

**CS FOR HOUSE BILL NO. 382(RES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

**BY THE HOUSE RESOURCES COMMITTEE**

**Offered: 3/18/02**

**Referred: Finance**

**Sponsor(s): REPRESENTATIVES GUESS, Foster**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the evaluation and cleanup of sites where certain controlled**  
2 **substances may have been manufactured or stored."**

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

4 \* **Section 1.** The uncodified 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 6A. Cleanup of Illegal Drug Sites.**

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

1 illegal drug manufacturing sites, determines that a site constitutes an illegal drug  
 2 manufacturing site, the law enforcement agency that employs the officer shall notify  
 3 the owner of the property and the department that the determination has been made.

4 (b) The notice to the property owner required under this section must include  
 5 the following information:

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

8 (2) a statement of the determination made by the law enforcement  
 9 officer that the site was an illegal drug manufacturing site and the findings that formed  
 10 the basis for the determination;

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

13 (4) the following information if it has been provided to the law  
 14 enforcement agency by the department:

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

17 (B) a copy of the testing procedures established under  
 18 AS 46.03.520(b) and a copy of the list of laboratories maintained under  
 19 AS 46.03.520(c) that must be used for determining whether the property is fit  
 20 for use; and

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

23 (c) The notice to the department required under this section must include

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

26 (2) a statement of the determination made by the law enforcement  
 27 officer that the site was an illegal drug manufacturing site and the findings that formed  
 28 the basis for the determination; and

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

31 **Sec. 46.03.510. Restrictions on property.** (a) Until determined to be fit for

1 use under AS 46.03.550, the property for which a notice has been issued under  
2 AS 46.03.500 may not be used or occupied for any purpose or transferred, sold,  
3 leased, or rented to another person except as provided in (b) of this section and except  
4 as necessary for testing or decontamination under AS 46.03.520 and 46.03.540. An  
5 oral or written contract that would transfer, sell, use, lease, or rent the property in  
6 violation of this subsection is voidable between the parties at the option of the  
7 purchaser, transferee, user, lessee, or renter. However, this subsection does not

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

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

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

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

29 (c) A person who knowingly uses, transfers, sells, leases, rents, or occupies  
30 property in violation of this section is guilty of a class A misdemeanor. In this  
31 subsection, "knowingly" has the meaning given in AS 11.81.900(a).

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

8           (b) The department shall establish procedures for testing property that may  
 9 have been an illegal drug manufacturing site.

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

17           **Sec. 46.03.530. Standards for determining fitness.** (a) Property for which a  
 18 notice was received under AS 46.03.500 is not fit for use if a test of the property  
 19 shows the presence of one of the following substances above the limit set by the  
 20 department for that substance: lead, mercury, methamphetamines, and volatile organic  
 21 compounds.

22           (b) The department shall adopt regulations that set the limit for each substance  
 23 listed in (a) of this section for purposes of determining whether the property for which  
 24 a notice was received under AS 46.03.500 is fit for use.

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

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

1           **Sec. 46.03.550. Fitness for use.** (a) Property for which a notice has been  
 2 issued under AS 46.03.500 shall be determined by the department to be fit for use if  
 3 the owner submits satisfactory evidence to the department that

4                   (1) based on testing procedures established by the department under  
 5 AS 46.03.520(b) and performed by laboratories that are on the list maintained by the  
 6 department under AS 46.03.520(c), the limits on substances specified in AS 46.03.530  
 7 are not exceeded on the property; or

8                   (2) if the property was ever tested under AS 46.03.520 and the test  
 9 results showed the property to be unfit for use under AS 46.03.530, decontamination  
 10 procedures were performed in accordance with the guidelines established under  
 11 AS 46.03.540(b) and the requirements of (1) of this subsection have been met.

12           (b) The department shall maintain a list of properties for which the department  
 13 has received notice under AS 46.03.500. When the department determines under (a)  
 14 of this section that a property on the list is fit for use, the department shall remove the  
 15 property from the list and notify the owner of the property that the property is fit for  
 16 use. On request, the department shall give a copy of the list maintained under this  
 17 section to any person who requests the list.

18           **Sec. 46.03.560. Securing the property.** The owner of property for which a  
 19 notice was received under AS 46.03.500 shall ensure that the property is vacated and  
 20 secured against use

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

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

28           **Sec. 46.03.570. Duties of the department; regulations.** (a) The department  
 29 shall adopt regulations implementing AS 46.03.500 - 46.03.599.

30           (b) The department shall periodically review information related to  
 31 decontamination of illegal drug manufacturing sites to determine whether substances

1 should be added to or deleted from AS 46.03.530. The department shall report written  
2 findings to the governor if the department determines that a change should be made to  
3 the list of substances in AS 46.03.530. The governor shall notify the legislature when  
4 written findings have been made under this subsection and provide a copy of the  
5 findings to a legislator on request.

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

7 (1) "illegal drug manufacturing site" means property on which there is  
8 a reasonably clear possibility of contamination with chemicals associated with the  
9 manufacturing of a controlled substance and where

10 (A) activity involving the unauthorized manufacture of a  
11 controlled substance listed on schedule I or II in AS 11.71 or any precursor  
12 chemical for such substances occurs; or

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

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