

SENATE BILL NO. 312

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY SENATOR WILKEN BY REQUEST

Introduced: 2/16/98

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to animals, to food, to pest control, and to the Alaska Food,
2 Drug and Cosmetic Act; and providing for an effective date."

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

4 * **Section 1.** AS 03.05.011(a)(2) is amended to read:

5 (2) establishment of quarantines for eradication of pests and diseases
6 in livestock;

7 * **Sec. 2.** AS 03.05.020(a) is amended to read:

8 (a) The commissioner shall

9 (1) require routine inspection of food animals [, FISH, POULTRY,
10 AND DERIVATIVE FOOD PRODUCTS,] to protect the public against fraud and [,]
11 disease [, AND SPOILAGE, AND IN THIS CONNECTION ADOPT UNIFORM
12 REGULATIONS ESTABLISHING STANDARDS OF IDENTITY AND
13 COMPOSITION OF THESE FOOD PRODUCTS AND MINIMUM STANDARDS OF
14 SANITATION AND HANDLING METHODS AS TO ALL PHASES OF

1 SLAUGHTERING, PROCESSING, STORING, TRANSPORTING, DISPLAYING,
2 AND SELLING OF THESE FOOD PRODUCTS;

3 (2) ISSUE ORDERS OR CAUSE THE ORDERS TO BE ISSUED BY
4 AN AUTHORIZED VETERINARIAN PROHIBITING TRANSPORTATION AND
5 SALE OF FOOD PRODUCTS INTENDED FOR HUMAN CONSUMPTION THAT
6 DO NOT MEET THE MINIMUM REQUIREMENTS ESTABLISHED UNDER (1)
7 OF THIS SUBSECTION, AND LIMITING THEIR USE AND DISPOSAL IN
8 CONFORMITY WITH PROTECTION OF THE PUBLIC];

9 (2) [(3)] adopt a schedule of fees or charges, and credit provisions, for
10 services rendered by state veterinarians to farmers and others at their request in caring
11 for livestock and poultry, and all the fees shall be transmitted to the commissioner for
12 deposit in the state treasury;

13 (3) [(4)] designate points of entry for admission of livestock or poultry
14 into the state, and arrange inspection at those points with or without collaboration and
15 assistance of the federal government, and bar entry of stock or poultry not shipped
16 under a valid permit or not free from contagious or infectious disease [;

17 (5) ADOPT, REPEAL, AND AMEND REGULATIONS
18 CONSISTENT WITH EXISTING LAW FOR

19 (A) THE LABELING AND GRADING OF MILK AND
20 MILK PRODUCTS AND STANDARDS OF CLEANLINESS AND
21 SANITATION, TO AT LEAST THE MINIMUM OF CURRENT
22 RECOMMENDATIONS OF THE UNITED STATES PUBLIC HEALTH
23 SERVICE, FOR THE OPERATION OF DAIRIES SELLING, OR OFFERING
24 FOR SALE, MILK OR MILK PRODUCTS;

25 (B) THE PRODUCTION AND SALE OF ICE CREAM AND
26 ALLIED FROZEN DESSERTS;

27 (C) THE PRODUCTION AND SALE OF IMITATION MILK
28 AND IMITATION MILK PRODUCTS;

29 (6) ESTABLISH A FIELD-KILL INSPECTION PROGRAM FOR
30 REINDEER THAT IS AVAILABLE AT STATE EXPENSE AND PROVIDES FOR
31 VOLUNTARY PARTICIPATION ON THE PART OF REINDEER HERDERS AND

PROCESSORS WHO WISH TO HAVE THE INSPECTED REINDEER USED IN
FEDERALLY INSPECTED MEAT PRODUCTS].

* **Sec. 3.** AS 03.05.040(a) is amended to read:

(a) On any business day during the usual hours of business the commissioner or an authorized inspector may, for the purpose of inspecting agricultural [, FISHERIES, OR AQUATIC FARM] products [OR AQUATIC FARM SITES] subject to regulation, enter a storehouse, warehouse, cold storage plant, packing house, slaughterhouse, retail store, or other building or place where those products are kept, stored, processed, or sold.

* **Sec. 4.** AS 03.05.050(a) is amended to read:

(a) An agricultural [OR FISHERIES] product found by the commissioner, or an authorized inspector, to violate a regulation adopted under this chapter is declared to be a public nuisance injurious to the public interest and may not be moved by the person in whose possession it may be except upon the specific direction of the commissioner or inspector.

* **Sec. 5.** AS 03.58.070(1) is amended to read:

(1) "department" means the [DEPARTMENT OF ENVIRONMENTAL CONSERVATION WHEN THE FOOD IS MEAT, FISH, POULTRY, OR PROCESSED, AND THE] Department of Natural Resources [WHEN THE FOOD IS NOT MEAT, FISH, POULTRY, OR PROCESSED];

* **Sec. 6.** AS 03.58.070(2) is repealed and reenacted to read:

(2) "food represented as organic food" means food, when the food is not meat, fish, poultry, or processed, that is marketed using the term "organic" or a derivative of that term in the labeling or advertising;

* **Sec. 7.** AS 16.40.100(b) is amended to read:

(b) A permit issued under this section authorizes the permittee, subject to the conditions of [AS 03.05 AND] AS 16.40.100 - 16.40.199 and AS 17.20, to acquire, purchase, offer to purchase, transfer, possess, sell, and offer to sell stock and aquatic farm products that are used or reared at the hatchery or aquatic farm. A person who holds a permit under this section may sell or offer to sell shellfish stock to the department or to an aquatic farm or related hatchery outside of the state.

1 * **Sec. 8.** AS 16.51.100(6) is amended to read:

2 (6) develop marketing programs based on the "inspection" and
3 "premium quality" seals designed under AS 17.20.066 [AS 03.05.026] and use the
4 seals in advertising and promotion efforts of the institute;

5 * **Sec. 9.** AS 17 is amended by adding a new chapter to read:

6 **Chapter 06. Sale of Organic Foods.**

7 **Sec. 17.06.010. Prohibition.** (a) A person may not sell or offer for sale food
8 represented as organic food if the person knows or has reason to know that the food
9 has been grown, raised, or produced with the use of

10 (1) a fertilizer, except for manure and other natural fertilizers;

11 (2) a manufactured pesticide, hormone, antibiotic, or growth stimulant,
12 except for *Bacillus thuringensis* and other natural pesticides;

13 (3) a substance listed by the department under AS 17.06.050 that is
14 similar to a substance that is restricted with regard to organic food under (1) or (2) of
15 this subsection.

16 (b) In this section, "with the use of" means

17 (1) applied to the food before a retail sale;

18 (2) fed to the animal producing the food;

19 (3) unless the substance applied is a pesticide, applied to the soil or
20 other growing medium within one year before seed planting or transplanting, or, if the
21 crops are perennial, before the appearance of the flower bud; or

22 (4) in the case of pesticides, applied to the soil or other growing
23 medium within two years before seed planting or transplanting, or, if the crops are
24 perennial, before the appearance of the flower bud.

25 **Sec. 17.06.020. Disclosure.** (a) Except as provided in (b) of this section, a
26 person may not sell food represented as organic food unless the name and address of
27 the producer of the food are displayed with the food. If the food is not displayed at the
28 purchase site, a written statement with the name and address of the producer must be
29 given to the purchaser unless the name and address are identified on a package
30 containing the purchased food. This subsection does not apply to a sale for
31 consumption on the premises.

(b) Advertising for the mail order sale of food represented as organic food must include the name and address of the producer of the food.

Sec. 17.06.030. Sworn statement of compliance. (a) A producer may not sell to a vendor food represented as organic food unless before the sale the producer provides the vendor with a sworn statement that the producer has grown, raised, or otherwise produced the food in compliance with AS 17.06.010. If a producer sells the food to the same vendor more than one time during a calendar year, one statement for the calendar year is sufficient to comply with this section.

(b) In this section, "vendor" means a person who sells food represented as organic food to another person for resale or to a consumer.

Sec. 17.06.050. Regulations. The department may adopt regulations under AS 44.62 (Administrative Procedure Act) to implement and interpret this chapter, including a regulation that lists and periodically updates substances under AS 17.06.010(a).

Sec. 17.06.060. Enforcement. (a) If the department determines that a person is violating a provision of this chapter, or a regulation adopted under this chapter, the department shall order the person to stop the violation and to refrain from future violations.

(b) If a person violates this chapter, a regulation adopted under this chapter, or an order issued under (a) of this section, the person is liable to the state for

(1) a civil fine that does not exceed the total of \$1,000 plus the state's estimated costs of investigating and taking appropriate administrative and enforcement actions for the violation; and

(2) an additional civil penalty of three times the value of the product knowingly sold in violation of this chapter.

(c) The provisions of this section are in addition to the remedies available under AS 45.50.471 - 45.50.561.

Sec. 17.06.070. Definitions. In this chapter,

(1) "department" means the Department of Environmental Conservation;

(2) "food represented as organic food" means food, when the food is meat, fish, poultry, or processed, that is marketed using the term "organic" or a

1 derivative of that term in the labeling or advertising;

2 (3) "producer" means a person who grows, raises, or produces food.

3 * **Sec. 10.** AS 17.20 is amended by adding a new section to read:

4 **Sec. 17.20.005. Powers and duties of commissioner.** To carry out the
5 requirements of this chapter, the commissioner may issue orders, regulations, permits,
6 quarantines, and embargoes relating to

7 (1) food offered to the public or sold, including

8 (A) inspection of meat, fish, poultry, and other food products;

9 (B) standards of sanitation and handling methods for all phases
10 of slaughtering, processing, storing, transporting, displaying, and selling; and

11 (C) labeling;

12 (2) control and eradication of pests;

13 (3) enforcement of hazard analysis critical control point programs for
14 seafood processing that are developed in cooperation with appropriate industry
15 representatives or, to the extent not inconsistent with this chapter or regulations
16 adopted under the authority of this chapter, that are established by regulations of the
17 United States Food and Drug Administration as they may periodically be revised;

18 (4) labeling and grading of milk and milk products and standards of
19 sanitation for dairies offering to the public or selling milk or milk products to at least
20 the minimum of current recommendations of the United States Public Health Service
21 pasteurized milk ordinance as it may periodically be revised;

22 (5) standards and conditions for the operation and siting of aquatic
23 farms and related hatcheries, including

24 (A) restrictions on the use of chemicals; and

25 (B) requirements to protect the public from contaminated
26 aquatic farm products that pose a risk to health;

27 (6) monitoring aquatic farms and aquatic farm products to ensure
28 compliance with this chapter and, to the extent not inconsistent with this chapter or
29 regulations adopted under the authority of this chapter, with the requirements of the
30 national shellfish sanitation program manual of operations published by the United
31 States Food and Drug Administration as it may periodically be revised;

(7) tests and analyses that may be made and hearings that may be held to determine whether the commissioner will issue a stop order or quarantine;

(8) transportation of, use of, disposal of, recalls of, or warnings concerning quarantined or embargoed items;

(9) cooperation with federal and other state agencies.

* **Sec. 11.** AS 17.20 is amended by adding a new section to read:

Sec. 17.20.044. Sale and labeling of frozen meat, fish, and poultry. (a)

Meat, fish, or poultry that has been frozen may not be sold, represented, or advertised as a fresh food.

(b) Meat, fish, and poultry that has been frozen must be labeled as a frozen food in accordance with regulations adopted by the commissioner.

(c) The commissioner shall adopt regulations that

(1) require frozen food labels for meat, fish, and poultry that has been frozen; and

(2) provide for the examination and inspection of meat, fish, and poultry to ascertain whether it has been frozen.

* **Sec. 12.** AS 17.20 is amended by adding a new section to read:

Sec. 17.20.065. Seafood processing permits and plans of operation. (a) A

person may not operate a seafood processing establishment or seafood processing vessel without a seafood processing permit issued by the department. A seafood processing permit issued under this section must be renewed annually.

(b) A person may not operate a seafood processing establishment or a seafood processing vessel without a written hazard analysis critical control point plan that explains the procedures used at each critical control point in the operation of the seafood processing establishment or the seafood processing vessel. The department may review, and comment on, the completeness of the hazard analysis critical control point plan prepared for a seafood processing establishment or a seafood processing vessel; however, the department may not require annual submission of the plan unless a change in operation, product, or process necessitates a change in the plan. In this subsection, "critical control point" means a point, step, or procedure in a food process at which control can be applied, and a food safety hazard can as a result be prevented,

1 eliminated, or reduced to acceptable levels.

2 * **Sec. 13.** AS 17.20 is amended by adding new sections to read:

3 **Sec. 17.20.066. Seafood product quality standards and seals.** (a) The
4 Alaska Seafood Marketing Institute established in AS 16.51 shall design an
5 "inspection" seal that may be used to signify that a seafood product has been packed
6 in compliance with the requirements of a permit issued under AS 17.20.065.

7 (b) The Alaska Seafood Marketing Institute shall design a "premium quality"
8 seal that may be used to signify that a seafood product has met the product
9 specifications and standards under (d) of this section.

10 (c) The commissioner shall authorize the use of an "inspection" seal for
11 display on seafood products processed by a person who, at the time the products are
12 processed, holds a permit to operate issued under AS 17.20.065 and who complies with
13 regulations adopted under this chapter.

14 (d) The commissioner, after consultation with the Alaska Seafood Marketing
15 Institute, shall develop product specifications and standards for the use of the
16 "premium quality" seal on Alaska seafood products. The commissioner shall authorize
17 a seafood processor to display a "premium quality" seal on products that qualify for
18 the seal if the processor meets the requirements of regulations adopted under this
19 chapter and has been issued a permit to operate under AS 17.20.065.

20 (e) A person may not display a seal under this section without authorization
21 from the commissioner.

22 **Sec. 17.20.067. Seafood processing research.** The commissioner may
23 conduct studies, research, experiments, and demonstrations, directly or through grants
24 to or contracts with public or private agencies, organizations, or individuals to

25 (1) improve sanitation practices in the processing of fish and fisheries
26 products; and

27 (2) develop improved techniques for surveillance and inspection
28 activities under this chapter.

29 * **Sec. 14.** AS 17.20.070 is amended to read:

30 **Sec. 17.20.070. Inspection by department.** An officer or employee
31 designated by the commissioner shall have access to a factory, aquatic farm, or

establishment, the operator of which holds a permit from the commissioner, for the purpose of ascertaining whether [OR NOT] the conditions of the permit are being complied with. Denial of access for inspection is ground for suspension of the permit until access is freely given.

* **Sec. 15.** AS 17.20.072 is amended to read:

Sec. 17.20.072. Enforcement authority. The commissioner is responsible for enforcing AS 17.20.005 - 17.20.075 [AS 17.20.010 - 17.20.075], and may delegate that authority as appropriate. This section does not limit the authority of peace officers.

* **Sec. 16.** AS 17.20.075 is amended to read:

Sec. 17.20.075. Definitions. In AS 17.20.005 - 17.20.075 [AS 17.20.010 - 17.20.075],

(1) "commissioner" means the commissioner of environmental conservation;

(2) "department" means the Department of Environmental Conservation.

* **Sec. 17.** AS 17.20.200(a) is amended to read:

(a) The commissioner of environmental conservation or an agent shall have free access at reasonable hours to a factory, warehouse, or establishment in which foods or cosmetics are manufactured, processed, packed, or held for introduction into commerce, [OR] to enter a vehicle being used to transport or hold these foods or cosmetics in commerce, or to an aquatic farm in order to

(1) inspect a factory, warehouse, establishment, [OR] vehicle, or aquatic farm to determine if the provisions of the commissioner's respective portions of this chapter are being violated; [,] and

(2) secure samples or specimens of a food, aquatic farm product, or cosmetic [AFTER PAYING OR OFFERING TO PAY FOR THE SAMPLE].

* **Sec. 18.** AS 17.20.280 is amended to read:

Sec. 17.20.280. Injunction proceedings. The commissioner of environmental conservation and the commissioner of health and social services may apply to the superior court for, and the court has jurisdiction to grant, a temporary or permanent injunction restraining a person from violating their respective portions of this chapter [AS 17.20.290].

1 * **Sec. 19.** AS 17.20 is amended by adding a new section to read:

2 **Sec. 17.20.305. Penalty for violation.** A person who with criminal negligence
3 violates a provision of this chapter or a regulation, order, quarantine, embargo, or
4 recall made under authority of this chapter, or violates a provision of a permit issued
5 under this chapter, is guilty of a class A misdemeanor for each offense. In this
6 section, "criminal negligence" has the meaning given in AS 11.81.900.

7 * **Sec. 20.** AS 17.20.320 is amended to read:

8 **Sec. 17.20.320. Effect of written guaranty.** A person is not subject to the
9 penalties of AS 17.20.305 [AS 17.20.310] for having violated AS 17.20.290(a)(1) or
10 (3) if that person establishes a guaranty or undertaking signed by and containing the
11 name and address of the person residing in the state from whom the article was
12 received in good faith, to the effect that it is not adulterated or misbranded within the
13 meaning of this chapter.

14 * **Sec. 21.** AS 17.20.330 is amended to read:

15 **Sec. 17.20.330. Liability for dissemination of false advertising.** The [NO]
16 publisher, radio-broadcast licensee, or agency or medium for the dissemination of an
17 advertisement, except the manufacturer, packer, distributor, or seller of the article to
18 which a false advertisement relates, is **not** liable under AS 17.20.305 [AS 17.20.310]
19 for the dissemination of the false advertisement, unless the publisher, licensee, agency
20 or medium has refused the request of the commissioner of health and social services
21 to furnish the name and post office address of the manufacturer, packer, distributor,
22 seller, or advertising agency, residing in the state who caused dissemination of the
23 advertisement.

24 * **Sec. 22.** AS 17.20.345 is amended to read:

25 **Sec. 17.20.345. Liability of food donor.** (a) Notwithstanding the provisions
26 of AS 17.20.290 and 17.20.305 [17.20.310], a donor of food for free distribution by
27 a food bank is not subject to civil or criminal liability arising from an injury or death
28 attributable to the condition of the donated food if the injury or death is not a result
29 of the gross negligence, recklessness, or intentional misconduct of the donor.

30 (b) Nothing in this section, AS 17.20.290, or 17.20.305 [17.20.310] prohibits
31 the donation by a donor of food apparently fit for human consumption at the time of

1 its donation solely because

2 (1) the label on the food is missing or the food is otherwise
3 misbranded; or

4 (2) the food, if offered for sale commercially, would not be readily
5 marketable because of appearance or grade, or because it is surplus.

6 (c) A person who donates to a food bank salmon from a hatchery that operates
7 under a permit issued under AS 16.10.400 - 16.10.470 is immune from liability as
8 provided in this section if the salmon is apparently fit for human consumption at the
9 time of its donation, even if the hatchery does not have a permit issued by the
10 Department of Environmental Conservation under this chapter [, AS 03.05,] or other
11 statute to process fisheries products for human consumption.

12 * **Sec. 23.** AS 17.20.346 is amended to read:

13 **Sec. 17.20.346. Liability of food bank.** (a) Notwithstanding the provisions
14 of AS 17.20.290 and **17.20.305** [17.20.310], a food bank that receives and distributes
15 food is not subject to civil or criminal liability arising from an injury or death
16 attributable to the condition of the food if

17 (1) the food bank inspects the food received in a reasonable manner
18 and finds it to be apparently fit for human consumption at the time of distribution;

19 (2) the food bank has no actual or constructive knowledge at the time
20 the food is distributed that it is adulterated, tainted, contaminated, or would be harmful
21 to the health or well-being of an individual consuming it; and

22 (3) the injury or death is not a direct result of the negligence,
23 recklessness, or intentional misconduct of the food bank.

24 (b) Nothing in this section, AS 17.20.290, or **17.20.305** [17.20.310] prohibits
25 the distribution by a food bank of food apparently fit for human consumption at the
26 time of its distribution solely because

27 (1) the label on the food is missing or the food is otherwise
28 misbranded; or

29 (2) the food, if sold commercially, would not be readily marketable
30 because of appearance or grade, or because it is surplus.

31 * **Sec. 24.** AS 17.20.370(7) is amended to read:

(7) "farmed salmon product" means a food product that contains salmon that is propagated, farmed, or cultivated in [AN AQUATIC FARM; IN THIS PARAGRAPH

(A) "AQUATIC FARM" MEANS] a facility that grows, farms, or cultivates finfish in captivity or under positive control [,] but **that is** [DOES] not [INCLUDE] a salmon hatchery that is owned by the state or that holds a salmon hatchery permit under AS 16.10.400; **in this paragraph,**

[(B)] "positive control" has the meaning given in AS 16.40.199;

* **Sec. 25.** AS 17.20.370 is amended by adding new paragraphs to read:

(15) "aquatic farm" has the meaning given in AS 16.40.199;

(16) "aquatic farm product" has the meaning given in AS 16.40.199;

(17) "fish or fisheries products" means any aquatic animal, including amphibians, or aquatic plants or parts of those plants, animals or amphibians that are usable as human food.

* **Sec. 26.** AS 03.05.011(a)(3), 03.05.011(a)(7), 03.05.011(a)(8), 03.05.011(a)(9), 03.05.011(a)(10), 03.05.025, 03.05.026, 03.05.035, 03.05.070, 03.05.085, 03.05.100(2); AS 03.15.020; AS 17.05.010, 17.05.020, 17.05.050; AS 17.07; AS 17.20.210, and 17.20.310 are repealed.

* **Sec. 27.** TRANSITION. Regulations, orders, permits, quarantines, and embargoes issued or adopted under authority of a law amended or repealed by this Act remain in effect for the term issued, or until revoked, vacated, or otherwise modified under the provisions of this Act. Litigation, hearings, investigations, and other proceedings pending under a law amended or repealed by this Act continue in effect and may be continued and completed notwithstanding an amendment or repeal provided for in this Act. Contracts, rights, liabilities, and obligations created by or under a law amended or repealed by this Act, and in effect on the effective date of this Act, remain in effect notwithstanding this Act's taking effect.

* **Sec. 28.** This Act takes effect July 1, 1998.