

**CS FOR SENATE BILL NO. 9(STA)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

**BY THE SENATE STATE AFFAIRS COMMITTEE**

**Offered: 2/12/03**

**Referred: Judiciary**

**Sponsor(s): SENATORS GUESS, Ellis, French**

**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; and providing for an effective date."**

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 7A. 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, any lienholder of record, the occupants and users of the  
 4 property, and the department that the determination has been made. The owner of the  
 5 property may appeal the determination to the superior court for review of whether the  
 6 determination was made in compliance with this subsection. In the appeal, the burden  
 7 of proving by a preponderance of the evidence that the determination was made in  
 8 compliance with this subsection is on the law enforcement agency that employed the  
 9 officer who made the determination.

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

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

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

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

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

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

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

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

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

1 include

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

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

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

9 (4) the name and mailing address of any lienholder of record for the  
10 property where the site is located.

11 (d) The notice required under (a) of this section for the occupants and users of  
12 the property shall be accomplished by immediate posting of the entryway of the  
13 property with a notice that includes the location of the property, the information  
14 described in (b)(2) and (3) of this section, and a statement that the property may pose a  
15 substantial risk of physical harm to persons or animals that enter or occupy the  
16 property.

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

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

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

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

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

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

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

27          (d) It is an affirmative defense to a prosecution under (c) of this section for  
28 allowing another to use or occupy the property that the defendant or an agent of the  
29 defendant, within four days after receiving a notice under AS 46.03.500, filed an  
30 appropriate civil action to remove the user or occupier from the property for which the  
31 notice was received.

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

8           (b) The department shall establish sampling and testing procedures for  
9 evaluating substances on property that may have been an illegal drug manufacturing  
10 site.

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

18           **Sec. 46.03.530. Standards for determining fitness.** (a) Property for which a  
19 notice was received under AS 46.03.500(b) is not fit for use if sampling and testing of  
20 the property under AS 46.03.520 shows the presence of one of the following  
21 substances above the limit set by the department for that substance: lead, mercury,  
22 methamphetamines, volatile organic compounds, iodine, sodium hydroxide, red  
23 phosphorus, lithium metal, sodium metal, or another substance for which the  
24 department has set a limit under (b) of this section.

25           (b) The department shall adopt regulations that set the limit for each substance  
26 specifically listed in (a) of this section for purposes of determining whether the  
27 property for which a notice was received under AS 46.03.500 is fit for use. The  
28 department shall also determine whether there are other substances associated with  
29 illegal drug manufacturing sites that may pose a substantial risk of physical harm to  
30 persons or animals that enter or occupy the site and shall adopt regulations that set  
31 limits for those substances for purposes of determining whether the property for which

1 notice was received under AS 46.03.500 is fit for use.

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

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

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

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

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

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

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

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

31 (1) within four days after receiving the notice if the owner does not test

1 the property under AS 46.03.520 within four days after receiving the notice; or

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

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

9 (b) The department shall periodically review information related to  
10 decontamination of illegal drug manufacturing sites to determine whether substances  
11 should be added to or deleted from the list of substances specifically named in  
12 AS 46.03.530(a). The department shall report written findings to the governor if the  
13 department determines that a change should be made to the list of specific substances  
14 in AS 46.03.530(a). The governor shall notify the legislature when written findings  
15 have been made under this subsection and provide a copy of the findings to a legislator  
16 on request.

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

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

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

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

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

28 \* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to  
29 read:

30 REGULATIONS. The Department of Environmental Conservation may immediately  
31 begin to develop and adopt regulations to implement this Act. The regulations take effect

1 under AS 44.62 (Administrative Procedure Act).

2 \* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to  
3 read:

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

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

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