

HOUSE BILL NO. 455

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE KOHRING

Introduced: 2/18/98

Referred: Resources, Health, Education and Social Services, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the functions of the Department of Environmental**
2 **Conservation; 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 is amended to read:

5 **Sec. 03.05.011. Powers and duties of commissioner of natural resources**

6 **[ENVIRONMENTAL CONSERVATION].** (a) To carry out the requirements of
7 this title, the commissioner [OF ENVIRONMENTAL CONSERVATION] may issue
8 orders, regulations, permits, quarantines, and embargoes relating to

9 (1) examination and inspection of premises containing products,
10 articles, and commodities carrying pests;

11 (2) establishment of quarantines for eradication of pests;

12 (3) establishment of standards and labeling requirements pertaining to
13 the sale of meat, fish, and poultry;

14 (4) tests and analyses that may be made and hearings that may be held

1 to determine whether the commissioner will issue a stop order or quarantine;

2 (5) cooperation with federal and other state agencies;

3 (6) regulation of fur farming; for purposes of this paragraph, "fur
4 farming" means the raising of and caring for animals for the purpose of marketing
5 their fur, or animals themselves for breeding stock;

6 (7) examination and inspection of meat, fish, and poultry advertised for
7 sale or sold to the public;

8 (8) enforcement of hazard analysis critical control point programs for
9 seafood processing that are developed in cooperation with appropriate industry
10 representatives or that are established by federal regulation and adopted by the
11 department;

12 (9) establishment of standards and conditions for the operation and
13 siting of aquatic farms and related hatcheries, including

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

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

17 (10) monitoring aquatic farms and aquatic farm products to ensure
18 compliance with this chapter and with the requirements of the national shellfish
19 sanitation program manual of operations published by the Food and Drug
20 Administration.

21 (b) The commissioner [OF ENVIRONMENTAL CONSERVATION] shall
22 regulate the farming of elk in a manner similar to the manner in which the
23 commissioner regulates domestic animals and livestock, to the extent that is
24 appropriate.

25 * **Sec. 2.** AS 03.05.025 is amended to read:

26 **Sec. 03.05.025. Seafood processing permits and plans of operation.** (a) A
27 person may not operate a seafood processing establishment or seafood processing
28 vessel without a seafood processing permit issued by the department [DEPARTMENT
29 OF ENVIRONMENTAL CONSERVATION]. A seafood processing permit issued
30 under this section must be renewed annually.

31 (b) A person may not operate a seafood processing establishment or a seafood

1 processing vessel without a written hazard analysis critical control point plan that
 2 explains the procedures used at each critical control point in the operation of the
 3 seafood processing establishment or the seafood processing vessel. The **department**
 4 [DEPARTMENT OF ENVIRONMENTAL CONSERVATION] may review, and
 5 comment on, the completeness of the hazard analysis critical control point plan
 6 prepared for a seafood processing establishment or a seafood processing vessel;
 7 however, the department may not require annual submission of the plan unless a
 8 change in operation, product, or process necessitates a change in the plan. In this
 9 subsection, "critical control point" means a point in the seafood production process
 10 where a high probability exists that improper controls may cause, allow, or contribute
 11 to a health hazard in the final seafood product.

12 * **Sec. 3.** AS 03.05.026(c) is amended to read:

13 (c) The commissioner [OF ENVIRONMENTAL CONSERVATION] shall
 14 authorize the use of an "inspection" seal for display on seafood products processed by
 15 a person who, at the time the products are processed, holds a permit to operate issued
 16 under AS 03.05.025 [,] and who complies with regulations adopted under
 17 AS 03.05.025.

18 * **Sec. 4.** AS 03.05.026(d) is amended to read:

19 (d) The commissioner [OF ENVIRONMENTAL CONSERVATION], after
 20 consultation with the Alaska Seafood Marketing Institute, shall develop product
 21 specifications and standards for the use of the "premium quality" seal on Alaska
 22 seafood products. The commissioner shall authorize a seafood processor to display a
 23 "premium quality" seal on products that qualify for the seal if the processor meets the
 24 requirements of regulations adopted under this section and AS 03.05.025 [,] and has
 25 been issued a permit to operate under AS 03.05.025.

26 * **Sec. 5.** AS 03.05.026(e) is amended to read:

27 (e) A person may not display a seal under this section without authorization
 28 from the commissioner [OF ENVIRONMENTAL CONSERVATION].

29 * **Sec. 6.** AS 03.05.085 is amended to read:

30 **Sec. 03.05.085. Seafood processing research.** The commissioner [OF
 31 ENVIRONMENTAL CONSERVATION] may conduct studies, research, experiments,

1 and demonstrations, directly or through grants to or contracts with public or private
2 agencies, organizations, or individuals,

3 (1) to improve sanitation practices in the processing of fish and
4 fisheries products; and

5 (2) to develop improved techniques for surveillance and inspection
6 activities under this chapter.

7 * **Sec. 7.** AS 03.05.090 is amended to read:

8 **Sec. 03.05.090. Penalty for violation.** A person who violates a provision of
9 this chapter or a regulation, order, or quarantine made under authority of this chapter,
10 or violates a provision of a permit issued under this chapter, or sells seeds failing to
11 meet the labeling requirements, standards, and tests provided for by regulation of the
12 commissioner [OF NATURAL RESOURCES OR THE COMMISSIONER OF
13 ENVIRONMENTAL CONSERVATION] is guilty of a class A misdemeanor for each
14 offense.

15 * **Sec. 8.** AS 03.15.020 is amended to read:

16 **Sec. 03.15.020. Purpose of appropriations.** Appropriations available to the
17 department [DEPARTMENT OF NATURAL RESOURCES OR TO THE
18 DEPARTMENT OF ENVIRONMENTAL CONSERVATION] may be used

19 (1) to buy materials or equipment needed to control agricultural pests
20 when the persons directly affected cannot bear the total cost and the pest is one that
21 is or may become a public problem;

22 (2) to charter or hire on a custom basis equipment and operators
23 necessary for pest-control work when the persons directly affected cannot provide the
24 service and the pest is one that is or may become a public problem;

25 (3) to match federal indemnity payments to livestock owners for
26 livestock slaughtered under any cooperating livestock health program;

27 (4) to maintain a supply of vaccines, serums, and chemicals needed for
28 emergency pest control, that are not commercially available in the state.

29 * **Sec. 9.** AS 03.45.050 is amended to read:

30 **Sec. 03.45.050. Inspection, quarantine, or destruction of livestock.**

31 Domestic animals and poultry in the state are subject to inspection and test for all

1 diseases [,] and to quarantine, slaughter, or destruction when found to be infected with
 2 or suffering from any contagious disease by an inspector of the Animal Disease
 3 Eradication Branch, United States Department of Agriculture, or by a qualified
 4 inspector authorized by the commissioner [OF ENVIRONMENTAL
 5 CONSERVATION] to make inspections and tests of animals. Inspections and tests
 6 of animals kept for dairy purposes by dairies that offer their products to the public in
 7 the state [,] and inspection and tests of animals kept for private dairy purposes **if** [,
 8 PROVIDED] they are readily accessible [,] shall be made at least once every year, if
 9 possible, and all animals not readily accessible for inspection shall be inspected before
 10 they are brought into a community where other animals used for dairy purposes are
 11 kept. The commissioner may make arrangements with the Animal Disease Eradication
 12 Branch, United States Department of Agriculture, for these inspections and tests. In
 13 the event that arrangements cannot be made with the Animal Disease Eradication
 14 Branch, the commissioner may employ inspectors. Inspections shall be carried on in
 15 cooperation with the Animal Disease Eradication Branch and in accordance with its
 16 regulations.

17 * **Sec. 10.** AS 03.45.060(c) is amended to read:

18 (c) If the inspector determines that the animal should be slaughtered or
 19 destroyed, the inspector may condemn and have the animal slaughtered or destroyed
 20 in the manner the inspector determines. Reimbursement may be allowed for the
 21 slaughter or destruction of dairy cattle only. In such case, the inspector and the owner
 22 shall appraise the dairy cattle at a fair valuation without regard to the disease. Where
 23 they cannot agree as to the value of the animal, the owner and inspector may select
 24 a disinterested third party to aid in the appraisal. Where they cannot agree on the
 25 selection of a third party, a peace officer in the judicial district where the inspection
 26 is made may designate a third disinterested party to act with the inspector and owner
 27 to determine the value of the animal. The amount realized from the sale of the carcass
 28 of the slaughtered animal shall be paid to the owner of the animal, and the inspector
 29 shall certify to the commissioner [OF ENVIRONMENTAL CONSERVATION] the
 30 name and address of the owner, the date the animal was condemned, the appraised
 31 value of the animal, together with the net sum realized from the salvage **of the animal**

1 [THEREOF,] or **that** [WHICH] could have been realized.

2 * **Sec. 11.** AS 03.45.070 is amended to read:

3 **Sec. 03.45.070. Compensation to owners of dairy cattle destroyed; records**
 4 **to be kept.** The commissioner [OF ENVIRONMENTAL CONSERVATION] may
 5 enter into cooperative agreements with the United States Department of Agriculture for
 6 controlling diseases among dairy cattle and may match federal indemnity payments for
 7 livestock slaughtered thereunder [,] from any funds available. The commissioner shall
 8 keep a record of all payments made, with a copy of the inspector's certification of
 9 appraised value and salvage value.

10 * **Sec. 12.** AS 03.45.080 is amended to read:

11 **Sec. 03.45.080. Record and payment of value of destroyed dairy cattle.**
 12 The Department of Administration shall keep a record of the appraised value of all
 13 dairy cattle slaughtered or destroyed and of the salvage value **of the dairy cattle**
 14 [THEREOF], stating the date when the animal was slaughtered or destroyed and the
 15 name of the inspector who ordered the animal slaughtered or destroyed. The
 16 Department of Administration, with the approval of the **department** [DEPARTMENT
 17 OF ENVIRONMENTAL CONSERVATION], shall pay the owner of the animal
 18 slaughtered or destroyed two-thirds of the difference between the appraised value and
 19 the salvage value of the animal slaughtered or destroyed. The appraised valuation of
 20 each slaughtered animal may not exceed \$175 in the first judicial district and not more
 21 than \$200 in the second and third judicial districts and not more than \$250 in the
 22 fourth judicial district. Payment may not be made if at the time of inspection, test, or
 23 destruction, the animal was upon the premises of any person to which it had been sold,
 24 shipped, or delivered for the purpose of being slaughtered. Payment may not be made
 25 unless the owner has complied with all lawful quarantine regulations.

26 * **Sec. 13.** AS 03.53.010(b) is amended to read:

27 (b) The following persons are authorized to enforce the provisions of this
 28 section:

- 29 (1) the commissioner [OF ENVIRONMENTAL CONSERVATION];
 30 (2) a state employee authorized by the commissioner [OF
 31 ENVIRONMENTAL CONSERVATION].

1 * **Sec. 14.** AS 08.13.210 is amended to read:

2 **Sec. 08.13.210. Health and sanitary conditions.** Health and sanitary
3 conditions in shops and schools of barbering, hairdressing, and cosmetology shall be
4 supervised by the Department of **Health and Social Services** [ENVIRONMENTAL
5 CONSERVATION].

6 * **Sec. 15.** AS 16.10.240(b) is amended to read:

7 (b) Notwithstanding (a) of this section, live dungeness crab, species *Cancer*
8 *magister*, may be taken, shipped, transported, or sent from the state by means of
9 surface transportation if the crab are taken at a time and location in the state for which
10 the Department of **Natural Resources** [ENVIRONMENTAL CONSERVATION] does
11 not require seafood processors to test dungeness crab for the presence of marine toxins.

12 * **Sec. 16.** AS 16.40.050(d) is amended to read:

13 (d) Elk imported, exported, or possessed for the purpose of elk farming are
14 subject to the provisions of AS 03 and regulations adopted under AS 03 by the
15 commissioner of natural resources [OR THE COMMISSIONER OF
16 ENVIRONMENTAL CONSERVATION] for domestic animals and livestock [,] to the
17 extent they are made applicable to elk by the **commissioner of natural resources**
18 [COMMISSIONERS].

19 * **Sec. 17.** AS 17.07.200(1) is amended to read:

20 (1) "department" means the Department of **Health and Social Services**
21 [ENVIRONMENTAL CONSERVATION];

22 * **Sec. 18.** AS 17.20.072 is amended to read:

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

26 * **Sec. 19.** AS 17.20.152 is amended to read:

27 **Sec. 17.20.152. Enforcement authority.** The commissioner [OF
28 ENVIRONMENTAL CONSERVATION] is responsible for enforcing **AS 17.20.140 -**
29 **17.20.152** [AS 17.20.140 - 17.20.155,] and may delegate that authority as appropriate.
30 This section does not limit the authority of peace officers.

31 * **Sec. 20.** AS 17.20.180 is amended to read:

1 **Sec. 17.20.180. Regulations.** The **department** [DEPARTMENT OF
2 ENVIRONMENTAL CONSERVATION AND THE DEPARTMENT OF HEALTH
3 AND SOCIAL SERVICES] may adopt regulations for the efficient enforcement of
4 [THEIR RESPECTIVE PORTIONS OF] this chapter. **The** [EACH] department may
5 make the regulations conform, in so far as practicable, with those adopted under the
6 federal act.

7 * **Sec. 21.** AS 17.20.200(a) is amended to read:

8 (a) The commissioner [OF ENVIRONMENTAL CONSERVATION] or an
9 agent shall have free access at reasonable hours to a factory, warehouse, or
10 establishment in which foods, [OR] cosmetics, **drugs, or devices** are manufactured,
11 processed, packed, or held for introduction into commerce, or to enter a vehicle being
12 used to transport or hold these foods, [OR] cosmetics, **drugs, or devices** in commerce,
13 in order to

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

17 (2) secure samples or specimens of a food, [OR] cosmetic, **drug, or**
18 **device** after paying or offering to pay for the sample.

19 * **Sec. 22.** AS 17.20.200(b) is amended to read:

20 (b) The commissioner [OF ENVIRONMENTAL CONSERVATION] shall
21 make or have made examinations of samples secured under this section to determine
22 whether or not a provision of the commissioner's respective portions of this chapter is
23 being violated.

24 * **Sec. 23.** AS 17.20.210 is amended to read:

25 **Sec. 17.20.210. Reimbursement for expenses.** The **department**
26 [DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE
27 DEPARTMENT OF HEALTH AND SOCIAL SERVICES] may make expenditures
28 from money appropriated for the administration of [THEIR RESPECTIVE PORTIONS
29 OF] this chapter to reimburse authorized employees or agents for amounts expended
30 without receipt, covering purchases or services obtained in securing evidence of a
31 violation of [THEIR RESPECTIVE PORTIONS OF] this chapter, upon vouchers

1 certified by the disbursing and certifying officer [OFFICERS] of the [APPROPRIATE]
 2 department. Disbursement may [SHALL] not exceed \$800 in any biennium.

3 * **Sec. 24.** AS 17.20.220(a) is amended to read:

4 (a) The commissioner [OF ENVIRONMENTAL CONSERVATION AND THE
 5 COMMISSIONER OF HEALTH AND SOCIAL SERVICES] may have published
 6 from time to time reports summarizing judgments, decrees, and court orders that
 7 [WHICH] have been rendered under [THEIR RESPECTIVE PORTIONS OF] this
 8 chapter, including the nature of the charge and the disposition of it.

9 * **Sec. 25.** AS 17.20.220(b) is amended to read:

10 (b) The commissioner [OF ENVIRONMENTAL CONSERVATION] may have
 11 disseminated information regarding food, [AND] cosmetics, drugs, and devices that
 12 [WHICH] the commissioner considers necessary in the interest of public health and the
 13 protection of the consumer against fraud. This section does not prohibit the
 14 commissioner from collecting, reporting, and illustrating the results of the
 15 commissioner's investigations.

16 * **Sec. 26.** AS 17.20.230(a) is amended to read:

17 (a) Whenever the commissioner [OF ENVIRONMENTAL CONSERVATION]
 18 finds or has probable cause to believe that a food, [OR] cosmetic, or drug is
 19 adulterated, or a food, cosmetic, drug, or device is so misbranded as to be dangerous
 20 or fraudulent within the meaning of this chapter, the commissioner shall affix to it a
 21 tag or other appropriate marking, giving notice that it is or is suspected of being
 22 adulterated or misbranded and has been detained or embargoed, and warning all
 23 persons not to remove or dispose of it by sale or otherwise until permission for
 24 removal or disposal is given by the commissioner or the court. A person may not
 25 remove or dispose of a detained or embargoed article by sale or otherwise without this
 26 permission.

27 * **Sec. 27.** AS 17.20.240 is amended to read:

28 **Sec. 17.20.240. Petition for libel for condemnation.** When an article
 29 detained or embargoed under AS 17.20.230 has been found by the commissioner [OF
 30 ENVIRONMENTAL CONSERVATION OR THE COMMISSIONER OF HEALTH
 31 AND SOCIAL SERVICES, AS THE CASE MAY BE,] to be adulterated or

1 misbranded, the [APPROPRIATE] commissioner shall petition the superior court for
2 a libel for condemnation of the article. When the [THAT] commissioner finds that a
3 detained or embargoed article is not adulterated or misbranded, the commissioner shall
4 remove the tag or other marking.

5 * **Sec. 28.** AS 17.20.250 is amended to read:

6 **Sec. 17.20.250. Destruction of adulterated or misbranded goods.** If the
7 superior court finds that a detained or embargoed article is adulterated or misbranded,
8 the article [IT] shall, after entry of the decree, be destroyed at the expense of the
9 claimant, under the supervision of the commissioner [OF ENVIRONMENTAL
10 CONSERVATION OR THE COMMISSIONER OF HEALTH AND SOCIAL
11 SERVICES, AS THE CASE MAY BE]. Court costs and fees and storage and other
12 proper expenses shall be taxed against the claimant of the article.

13 * **Sec. 29.** AS 17.20.260 is amended to read:

14 **Sec. 17.20.260. Exemption from destruction.** When the adulteration or
15 misbranding can be corrected by proper labeling or processing of the article, and after
16 entry of the decree, and after costs, fees, and expenses have been paid and a good and
17 sufficient bond, conditioned that the article will be properly labeled or processed, has
18 been executed, the court may order that the article be delivered to the claimant for
19 labeling or processing under the supervision of the commissioner [OF
20 ENVIRONMENTAL CONSERVATION OR THE COMMISSIONER OF HEALTH
21 AND SOCIAL SERVICES, AS THE CASE MAY BE]. The claimant shall pay the
22 expense of supervision. The bond shall be returned to the claimant of the article on
23 representation to the court by the [APPROPRIATE] commissioner that the article is
24 no longer in violation of this chapter [,] and that the expenses of supervision have been
25 paid.

26 * **Sec. 30.** AS 17.20.270 is amended to read:

27 **Sec. 17.20.270. Immediate destruction of contaminated food.** Meat,
28 seafood, poultry, vegetable, fruit, or other perishable article in any room, building,
29 vehicle of transportation, or other structure that [WHICH] is unsound, or contains a
30 filthy, decomposed, or putrid substance, or a substance that may be poisonous or
31 deleterious to health or otherwise unsafe, is a nuisance. Whenever the commissioner

1 [OF ENVIRONMENTAL CONSERVATION] finds such an article, the commissioner
2 shall immediately condemn or destroy it or in any other manner render it unsalable as
3 human food.

4 * **Sec. 31.** AS 17.20.280 is amended to read:

5 **Sec. 17.20.280. Injunction proceedings.** The commissioner [OF
6 ENVIRONMENTAL CONSERVATION AND THE COMMISSIONER OF HEALTH
7 AND SOCIAL SERVICES] may apply to the superior court for, and the court has
8 jurisdiction to grant, a temporary or permanent injunction restraining a person from
9 violating [THEIR RESPECTIVE PORTIONS OF] AS 17.20.290.

10 * **Sec. 32.** AS 17.20.290(c) is amended to read:

11 (c) The commissioner [OF HEALTH AND SOCIAL SERVICES] or a
12 designee of the commissioner is responsible for enforcing the provisions of
13 [PARAGRAPHS (a)(1), (2), (3), (4), (6), (7), (8), (9), AND (10) OF] this section [, IF
14 THE SUBJECT OF THE PROHIBITED ACT INVOLVES DRUGS OR DEVICES,
15 AND THE PROVISIONS OF PARAGRAPHS (a)(5), (11), AND (13) OF THIS
16 SECTION]. This subsection does not limit the authority of peace officers.

17 * **Sec. 33.** AS 17.20.345(c) is amended to read:

18 (c) A person who donates to a food bank salmon from a hatchery that operates
19 under a permit issued under AS 16.10.400 - 16.10.470 is immune from liability as
20 provided in this section if the salmon is apparently fit for human consumption at the
21 time of its donation, even if the hatchery does not have a permit issued [BY THE
22 DEPARTMENT OF ENVIRONMENTAL CONSERVATION] under this chapter,
23 AS 03.05, or other statute to process fisheries products for human consumption.

24 * **Sec. 34.** AS 17.20.350 is amended to read:

25 **Sec. 17.20.350. Report of minor violations.** Nothing in this chapter requires
26 [EITHER] the commissioner [OF ENVIRONMENTAL CONSERVATION OR THE
27 COMMISSIONER OF HEALTH AND SOCIAL SERVICES, AS THE CASE MAY
28 BE,] to report minor violations of [THEIR RESPECTIVE PORTIONS OF] this chapter
29 for prosecution, or for the institution of libel or injunction proceedings, when the
30 [THAT] commissioner believes that the public interest will be adequately served by
31 a suitable written notice or warning.

1 * **Sec. 35.** AS 17.20.360 is amended to read:

2 **Sec. 17.20.360. Hearing before report of criminal violation.** The attorney
3 general, to whom the commissioner [OF ENVIRONMENTAL CONSERVATION OR
4 THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES, AS THE CASE
5 MAY BE,] reports a violation of this chapter, shall institute appropriate proceedings
6 in the superior court without delay and prosecute them in the manner required by law.
7 Before a violation of this chapter is reported to the attorney general, the person against
8 whom the proceeding is contemplated shall be given appropriate notice and an
9 opportunity to respond to the [APPROPRIATE] commissioner, orally or in writing, in
10 person or by attorney, with regard to the contemplated proceeding.

11 * **Sec. 36.** AS 17.20.370 is amended by adding new paragraphs to read:

12 (15) "commissioner" means the commissioner of health and social
13 services;

14 (16) "department" means the Department of Health and Social Services.

15 * **Sec. 37.** AS 18.35.090(1) is amended to read:

16 (1) "department" means the Department of **Health and Social Services**
17 [ENVIRONMENTAL CONSERVATION];

18 * **Sec. 38.** AS 18.35.230(1) is amended to read:

19 (1) "department" means the Department of **Health and Social Services**
20 [ENVIRONMENTAL CONSERVATION];

21 * **Sec. 39.** AS 18.35.365 is amended to read:

22 **Sec. 18.35.365. Definitions.** In AS 18.35.300 - 18.35.365,

23 (1) "commissioner" means commissioner of **health and social services**
24 [ENVIRONMENTAL CONSERVATION];

25 (2) "department" means the Department of **Health and Social Services**
26 [ENVIRONMENTAL CONSERVATION].

27 * **Sec. 40.** AS 44.29.020 is amended by adding a new subsection to read:

28 (c) The Department of Health and Social Services may regulate the quality and
29 purity of commercially compressed air sold for human respiration and may adopt
30 regulations to implement this subsection.

31 * **Sec. 41.** AS 44.29.022(a) is amended to read:

1 (a) The commissioner of health and social services may establish by regulation
 2 a schedule of reasonable fees for services provided by the Department of Health and
 3 Social Services under AS 44.29.020(a)(1) - (8), AS 46.03.015, AS 47.10, AS 47.12,
 4 AS 47.14, AS 47.30.655 - 47.30.910, and AS 47.80.100 - 47.80.170. The fee
 5 established for a service may not exceed the actual cost of providing the service. The
 6 commissioner may define or establish the "actual cost of providing a service" by
 7 regulation. The Department of Health and Social Services shall charge and collect the
 8 fees established under this subsection. The department may waive collection of a fee
 9 upon a finding that collection is not economically feasible or in the public interest.

10 * **Sec. 42.** AS 44.46.020 is amended by adding a new subsection to read:

11 (b) Notwithstanding any other provision of law or any other authority given
 12 to the Department of Environmental Conservation, the department may not establish
 13 minimum drinking water standards or monitor public water systems. In this
 14 subsection, "monitor" and "public water system" have the meanings given in
 15 AS 46.03.015.

16 * **Sec. 43.** AS 44.46.025(a) is amended to read:

17 (a) The Department of Environmental Conservation may adopt regulations that
 18 prescribe reasonable fees, and establish procedures for the collection of the fees, to
 19 cover the applicable direct costs, not including travel, of inspections, permit
 20 preparation and administration, plan review and approval, and other services provided
 21 by the department relating to

22 (1) [AGRICULTURE AND ANIMALS UNDER AS 03.05; FOOD,
 23 DRUGS, AND COSMETICS UNDER AS 17.20; AND PUBLIC
 24 ACCOMMODATIONS AND FACILITIES UNDER AS 18.35;

25 (2)] certificates of inspection for motor vehicles under AS 46.14.400
 26 or 46.14.510;

27 (2) [(3)] sewerage system and treatment works and wastewater disposal
 28 systems, and drinking water systems, under AS 46.03.720;

29 (3) [(4)] REPEALED

30 (5) REPEALED

31 (6)] water and wastewater operator training under AS 46.30;

1 (4) [(7)] control of solid waste facilities under AS 46.03.020(10) and
2 46.03.100;

3 (5) [(8)] certification of laboratories conducting environmental analyses
4 of [PUBLIC DRINKING WATER SYSTEMS OR OF] oil or hazardous substances [,]
5 or conducting other analyses required by the department;

6 (6) [(9)] certification of federal permits or authorizations under 33
7 U.S.C. 1341 (sec. 401, Clean Water Act).

8 * **Sec. 44.** AS 44.62.330(a)(27) is amended to read:

9 (27) Department of Health and Social Services [AND DEPARTMENT
10 OF ENVIRONMENTAL CONSERVATION] under AS 17.20 (Alaska Food, Drug, and
11 Cosmetic Act), and Department of Commerce and Economic Development in
12 connection with the licensing of embalmers and funeral directors under AS 08.42;

13 * **Sec. 45.** AS 44.62.330(a)(30) is amended to read:

14 (30) Department of **Health and Social Services** [ENVIRONMENTAL
15 CONSERVATION], under AS 18.35.010 - 18.35.090, concerning the regulation of
16 tourist and trailer camps, motor courts, and motels;

17 * **Sec. 46.** AS 46.03 is amended by adding a new section to article 1 to read:

18 **Sec. 46.03.015. Drinking water.** (a) The Department of Health and Social
19 Services

20 (1) shall monitor public water systems in the state;

21 (2) shall establish by regulation monitoring, sampling, and reporting
22 requirements for persons with public water systems;

23 (3) shall establish by regulation minimum drinking water standards for
24 the state;

25 (4) may certify laboratories conducting analyses of public drinking
26 water systems or conducting other analyses required by the Department of Health and
27 Social Services;

28 (5) may establish by regulation maintenance standards for public water
29 systems; and

30 (6) may enforce the provisions of AS 46.03.800.

31 (b) In this subsection,

1 (1) "monitor" includes sampling, analyzing, investigating, and enforcing
2 standards with regard to the system;

3 (2) "public water system" means a structural arrangement that is made
4 by a person and that provides water for human consumption, and includes systems that
5 provide water to more than one residential dwelling unit, to housing subdivisions, or
6 to a factory, office building, restaurant, school, or other similar facility, but does not
7 include a system that only serves a single-family residence.

8 * **Sec. 47.** AS 46.03.020(10) is amended to read:

9 (10) adopt regulations necessary to carry out [EFFECTUATE] the
10 purposes of this chapter, except AS 46.03.015, including, by way of example and not
11 limitation, regulations providing for

12 (A) control, prevention, and abatement of air, water, or land or
13 subsurface land pollution;

14 (B) safeguard standards for petroleum and natural gas pipeline
15 construction, operation, modification, or alteration;

16 (C) protection of public water supplies by establishing
17 [MINIMUM DRINKING WATER] standards [, AND STANDARDS] for the
18 construction, improvement, and maintenance of public water supply systems;

19 (D) collection and disposal of sewage and industrial waste;

20 (E) collection and disposal of garbage, refuse, and other
21 discarded solid materials from industrial, commercial, agricultural, and
22 community activities or operations;

23 (F) [REPEALED

24 (G)] control of pesticides;

25 (G) [(H)] other purposes as may be required for the
26 implementation of the policy declared in AS 46.03.010;

27 (H) [(I)] handling, transportation, treatment, storage, and
28 disposal of hazardous wastes;

29 * **Sec. 48.** AS 46.03.760(a) is amended to read:

30 (a) A person who violates or causes or permits to be violated a provision of
31 this chapter other than AS 46.03.250 - 46.03.314, or a provision of AS 46.04 or

1 AS 46.09, or a regulation, a lawful order of the department, **a lawful order of the**
 2 **Department of Health and Social Services under AS 46.03.015 or 46.03.800,** or a
 3 permit, approval, or acceptance, or term or condition of a permit, approval, or
 4 acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09 is liable, in a civil
 5 action, to the state for a sum to be assessed by the court of not less than \$500 nor
 6 more than \$100,000 for the initial violation, nor more than \$5,000 for each day after
 7 that on which the violation continues, and that shall reflect, when applicable,

8 (1) reasonable compensation in the nature of liquidated damages for
 9 any adverse environmental effects caused by the violation, which shall be determined
 10 by the court according to the toxicity, degradability, and dispersal characteristics of the
 11 substance discharged, the sensitivity of the receiving environment, and the degree to
 12 which the discharge degrades existing environmental quality;

13 (2) reasonable costs incurred by the state in detection, investigation, and
 14 attempted correction of the violation;

15 (3) the economic savings realized by the person in not complying with
 16 the requirement for which a violation is charged.

17 * **Sec. 49.** AS 46.03.760(c) is amended to read:

18 (c) The court, upon motion of the department, **or the Department of Health**
 19 **and Social Services with regard to AS 46.03.015 or 46.03.800,** or upon its own
 20 motion, may defer assessment of all or part of that portion of the sum imposed upon
 21 a person under (a)(3) of this section conditioned upon the person complying, within
 22 the shortest feasible time, with the requirement for which a violation is shown.

23 * **Sec. 50.** AS 46.03.760(e) is amended to read:

24 (e) A person who violates or causes or permits to be violated a provision of
 25 AS 46.03.250 - 46.03.314, AS 46.14, or a regulation, a lawful order of the department,
 26 **a lawful order of the Department of Health and Social Services under**
 27 **AS 46.03.015 or 46.03.800,** or a permit, approval, or acceptance, or term or condition
 28 of a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314 or
 29 AS 46.14 is liable, in a civil action, to the state for a sum to be assessed by the court
 30 of not less than \$500 nor more than \$100,000 for the initial violation, nor more than
 31 \$10,000 for each day after that on which the violation continues, and that shall reflect,

1 when applicable,

2 (1) reasonable compensation in the nature of liquidated damages for
 3 any adverse environmental effects caused by the violation, **which** [THAT] shall be
 4 determined by the court according to the toxicity, degradability, and dispersal
 5 characteristics of the substance discharged, the sensitivity of the receiving environment,
 6 and the degree to which the discharge degrades existing environmental quality; for a
 7 violation relating to AS 46.14, the court, in making its determination under this
 8 paragraph, shall also consider the degree to which the discharge causes harm to
 9 persons or property; this paragraph may not be construed to limit the right of parties
 10 other than the state to recover for personal injuries or damage to their property;

11 (2) reasonable costs incurred by the state in detection, investigation, and
 12 attempted correction of the violation;

13 (3) the economic savings realized by the person in not complying with
 14 the requirement for which a violation is charged; and

15 (4) the need for an enhanced civil penalty to deter future
 16 noncompliance.

17 * **Sec. 51.** AS 46.03.765 is amended to read:

18 **Sec. 46.03.765. Injunctions.** The superior court has jurisdiction to enjoin a
 19 violation of this chapter, AS 46.04, AS 46.09, AS 46.14, or of a regulation, a lawful
 20 order of the department, **a lawful order of the Department of Health and Social**
 21 **Services under AS 46.03.015 or 46.03.800,** or **a** permit, approval, or acceptance, or
 22 term or condition of a permit, approval, or acceptance issued under this chapter,
 23 AS 46.04, AS 46.09, or AS 46.14. In actions brought under this section, temporary
 24 or preliminary relief may be obtained upon a showing of an imminent threat of
 25 continued violation, and probable success on the merits, without the necessity of
 26 demonstrating physical irreparable harm. The balance of equities in actions under this
 27 section may affect the timing of compliance, but not the necessity of compliance
 28 within a reasonable period of time.

29 * **Sec. 52.** AS 46.03.780(a) is amended to read:

30 (a) A person who violates a provision of this chapter, AS 46.04, AS 46.09, or
 31 AS 46.14, or who fails to perform a duty imposed by this chapter, AS 46.04,

1 AS 46.09, or AS 46.14, or violates or disregards an order, permit, or other
 2 determination of the department, **or of the Department of Health and Social Services**
 3 **under AS 46.03.015 or 46.03.800**, made under the provisions of this chapter,
 4 AS 46.04, AS 46.09, or AS 46.14, respectively, and thereby causes the death of fish,
 5 animals, or vegetation or otherwise injures or degrades the environment of the state is
 6 liable to the state for damages.

7 * **Sec. 53.** AS 46.03.790(a) is amended to read:

8 (a) Except as provided in (d) of this section, a person is guilty of a class A
 9 misdemeanor if the person with criminal negligence

10 (1) violates a provision of this chapter, AS 46.04, AS 46.09, or
 11 AS 46.14, a regulation or order of the department, **a regulation or order of the**
 12 **Department of Health and Social Services under AS 46.03.015 or 46.03.800**, or a
 13 permit, approval, or acceptance, or a term or condition of a permit, approval, or
 14 acceptance issued under this chapter, AS 46.04, AS 46.09, or AS 46.14;

15 (2) fails to provide information or provides false information required
 16 by AS 46.03.755, AS 46.04, or AS 46.09, [OR] by a regulation adopted by the
 17 department under AS 46.03.755, AS 46.04, or AS 46.09, **or by a regulation adopted**
 18 **by the Department of Health and Social Services under AS 46.03.015 or 46.03.800;**

19 (3) makes a false statement or representation in an application, label,
 20 manifest, record, report, permit, or other document filed, maintained, or used for
 21 purposes of compliance with AS 46.03.250 - 46.03.314 applicable to hazardous wastes
 22 or a regulation adopted by the department under AS 46.03.250 - 46.03.314;

23 (4) makes a false statement, representation, or certification in an
 24 application, notice, record, report, permit, or other document filed, maintained, or used
 25 for purposes of compliance with AS 46.14 or a regulation adopted under AS 46.14; or

26 (5) renders inaccurate a monitoring device or method required to be
 27 maintained under AS 46.14, a regulation adopted under AS 46.14, or a permit issued
 28 by the department or a local air quality control program under AS 46.14.

29 * **Sec. 54.** AS 46.03.820 is amended to read:

30 **Sec. 46.03.820. Emergency powers.** (a) When the department, **or the**
 31 **Department of Health and Social Services under AS 46.03.015 or 46.03.800**, finds,

1 after investigation, that a person is causing, engaging in, or maintaining a condition or
2 activity that, in the judgment of its commissioner presents an imminent or present
3 danger to the health or welfare of the people of the state or would result in or be likely
4 to result in irreversible or irreparable damage to the natural resources or environment,
5 and it appears to be prejudicial to the interests of the people of the state to delay action
6 until an opportunity for a hearing can be provided, the department, **or the Department**
7 **of Health and Social Services with regard to AS 46.03.015 or 46.03.800**, may,
8 without prior hearing, order that person by notice to discontinue, abate, or alleviate the
9 condition or activity. The proscribed condition or activity shall be immediately
10 discontinued, abated, or alleviated.

11 (b) Upon receipt of an order of **a** [THE] department made under (a) of this
12 section, the person affected has the right to be heard and to present proof to the
13 department that the condition or activity does not constitute an actual or potential
14 source of irreversible or irreparable damage to the natural resources or environment
15 of the state, or that the order may constitute a substantial private hardship.

16 (c) In the [COMMISSIONER'S] discretion **of the department issuing an**
17 **order under (a) of this section** or upon application made by the recipient of an order
18 within 15 days of receipt of the order, the department **issuing the order** shall schedule
19 a hearing at the earliest possible time. The hearing shall be scheduled within five days
20 of the receipt of the application. The submission of an application or the scheduling
21 of a hearing does not stay the operation of the department's order issued under (a) of
22 this section.

23 (d) After a hearing, the department **issuing the order** may affirm, modify, or
24 set aside the order. An order affirmed, modified, or set aside after hearing is subject
25 to judicial review as provided in AS 44.62.560. The order is not stayed pending
26 judicial review unless the commissioner **of the department issuing the order** so
27 directs. If an order is not immediately complied with, the attorney general, upon
28 request of the commissioner **of the department issuing the order**, shall seek
29 enforcement of the order.

30 (e) The department, **or the Department of Health and Social Services under**
31 **AS 46.03.015 or 46.03.800**, may adopt additional regulations prescribing the procedure

1 to be followed in the issuance of emergency orders.

2 * **Sec. 55.** AS 46.03.850(a) is amended to read:

3 (a) When, in the opinion of the department, **or the Department of Health and**
4 **Social Services with regard to AS 46.03.015 or 46.03.800,** a person is violating or
5 is about to violate a provision of this chapter, AS 46.04, or AS 46.14, [OR] a
6 regulation or lawful order of the department, **a regulation or lawful order of the**
7 **Department of Health and Social Services under AS 46.03.015 or 46.03.800,** [OR]
8 a permit or certificate, [OR] a term or condition of a permit or certificate issued by the
9 department under this chapter, AS 46.04, AS 46.14, **or a term or condition of a**
10 **permit or certificate issued by the Department of Health and Social Services**
11 **under AS 46.03.015 or 46.03.800,** the **responsible** department may notify the person
12 of its determination by personal service or certified mail. The determination and
13 notice do not constitute an order under AS 46.03.820.

14 * **Sec. 56.** AS 46.03.850(b) is amended to read:

15 (b) The recipient of the determination shall file with the department **that made**
16 **the determination under (a) of this section,** within the time period specified in the
17 notice, a report stating what measures have been and are being taken, or are proposed
18 to be taken, to correct or control the conditions outlined in the notice.

19 * **Sec. 57.** AS 46.03.850(c) is amended to read:

20 (c) After the report is filed under (b) of this section or the time period
21 specified for it has elapsed, the department **that made the determination under (a)**
22 **of this section** may issue a compliance order in conformity with the authority of the
23 department and the public policy declared in AS 46.03.010. A copy of the compliance
24 order shall be served personally or sent by certified mail to the person affected. A
25 compliance order is effective upon receipt.

26 * **Sec. 58.** AS 46.03.850(e) is amended to read:

27 (e) The department **that made the determination under (a) of this section**
28 shall hold a hearing within 20 days after receipt of a request for one under (d) of this
29 section. After the hearing, the department may rescind, modify, or affirm the
30 compliance order.

31 * **Sec. 59.** AS 46.03.860 is amended to read:

1 **Sec. 46.03.860. Inspection warrant.** The department may seek search
 2 warrants for the purpose of investigating actual or suspected sources of pollution or
 3 contamination or to ascertain compliance or noncompliance with AS 46.14 or this
 4 chapter, **except AS 46.03.015**, or a regulation adopted under AS 46.14 or this chapter,
 5 **except AS 46.03.015**.

6 * **Sec. 60.** AS 46.03.860 is amended by adding a new subsection to read:

7 (b) The Department of Health and Social Services may seek search warrants
 8 for the purpose of investigating actual or suspected violations of AS 46.03.015 or
 9 46.03.800.

10 * **Sec. 61.** AS 46.03.870(b) is amended to read:

11 (b) Except as specified in AS 46.03.822 - 46.03.828, a determination or order
 12 of the department, **or a determination or order of the Department of Health and**
 13 **Social Services under AS 46.03.015 or 46.03.800**, does not create a presumption of
 14 law or finding of fact inuring to or for the benefit of persons other than the state.

15 * **Sec. 62.** AS 46.03.890 is amended to read:

16 **Sec. 46.03.890. Enforcement authority.** (a) The following persons are
 17 authorized to enforce this chapter:

18 (1) a state employee authorized by the commissioner, **except for**
 19 **enforcement of AS 46.03.015 or 46.03.800**;

20 (2) a police officer of the state; **and**

21 **(3) a state employee authorized by the commissioner of health and**
 22 **social services with regard to the responsibilities of the Department of Health and**
 23 **Social Services under this chapter.**

24 (b) Inspection and enforcement employees of the department designated by the
 25 commissioner are peace officers in the performance of their duties under this chapter,
 26 AS 46.04, AS 46.09, and AS 46.14. **Inspection and enforcement employees of the**
 27 **Department of Health and Social Services designated by the Department of Health**
 28 **and Social Services are peace officers in the performance of their duties under**
 29 **AS 46.03.015 and 46.03.800.**

30 * **Sec. 63.** AS 46.03.900(5) is amended to read:

31 (5) "commissioner" means the commissioner of environmental

1 conservation **unless the context indicates otherwise;**

2 * **Sec. 64.** AS 46.03.900(6) is amended to read:

3 (6) "department" means the Department of Environmental Conservation

4 **unless the context indicates otherwise;**

5 * **Sec. 65.** AS 03.05.020(b), 03.05.035(d), 03.05.040(b), 03.05.050(b), 03.05.060(b),
6 03.05.070(b), 03.05.080(b); AS 03.25.250; AS 03.58.070(1); AS 17.20.075, 17.20.155,
7 17.20.200(c), 17.20.220(c), 17.20.230(b), 17.20.290(b); AS 44.46.020(5), and 44.46.025(d) are
8 repealed.

9 * **Sec. 66.** TRANSITION. (a) All litigation, hearings, investigations, and other
10 proceedings pending under a law amended or repealed by this Act, or in connection with
11 functions transferred by this Act, continue in effect and may be continued and completed
12 notwithstanding an amendment or a repeal provided for in this Act.

13 (b) Certificates and orders issued under authority of a law amended or repealed by this
14 Act remain in effect for the term issued, or until revoked, vacated, or otherwise modified
15 under the provisions of this Act.

16 (c) Regulations in effect on June 30, 1998, that were adopted to implement a function
17 that is transferred by this Act remain in effect and shall be enforced by the agency to which
18 the function is transferred under this Act until amended by the agency to which the function
19 is transferred.

20 (d) Wherever in Alaska Statutes affected by this Act there is a reference to regulations
21 adopted under a section of law and there are no regulations adopted under that section because
22 previous regulations adopted under another section are being enforced under (c) of this
23 section, the reference shall be construed to refer to the previously adopted regulations until
24 they are amended by the new agency.

25 (e) All contracts, rights, liabilities, and obligations created by or under a law amended
26 or repealed by this Act, and in effect on July 1, 1998, remain in effect notwithstanding this
27 Act's taking effect.

28 (f) Records, equipment, appropriations, and other property of agencies of the state
29 whose functions are transferred under this Act shall be transferred commensurate with the
30 provisions of this Act.

31 * **Sec. 67.** This Act takes effect July 1, 1998.