

2003 SENATE BILL 324

November 19, 2003 – Introduced by Senators KEDZIE, ROESSLER, STEPP and LEIBHAM, cosponsored by Representatives JOHNSRUD, GRONEMUS, MONTGOMERY, JESKEWITZ, HAHN, OLSEN, AINSWORTH, HINES, VRAKAS, PETROWSKI, KRAWCZYK and MILLER. Referred to Committee on Environment and Natural Resources.

1 **AN ACT** *to repeal* 77.9961 (4) and 292.65 (3) (am) 3.; *to renumber and amend*
2 77.9961 (1); *to amend* 77.9961 (title), 77.9961 (2), 77.9961 (3), 77.9964 (2),
3 292.65 (1) (i) 3. b., 292.65 (3) (am) 1., 292.65 (3) (am) 2., 292.65 (4) (k), 292.65
4 (4) (m), 292.65 (7) (c) 1., 292.65 (8) (a) (intro.), 292.65 (8) (a) 4m., 292.65 (8) (d)
5 7., 292.65 (8) (j) 2., 292.65 (8) (j) 4., 292.65 (8m) and 292.65 (11); and *to create*
6 77.996 (6), 77.996 (7), 77.9961 (1) (b), 77.9961 (1) (c), 77.9961 (1) (d), 77.9961 (1)
7 (e), 77.9961 (1m), 292.65 (1) (gv) and 292.65 (1) (h) 4. of the statutes; **relating**
8 **to:** the Dry Cleaner Environmental Response Program and the administration
9 of dry cleaning license fees.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Natural Resources (DNR) administers the Dry Cleaner Environmental Response Program (DERP), which provides reimbursement for a portion of the costs of responding to discharges of dry cleaning solvents. This bill makes several changes in DERP.

Under current law, a person who operated a dry cleaning facility that has closed, but who does not own the property on which the facility was located, is eligible under DERP only if the facility closed before October 14, 1997. Under this bill, such

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a person is eligible if the facility closed after October 13, 1997, as long as the facility was licensed by the Department of Revenue (DOR) before it closed. Also, under current law, a person who owns property on which a dry cleaning facility that has closed was located, but who did not operate the facility, may be eligible under DERP if the dry cleaning facility was licensed by DOR before the facility closed. Under the bill, the dry cleaning facility must also have operated while the person owned the property.

Under current law, a person may not apply for DERP after August 30, 2005, if the dry cleaning facility to which the application applies closed before September 1, 1998, or after August 1, 2008, in any other case. This bill eliminates the application deadlines and instead provides that a person is not eligible for DERP if the person submits the required notice of a potential claim after August 30, 2008.

Under current law, an applicant for DERP must notify DNR of any insurance claim made to recover costs that are eligible under DERP and of any proceeds received. The award is reduced by the amount by which the insurance proceeds exceed the DERP deductible plus the eligible costs in excess of the DERP maximum payment. The bill expands these provisions so that they apply to other sources of reimbursement and to tax refunds in addition to insurance proceeds.

Under current law, DNR may not make a DERP award if the applicant has not paid all of the license fees and other fees owed to DOR. This bill expands the prohibition so that it also applies to penalties and interest owed to DOR and allows DNR to make an award if anyone has paid the fees, penalty, and interest or if an agreement has been entered into with DOR establishing a payment schedule.

Under current law, a person who operates a dry cleaning facility in this state must pay a license fee to DOR. The license fee is paid in four installments and each installment is equal to 1.8 percent of the person's gross receipts from the previous three months from dry cleaning apparel and household fabrics. Under current law, "gross receipts" with respect to the dry cleaning license fee is undefined. Under the bill, "gross receipts" has, generally, the same meaning as the meaning of "gross receipts" for sales and use tax purposes. In addition, under the bill, generally, the sales and use tax provisions under current law related to operating a business without a permit, revoking a permit, and collecting delinquent taxes apply to operating a dry cleaning facility without a license, revoking a license to operate a dry cleaning facility, and collecting delinquent license fees.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

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

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

5 77.996 (7) “Launder” means to use water and detergent as the main process
6 for cleaning apparel or household fabrics.

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

8 **77.9961** (title) **License and fee.**

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

11 77.9661 (1) (a) No person may operate a dry cleaning facility in this state unless
12 the person completes and submits to the department an application for a license on
13 a form that the department prescribes and pays to the department a fee for each dry
14 cleaning facility that the person operates. ~~The fee shall be paid in installments, as~~
15 ~~provided in sub. (2), and each installment is equal to 1.8% of the gross receipts from~~
16 ~~the previous 3 months from dry cleaning apparel and household fabrics, but not from~~
17 ~~formal wear the facility rents to the general public.~~

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

19 77.9961 (1) (b) The department may require, before or after the license is
20 issued, that any person who submits an application for a license under par. (a)
21 provide a security deposit to the department. For purposes of this paragraph, s.
22 77.61 (2), as it applies to a security deposit related to a seller’s permit, applies to the
23 a security deposit required under this subsection.

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

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

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

10 77.9961 (1) (d) Section 77.52 (12), as it applies to a person who operates as a
11 seller without a seller's permit, applies to a person who operates a dry cleaning
12 facility without a license issued under this subsection.

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

14 77.9961 (1) (e) The department may revoke a license issued under this
15 subsection, if the person who holds the license fails to comply with any provision of
16 this subchapter related to the fees imposed under this subchapter or any rule
17 promulgated by the department related to the fees imposed under this subchapter,
18 is delinquent with respect to taxes imposed by the department, or fails to timely file
19 a return or report with respect to taxes imposed under chs. 71, 72, 76, 77, 78, or 139
20 after having been requested to file the return or report. Section 77.52 (11), as it
21 applies to revoking a seller's permit, applies to revoking a license issued under this
22 subsection.

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

24 77.9961 (1m) Every person operating a dry cleaning facility shall pay to the
25 department a fee for each dry cleaning facility that the person operates. The fee shall

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1 be paid in installments, as provided in sub. (2), and each installment is equal to 1.8%
2 of the gross receipts from the previous 3 months from dry cleaning apparel and
3 household fabrics, but not from formal wear the facility rents to the general public.

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

5 77.9961 (2) Persons who owe a fee under this section shall pay it in
6 installments on or before April 25, July 25, October 25 and January 25. The
7 department shall issue a license to each person who pays the January 25 installment
8 and the previous 3 installments and submits the form under this section. The license
9 is valid for the year in which the January 25 installment is due. If a dry cleaning
10 facility is sold, the seller may transfer the license to the buyer. Each holder of a
11 license under this section shall display it prominently in the facility to which it
12 applies.

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

14 77.9961 (3) ~~On or before December 15, the~~ The department shall mail to each
15 dry cleaning facility of which it is aware a form on which to apply for a license under
16 this section.

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

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

19 77.9964 (2) Except as provided in s. 77.9961 (4), ~~sections (1) (b), (d), and (e), ss.~~
20 71.74 (1) to (3), (7) and (9), and (10) to (12), 71.75 (1), (2), (6), (7), (9), and (10), 71.77
21 (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
22 (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2. and (b)
23 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
24 (1) (a), (2), (3), and (4) to (6) (7), 71.92, and 71.93 as they apply to the taxes under ch.
25 71 apply to the fees under this subchapter.

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

2 292.65 (1) (gv) “Launder” means to use water and detergent as the main
3 process for cleaning apparel or household fabrics.

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

5 292.65 (1) (h) 4. A person who operated a dry cleaning facility that ceased
6 operation after October 13, 1997, but that was licensed under s. 77.9961 (2) before
7 it ceased operation.

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

9 292.65 (1) (i) 3. b. A dry cleaning facility that has ceased operation but that was
10 licensed under s. 77.9961 (2) before it ceased operation and was licensed and
11 operating while the person owned the property.

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

13 292.65 (3) (am) 1. The department shall establish a method for determining the
14 order in which it pays awards under this section. Except as provided in ~~subds.~~ subd.
15 2. and 3., the method shall be based on environmental factors and on the order in
16 which applications are received.

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

18 292.65 (3) (am) 2. The department shall pay an award for immediate action
19 activities before it pays other awards.

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

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

22 292.65 (4) (k) *Agents.* An owner or operator may enter into a written agreement
23 with another person under which that other person acts as an agent for the owner
24 or operator in conducting the activities required under ~~par.~~ pars. (e) to (j). If an
25 agreement is entered into under this paragraph, all requirements applicable to an

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1 owner or operator under par. (m) and subs. (8) (a), (8m), and (12) apply to the agent.
2 The owner or operator and or the agent shall jointly may submit the application for
3 an award under this section.

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

5 292.65 **(4)** (m) *Notification of ~~insurance claims applications~~ and receipt of*
6 *~~proceeds funds~~.* An owner or operator shall notify the department of any application,
7 including any insurance claim, made to obtain funds to cover eligible costs or to
8 obtain a tax credit based on eligible costs, the status of the claim application, and,
9 if the owner or operator has received any insurance proceeds funds or any tax credit
10 arising from the claim application, the amount of the proceeds funds or tax credit
11 received.

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

13 292.65 **(7)** (c) 1. Costs incurred before ~~January 1, 1991~~ October 14, 1997.

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

15 292.65 **(8)** (a) *Application.* (intro.) An owner or operator shall submit an
16 application on a form provided by the department. ~~An owner or operator may not~~
17 ~~submit an application before September 1, 1998. An owner or operator may not~~
18 ~~submit an application after August 30, 2005, if the application relates to a dry~~
19 ~~cleaning facility that ceased to operate before September 1, 1998.~~ An owner or
20 operator may not submit an application if the owner or operator submits the
21 notification of potential claim under sub. (4) (c) after August 20 30, 2008, if the
22 ~~application relates to any other dry cleaning facility.~~ The department shall authorize
23 owners and operators to apply for awards at stages in the process under sub. (4) that
24 the department specifies by rule. An application shall include all of the following
25 documentation of activities, plans, and expenditures associated with the eligible

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1 costs incurred because of a dry cleaning product discharge from a dry cleaning
2 facility:

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

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

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

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

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

13 292.65 (8) (j) 2. If a ~~consultant~~ person other than an owner or operator prepares
14 an application that is submitted by an the owner or operator and that includes
15 ineligible costs that are identified under subd. 3., the ~~consultant~~ person shall pay to
16 the department an amount equal to 50% of the ineligible costs identified under subd.
17 3. that are included in the application. A ~~consultant~~ person, other than an owner or
18 operator, who prepares an application may not charge the owner or operator for any
19 amount that the ~~consultant~~ person is required to pay under this subdivision.
20 Payments made under this subdivision shall be deposited in the dry cleaner
21 environmental response fund.

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

23 292.65 (8) (j) 4. If, prior to receiving an award under this section, an owner or
24 operator receives payment from another person, including an insurance company,
25 arising out of ~~a claim~~ an application for payment of any eligible costs or receives a

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1 tax credit based on any eligible costs, the department may not reimburse the owner
2 or operator any amount that exceeds the difference between the amount of the award
3 calculated under subd. 1. or 2. and pars. (e) and (f) and the amount by which the
4 ~~insurance~~ payment exceeds the sum of the deductible and the amount by which the
5 amount calculated under par. (e) exceeds the maximum award under par. (f).

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

7 **292.65 (8m) REIMBURSEMENT OF ~~INSURANCE PROCEEDS~~ PAYMENTS AND TAX CREDITS.**

8 If, after the an owner or operator receives an award under this section, the owner or
9 operator receives payment from another person, including an insurance company,
10 arising out of ~~a claim~~ an application for payment of any eligible costs or receives a
11 tax credit based on any eligible costs, the owner or operator shall pay to the
12 department the any amount by which the ~~insurance~~ payment or tax credit exceeds
13 ~~the sum of the deductible and the amount by which the amount calculated under sub.~~
14 ~~(8) (e) exceeds the maximum award under sub. (8) (f)~~ difference between the total
15 amount of eligible costs and the amount of the award, but not more than the amount
16 of the award received. The amounts collected by the department under this
17 subsection shall be deposited in the dry cleaner environmental response fund.

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

19 **292.65 (11) ENVIRONMENTAL FUND REIMBURSEMENT.** If the department expends
20 funds from the environmental fund under s. 292.11 (7) (a) or 292.31 (3) (b) because
21 of a discharge of dry cleaning product at a dry cleaning facility and there is a person
22 who would be an eligible owner or operator under this section for the dry cleaning
23 facility, the department shall transfer from the appropriation account under s.
24 20.370 (6) (eq) to the environmental fund an amount equal to the amount expended
25 under s. 292.11 (7) (a) or 292.31 (3) (b) less the applicable deductible under sub. (8)

