



# LAWS OF ALASKA

1998

**Source**  
SB 312

**Chapter No.**  
72

## AN ACT

Relating to animals, to food, to pest control, and to the Alaska Food, Drug and Cosmetic Act; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

**Approved by the Governor:** June 3, 1998  
**Actual Effective Date:** July 1, 1998

AN ACT

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

3

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

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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

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

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

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

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

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

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

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

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 AS 03.58.070(2) is repealed and reenacted to read:

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

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

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

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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.

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

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

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

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

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

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

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

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

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

28 **Sec. 17.06.070. Definitions.** In this chapter,

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

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

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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;

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

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

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

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

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

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

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

12 (c) The commissioner shall adopt regulations that

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

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

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

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

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

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

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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

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

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

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

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

10 **Sec. 17.20.075. Definitions.** In AS 17.20.005 - 17.20.075 [AS 17.20.010 -  
11 17.20.075],

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

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

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

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

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

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

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

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

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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:

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

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

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

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

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

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

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

15 \* Sec. 26. AS 03.05.011(a)(3), 03.05.011(a)(7), 03.05.011(a)(8), 03.05.011(a)(9),  
16 03.05.011(a)(10), 03.05.025, 03.05.026, 03.05.035, 03.05.070, 03.05.085, 03.05.100(2);  
17 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  
18 are repealed.

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

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