



# LAWS OF ALASKA

**2003**

**Source**

SCS CSHB 59(FIN)

**Chapter No.**

\_\_\_\_\_

**AN ACT**

Relating to the evaluation and cleanup of sites where certain controlled substances may have been manufactured or stored; and providing for an effective date.

\_\_\_\_\_

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

THE ACT FOLLOWS ON PAGE 1



## AN ACT

1 Relating to the evaluation and cleanup of sites where certain controlled substances may have  
2 been manufactured or stored; and providing for an effective date.

3 \_\_\_\_\_  
4 \* **Section 1.** The uncoded law of the State of Alaska is amended by adding a new section  
5 to read:

6 PURPOSE. The purpose of this Act is to provide a just, equitable, and practicable  
7 method, to be cumulative with and in addition to any other remedy provided by law, whereby  
8 property that endangers the life, safety, or welfare of the general public or occupants of the  
9 property because of toxic chemical contamination that may result from illegal drug  
10 manufacturing may be required to be decontaminated or vacated and secured against use.

11 \* **Sec. 2.** AS 46.03 is amended by adding new sections to read:

### 12 **Article 7A. Cleanup of Illegal Drug Sites.**

13 **Sec. 46.03.500. Notice of illegal drug manufacturing site.** (a) When a law  
14 enforcement officer or team of law enforcement officers, qualified under federal  
15 regulations to investigate and dismantle illegal drug manufacturing sites, determines

1 that a site constitutes an illegal drug manufacturing site, the primary law enforcement  
2 agency that conducted the investigation shall notify the owner of the property, the  
3 occupants and users of the property, and the department that the determination has  
4 been made. The owner of the property may appeal the determination to the superior  
5 court for review of whether the determination was made in compliance with this  
6 subsection. In the appeal, the burden of proving by a preponderance of the evidence  
7 that the determination was made in compliance with this subsection is on the primary  
8 law enforcement agency that conducted the investigation.

9 (b) The notice to the property owner required under (a) of this section shall be  
10 given in a manner that is consistent with the Alaska Rules of Civil Procedure for the  
11 service of process in a civil action in this state and must include the following  
12 information:

13 (1) the parcel identification number and legal description of the  
14 property where the site is located;

15 (2) a statement of the determination made by the primary law  
16 enforcement agency that the site was an illegal drug manufacturing site and the  
17 findings that formed the basis for the determination;

18 (3) a citation to, and short summary of, AS 46.03.510, which restricts  
19 transfer and occupancy of the site until it is determined to be fit for use; and

20 (4) the following information, which shall be provided to the primary  
21 law enforcement agency by the department:

22 (A) a copy of the standards contained in regulations adopted  
23 under AS 46.03.530 that determine whether the property is fit for use;

24 (B) a copy of the sampling and testing procedures established  
25 under AS 46.03.520(b) and a copy of the list of laboratories maintained under  
26 AS 46.03.520(c) that must be used for determining whether the property is fit  
27 for use; and

28 (C) a copy of the guidelines for decontamination established by  
29 the department under AS 46.03.540(b).

30 (c) The notice to the department required under (a) of this section must  
31 include

1                   (1) the parcel identification number and legal description of the  
2 property where the site is located;

3                   (2) a statement of the determination made by the primary law  
4 enforcement agency that the site was an illegal drug manufacturing site and the  
5 findings that formed the basis for the determination; and

6                   (3) the name and mailing address of the person who owns the property  
7 where the site is located.

8                   (d) The notice required under (a) of this section for the occupants and users of  
9 the property shall be accomplished by immediate posting of the property with a notice  
10 that includes the location of the property, the information described in (b)(2) and (3) of  
11 this section, and a statement that the property may pose a substantial risk of physical  
12 harm to persons who occupy or use the property. For purposes of posting of the notice  
13 to the occupants and users of the property required by this subsection, the posting shall  
14 be made, for property that is

15                         (1) a single family dwelling, at the main entryway of the property; and

16                         (2) other than a single family dwelling and for a hotel, motel, public  
17 inn, or similar place of public accommodation that provides lodging, at the door of the  
18 unit that is the site that constitutes the illegal drug manufacturing site.

19                   (e) If a person other than the owner, such as a property manager or rental  
20 agency, is authorized to let others use or occupy property for which an owner has  
21 received a notice under (a) of this section or is authorized to transfer, sell, lease, or  
22 rent the property to others, the owner of the property shall communicate the substance  
23 of the notice to that person within four days after receiving the notice.

24                   **Sec. 46.03.510. Restrictions on property.** (a) Until determined to be fit for  
25 use under AS 46.03.550, the property for which a notice has been issued under  
26 AS 46.03.500(a) may not be transferred, sold, leased, or rented to another person  
27 except as provided in (b) of this section, and a person may not use or occupy the  
28 property at any time after the fourth day following the day on which the property was  
29 posted with the notice required under AS 46.03.500(d), except as necessary for  
30 sampling, testing, or decontamination under AS 46.03.520 and 46.03.540. An oral or  
31 written contract that would transfer, sell, lease, rent, or otherwise allow the use of the

1 property in violation of this subsection is voidable between the parties at the option of  
2 the purchaser, transferee, user, lessee, or renter. However, this subsection does not

3 (1) make voidable a promissory note or other evidence of indebtedness  
4 or a mortgage, trust deed, or other security interest securing the promissory note or  
5 evidence of indebtedness, if the note or evidence of indebtedness, mortgage, trust  
6 deed, or other security interest was given to a person other than the person  
7 transferring, selling, using, leasing, or renting the property to induce the person to  
8 finance the transfer, sale, use, leasing, or rental of the property;

9 (2) make voidable a lease or rental agreement between the property  
10 owner and the person who caused the property to be contaminated and determined  
11 unfit for use; or

12 (3) impair obligations or duties required to be performed on  
13 termination of a contract, as required by the contract, such as payment of damages or  
14 return of refundable deposits.

15 (b) Notwithstanding (a) of this section, property covered by (a) of this section  
16 may be transferred or sold if full written disclosure is made to the prospective  
17 transferee or purchaser that the property has been determined to be an illegal drug  
18 manufacturing site and the property has not been determined to be fit for use. The  
19 disclosure shall be attached to the earnest money receipt, if any, and shall accompany  
20 the transfer or sale document. The disclosure is not considered to be part of the  
21 transfer or sale document, however, and may not be recorded. The property shall  
22 continue to be subject to the restrictions in (a) of this section after transfer or sale  
23 under this subsection.

24 (c) A person who knowingly transfers, sells, leases, or rents property to  
25 another, knowingly allows another to use or occupy property, or, being the owner of  
26 property, knowingly occupies or uses the property in violation of this section is guilty  
27 of a class A misdemeanor. In this subsection, "knowingly" has the meaning given in  
28 AS 11.81.900(a).

29 (d) It is an affirmative defense to a prosecution under (c) of this section for  
30 allowing another to use or occupy the property that the defendant or an agent of the  
31 defendant, within four days after receiving a notice under AS 46.03.500, filed an

1 appropriate civil action to remove the user or occupier from the property for which the  
2 notice was received.

3 **Sec. 46.03.520. Sampling and testing procedures.** (a) If the owner of the  
4 property for which notice was received under AS 46.03.500(b) desires to determine if  
5 the property is fit for use, the owner shall cause the site to be sampled and tested for  
6 the substances covered in regulations adopted under AS 46.03.530, using the  
7 procedures and laboratory services specified under (b) and (c) of this section. The  
8 property owner shall inform the laboratory used for sampling or testing under this  
9 subsection that the sampling and testing are related to property that has been  
10 determined to be an illegal drug manufacturing site.

11 (b) The department shall establish procedures for sampling and testing  
12 property that may have been an illegal drug manufacturing site.

13 (c) The department shall establish and maintain a list of laboratories in the  
14 state that have notified the department that they have the capacity to perform the  
15 sampling and testing procedures and that they wish to be on the list maintained under  
16 this subsection. A laboratory may not be included on the list unless the laboratory  
17 agrees to send the department a copy of test results related to properties whose owners  
18 have informed the laboratory that the test results are for property that has been  
19 determined to be an illegal drug manufacturing site.

20 **Sec. 46.03.530. Standards for determining fitness.** (a) Property for which a  
21 notice was received under AS 46.03.500(b) is not fit for use if sampling and testing of  
22 the property under AS 46.03.520 shows the presence of substances for which the  
23 department has set a limit under (b) of this section.

24 (b) The Department of Public Safety shall annually submit a list of substances  
25 to the Department of Environmental Conservation. The department shall adopt  
26 regulations that set the limit for each substance specified by the Department of Public  
27 Safety for purposes of determining whether the property for which a notice was  
28 received under AS 46.03.500 is fit for use. The department may also determine  
29 whether there are other substances associated with illegal drug manufacturing sites  
30 that may pose a substantial risk of harm to persons who occupy or use the site or to  
31 public health and may adopt regulations that set limits for those substances for the

1 purposes of determining whether the property for which notice was received under  
2 AS 46.03.500 is fit for use.

3 **Sec. 46.03.540. Decontamination requirements.** (a) If the owner desires to  
4 decontaminate the property for which a notice has been issued under AS 46.03.500,  
5 the owner shall follow the guidelines established by the department under (b) of this  
6 section.

7 (b) The department shall establish guidelines for decontamination of sites that  
8 are determined to be unfit for use under AS 46.03.530. The department shall provide  
9 a copy of the guidelines to any person who requests a copy.

10 **Sec. 46.03.550. Fitness for use.** (a) Property for which a notice has been  
11 issued under AS 46.03.500 shall be determined by the department to be fit for use if  
12 the owner certifies to the department under penalty of unsworn falsification that

13 (1) based on sampling and testing procedures established by the  
14 department under AS 46.03.520(b) and performed by laboratories that are on the list  
15 maintained by the department under AS 46.03.520(c), the limits on substances  
16 specified in regulations adopted under AS 46.03.530 are not exceeded on the property;

17 (2) if the property was ever sampled and tested under AS 46.03.520  
18 and the test results showed the property to be unfit for use under AS 46.03.530,  
19 decontamination procedures were performed in accordance with the guidelines  
20 established under AS 46.03.540(b) and the requirements of (1) of this subsection have  
21 been met; or

22 (3) a court has held that the determination that the property was an  
23 illegal drug manufacturing site was not made in compliance with AS 46.03.500(a).

24 (b) The department shall maintain a list of properties for which the department  
25 has received notice under AS 46.03.500(c). When the department determines under  
26 (a) of this section that a property on the list is fit for use, the department shall remove  
27 the property from the list and notify the owner of the property that the property is fit  
28 for use. On request, the department shall give a copy of the list maintained under this  
29 section to any person who requests the list.

30 **Sec. 46.03.560. Securing the property.** The owner of property for which a  
31 notice was received under AS 46.03.500(b) shall ensure that the property is vacated



1 and secured against use

2 (1) within four days after receiving the notice if the owner does not test  
3 the property under AS 46.03.520 within four days after receiving the notice; or

4 (2) within four days after receiving the test results if the owner tests  
5 the property within four days after receiving the notice, the test shows the presence of  
6 a substance that exceeds the limits set in regulations adopted under AS 46.03.530, and  
7 the owner does not begin decontamination procedures under AS 46.03.540 within four  
8 days after receiving the test results.

9 **Sec. 46.03.570. Duties of the department; regulations.** The department  
10 shall adopt regulations implementing AS 46.03.500 - 46.03.599.

11 **Sec. 46.03.599. Definitions.** In AS 46.03.500 - 46.03.599,

12 (1) "illegal drug manufacturing site" means property on which there is  
13 reasonable cause to suspect contamination with chemicals associated with the  
14 manufacturing of a controlled substance and where

15 (A) activity involving the unauthorized manufacture of a  
16 controlled substance listed on schedule I or II in AS 11.71 or a precursor  
17 chemical or necessary chemical for the substances has occurred; or

18 (B) there are kept, stored, or located any of the devices,  
19 equipment, things, or substances used for the unauthorized manufacture of a  
20 controlled substance listed on schedule I or II in AS 11.71;

21 (2) "site" means an illegal drug manufacturing site.

22 \* **Sec. 3.** The uncoded law of the State of Alaska is amended by adding a new section to  
23 read:

24 **REGULATIONS.** The Department of Environmental Conservation may immediately  
25 begin to develop and adopt regulations to implement this Act. The regulations take effect  
26 under AS 44.62 (Administrative Procedure Act).

27 \* **Sec. 4.** The uncoded law of the State of Alaska is amended by adding a new section to  
28 read:

29 **CERTIFICATION OF EFFECTIVE DATE OF REGULATIONS.** The lieutenant  
30 governor shall certify to the revisor of statutes the effective date of the initial regulations  
31 adopted by the Department of Environmental Conservation under sec. 3 of this Act.

1     \* **Sec. 5.** Sections 1 and 2 of this Act take effect on the effective date of the initial  
2 regulations adopted by the Department of Environmental Conservation under sec. 3 of this  
3 Act.

4     \* **Sec. 6.** Sections 3 and 4 of this Act take effect immediately under AS 01.10.070(c).