

2003 DRAFTING REQUEST

Senate Amendment (SA-SB324)

Received: 02/17/2004

Received By: btradewe

Wanted: Today

Identical to LRB:

For: Neal Kedzie (608) 266-2635

By/Representing: Dan Johnson

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact:

Addl. Drafters:

Subject: Environment - env. cleanup

Extra Copies:

Submit via email: YES

Requester's email: Sen.Kedzie@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Third party site discovery costs

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	btradewe 02/18/2004	wjackson 02/18/2004	pgreensl 02/18/2004		sbasford 02/18/2004	sbasford 02/18/2004	

FE Sent For:

<END>

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/?	btradewe	1 WLj 2/18	2/18 PS	2/18 PS/oh			

FE Sent For:

<END>

Tradewell, Becky

From: Johnson, Dan (Legislature)
Sent: Tuesday, February 17, 2004 9:35 AM
To: Tradewell, Becky
Subject: SB 324 new simple amendment request

Hi Becky,

Thanks for the copy of the amendment to SB 198. I have a new request for a simple amendment to Senate Bill 324, the drycleaner response fund bill. We may need to put a bit of a rush on this amendment.

You recently drafted LRBa2172/1 to the bill, however the DNR and drycleaners were not amenable to that amendment. Thus, we talked about it and have reached a compromise for a new amendment. It is as follows:

- Third party claims, not to exceed \$15,000, shall be eligible for an award under ch. 292.65 for reasonable costs for site discovery where the discovery was necessary to determine the source of a dry cleaning product discharge and meets the definition of site investigation scoping in ch. NR 169.05(27).
- Such costs may be incurred by the third party prior to: a report of the dry cleaning solvent discharge to the department by an owner or operator; and notification of potential claim to the department by an owner or operator. The third party claim shall be eligible for reimbursement notwithstanding that the owner or operator may not report the dry cleaning product discharge to the department or notify the department of a potential claim until after the owner or operator is notified by the third party of the third party claim.
- Such third party claims shall be included with the site investigation reimbursement application, and the third party shall be subject to ch. 292.65(8)(j) for inclusion of ineligible costs.

In contrast to the previous amendment, "3rd party" could simply be defined as a person who is not an owner or operator, or the agent of an owner or operator. Also, we would drop the January 1, 2004 date, limit it costs related to site discovery, and lower the amount from \$50,000 to \$15,000.

If you have any questions, you may call me or speak with Robin Schmidt at the DNR, who put this new language together. Thank you very much!

Dan Johnson
State Senator Neal Kedzie
11th Senate District
(608) 266-2635

Tradewell, Becky

From: Schmidt, Robin R. [Robin.Schmidt@dnr.state.wi.us]

Sent: Tuesday, February 17, 2004 6:22 PM

To: Tradewell, Becky

Cc: Johnson, Dan (Legislature); Soellner, Jeffrey K; Kavanaugh, Edwina C; bswingle@toriiphillips.com

Becky - thanks for taking the time to speak with me earlier this afternoon. We've discussed some of the issues you raised, and believe we have a relatively simple solution to making the statutory changes. We see three sections of the statute that need to be modified - the first you already accommodated in your first draft when putting this together for the initial amendment. You should be aware that the initial amendment you saw previous to today has been significantly modified in order to get the drycleaning industry and DNR support for the amendment. I believe Dan forwarded to you the new amendment language per our agreement with Rep. Foti and Sen. Kedzie this morning.

Here are our suggestions for your consideration:

1. **Define third party** as you had except for item c - third party is anyone other than the drycleaner owner or operator or their agent.
2. **Create 292.65(7)(a)15 to include the following concepts as eligible costs (these could be incorporated into one item):**

*notwithstanding 292.65(4);

*costs determined by the dept to be reasonable and necessary up to \$15,000;

*incurred by a third party in the discovery of drycleaner contamination on their property;

* costs have to have been incurred prior to an eligible applicant having discovered a release of drycleaning solvent from their facility

(We will specify in rule how those costs are to be submitted to the Department, but they would need to be submitted as part of the eligible applicant's (, i.e., the dry cleaner or his agent) site investigation reimbursement application)

3. **Create a new paragraph in s. 292.65(8)(j) to include: -**

* That whomever prepares the submittal for inclusion by the eligible applicant, either a consultant or the third party themselves, the preparer shall pay to the department an amount equal to 50% of the ineligible costs that they included in their site discovery request from the eligible applicant.

Please note that the Department will specify in rule that the submittal must be on a form provided by the department, which will include a statement that must be signed by the third party indicating all the information is accurate on the form, as well as providing documentation of the costs incurred, cancelled checks, etc. that would normally need to be included in any application submitted for this program.

We believe that if these changes are made, the concepts agreed upon would be included and we could move forward to implement this addition to the program. Edwina Kavanaugh, the DNR attorney assigned to the DERF program, also suggested I pass along the following thoughts from her to help you in preparing these changes:

What we are trying to do is the following:

- Let dry cleaners/eligible applicants include on **their** claim for reimbursement (as a separate attachment or breakout of costs) up to \$15K of reasonable and necessary costs incurred by a third party rather than by the dry cleaner;
- The costs were incurred by the third party to discover contamination on the third party's land from dry cleaning product that apparently migrated there from the dry cleaner's land;
- The third party could not have known or learned of the contamination from the dry cleaner or DNR because the drycleaner had not yet discovered or reported a release of dry cleaning product on the dry cleaner's land;
- The dry cleaner is seeking reimbursement for these costs because he is potentially liable to the third party (via suit by the third

02/18/2004

party against him) for these costs, since they were likely caused by the dry cleaner's release of dry cleaning product. Thus the dry cleaner wants to reimburse the third party for such costs to avoid getting sued by the third party;

- Because the dry cleaner is relying on the list of such costs submitted by the third party to him, we'd want any penalty under s. 292.65(8)(j) to be assessed against the third party rather than the dry cleaner.
- We'll let the dry cleaners and third party work out between themselves how/when/if the dry cleaner passes on the reimbursed costs to the third party – we are just interested in getting those funds for this potential liability to the dry cleaner.

Please let me know if you have questions or concerns on this - we are hopeful that these changes will address previous concerns and not require significant overhaul of the entire statute. If you have concerns or have other ideas of how to incorporate these in a more simple manner, please feel free to call me at 267-7569. Thank you for your time.



State of Wisconsin
2003 - 2004 LEGISLATURE

Wanted 1pm.

LRBa2237/1

RCT:f:....

Wlj

SENATE AMENDMENT ,
TO 2003 SENATE BILL 324

DNote

1 At the locations indicated, amend the bill as follows:

2 √ 1. Page 7, line 11: after that line insert:

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

4 292.65 (7) (b) *Costs incurred by 3rd parties.* 1. In this paragraph, "3rd party"
5 means a person who is not an owner or operator or the agent of an owner or operator.

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

12 √ 2. Page 8, line 6: after that line insert:

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

1 292.65 (8) (c) *Approval*. Subject to par. (d), if the department finds that an
2 applicant meets the requirements of this section and rules promulgated under this
3 section, the department shall make an award as provided in this subsection to
4 ~~reimburse~~ the applicant for eligible costs ~~paid~~. The department may not make an
5 award for an investigation before it approves the investigation. The department may
6 not make an award for remedial action activities before it approves the remedial
7 action activities.”.

History: 1997 a. 27; 1999 a. 9, 185 ss. 143 to 145, 188 to 190; 2001 a. 16.

8 **3.** Page 8, line 11: after that line insert:

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

10 292.65 (8) (e) *Deductible*. (intro.) The department may ~~reimburse~~ make an
11 award ^{to} the owner or operator of a dry cleaning facility only for eligible costs incurred
12 at each dry cleaning facility that exceed the following deductible:”.

History: 1997 a. 27; 1999 a. 9, 185 ss. 143 to 145, 188 to 190; 2001 a. 16.

13 **4.** Page 8, line 21: after that line insert:

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

15 292.65 (8) (j) 3m. If a person other than an owner or operator prepares a
16 statement that is submitted by the owner or operator in order to obtain payment for
17 costs incurred by a 3rd party under sub. (7) (b) and the statement includes ineligible
18 costs, the person shall pay to the department an amount equal to 50% ^{SEE APPENDIX} of the amount
19 of ineligible costs included in the statement.”.

20

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa2237/1dn
RCT:.....

Dan Johnson [^] _✓

This amendment authorizes DNR to make an award for 3rd party costs without regard to whether the eligible owner or operator has reimbursed the 3rd party for the costs. Currently, the program only makes awards to reimburse an owner or operator for costs the owner or operator has already incurred. I feel that it is necessary to amend s. 292.65 (8) (c) and (e) (intro.) to harmonize with this change in the program.

This amendment requires a person, other than an owner or operator, who prepares a statement of 3rd party costs for submission to DNR to pay DNR an amount equal to 50% of the amount of costs on the statement that DNR determines are ineligible. As a practical matter, it may be difficult for DNR to obtain payment, unless the person preparing the statement is a consultant who wants to continue doing work under the program.

Please let me know if you have questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

STEP
Rebecca

third-party

third

third-party

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa2237/1dn
RCT:wlj:pg

February 18, 2004

Dan Johnson:

This amendment authorizes DNR to make an award for third-party party costs without regard to whether the eligible owner or operator has reimbursed the third party for the costs. Currently, the program makes awards only to reimburse an owner or operator for costs the owner or operator has already incurred. I feel that it is necessary to amend s. 292.65 (8) (c) and (e) (intro.) to harmonize with this change in the program.

This amendment requires a person, other than an owner or operator, who prepares a statement of third-party costs for submission to DNR to pay DNR an amount equal to 50% of the amount of costs on the statement that DNR determines are ineligible. As a practical matter, it may be difficult for DNR to obtain payment, unless the person preparing the statement is a consultant who wants to continue doing work under the program.

Please let me know if you have questions or redraft instructions.

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