

**HOUSE CS FOR CS FOR SENATE BILL NO. 178(FIN)(efd fld H)(crt rule fld H)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**EIGHTEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

**Amended: 4/20/94**

**Offered: 3/21/94**

**Sponsor(s): SENATE JUDICIARY COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to civil nuisance actions."

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

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 AS 09.45.230 is repealed and reenacted to read:

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

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

11                           (1) a statute or regulation;

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

13                                   (A) issued after public hearing by the state or federal  
14                           government; and

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(B) subject to

- (i) continuing compliance monitoring;
- (ii) periodic review by the issuing agency;
- (iii) renewal on a periodic basis; or
- (iv) AS 46.40; or

(3) a court order or judgment.

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

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

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

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

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

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

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

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

5     \* Sec. 3. This Act applies to an action if a final judgment has not been entered in the  
6     action before the effective date of this Act, and to that extent this Act is retroactive under  
7     AS 01.10.090.

8     \* Sec. 4. As provided under AS 01.10.030, if a provision of this Act or the application of  
9     a provision of this Act to a person or circumstance is held unconstitutional, the remainder of  
10    this Act and the application of this Act to other persons or circumstances are not affected.