

CS FOR HOUSE BILL NO. 228(JUD)

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

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/24/01
Referred: Finance

Sponsor(s): REPRESENTATIVES HARRIS, Meyer, Hayes, Whitaker, Hudson, Murkowski, Kerttula, Crawford

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the accounting of fees from business license endorsements for
2 tobacco products, to the disclosure of certain confidential cigarette and tobacco product
3 information, to notification regarding a cigarette manufacturer's noncompliance with
4 the tobacco product Master Settlement Agreement, to business license endorsements for
5 sale of tobacco products, to citations and penalties for illegal sales of tobacco products;
6 and providing for an effective date."

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

8 * **Section 1.** AS 37.05.146(b)(4) is amended by adding a new subparagraph to read:

9 (XX) receipts of the Department of Community and Economic
10 Development for fees for business license endorsements for tobacco products
11 (AS 43.70.075);

12 * **Sec. 2.** AS 40.25 is amended by adding a new section to read:

13 **Sec. 40.25.105. Disclosure of information for compliance with the tobacco**

1 **product Master Settlement Agreement.** (a) Notwithstanding the provisions of
 2 AS 40.25.100(a), the Department of Revenue may disclose information submitted to
 3 the Department of Revenue relating to cigarette and tobacco products, cigarette and
 4 tobacco product manufacturers, and cigarette and tobacco product retailers to the
 5 attorney general and to other parties as the Department of Revenue determines
 6 necessary to monitor and enforce compliance by cigarette and tobacco product
 7 manufacturers with the tobacco product Master Settlement Agreement described in
 8 AS 45.53.010 - 45.53.100.

9 (b) A person receiving information under this section shall maintain the
 10 confidentiality that the Department of Revenue is required to extend under
 11 AS 43.05.230 to the returns, reports, documents, determinations, and workpapers
 12 furnished to that person under this section.

13 * **Sec. 3.** AS 43.50 is amended by adding a new section to read:

14 **Sec. 43.50.145. Notification of noncompliance; confiscation of**
 15 **noncomplying cigarettes.** The department shall notify a licensee in writing when a
 16 determination has been made that a cigarette manufacturer has failed to comply with
 17 AS 45.53.020 or 45.53.040(a). The department's notification must contain the name
 18 of the cigarette manufacturer that failed to comply and the affected brands of
 19 cigarettes. The licensee shall, within 30 days after receiving the department's
 20 notification under this section, destroy the brands of cigarettes covered by the notice
 21 or return the brands of cigarettes to the manufacturer or distributor from which they
 22 were purchased. Beginning on the 31st day after receipt of the notice, the brands of
 23 cigarettes specified in the notice are contraband and subject to immediate confiscation.
 24 The department may allow a credit for the tax on the returned or destroyed cigarettes.

25 * **Sec. 4.** AS 43.70.075(a) is amended to read:

26 (a) Unless a person has a business license endorsement issued under this
 27 section **for each location or outlet in a location where the person offers tobacco**
 28 **products for sale**, a person may not sell **or allow a vending machine to sell in its**
 29 **location or outlet** cigarettes, cigars, tobacco, or **other** products containing tobacco as
 30 a retailer **at that location or outlet**. **Each** [AN] endorsement required under this
 31 section is in addition to any other license or endorsement required by law. **A person**

1 **may not apply for an endorsement under this section for a location or outlet if an**
 2 **endorsement issued for the same location or outlet is currently suspended or**
 3 **revoked. An endorsement issued for a location or outlet to a person in violation**
 4 **of this subsection is void.**

5 * **Sec. 5.** AS 43.70.075(b) is amended to read:

6 (b) The department, upon payment of a fee of **\$100** [\$25], shall issue a
 7 business license endorsement to a person who applies for a business license under this
 8 chapter, and may renew the endorsement issued under this subsection for a fee of **\$100**
 9 [\$25]. The endorsement expires at the same time as the license to which it attaches.
 10 **Upon issuance of an endorsement, the department shall also issue to the person**
 11 **receiving the endorsement notice of the penalties that may be imposed under this**
 12 **section.**

13 * **Sec. 6.** AS 43.70.075(d) is repealed and reenacted to read:

14 (d) If a person who holds an endorsement issued under this section, or an
 15 agent or an employee of a person who holds an endorsement issued under this section
 16 acting within the scope of the agency or employment, has been convicted of violating
 17 AS 11.76.100, 11.76.106, or 11.76.107, the department shall suspend the endorsement
 18 for a period of

19 (1) 20 days and impose a civil penalty of \$300 if the person has not
 20 been previously convicted of violating AS 11.76.100, 11.76.106, or 11.76.107;

21 (2) 45 days and impose a civil penalty of \$500 if, within the 24 months
 22 before the date of the department's notice under (m) of this section, the person, or an
 23 agent or employee of the person while acting within the scope of the agency or
 24 employment of the person, was convicted once of violating AS 11.76.100, 11.76.106,
 25 or 11.76.107;

26 (3) 90 days and impose a civil penalty of \$1,000 if, within the 24
 27 months before the date of the department's notice under (m) of this section, the person,
 28 or an agent or employee of the person while acting within the scope of the agency or
 29 employment of the person, was convicted twice of violating AS 11.76.100, 11.76.106,
 30 or 11.76.107, or a provision of this section or a regulation implementing this section
 31 adopted under AS 43.70.090; or

1 (4) one year and impose a civil penalty of \$2,500 if, within the 24
 2 months before the date of the department's notice under (m) of this section, the person,
 3 or an agent or employee of the person while acting within the scope of the agency or
 4 employment of the person, was convicted more than twice of violating AS 11.76.100,
 5 11.76.106, or 11.76.107.

6 * **Sec. 7.** AS 43.70.075(e) is amended to read:

7 (e) If a person who receives an endorsement under this section has multiple
 8 retail locations or outlets in a location, a suspension or revocation imposed under
 9 [(d) OF] this section applies only to the retail outlet in the location in which the
 10 violation occurs.

11 * **Sec. 8.** AS 43.70.075 is amended by adding new subsections to read:

12 (k) If a person, or an agent or employee of the person while acting within the
 13 scope of the agency or employment of the person, violates a provision of (a) or (g) of
 14 this section, the department may suspend the person's business license endorsement or
 15 right to obtain a business license endorsement for a period of not more than

16 (1) 45 days; or

17 (2) 90 days if, within the 24 months before the date of the department's
 18 notice under (m) of this section, the person, or an agent or employee of the person
 19 while acting within the scope of the agency or employment of the person, violates a
 20 provision of (a) or (g) of this section.

21 (l) Notwithstanding (a) of this section, a person owning vending machines that
 22 offer tobacco products for sale need obtain only one business license endorsement
 23 under this section even if the person has vending machines in more than one outlet or
 24 location in the state. The person who owns a vending machine that offers tobacco
 25 products for sale and holds the business license issued under AS 43.70.020 is the
 26 retailer and is required to obtain a business license endorsement issued under this
 27 section.

28 (m) The department may initiate suspension of a business license endorsement
 29 or the right to obtain a business license endorsement under this section by sending the
 30 person subject to the suspension a notice by certified mail, return receipt requested, or
 31 by delivering the notice to the person. The notice must contain information that

1 informs the person of the grounds for suspension, the length of any suspension sought,
 2 and the person's right to administrative review before the department. A suspension
 3 begins 30 days after receipt of notice described in this subsection unless the person
 4 delivers a timely written request for a hearing to the department in the manner
 5 provided by regulations of the department. If a hearing is requested under this
 6 subsection, a hearing officer of the department shall determine the issues by using the
 7 preponderance of the evidence test and shall conduct the hearing in the manner
 8 provided by regulations of the department. A hearing under this subsection is limited
 9 to the following questions:

10 (1) was the person holding the business license endorsement, or an
 11 agent or employee of the person while acting within the scope of the agency or
 12 employment of the person, convicted by plea or judicial finding of violating
 13 AS 11.76.100, 11.76.106, or 11.76.107;

14 (2) if the department does not allege a conviction of AS 11.76.100,
 15 11.76.106, or 11.76.107, did the person, or an agent or employee of the person while
 16 acting within the scope of the agency or employment of the person, violate a provision
 17 of (a) or (g) of this section;

18 (3) within the 24 months before the date of the department's notice
 19 under this subsection, was the person, or an agent or employee of the person while
 20 acting within the scope of the agency or employment of the person, convicted of
 21 violating AS 11.76.100, 11.76.106, or 11.76.107 or adjudicated for violating a
 22 provision of (a) or (g) of this section.

23 (n) The commissioner may

24 (1) adopt the proposed decision of a hearing officer under this section;

25 (2) remand the matter for further proceedings; or

26 (3) reject the proposed decision, review the record, and issue a
 27 decision based on the record.

28 (o) After notice and a hearing, the department may revoke a business license
 29 endorsement or increase a period of suspension if the department finds that, during a
 30 period of suspension, a person continues the conduct for which the endorsement or the
 31 right to obtain an endorsement was suspended. A person whose endorsement or right

1 to obtain an endorsement is revoked or suspended under this subsection may not apply
 2 for or obtain an endorsement under this chapter. A period of revocation or suspension
 3 imposed under this subsection may not exceed two years.

4 (p) If a person who holds an endorsement issued under this section violates (f)
 5 of this section, the department may impose a civil penalty not to exceed \$250 for each
 6 day of the violation, but the department may not suspend or revoke a business license
 7 endorsement. The total civil penalty imposed under this subsection for each violation
 8 may not exceed \$5,000.

9 (q) The department may adopt regulations to establish an administrative
 10 hearing process for actions taken by the department under this section. AS 44.62
 11 (Administrative Procedure Act) does not apply to a hearing under this section.

12 (r) For purposes of this section, the sale of a product containing tobacco by an
 13 agent or employee of a person who holds or is required to hold a business license
 14 endorsement under this section at the location or outlet in a location for which the
 15 endorsement was or was required to be issued is rebuttably presumed to have been a
 16 sale within the person's scope of agency or employment.

17 (s) If a person violates (a) of this section, the department may impose a civil
 18 penalty not to exceed \$250 for each day of the violation. The total civil penalty
 19 imposed under this subsection for each violation may not exceed \$5,000. The civil
 20 penalty described in this subsection may be imposed in addition to a suspension of a
 21 business license endorsement or the right to obtain a business license endorsement
 22 ordered by the department under (k) or (o) of this section.

23 * **Sec. 9.** AS 43.70.105 is amended by adding a new subsection to read:

24 (b) Notwithstanding an exemption provided by (a) of this section, a person
 25 who sells cigarettes, cigars, tobacco, or other products containing tobacco as a retailer
 26 must have a business license under AS 43.70.020 and a business license endorsement
 27 required under AS 43.70.075.

28 * **Sec. 10.** AS 44.29 is amended by adding new sections to read:

29 **Article 1A. Citations Concerning Tobacco Products.**

30 **Sec. 44.29.092. Citation for certain offenses concerning tobacco products.**

31 A peace officer or an agent or employee of the Department of Health and Social

1 Services who is authorized by the commissioner of health and social services to
 2 enforce this section, may issue a citation for a violation of AS 11.76.100, 11.76.106, or
 3 11.76.107 if there is probable cause to believe a person has violated AS 11.76.100,
 4 11.76.106, or 11.76.107.

5 **Sec. 44.29.094. Procedure and form of citation.** (a) A citation issued under
 6 AS 44.29.092 must be in writing and must contain a notice to appear in court. A
 7 person receiving the citation is not required to sign the notice.

8 (b) The time specified in the notice to appear in court on the citation shall be
 9 at least five days, not including weekends and holidays, after the issuance of the
 10 citation, unless the person cited requests an earlier appearance in court.

11 (c) The department is responsible for issuing to its agents or employees books
 12 containing the appropriate form of citations and shall maintain a record of each book
 13 issued and each form contained in the book. The department shall require and retain a
 14 receipt for each book issued under this subsection to an agent or employee of the
 15 department.

16 (d) The original or a copy of the form of citation shall be deposited with a
 17 court having jurisdiction over the alleged offense. Upon deposit with the court, the
 18 citation may be disposed of only by trial in the court or other official action taken by
 19 the magistrate, judge, or prosecutor. A citation, copies of a citation, or the record of
 20 issuance may not be disposed of except as required under this subsection and (e) of
 21 this section.

22 (e) The department shall require the return of a copy of each citation issued by
 23 an agent or employee of the department and all copies of the citation that have been
 24 spoiled or upon which an entry has been made and not issued to an alleged violator.
 25 The department shall also maintain, in connection with each citation issued by an
 26 agent or employee, a record of the disposition of the charge by the court where the
 27 original copy of the citation is deposited.

28 (f) If the form of citation conforms to court rules and includes the essential
 29 facts constituting the offense charged, and if the citation is sworn to as required under
 30 the state laws for a complaint charging commission of the offense alleged in the
 31 citation, then the citation, when filed with a court having jurisdiction in this state, is

1 considered to be a lawful complaint for the purpose of prosecution.

2 (g) In this section, "department" means the Department of Health and Social
3 Services.

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

6 TRANSITION: REGULATIONS. The Department of Community and Economic
7 Development, the Department of Revenue, and the Department of Health and Social Services
8 may immediately proceed to adopt regulations necessary to implement changes to their
9 respective authorities made by this Act. The regulations take effect under AS 44.62
10 (Administrative Procedure Act), but not before the effective date of the respective statutory
11 changes.

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

14 TRANSITION: BUSINESS LICENSE ENDORSEMENTS FOR LOCATIONS AND
15 OUTLETS. Notwithstanding AS 43.70.075(a), as amended by sec. 4 of this Act, a person
16 who, on the effective date of sec. 4 of this Act, holds a business license endorsement under
17 AS 43.70.075(a) as that subsection existed on the day before the effective date of sec. 4 of this
18 Act, does not have to obtain an additional business license endorsement for every location or
19 outlet in a location where the person offers tobacco products for sale until the current
20 endorsement expires. Upon expiration of the business license endorsement held on the
21 effective date of sec. 4 of this Act, the person shall obtain a business license endorsement for
22 every location or outlet in a location where the person offers tobacco products for sale, as
23 required by AS 43.70.075(a), as amended by sec. 4 of this Act.

24 * **Sec. 13.** Sections 2 - 4, 11, and 12 of this Act take effect immediately under
25 AS 01.10.070(c).

26 * **Sec. 14.** Sections 1 and 5 of this Act take effect July 1, 2001.

27 * **Sec. 15.** Except as provided in secs. 13 and 14 of this Act, this Act takes effect January 1,
28 2002.