

HOUSE BILL NO. 378

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Introduced: 1/12/04

Referred: Health, Education and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska Food, Drug, and Cosmetic Act, including sales,**
2 **advertising, certain devices, food donors, and food banks; making certain violations of**
3 **organic food provisions and of the Alaska Food, Drug, and Cosmetic Act unfair methods**
4 **of competition and unfair or deceptive acts or practices under certain of the state's**
5 **unfair trade practices and consumer protection laws; and providing for an effective**
6 **date."**

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

8 * **Section 1.** AS 17.20.005 is amended to read:

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

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

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

1 (B) standards of sanitation and handling methods for all phases
 2 of slaughtering, processing, storing, transporting, displaying, and selling;
 3 [AND]

4 (C) labeling; **and**

5 **(D) the training, testing, and certification requirements for**
 6 **individuals who handle or prepare food, their supervisors, and their**
 7 **employers to ensure their knowledge of food safety and sanitation**
 8 **principles and requirements;**

9 (2) control and eradication of pests;

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

15 (4) labeling, subject to AS 17.20.013, and grading of milk and milk
 16 products and standards of sanitation for dairies offering to the public or selling milk or
 17 milk products to at least the minimum of current recommendations of the United
 18 States Public Health Service pasteurized milk ordinance as it may periodically be
 19 revised;

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

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

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

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

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

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

3 (9) cooperation with federal and other state agencies.

4 * **Sec. 2.** AS 17.20.290(b) is amended to read:

5 (b) The commissioner of environmental conservation or a designee of the
6 commissioner is responsible for enforcing the provisions of **(a)(1) - (10)**
7 [PARAGRAPHS (a)(1), (2), (3), (4), (6), (7), (8), (9), AND (10)] of this section, if the
8 subject of the prohibited act involves food or cosmetics, and the provisions of
9 [PARAGRAPH] (a)(12) of this section. This subsection does not limit the authority of
10 peace officers.

11 * **Sec. 3.** AS 17.20.290(c) is amended to read:

12 (c) The commissioner of health and social services or a designee of the
13 commissioner is responsible for enforcing the provisions of **(a)(1) - (10)**
14 [PARAGRAPHS (a)(1), (2), (3), (4), (6), (7), (8), (9), AND (10)] of this section, if the
15 subject of the prohibited act involves drugs or devices, and the provisions of **(a)(11)**
16 **and (13)** [PARAGRAPHS (a)(5), (11), AND (13)] of this section. This subsection
17 does not limit the authority of peace officers.

18 * **Sec. 4.** AS 17.20.305 is amended to read:

19 **Sec. 17.20.305. Penalty for violation.** A person who with criminal
20 negligence violates a provision of this chapter or a regulation, order, quarantine,
21 embargo, or recall made under authority of this chapter, or violates a provision of a
22 permit issued under this chapter, is guilty of a class A misdemeanor for each offense.
23 **The use of this section for a violation does not prevent imposition of a penalty**
24 **under AS 45.50.471 - 45.50.561 for the same violation.** In this section, "criminal
25 negligence" has the meaning given in AS 11.81.900.

26 * **Sec. 5.** AS 17.20 is amended by adding a new section to read:

27 **Sec. 17.20.315. Civil fine.** (a) In addition to any other penalties imposed
28 under this chapter or AS 45.50.471 - 45.50.561, the department may impose a civil
29 fine on a person for a serious violation or a repeat violation of this chapter, including
30 the regulations adopted under this chapter.

31 (b) The department shall, by regulation, adopt a schedule of fines that a person

1 may be required to pay under this section. A fine may not exceed \$1,000 for each
2 violation.

3 (c) In this section, "department" means the Department of Environmental
4 Conservation.

5 * **Sec. 6.** AS 17.20.320 is amended to read:

6 **Sec. 17.20.320. Effect of written guaranty.** A person is not subject to the
7 penalties of AS 17.20.305, 17.20.315, or AS 45.50.471 - 45.50.561 for having
8 violated AS 17.20.290(a)(1) or (3) if that person establishes a guaranty or undertaking
9 signed by and containing the name and address of the person residing in the state from
10 whom the article was received in good faith, to the effect that it is not adulterated or
11 misbranded within the meaning of this chapter.

12 * **Sec. 7.** AS 17.20.330 is amended to read:

13 **Sec. 17.20.330. Liability for dissemination of false advertising.** The
14 publisher, radio-broadcast licensee, or agency or medium for the dissemination of an
15 advertisement, except the manufacturer, packer, distributor, or seller of the article to
16 which a false advertisement relates, is not liable under AS 17.20.305, 17.20.315, or
17 AS 45.50.471 - 45.50.561 for the dissemination of the false advertisement, unless the
18 publisher, licensee, agency or medium has refused the request of the commissioner of
19 health and social services to furnish the name and post office address of the
20 manufacturer, packer, distributor, seller, or advertising agency, residing in the state
21 who caused dissemination of the advertisement.

22 * **Sec. 8.** AS 17.20.345(a) is amended to read:

23 (a) Notwithstanding the provisions of AS 17.20.290, [AND] 17.20.305, or
24 17.20.315, a donor of food for free distribution by a food bank is not subject to civil or
25 criminal liability arising from an injury or death attributable to the condition of the
26 donated food if the injury or death is not a result of the gross negligence, recklessness,
27 or intentional misconduct of the donor.

28 * **Sec. 9.** AS 17.20.345(b) is amended to read:

29 (b) Nothing in this section, AS 17.20.290, [OR] 17.20.305, 17.20.315, or
30 AS 45.50.471 - 45.50.561 prohibits the donation by a donor of food apparently fit for
31 human consumption at the time of its donation solely because

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

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

5 * **Sec. 10.** AS 17.20.346 is amended to read:

6 **Sec. 17.20.346. Liability of food bank.** (a) Notwithstanding the provisions of
7 AS 17.20.290, [AND] 17.20.305, or 17.20.315 a food bank that receives and
8 distributes food is not subject to civil or criminal liability arising from an injury or
9 death attributable to the condition of the food if

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

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

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

17 (b) Nothing in this section, AS 17.20.290, [OR] 17.20.305, 17.20.315, or
18 AS 45.50.471 - 45.50.561 prohibits the distribution by a food bank of food apparently
19 fit for human consumption at the time of its distribution solely because

20 (1) the label on the food is missing or the food is otherwise
21 misbranded; or

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

24 * **Sec. 11.** AS 17.20.360 is amended to read:

25 **Sec. 17.20.360. Attorney general to prosecute; hearing before report of**
26 **criminal violation.** The attorney general, to whom the commissioner of
27 environmental conservation or the commissioner of health and social services, as the
28 case may be, reports a violation of this chapter, shall institute appropriate proceedings
29 in the superior court without delay and prosecute them in the manner required by law.
30 [BEFORE A VIOLATION OF THIS CHAPTER IS REPORTED TO THE
31 ATTORNEY GENERAL, THE PERSON AGAINST WHOM THE PROCEEDING

1 IS CONTEMPLATED SHALL BE GIVEN APPROPRIATE NOTICE AND AN
 2 OPPORTUNITY TO RESPOND TO THE APPROPRIATE COMMISSIONER,
 3 ORALLY OR IN WRITING, IN PERSON OR BY ATTORNEY, WITH REGARD
 4 TO THE CONTEMPLATED PROCEEDING.]

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

6 **Sec. 17.20.365. Additional enforcement powers, penalties, and remedies.**

7 In addition to the enforcement powers, penalties, and remedies available under this
 8 chapter, the enforcement powers, penalties, and remedies under AS 45.50.471 -
 9 45.50.561 may be used, where appropriate, to enforce this chapter.

10 * **Sec. 13.** AS 45.50.471(b) is amended by adding new paragraphs to read:

11 (47) violating AS 17.06.010 (sale of, or offering to sell, organic food);

12 (48) violating a labeling or advertising provision of AS 17.20 (Alaska
 13 Food, Drug, and Cosmetic Act).

14 * **Sec. 14.** This Act takes effect July 1, 2004.