

REFERENCE TITLE: citizen suits; environment

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HB 2424

Introduced by
Representatives Epstein: Schwiebert, Solorio, Senator Stahl Hamilton

AN ACT

AMENDING SECTIONS 49-264 AND 49-407, ARIZONA REVISED STATUTES; RELATING TO ENVIRONMENTAL LAWSUITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 49-264, Arizona Revised Statutes, is amended to read:

49-264. Private right of action; citizen suits; right to intervene

A. Except as provided in subsection B of this section, a person that has an interest that is or may be adversely affected ~~by a violation of this chapter or a rule adopted or an order issued by the department pursuant to this chapter~~ may commence a civil action in superior court on the person's own behalf against:

1. A PERSON, THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE ALLEGING A VIOLATION OF THIS CHAPTER OR AN ORDER, PERMIT, STANDARD, RULE OR DISCHARGE LIMITATION ADOPTED OR ISSUED PURSUANT TO THIS CHAPTER. THE COURT HAS JURISDICTION TO ENFORCE THIS CHAPTER OR AN ORDER, PERMIT, STANDARD, RULE OR DISCHARGE LIMITATION ADOPTED OR ISSUED PURSUANT TO THIS CHAPTER AND TO APPLY ANY APPROPRIATE CIVIL PENALTY PURSUANT TO SECTION 49-262.

2. The director alleging a failure of the director to perform an act or duty under this chapter that is not discretionary with the director. The court shall have jurisdiction to order the director to perform the act or duty.

B. ~~No~~ AN action may NOT be commenced in ~~any~~ EITHER of the following cases:

1. Before ~~one hundred twenty~~ SIXTY days after the plaintiff has given notice of the alleged violation to the director and to an alleged violator.

~~2. If after conducting an investigation the director determines within one hundred twenty days after receiving notice of the alleged violation from the plaintiff that no violation has occurred, or the director had determined before receiving the notice of the alleged violation that the violation had not occurred.~~

~~3. If the department has issued and is diligently processing a notice of violation or an order or has commenced and is diligently prosecuting a civil action in the superior court to require compliance with the provision, order, permit, standard, rule or discharge limitation.~~

~~4.~~ 2. If the attorney general or county attorney has commenced and is diligently prosecuting a civil action in the superior court to require compliance with ~~the provision,~~ THIS CHAPTER OR THE order, permit, standard, rule or discharge limitation.

~~5. If the director is diligently pursuing the violation under another state or federal environmental law.~~

C. In an action commenced under this section:

1. THE DIRECTOR, IF NOT A PARTY, MAY INTERVENE AS A MATTER OF RIGHT.

2. The plaintiff has the burden of proof.

D. The court, in issuing a final order in an action brought under this section, may:

1. Award costs of litigation, including reasonable attorney and expert witness fees, to any party ~~that substantially prevails~~ IF THE COURT DETERMINES IT IS APPROPRIATE AND, IN ADDITION, TO THE DEFENDANT IN THE CASE OF A FRIVOLOUS ACTION.

2. PROVIDE FOR INJUNCTIVE OR OTHER EQUITABLE RELIEF OR ASSESS CIVIL PENALTIES THAT COULD HAVE BEEN ASSESSED UNDER SECTION 49-262. ANY MONIES COLLECTED AS CIVIL PENALTIES SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE WATER QUALITY ASSURANCE REVOLVING FUND ESTABLISHED BY SECTION 49-282.

E. THIS SECTION SHALL BE CONSTRUED IN A MANNER CONSISTENT WITH 33 UNITED STATES CODE SECTION 1365 AND WITH JUDICIAL INTERPRETATIONS OF THAT SECTION.

~~E.~~ F. A person that is or may be adversely affected by a violation of any requirement of the underground injection control permit program established pursuant to article 3.3 of this chapter may intervene as a matter of right in any pending state civil or administrative enforcement action. A person's right to intervene is limited as follows:

1. A person may intervene only if the person is adversely affected by the violation that is named in the state's action.

2. A person may intervene only for purposes of obtaining the following remedies for the state:

(a) A temporary restraining order.

(b) Injunctive relief.

(c) Civil penalties.

(d) Any combination of the penalties prescribed in this paragraph.

Sec. 2. Section 49-407, Arizona Revised Statutes, is amended to read:

49-407. Private right of action; citizen suits

A. Except as provided in subsection B OF THIS SECTION, a person ~~having~~ THAT HAS an interest ~~which~~ THAT is or may be adversely affected may commence a civil action in superior court on ~~his~~ THE PERSON'S own behalf against:

1. A PERSON, THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE ALLEGING A VIOLATION OF THIS ARTICLE OR ARTICLE 2 OF THIS CHAPTER OR AN ORDER, PERMIT, STANDARD, RULE OR EMISSION LIMITATION ADOPTED OR ISSUED PURSUANT TO THIS ARTICLE OR ARTICLE 2 OF THIS CHAPTER. THE COURT HAS JURISDICTION TO ENFORCE THIS ARTICLE OR ARTICLE 2 OF THIS CHAPTER OR AN ORDER, PERMIT, STANDARD, RULE OR EMISSION LIMITATION ADOPTED OR ISSUED PURSUANT TO THIS ARTICLE OR ARTICLE 2 OF THIS CHAPTER AND TO APPLY ANY APPROPRIATE CIVIL PENALTY PURSUANT TO SECTION 49-463.

2. The director alleging a failure of the director to perform an act or duty under this article or article 2 of this chapter that is not

1 discretionary with the director. The court has jurisdiction to order the
2 director to perform the act or duty.

3 B. ~~No~~ AN action may NOT be commenced in ~~any~~ EITHER of the following
4 cases:

5 1. Before sixty days after the plaintiff has given notice of the
6 alleged violation to the director and to an alleged violator.

7 ~~2. If the director determines no violation has occurred, or if the~~
8 ~~director has initiated an administrative enforcement action by issuing a~~
9 ~~warning letter, notice of violation or issuing an order.~~

10 ~~3.~~ 2. If the attorney general or county attorney has commenced and
11 is diligently prosecuting a civil action in the superior court to require
12 compliance with ~~the provision,~~ THIS ARTICLE OR ARTICLE 2 OF THIS CHAPTER
13 OR THE order, permit, standard, rule or emission limitation.

14 C. In an action commenced under this section:

15 1. THE DIRECTOR, IF NOT A PARTY, MAY INTERVENE AS A MATTER OF
16 RIGHT.

17 2. The plaintiff has the burden of proof.

18 D. The court, in issuing a final order in an action brought under
19 this section, may:

20 1. Award costs of litigation, including reasonable attorney and
21 expert witness fees, to any party ~~that substantially prevails~~ IF THE COURT
22 DETERMINES IT IS APPROPRIATE AND, IN ADDITION, TO THE DEFENDANT IN THE
23 CASE OF A FRIVOLOUS ACTION.

24 2. PROVIDE FOR INJUNCTIVE OR OTHER EQUITABLE RELIEF UNDER SECTION
25 49-462 OR ASSESS CIVIL PENALTIES THAT COULD HAVE BEEN ASSESSED UNDER
26 SECTION 49-463. ANY MONIES COLLECTED AS CIVIL PENALTIES SHALL BE
27 DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE AIR QUALITY FUND
28 ESTABLISHED BY SECTION 49-551.

29 E. THIS SECTION SHALL BE CONSTRUED IN A MANNER CONSISTENT WITH 42
30 UNITED STATES CODE SECTION 7604 AND WITH JUDICIAL INTERPRETATIONS OF THAT
31 SECTION.