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4/15/21

SENATE CS FOR CS FOR HOUSE BILL NO. 76(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act extending the January 15, 2021, governor's declaration of a public health**
2 **disaster emergency in response to the novel coronavirus disease (COVID-19) pandemic;**
3 **approving and ratifying declarations of a public health disaster emergency; providing**
4 **for a financing plan; making temporary changes to state law in response to the**
5 **COVID-19 outbreak in the following areas: emergency powers of the governor;**
6 **emergency powers of the commissioner of health and social services; occupational and**
7 **professional licensing, practice, and billing; telehealth; charitable gaming and online**
8 **ticket sales; access to federal stabilization funds; wills; unfair or deceptive trade**
9 **practices; school operating funds; workers' compensation; program execution; civil**
10 **liability; immunity from liability and disciplinary action for occupational licensees for**
11 **exposure of clients to COVID-19; immunity from liability for persons engaging in**
12 **business and their employees for exposure of customers to COVID-19; and abortion**

1 **funding; and providing for an effective date."**

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

3 * **Section 1.** The uncoded law of the State of Alaska is amended by adding a new section
4 to read:

5 FINDINGS. (a) The legislature finds that

6 (1) on March 11, 2020, the governor issued a declaration of a public health
7 disaster emergency under AS 26.23.020 in anticipation of the spread of COVID-19 to the
8 state and has since issued multiple new disaster declarations for the COVID-19 outbreak;

9 (2) since the initial outbreak through the present day, the outbreak of
10 COVID-19 has resulted in serious consequences for residents of the state and the state's
11 economy;

12 (3) many communities in the state, including the state's largest city of
13 Anchorage and the capital city of Juneau, have seen fit to impose lockdown or hunker-down
14 orders, which have severely reduced economic activity in those communities;

15 (4) lockdown orders and other pandemic-related factors have forced numerous
16 state businesses to close their doors and lay off employees or reduce service levels and
17 employee hours far below what would otherwise have been provided, to the detriment of both
18 those businesses and their hard-working employees;

19 (5) interstate and intrastate travel restrictions of varying levels of
20 restrictiveness, while intended to contain the spread of COVID-19, have resulted in further
21 reduction of economic activities in the state;

22 (6) the state has established and facilitated multiple programs to provide
23 economic assistance to struggling state residents and businesses, but the programs, while
24 providing much-needed relief, generally fall short of fully replacing regular levels of
25 voluntary economic activity;

26 (7) as a result of voluntary and government-imposed reductions of economic
27 activity,

28 (A) the state lost 29,000 jobs between October 2019 and October 2020;

29 (B) many businesses in the state have temporarily or permanently
30 closed;

1 (C) at least 45,000 students in the Anchorage School District have
2 been denied in-person education for a significant period during the pandemic;

3 (8) the shift from in-person learning to distance learning has negatively
4 affected students in the state in terms of the students' learning progression and emotional and
5 social development;

6 (9) the shift from in-person learning to distance learning has been associated
7 with increased instances of child abuse and food insecurity;

8 (10) multiple vaccines for COVID-19 have been developed and are currently
9 being distributed, allowing the state to move into a new phase of its COVID-19 recovery
10 efforts;

11 (11) due in part to the state's robust COVID-19 response efforts, the state
12 currently has the third-lowest COVID-19 fatality rate in the United States; and

13 (12) because of the diligent efforts of the state, Alaska has the highest
14 vaccination rate of all 50 states.

15 (b) Based on the findings in (a) of this section, the legislature finds that it is in the
16 best interest of the state to

17 (1) take appropriate steps to continue to contain the spread of COVID-19 and
18 to distribute COVID-19 vaccines statewide with the utmost diligence and dispatch;

19 (2) take appropriate steps to limit further harm to the state's economy, to
20 enable displaced workers in the state to return to work, and to allow students in the state to
21 rejoin in-person classes with their peers; and

22 (3) extend the public health disaster emergency declaration issued by the
23 governor on January 15, 2021, and all the powers granted under AS 18.15.390 and
24 AS 26.23.020, to December 31, 2021.

25 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 PUBLIC HEALTH DISASTER EMERGENCY; APPROVAL, RATIFICATION,
28 AND EXTENSION OF DISASTER EMERGENCY. (a) The declarations of a public health
29 disaster emergency issued by the governor on November 15, 2020, December 15, 2020, and
30 January 15, 2021, are approved and ratified.

31 (b) Under AS 26.23.020(c), the Alaska State Legislature extends to December 31,

2021, the declaration of a public health disaster emergency issued by the governor on January 15, 2021. The extension under this subsection includes an order, proclamation, or regulation issued under AS 26.23.020 and an action taken by the Department of Health and Social Services under the authority granted to the Department of Health and Social Services under AS 18.15.390.

(c) Notwithstanding (b) of this section, if the commissioner of health and social services certifies to the governor that there is no longer a present outbreak of novel coronavirus disease (COVID-19) or a credible threat of an imminent outbreak of COVID-19, the governor shall issue a proclamation that the public health disaster emergency identified in the declaration issued by the governor on January 15, 2021, no longer exists as of a date determined by the governor. The certification must be based on specific information received from a state or federal agency or another source that the commissioner determines to be reliable.

(d) The governor shall submit a proclamation issued under (c) of this section to the revisor of statutes, the president of the senate, the speaker of the house of representatives, and the lieutenant governor.

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

EMERGENCY POWERS OF THE GOVERNOR. Notwithstanding any other provision of law, the governor may not take any action under AS 26.23.020(g)(4) - (6), (8), or (11) to respond to the novel coronavirus disease (COVID-19) public health disaster emergency issued by the governor on January 15, 2021, as extended by sec. 2 of this Act.

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

EMERGENCY POWERS OF THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES. (a) Notwithstanding any other provision of law, the commissioner of health and social services may declare a public health emergency if the commissioner determines that the Department of Health and Social Services must take action to protect the public health, including providing public health services or enforcing existing health laws, as part of the state's response to the ongoing pandemic related to the novel coronavirus disease (COVID-19).

(b) A public health emergency declared under this section must support the efforts of the Department of Health and Social Services to maximize and maintain the following federal benefits:

(A) emergency allotments under the Supplemental Nutritional Assistance Program;

(B) blanket waivers enacted by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services;

(C) waivers under section 1135 of the Social Security Act;

(D) waivers under section 1915(c) of the Social Security Act, including Appendix K; and

(E) funding under the Stafford Act related to non-congregate sheltering.

(c) During a public health emergency declared under this section, the commissioner of health and social services may coordinate, allocate, distribute, and manage vaccine doses and therapeutics to respond to COVID-19.

(d) During a public health emergency declared under this section, the chief procurement officer shall authorize the use of an emergency procurement under AS 36.30.310 for a procurement related to the public health emergency requested by the commissioner of health and social services.

(e) A public health emergency declared under this section expires on the earlier of the date

(1) the commissioner of health and social services determines that the public health emergency declared under this section is no longer necessary; or

(2) the public health emergency issued under sec. 319 of the Public Health Service Act expires, subject to renewal by the United States Secretary of Health and Human Services.

* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

PUBLIC HEALTH DISASTER EMERGENCY; FINANCING PLAN. (a) Under AS 26.23.020(k), the Alaska State Legislature approves this financing plan for the declaration of a public health disaster emergency issued by the governor on January 15, 2021, as extended

by sec. 2 of this Act, and provides that the following appropriations and authorizations may be used to cope with the public health disaster emergency:

(1) the appropriations made in sec. 8, ch. 2, SLA 2020;

(2) the appropriations made in sec. 10, ch. 7, SLA 2020;

(3) the authorization made in sec. 1, ch. 8, SLA 2020, Department of Health and Social Services, allowing for up to \$20,000,000 in transfers between all appropriations made in the Department of Health and Social Services, except for transfers from the Medicaid services appropriation;

(4) the appropriations made in sec. 28, ch. 8, SLA 2020, Department of Health and Social Services,

(A) of federal receipts received during the fiscal year ending June 30, 2021, for Medicaid services; and

(B) to the Department of Health and Social Services public health emergency response for the purpose of responding to the novel coronavirus disease (COVID-19) public health disaster emergency;

(5) the appropriation made in sec. 38, ch. 8, SLA 2020, to the disaster relief fund under AS 26.23.300(a);

(6) the appropriation made in sec. 37(a), ch. 8, SLA 2020, of excess federal receipts received during the fiscal year ending June 30, 2021;

(7) the authorization made in ch. 32, SLA 2020, for expenditure of federal CARES Act receipts;

(8) any future appropriations made for the fiscal years ending June 30, 2021, and June 30, 2022, for the cost of responding to and mitigating the risk of the coronavirus disease (COVID-19) outbreak.

(b) The governor may not expend more than a cumulative total of \$10,000,000 of state funds from the disaster relief fund under AS 26.23.020(h) - (k) or 26.23.300(b) in response to the declaration of a public health disaster emergency issued by the governor on January 15, 2021, as extended by sec. 2 of this Act.

(c) Notwithstanding AS 26.23.050(b), the expenditure of state funds to cope with the effects of the declaration of a public health disaster emergency issued by the governor on January 15, 2021, as extended by sec. 2 of this Act, is limited to the appropriations and

expenditure authority identified in (a) and (b) of this section.

* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REPORTS. Beginning May 1, 2021, the office of management and budget shall electronically submit, on the first day of the month, a report to the legislative finance division that lists the total expenditures incurred by the state in its response to the public health disaster emergency, including mitigating, preventing, and controlling novel coronavirus disease (COVID-19). The report should include cumulative expenses incurred by category, beginning March 11, 2020, and the date the governor issued the initial declaration of a public health disaster emergency and should reflect changes over the last monthly reporting period. The office of management and budget shall submit a final report not later than January 31, 2022, or 60 days after the date the governor determines, under sec. 2 of this Act, that the public health disaster emergency no longer exists, whichever is earlier.

* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to read:

PROFESSIONAL AND OCCUPATIONAL LICENSING. (a) Notwithstanding any other provision of law, during the novel coronavirus disease (COVID-19) public health disaster emergency declared by the governor on January 15, 2021, as extended by sec. 2 of this Act, a professional or occupational licensing board listed in AS 08.01.010, or the director, with respect to a profession regulated by the Department of Commerce, Community, and Economic Development,

(1) may not increase licensing fees; and

(2) may grant a license, permit, or certificate on an expedited basis to an individual who holds a corresponding license, permit, or certificate in good standing in another jurisdiction to the extent necessary to respond to the public health disaster emergency; a license expedited under this section expires on the earlier of

(A) December 31, 2021; or

(B) the date the governor determines, under sec. 2 of this Act, that the public health disaster emergency no longer exists.

(b) Notwithstanding any other provision of law and to the extent necessary to respond to the public health disaster emergency, a board listed in AS 08.01.010, the commissioner of

commerce, community, and economic development, or the director, as applicable, may take additional action necessary to protect public health, safety, and welfare, including

(1) temporarily waiving or modifying the continuing education requirements required for licensees to renew a professional license, permit, or certificate in calendar year 2021;

(2) regulating the scope and duration of any license, permit, or certificate issued under this section;

(3) requiring any individual granted a license, permit, or certificate under this section to arrange and agree to supervision, in person or by other means, by an individual who holds a license, permit, or certificate in good standing for the applicable profession or by an administrator of a facility licensed under AS 47.32.

(c) An individual seeking or holding an expedited license, permit, or certificate under this section who travels to the state from outside the state must comply with travel restrictions ordered or guidelines recommended by the Centers for Disease Control and Prevention, United States Department of Health and Human Services, that are in effect at the time the individual arrives in the state.

(d) In this section, "director" means the director of the division in the Department of Commerce, Community, and Economic Development responsible for business and professional licensing.

* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TELEMEDICINE AND TELEHEALTH. (a) Notwithstanding any other provision of law, during the novel coronavirus disease (COVID-19) public health disaster emergency declared by the governor under AS 26.23.020 on January 15, 2021, as extended by sec. 2 of this Act, the provisions of AS 08.64.170 and AS 08.68.160 do not apply to a health care provider who is providing treatment, rendering a diagnosis, or prescribing, dispensing, or administering a prescription, excluding a controlled substance listed under AS 11.71.140 - 11.71.190, through telehealth as defined in AS 47.05.270(e), without first conducting an in-person physical examination, if

(1) the health care provider is licensed, permitted, or certified to provide health care services in another jurisdiction and is in good standing in the jurisdiction that

1 issued the license, permit, or certification;

2 (2) the health care services provided without an in-person physical
3 examination are within the provider's authorized scope of practice in the jurisdiction that
4 issued the provider's license, permit, or certification;

5 (3) in the event that the health care provider determines that the encounter will
6 extend beyond the scope of practice or scope of services described in this section, the health
7 care provider advises the patient that the health care provider is not authorized to provide the
8 services to the patient, recommends that the patient contact a health care provider licensed in
9 the state, and terminates the encounter.

10 (b) The amount charged by a health care provider for services provided under this
11 section must be reasonable and consistent with the ordinary fees typically charged for that
12 service and may not be more than five percent above the ordinary fees typically charged for
13 that service. A health care provider who is required to terminate an encounter under (a)(3) of
14 this section may not charge for any services provided during the encounter.

15 (c) Notwithstanding any other provision of law, during the COVID-19 public health
16 disaster emergency, the commissioner of health and social services may waive any state law
17 or regulation if compliance would substantially prevent or impede the provision of health care
18 services under this section. Nothing in this subsection may be construed to abrogate authority
19 granted to the commissioner of health and social services under AS 18.15.390.

20 (d) In this section, "health care provider" has the meaning given in AS 18.15.395 and
21 includes a person that provides behavioral health care services.

22 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 DEPARTMENT OF REVENUE; CHARITABLE GAMING ONLINE TICKET
25 SALES. (a) Notwithstanding any other provision of law, for the duration of the novel
26 coronavirus disease (COVID-19) public health disaster emergency declared by the governor
27 under AS 26.23.020 on January 15, 2021, as extended by sec. 2 of this Act, the Department of
28 Revenue may permit online charitable gaming ticket sales specified in (b) of this section to
29 benefit charities in the state.

30 (b) Notwithstanding AS 05.15.640, a permittee, operator, or multiple-beneficiary
31 permittee may sell tickets online for a raffle or lottery, dog mushers' contest, derby, or type of

classic defined in AS 05.15.690. A permittee may draw winning tickets online.

(c) A ticket seller may not sell a ticket online unless and until the seller verifies that, at the time of sale, the purchaser is

(1) of legal purchasing age;

(2) physically present in the state; and

(3) not physically present within an option area where charitable gaming is prohibited.

(d) The Department of Revenue shall establish standards for online ticket sales to ensure compliance with charitable gaming laws, including

(1) age and location verification requirements reasonably designed to block online ticket sales to a person who is

(A) located outside the state; or

(B) not of legal purchasing age; and

(2) appropriate data security standards to prevent unauthorized online ticket sales to a person whose age and current location has not been verified.

* **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to read:

SCHOOL OPERATING FUNDS. (a) Notwithstanding AS 14.17.505(a), a school district may accumulate in a fiscal year an unreserved portion of its year-end fund balance in its school operating fund, as defined in regulation by the Department of Education and Early Development, in any amount.

(b) Notwithstanding AS 14.17.505(b), the unreserved portion of the year-end operating fund balance of a school district for the preceding fiscal year may not be used to reduce the state aid paid to that school district in the current fiscal year.

* **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to read:

WORKERS' COMPENSATION PRESUMPTION OF COMPENSABILITY. (a) Notwithstanding AS 23.30.121, 23.30.395(2), and 23.30.395(24), an employee who contracts the novel coronavirus disease (COVID-19) is conclusively presumed to have contracted an occupational disease arising out of and in the course of employment if, during the public health disaster emergency declared by the governor on January 15, 2021, as extended by sec.

2 of this Act, the employee

(1) is employed as a firefighter, emergency medical technician, paramedic, peace officer, or health care provider;

(2) is exposed to COVID-19 in the course of employment as a firefighter, emergency medical technician, paramedic, peace officer, or health care provider; and

(3) receives a

(A) COVID-19 diagnosis by a physician;

(B) presumptive positive COVID-19 test result; or

(C) laboratory-confirmed COVID-19 diagnosis.

(b) In this section,

(1) "emergency medical technician" has the meaning given in AS 18.08.200;

(2) "firefighter" means

(A) a person employed by a state or municipal fire department or who is a member of a volunteer fire department registered with the state fire marshal; or

(B) a person registered for purposes of workers' compensation with the state fire marshal as a member of a volunteer fire department;

(3) "health care provider" has the meaning given in AS 13.52.390;

(4) "paramedic" has the meaning given in AS 12.55.185;

(5) "peace officer" has the meaning given in AS 11.81.900.

* **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to read:

PROGRAM EXECUTION. (a) Notwithstanding AS 37.07.080(h), an appropriation item for the fiscal years ending June 30, 2021, and June 30, 2022, may not be increased based on receipt of additional federal receipts from

(1) H.R. 133 (P.L. 116-260 (Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA))) for the Department of Transportation and Public Facilities;

(2) sec. 9901, P.L. 117-2 (Subtitle M—Coronavirus State and Local Fiscal Recovery Funds, American Rescue Plan Act of 2021); or

(3) funds appropriated by the 117th Congress

(A) for infrastructure, jobs, or as part of the American Jobs Plan, as

proposed by the President of the United States, or a similar bill or plan; or

(B) related to novel coronavirus disease (COVID-19) or economic recovery.

(b) This section does not apply to appropriations and expenditures ratified under ch. 32, SLA 2020, or to appropriations that were increased based on compliance with AS 37.07.080(h) before the effective date of this section.

* **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CIVIL LIABILITY. (a) A state agency, or an employee or agent of the state acting in an official capacity for the state, is immune from civil and criminal liability for acts performed in good faith based on the authority granted by this Act.

(b) A person is immune from civil and criminal liability for acts performed in good faith at the request of a government agency acting on the authority granted by this Act. This immunity does not apply to an act or omission that constitutes gross negligence, reckless misconduct, or intentional misconduct.

* **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LICENSEE LIABILITY FOR CLIENT EXPOSURE TO COVID-19. (a) A licensee is immune from disciplinary action under this title for sickness, death, economic loss, and other damages suffered by a client of the licensee from exposure to novel coronavirus disease (COVID-19) in the course of the licensee's practice of the licensee's trade or profession.

(b) To qualify for immunity under this section, a licensee must have been practicing the licensee's trade or profession in substantial compliance with the applicable federal, state, and municipal laws and health mandates in effect at the time of the client's exposure to COVID-19.

(c) Immunity under this section does not apply to exposure to COVID-19 resulting from the gross negligence, recklessness, or intentional misconduct of a licensee. Substantial compliance by the licensee with applicable federal, state, or municipal public health mandates in effect at the time of the exposure precludes a finding of gross negligence under this subsection. If applicable federal, state, or municipal health mandates were not in effect at the time of the exposure, substantial compliance by the licensee with federal health guidelines or

1 health mandates issued by a municipality in effect at the time of exposure precludes a finding
2 of gross negligence under this subsection.

3 (d) Immunity under this section is in addition to any other immunity from liability
4 provided under state or federal law.

5 (e) In this section, "licensee" has the meaning given in AS 08.01.110.

6 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 BUSINESS AND EMPLOYEE LIABILITY FOR CUSTOMER EXPOSURE TO
9 COVID-19. (a) A person who engages in business and an employee of that person when
10 working in the business are immune from civil liability for sickness, death, economic loss,
11 and other damages suffered by a customer from exposure to novel coronavirus disease
12 (COVID-19) while patronizing the business.

13 (b) To qualify for immunity under this section, the person engaging in business must
14 have been operating the business in substantial compliance with the applicable federal, state,
15 and municipal laws and health mandates in effect at the time of the customer's exposure to
16 COVID-19.

17 (c) Immunity under this section does not apply to exposure to COVID-19 resulting
18 from the gross negligence, recklessness, or intentional misconduct of a person engaging in
19 business or an employee of that person.

20 (d) Immunity under this section is in addition to any other immunity from liability
21 provided under state or federal law.

22 (e) In an action to impose liability for damages resulting from exposure to
23 COVID-19, substantial compliance by a person who engages in business, or by an employee
24 of a person who engages in business when working in the business, with applicable federal,
25 state, or municipal public health mandates in effect at the time of the exposure precludes a
26 finding of gross negligence under (c) of this section. If applicable federal, state, or municipal
27 health mandates were not in effect at the time of the exposure, substantial compliance by a
28 person who engages in business, or by an employee of a person who engages in business
29 when working in the business, with federal health guidelines or health mandates issued by a
30 municipality in effect at the time of exposure precludes a finding of gross negligence under
31 (c) of this section.

(f) In this section, "business" has the meaning given in AS 18.35.399.

* **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to read:

ABORTION FUNDING. Money received under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Coronavirus Response and Relief Supplemental Appropriations Act (CRSSAA), or the American Rescue Plan Act may not be expended for an abortion that is not mandatory under AS 47.07.030(a). Money may only be expended for mandatory services required under 42 U.S.C. 1396 - 1396p (Title XIX of the Social Security Act) and for optional services offered by the state plan for medical assistance that has been approved by the United States Department of Health and Human Services.

* **Sec. 17.** The uncodified law of the State of Alaska enacted in sec. 37, ch. 10, SLA 2020, is amended to read:

Sec. 37. Sections [25, 26, 28,] 29 [,] and 31 of this Act are repealed March 11, 2021.

* **Sec. 18.** Sections 25, 26, and 28, ch. 10, SLA 2020, are repealed on the earlier of

(1) December 31, 2021; or

(2) the date the governor determines, under sec. 2 of this Act, that the public health disaster emergency declared by the governor under AS 26.23.020 on January 15, 2021, as extended by sec. 2 of this Act, no longer exists.

* **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. Sections 14 and 15 of this Act apply to novel coronavirus disease (COVID-19) exposure occurring on or after February 15, 2021.

* **Sec. 20.** (a) Sections 1 - 3, 5, 7 - 9, 11, and 13 of this Act are repealed on the earlier of

(1) December 31, 2021; or

(2) the date the governor determines, under sec. 2 of this Act, that the public health disaster emergency declared by the governor under AS 26.23.020 on January 15, 2021, as extended by sec. 2 of this Act, no longer exists.

(b) Sections 4, 14, and 15 of this Act are repealed June 30, 2023.

(c) Section 10 of this Act is repealed June 30, 2025.

* **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 RETROACTIVITY. (a) Except as provided in (b) of this section, this Act is
3 retroactive to February 14, 2021.

4 (b) Sections 2(a) and 11 of this Act are retroactive to November 15, 2020.

5 * **Sec. 22.** This Act takes effect immediately under AS 01.10.070(c).