

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 29 (RESOURCES)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE RESOURCES COMMITTEE**

**Offered: 5/20/91  
Referred: Judiciary**

**Sponsor(s): REPRESENTATIVES KOPONEN, Brown, Ellis**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act authorizing suits to enforce environmental laws."**

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

3 **\* Section 1. AS 46.03.870(b) is amended to read:**

4 (b) Except as provided [SPECIFIED] in AS 46.03.822 - 46.03.828 **and except in an**  
5 **action under (d) of this section**, a determination or order of the department does not create a  
6 presumption of law or finding of fact inuring to or for the benefit of persons other than the state.

7 **\* Sec. 2. AS 46.03.870 is amended by adding new subsections to read:**

8 (d) Except as provided in (g) of this section, a person who has an interest that is or may  
9 be adversely affected by the violation may file a civil action against

10 (1) a person, including the state or an agency of the state, where the person is  
11 alleged to be in violation of a law, regulation, permit, plan, or order established under this  
12 chapter, AS 46.04, or AS 46.09; for the purposes of this paragraph, "person" does not include  
13 a municipality having within its boundaries taxable real and personal property with a full value  
14 determination of \$100,000,000 or less as determined as of January 1 of the second fiscal year

1 preceding the alleged violation by the Department of Community and Regional Affairs under  
2 AS 14.17.140; or

3 (2) the commissioner where a failure of the commissioner to perform a  
4 nondiscretionary act or duty specified under this chapter, AS 46.04, or AS 46.09 is alleged.

5 (e) For purposes of this section, the decision or duty of the commissioner to bring an  
6 enforcement action against a person alleged to be in violation of a law, regulation, permit, plan,  
7 or order established under this chapter, AS 46.04, or AS 46.09 is a discretionary act or duty.

8 (f) In an action under (d)(1) of this section, the court may assess civil penalties under  
9 AS 46.03.760, issue an injunction under AS 46.03.765, and order other relief. In an action under  
10 (d)(2) of this section, the court may issue an injunction and order other relief.

11 (g) A person may not file a civil action under (d) of this section unless the violation is  
12 substantial and is either continuing, intermittent, or likely to recur, and

13 (1) if the action is under (d)(1) of this section

14 (A) until 60 days after the person has given notice of the violation to the  
15 commissioner and to the person alleged to be in violation of a law, regulation, permit,  
16 plan, or order; or

17 (B) if the commissioner has commenced and is diligently prosecuting a  
18 civil action or administrative penalty proceeding to require compliance with the law,  
19 regulation, permit, plan, or order; or

20 (2) if the action is under (d)(2) of this section until 60 days after the person has  
21 given notice of the violation to the commissioner.

22 (h) Notwithstanding the time limits in (g)(1)(A) and (2) of this section, in an action  
23 involving a hazardous waste, a hazardous substance as defined under AS 46.03.826 or  
24 AS 46.09.900, or a hazardous air pollutant as defined under 42 U.S.C. 7412, a person may file  
25 a civil action under (d) of this section

26 (1) 10 days after giving notice under (g)(1)(A) or (2), as appropriate; or

27 (2) immediately after giving notice under (g)(1)(A) or (2), as appropriate, if the  
28 action may involve an imminent and substantial endangerment to health or the environment.

29 (i) A settlement of a civil action brought under this section must provide that the  
30 proceeds received by a party under the settlement may only be used for restoration costs,  
31 environmental education, donations to groups exempt under 26 U.S.C. 501(c)(3), or for

1 reimbursement of legal fees and costs. This subsection does not apply if the terms of the  
2 settlement are subject to approval by the court.

3 \* Sec. 3. AS 46.03.890 is repealed and reenacted to read:

4 Sec. 46.03.890. ENFORCEMENT AUTHORITY. A police officer of the state and a  
5 state employee authorized by the commissioner are authorized to enforce this chapter. This  
6 section does not limit the right of a person under AS 46.03.870(d) - (i).

7 \* Sec. 4. AS 46.03.870(a) is repealed.