

SENATE BILL NO. 9

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATORS GUESS, Ellis

Introduced: 1/21/03

Referred: State Affairs, Judiciary

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

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

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

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

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

30 (1) make voidable a promissory note or other evidence of indebtedness
31 or a mortgage, trust deed, or other security interest securing the promissory note or

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

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

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

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

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

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

30 **Sec. 46.03.520. Testing procedures.** (a) If the owner of the property for
 31 which notice was received under AS 46.03.500(b) desires to determine if the property

1 is fit for use, the owner shall cause the site to be tested for the substances specified in
 2 AS 46.03.530, using the procedures and laboratory services specified under (b) and (c)
 3 of this section. The property owner shall inform the laboratory used for a test under
 4 this subsection that the test is related to property that has been determined to be an
 5 illegal drug manufacturing site.

6 (b) The department shall establish procedures for testing property that may
 7 have been an illegal drug manufacturing site.

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

15 **Sec. 46.03.530. Standards for determining fitness.** (a) Property for which a
 16 notice was received under AS 46.03.500(b) is not fit for use if a test of the property
 17 shows the presence of one of the following substances above the limit set by the
 18 department for that substance: lead, mercury, methamphetamines, and volatile organic
 19 compounds.

20 (b) The department shall adopt regulations that set the limit for each substance
 21 listed in (a) of this section for purposes of determining whether the property for which
 22 a notice was received under AS 46.03.500 is fit for use.

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

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

30 **Sec. 46.03.550. Fitness for use.** (a) Property for which a notice has been
 31 issued under AS 46.03.500 shall be determined by the department to be fit for use if

1 the owner submits satisfactory evidence to the department that

2 (1) based on testing procedures established by the department under
3 AS 46.03.520(b) and performed by laboratories that are on the list maintained by the
4 department under AS 46.03.520(c), the limits on substances specified in AS 46.03.530
5 are not exceeded on the property;

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

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

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

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

21 (1) within four days after receiving the notice if the owner does not test
22 the property under AS 46.03.520 within four days after receiving the notice; or

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

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

30 (b) The department shall periodically review information related to
31 decontamination of illegal drug manufacturing sites to determine whether substances

1 should be added to or deleted from AS 46.03.530. The department shall report written
 2 findings to the governor if the department determines that a change should be made to
 3 the list of substances in AS 46.03.530. The governor shall notify the legislature when
 4 written findings have been made under this subsection and provide a copy of the
 5 findings to a legislator on request.

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

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

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

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

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

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

19 REGULATIONS. The Department of Environmental Conservation may immediately
 20 begin to develop and adopt regulations to implement this Act. The regulations take effect
 21 under AS 44.62 (Administrative Procedure Act).

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

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

27 * **Sec. 5.** Sections 1 and 2 of this Act take effect on the effective date of the initial
 28 regulations adopted by the Department of Environmental Conservation under sec. 3 of this
 29 Act.

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