



LAWS OF ALASKA

1994

Source

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Chapter No.

17

AN ACT

Relating to civil nuisance actions.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: April 29, 1994

Actual Effective Date: July 28, 1994

AN ACT

1 Relating to civil nuisance actions.

2 _____
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 AS 09.45.230 is repealed and reenacted to read: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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1 (B) subject to

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

6 (3) a court order or judgment.

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

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

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

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

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

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

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

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