

HOUSE CS FOR CS FOR SENATE BILL NO. 178(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 3/21/94

Referred: Rules

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil nuisance actions; amending Alaska Rules of Civil
2 Procedure 79 and 82; and providing for an effective date."

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

4 * **Section 1.** AS 09.45.230 is repealed and reenacted to read:

5 Sec. 09.45.230. **ACTION BASED ON PRIVATE NUISANCE.** (a) A person
6 may bring a civil action to enjoin or abate a private nuisance. Damages may be
7 awarded in the action.

8 (b) A person may not maintain an action under this section based upon an air
9 emission or water or solid waste discharge, other than the placement of nuclear waste,
10 where the emission or discharge was expressly authorized by and is not in violation
11 of a term or condition of

12 (1) a statute or regulation;

13 (2) a license, permit, or order that is

14 (A) issued after public hearing by the state or federal

1 government; and

2 (B) subject to

3 (i) continuing compliance monitoring;

4 (ii) periodic review by the issuing agency;

5 (iii) renewal on a periodic basis; or

6 (iv) AS 46.40; or

7 (3) a court order or judgment.

8 (c) The provisions of (b) of this section do not apply to actions in which the
9 air emission or water or solid waste discharge that is the subject of the action produces
10 a result that was unknown or not reasonably foreseeable at the time of the
11 authorization.

12 (d) The provisions of (b) of this section remain in effect only as long as both
13 of the following are satisfied:

14 (1) AS 46.03.900 defines "pollution" as including the contamination or
15 altering of waters, land, or subsurface land of the state in a manner that creates a
16 nuisance; and

17 (2) AS 46.14.990 defines "emission" as the release of one or more air
18 contaminants to the atmosphere.

19 (e) Notwithstanding other provisions of law, except AS 09.50.170 - 09.50.240
20 and AS 19.25.080 - 19.25.180, a person may not bring a civil action to enjoin or abate
21 a private nuisance or to recover damages for a private nuisance unless the action is
22 authorized by this section.

23 (f) A person who is shielded under (b) of this section from a nuisance action
24 shall indemnify, defend, and hold the state harmless from a claim or court action for
25 inverse condemnation, including damages, costs, and attorney fees, for which the state
26 may become liable because of the air emission or wastewater or solid waste discharge
27 for which the person is shielded by (b) of this section. The state shall immediately
28 tender the defense of the inverse condemnation claim or court action to the person.
29 The provisions of (b) of this section do not apply to shield the person, if the person
30 fails to accept or refuses the tender of the defense. A person who prevails in the
31 defense of the claim or court action for inverse condemnation described under this

1 subsection shall be awarded full reasonable attorney fees and costs.

2 * Sec. 2. AS 09.45 is amended by adding a new section to article 4 to read:

3 Sec. 09.45.255. DEFINITION. In AS 09.45.230 - 09.45.255, "nuisance" means
4 a substantial and unreasonable interference with the use or enjoyment of real property,
5 including water.

6 * Sec. 3. AS 09.45.230(f), enacted by sec. 1 of this Act, amends

7 (1) Alaska Rule of Civil Procedure 79 by requiring a prevailing party to be
8 awarded full reasonable costs in certain actions rather than the items allowed as costs under
9 the rule;

10 (2) Alaska Rule of Civil Procedure 82 by requiring the court to award full
11 reasonable attorney fees to a prevailing party in certain actions.

12 * Sec. 4. This Act applies to an action if a final judgment has not been entered in the
13 action before the effective date of this Act, and to that extent this Act is retroactive under
14 AS 01.10.090.

15 * Sec. 5. As provided under AS 01.10.030, if a provision of this Act or the application of
16 a provision of this Act to a person or circumstance is held unconstitutional, the remainder of
17 this Act and the application of this Act to other persons or circumstances are not affected.

18 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).