a license on a form that the department prescribes and pays to the department a fee for each dry cleaning facility that the person operates. The fee shall be paid in installments, as provided in sub. (2), and each installment is equal to 1.8% of the gross receipts from the previous 3 months from dry cleaning apparel and household fabrics, but not from formal wear the facility rents to the general public.

**SECTION 5.** 77.9961 (1) (b) of the statutes is created to read:

77.9961 (1) (b) The department may require, before or after the license is issued, that any person who submits an application for a license under par. (a) provide a security deposit to the department. For purposes of this paragraph, s. 77.61 (2), as it applies to a security deposit

\* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

related to a seller's permit, applies to the a security deposit required under this subsection.

**SECTION 6.** 77.9961 (1) (c) of the statutes is created to read:

77.9961 (1) (c) Subject to par. (b), the department shall issue a license to each person who completes and submits an application for a license under par. (a). If a dry cleaning facility is sold, the seller may transfer the license to the buyer. A license is valid until the license is surrendered by the person to whom the license was issued or transferred or until the license is revoked by the department as provided in par. (e). A license is valid only for the facility designated by the license and the license holder shall display the license prominently in the facility to which the license applies.

**SECTION 7.** 77.9961 (1) (d) of the statutes is created to read:

77.9961 (1) (d) Section 77.52 (12), as it applies to a person who operates as a seller without a seller's permit, applies to a person who operates a dry cleaning facility without a license issued under this subsection.

**SECTION 8.** 77.9961 (1) (e) of the statutes is created to read:

77.9961 (1) (e) The department may revoke a license issued under this subsection, if the person who holds the license fails to comply with any provision of this subchapter related to the fees imposed under this subchapter or any rule promulgated by the department related to the fees imposed under this subchapter, is delinquent with respect to taxes imposed by the department, or fails to timely file a return or report with respect to taxes imposed under chs. 71, 72, 76, 77, 78, or 139 after having been requested to file the return or report. Section 77.52 (11), as it applies to revoking a seller's permit, applies to revoking a license issued under this subsection.

**SECTION 9.** 77.9961 (1m) of the statutes is created to read:

77.9961 (1m) Every person operating a dry cleaning facility shall pay to the department a fee for each dry cleaning facility that the person operates. The fee shall be paid in installments, as provided in sub. (2), and each installment is equal to 1.8% of the gross receipts from the previous 3 months from dry cleaning apparel and household fabrics, but not from formal wear the facility rents to the general public.

**SECTION 10.** 77.9961 (2) of the statutes is amended to read:

77.9961 (2) Persons who owe a fee under this section shall pay it in installments on or before April 25, July 25, October 25 and January 25. ~~The department shall issue a license to each person who pays the January 25 installment and the previous 3 installments and submits the form under this section. The license is valid for the year in which the January 25 installment is due. If a dry cleaning facility is sold, the seller may transfer the license to the buyer. Each holder of a license under this section~~

~~shall display it prominently in the facility to which it applies.~~

**SECTION 11.** 77.9961 (3) of the statutes is amended to read:

77.9961 (3) ~~On or before December 15, the~~ The department shall mail to each dry cleaning facility of which it is aware a form on which to apply for a license under this section.

**SECTION 12.** 77.9961 (4) of the statutes is repealed.

**SECTION 13.** 77.9964 (2) of the statutes is amended to read:

77.9964 (2) Except as provided in s. 77.9961 (4), ~~sections (1) (b), (d), and (e), ss. 71.74 (1) to (3), (7) and (9), and (10) to (12), 71.75 (1), (2), (6), (7), (9), and (10), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2. and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90, 71.91 (1) (a), (2), (3), and (4) to (6) (7), 71.92, and 71.93 as they apply to the taxes under ch. 71 apply to the fees under this subchapter.~~

**SECTION 14.** 292.65 (1) (gv) of the statutes is created to read:

292.65 (1) (gv) "Laundry" means to use water and detergent as the main process for cleaning apparel or household fabrics.

**SECTION 15.** 292.65 (1) (h) 4. of the statutes is created to read:

292.65 (1) (h) 4. A person who operated a dry cleaning facility that ceased operation after October 13, 1997, but that was licensed under s. 77.9961 (2) before it ceased operation.

**SECTION 16.** 292.65 (1) (i) 3. b. of the statutes is amended to read:

292.65 (1) (i) 3. b. A dry cleaning facility that has ceased operation but that was licensed under s. 77.9961 (2) before it ceased operation and was licensed and operating while the person owned the property.

**SECTION 17.** 292.65 (3) (am) 1. of the statutes is amended to read:

292.65 (3) (am) 1. The department shall establish a method for determining the order in which it pays awards under this section. Except as provided in ~~subs. subd. 2. and 3.~~, the method shall be based on environmental factors and on the order in which applications are received.

**SECTION 18.** 292.65 (3) (am) 2. of the statutes is amended to read:

292.65 (3) (am) 2. The department shall pay an award for immediate action activities before it pays other awards.

**SECTION 19.** 292.65 (3) (am) 3. of the statutes is repealed.

**SECTION 20.** 292.65 (4) (k) of the statutes is amended to read:

292.65 (4) (k) *Agents.* An owner or operator may enter into a written agreement with another person under

which that other person acts as an agent for the owner or operator in conducting the activities required under par. (e) to (j). If an agreement is entered into under this paragraph, all requirements applicable to an owner or operator under par. (m) and subs. (8) (a), (8m), and (12) apply to the agent. The owner or operator and the agent shall jointly may submit the application for an award under this section.

**SECTION 21.** 292.65 (4) (m) of the statutes is amended to read:

292.65 (4) (m) *Notification of insurance claims applications and receipt of proceeds funds.* An owner or operator shall notify the department of any application, including any insurance claim, made to obtain funds to cover eligible costs or to obtain a tax credit based on eligible costs, the status of the claim application, and, if the owner or operator has received any insurance proceeds funds or any tax credit arising from the claim application, the amount of the proceeds funds or tax credit received.

**SECTION 21r.** 292.65 (7) (b) of the statutes is created to read:

292.65 (7) (b) *Costs incurred by 3rd parties.* 1. In this paragraph, "3rd party" means a person who is not an owner or operator or the agent of an owner or operator.

2. Eligible costs for an award under this section include reasonable and necessary costs, up to \$15,000, incurred by a 3rd party in the discovery of a discharge of dry cleaning product from an eligible owner's or operator's dry cleaning facility before the eligible owner or operator discovered the discharge, notwithstanding non-compliance with the procedural requirements of sub. (4) in relation to the costs incurred by the 3rd party.

**SECTION 22.** 292.65 (7) (c) 1. of the statutes is amended to read:

292.65 (7) (c) 1. Costs incurred before January 1, 1991 October 14, 1997.

**SECTION 23.** 292.65 (8) (a) (intro.) of the statutes is amended to read:

292.65 (8) (a) *Application.* (intro.) An owner or operator shall submit an application on a form provided by the department. An owner or operator may not submit an application before September 1, 1998. An owner or operator may not submit an application after August 30, 2005, if the application relates to a dry cleaning facility that ceased to operate before September 1, 1998. An owner or operator may not submit an application if the owner or operator submits the notification of potential claim under sub. (4) (c) after August 20 30, 2008, if the application relates to any other dry cleaning facility. The department shall authorize owners and operators to apply for awards at stages in the process under sub. (4) that the department specifies by rule. An application shall include all of the following documentation of activities, plans, and expenditures associated with the eligible costs incurred because of a dry cleaning product discharge from a dry cleaning facility:

**SECTION 24.** 292.65 (8) (a) 4m. of the statutes is amended to read:

292.65 (8) (a) 4m. If the owner or operator receives any proceeds funds arising from an application, including an insurance claim, for any eligible costs or a tax credit based on eligible costs, a record of the payment.

**SECTION 24m.** 292.65 (8) (c) of the statutes is amended to read:

292.65 (8) (c) *Approval.* Subject to par. (d), if the department finds that an applicant meets the requirements of this section and rules promulgated under this section, the department shall make an award as provided in this subsection to reimburse the applicant for eligible costs paid. The department may not make an award for an investigation before it approves the investigation. The department may not make an award for remedial action activities before it approves the remedial action activities.

**SECTION 25.** 292.65 (8) (d) 7. of the statutes is amended to read:

292.65 (8) (d) 7. The applicant has not paid all All of the fees, interest, and penalties due under ss. 77.9961 and 77.9962, and 77.9964 have not been paid unless an agreement has been entered into with the department of revenue establishing a payment schedule for all of the fees, interest, and penalties due.

**SECTION 25g.** 292.65 (8) (e) (intro.) of the statutes is amended to read:

292.65 (8) (e) *Deductible.* (intro.) The department may reimburse make an award to the owner or operator of a dry cleaning facility only for eligible costs incurred at each dry cleaning facility that exceed the following deductible:

**SECTION 26.** 292.65 (8) (j) 2. of the statutes is amended to read:

292.65 (8) (j) 2. If a consultant person other than an owner or operator prepares an application that is submitted by an the owner or operator and that includes ineligible costs that are identified under subd. 3., the consultant person shall pay to the department an amount equal to 50% of the ineligible costs identified under subd. 3. that are included in the application. A consultant person, other than an owner or operator, who prepares an application may not charge the owner or operator for any amount that the consultant person is required to pay under this subdivision. Payments made under this subdivision shall be deposited in the dry cleaner environmental response fund.

**SECTION 26r.** 292.65 (8) (j) 3m. of the statutes is created to read:

292.65 (8) (j) 3m. If a person other than an owner or operator prepares a statement that is submitted by the owner or operator to obtain payment for costs incurred by a 3rd party under sub. (7) (b) and the statement includes ineligible costs, the person shall pay to the department an amount equal to 50% of the amount of ineligible costs

included in the statement. Payments made under this subdivision shall be deposited in the dry cleaner environmental response fund.

**SECTION 27.** 292.65 (8) (j) 4. of the statutes is amended to read:

292.65 (8) (j) 4. If, prior to receiving an award under this section, an owner or operator receives payment from another person, including an insurance company, arising out of a claim an application for payment of any eligible costs or receives a tax credit based on any eligible costs, the department may not reimburse the owner or operator any amount that exceeds the difference between the amount of the award calculated under subd. 1. or 2. and pars. (e) and (f) and the amount by which the ~~insurance~~ payment exceeds the sum of the deductible and the amount by which the amount calculated under par. (e) exceeds the maximum award under par. (f).

**SECTION 28.** 292.65 (8m) of the statutes is amended to read:

292.65 (8m) REIMBURSEMENT OF ~~INSURANCE PROCEEDS PAYMENTS AND TAX CREDITS~~. If, after ~~the an~~ owner or operator receives an award under this section, the owner or operator receives payment from another person, including an insurance company, arising out of a claim an application for payment of any eligible costs or receives a tax credit based on any eligible costs, the owner or operator shall pay to the department the any amount by which the ~~insurance~~ payment or tax credit exceeds the ~~sum of the deductible and the amount by which the amount calculated under sub. (8) (e) exceeds~~

~~the maximum award under sub. (8) (f) difference between the total amount of eligible costs and the amount of the award~~, but not more than the amount of the award received. The amounts collected by the department under this subsection shall be deposited in the dry cleaner environmental response fund.

**SECTION 29.** 292.65 (11) of the statutes is amended to read:

292.65 (11) ENVIRONMENTAL FUND REIMBURSEMENT. If the department expends funds from the environmental fund under s. 292.11 (7) (a) or 292.31 (3) (b) because of a discharge of dry cleaning product at a dry cleaning facility and there is a person who would be an eligible owner or operator under this section for the dry cleaning facility, the department shall transfer from the appropriation account under s. 20.370 (6) (eq) to the environmental fund an amount equal to the amount expended under s. 292.11 (7) (a) or 292.31 (3) (b) less the applicable deductible under sub. (8) (e). The department shall make transfers under this subsection when the department determines that sufficient funds are available in the appropriation account under s. 20.370 (6) (eq).

**SECTION 30. Initial applicability.**

(1) The treatment of section 77.996 (6) of the statutes first applies to the license fee installment that is due after the effective date of this subsection.

(2) The treatment of sections 77.9961 (1) (d) and (4) of the statutes first applies to penalties assessed on the effective date of this subsection.