

HOUSE BILL NO. 228

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES HARRIS, Meyer, Hayes, Whitaker, Hudson, Murkowski, Kerttula, Crawford

Introduced: 4/2/01

Referred: Labor and Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

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

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

8 * **Section 1.** AS 11.76.100(d) is amended to read:

9 (d) A person who violates (a) of this section is guilty of a violation and upon
10 conviction is punishable by a fine of not less than

11 **(1) \$300 if the person does not hold a business license endorsement**
12 **issued under AS 43.70.075;**

13 **(2) \$1,000 if the person has not been previously convicted of**

1 **violating this section and the person holds a business license endorsement issued**
 2 **under AS 43.70.075;**

3 **(3) \$2,000 if the person has been previously convicted once within**
 4 **the past 24 months of violating this section and the person holds a business**
 5 **license endorsement issued under AS 43.70.075;**

6 **(4) \$5,000 if the person has been previously convicted more than**
 7 **once within the past 24 months of violating this section and the person holds a**
 8 **business license endorsement issued under AS 43.70.075.**

9 * **Sec. 2.** AS 37.05.146(b)(4) is amended by adding a new subparagraph to read:

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

13 * **Sec. 3.** AS 40.25 is amended by adding a new section to read:

14 **Sec. 40.25.105. Disclosure of information for compliance with the tobacco**
 15 **product Master Settlement Agreement.** (a) Notwithstanding the provisions of
 16 AS 40.25.100(a), the Department of Revenue may disclose information submitted to
 17 the Department of Revenue relating to cigarette and tobacco products, cigarette and
 18 tobacco product manufacturers, and cigarette and tobacco product retailers to the
 19 attorney general and to other parties as the Department of Revenue determines
 20 necessary to monitor and enforce compliance by cigarette and tobacco product
 21 manufacturers with the tobacco product Master Settlement Agreement described in
 22 AS 45.53.010 - 45.53.100.

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

27 * **Sec. 4.** AS 43.50 is amended by adding a new section to read:

28 **Sec. 43.50.145. Notification of noncompliance; confiscation of**
 29 **noncomplying cigarettes.** The department shall notify a licensee in writing when a
 30 determination has been made that a cigarette manufacturer has failed to comply with
 31 AS 45.53.020 or 45.53.040(a). The department's notification must contain the name

1 of the cigarette manufacturer that failed to comply and the affected brands of
 2 cigarettes. The licensee shall, within 30 days after receiving the department's
 3 notification under this section, destroy the brands of cigarettes covered by the notice
 4 or return the brands of cigarettes to the manufacturer or distributor from which they
 5 were purchased. Beginning on the 31st day after receipt of the notice, the brands of
 6 cigarettes specified in the notice are contraband and subject to immediate confiscation.
 7 The department may allow a credit for the tax on the returned or destroyed cigarettes.

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

9 (a) Unless a person has a business license endorsement issued under this
 10 section **for each location or outlet in a location where the person offers tobacco**
 11 **products for sale**, a person may not sell **or allow a vending machine to sell in its**
 12 **location or outlet** cigarettes, cigars, tobacco, or **other** products containing tobacco as
 13 a retailer **at that location or outlet**. **Each** [AN] endorsement required under this
 14 section is in addition to any other license or endorsement required by law. **A person**
 15 **may not apply for an endorsement under this section for a location or outlet if an**
 16 **endorsement issued for the same location or outlet is currently suspended or**
 17 **revoked. An endorsement issued for a location or outlet to a person in violation**
 18 **of this subsection is void.**

19 * **Sec. 6.** AS 43.70.075(b) is amended to read:

20 (b) The department, upon payment of a fee of **\$100** [\$25], shall issue a
 21 business license endorsement to a person who applies for a business license under this
 22 chapter, and may renew the endorsement issued under this subsection for a fee of **\$100**
 23 [\$25]. The endorsement expires at the same time as the license to which it attaches.

24 * **Sec. 7.** AS 43.70.075(d) is amended to read:

25 (d) If a person who holds an endorsement issued under this section, or an
 26 agent or an employee of a person who holds an endorsement issued under this section
 27 acting within the scope of the agency or employment, has been convicted of violating
 28 AS 11.76.100, 11.76.106, or 11.76.107, [OR VIOLATES A PROVISION OF THIS
 29 SECTION OR A REGULATION IMPLEMENTING THIS SECTION ADOPTED
 30 UNDER AS 43.70.090,] the department **shall** [MAY] suspend the endorsement for a
 31 period of [NOT MORE THAN]

1 (1) 20 days if the person has not been previously convicted of
 2 violating AS 11.76.100, 11.76.106, or 11.76.107;

3 (2) 45 days if, within the 24 months before the date of the
 4 department's notice under (m) of this section, the person, or an agent or
 5 employee of the person while acting within the scope of the agency or
 6 employment of the person, was convicted once of violating AS 11.76.100,
 7 11.76.106, or 11.76.107; [OR]

8 (3) [(2)] 90 days if, within the [PAST] 24 months before the date of
 9 the department's notice under (m) of this section, the person, or an agent or
 10 employee of the person while acting within the scope of the agency or
 11 employment of the person, was [HAS BEEN PREVIOUSLY] convicted twice of
 12 violating AS 11.76.100, 11.76.106, or 11.76.107, or a provision of this section or a
 13 regulation implementing this section adopted under AS 43.70.090; or

14 (4) one year if, within the 24 months before the date of the
 15 department's notice under (m) of this section, the person, or an agent or
 16 employee of the person while acting within the scope of the agency or
 17 employment of the person, was convicted more than twice of violating
 18 AS 11.76.100, 11.76.106, or 11.76.107.

19 * **Sec. 8.** AS 43.70.075(e) is amended to read:

20 (e) Except as provided in (l) of this section, if [IF] a person who receives an
 21 endorsement under this section has multiple retail locations or outlets in a location, a
 22 suspension or revocation imposed under [(d) OF] this section applies only to the retail
 23 outlet in the location in which the violation occurs.

24 * **Sec. 9.** AS 43.70.075 is amended by adding new subsections to read:

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

29 (1) 45 days; or

30 (2) 90 days if, within the 24 months before the date of the department's
 31 notice under (m) of this section, the person, or an agent or employee of the person

1 while acting within the scope of the agency or employment of the person, violates a
2 provision of (a) or (g) of this section.

3 (l) Notwithstanding (a) of this section, a person owning vending machines that
4 offer tobacco products for sale need obtain only one business license endorsement
5 under this section even if the person has vending machines in more than one outlet or
6 location in the state. The person who owns a vending machine that offers tobacco
7 products for sale and holds the business license issued under AS 43.70.020 is the
8 retailer and is required to obtain a business license endorsement issued under this
9 section. Notwithstanding (a) and (e) of this section, if an endorsement under this
10 section for the sale of tobacco products through vending machines is suspended or
11 revoked, the person may not sell cigarettes, cigars, tobacco, or other products
12 containing tobacco through any of the person's other vending machines in retail
13 locations or outlets that require an endorsement under this section.

14 (m) The department may initiate suspension of a business license endorsement
15 or the right to obtain a business license endorsement under this section by sending the
16 person subject to the suspension a notice by certified mail, return receipt requested, or
17 by delivering the notice to the person. The notice must contain information that
18 informs the person of the grounds for suspension, the length of any suspension sought,
19 and the person's right to administrative review before the department. A suspension
20 begins 30 days after receipt of notice described in this subsection unless the person
21 delivers a timely written request for a hearing to the department in the manner
22 provided by regulations of the department. If a hearing is requested under this
23 subsection, a hearing officer of the department shall determine the issues by using the
24 preponderance of the evidence test and shall conduct the hearing in the manner
25 provided by regulations of the department. A hearing under this subsection is limited
26 to the following questions:

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

31 (2) if the department does not allege a conviction of AS 11.76.100,

1 11.76.106, or 11.76.107, did the person, or an agent or employee of the person while
2 acting within the scope of the agency or employment of the person, violate a provision
3 of (a) or (g) of this section;

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

9 (n) The commissioner may

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

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

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

14 (o) After notice and a hearing, the department may revoke a business license
15 endorsement or increase a period of suspension if the department finds that, during a
16 period of suspension, a person continues the conduct for which the endorsement or the
17 right to obtain an endorsement was suspended. A person whose endorsement or right
18 to obtain an endorsement is revoked or suspended under this subsection may not apply
19 for or obtain an endorsement under this chapter. A period of revocation or suspension
20 imposed under this subsection may not exceed two years.

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

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

29 (r) For purposes of this section, the sale of a product containing tobacco by an
30 agent or employee of a person who holds or is required to hold a business license
31 endorsement under this section at the location or outlet in a location for which the

1 endorsement was or was required to be issued is rebuttably presumed to have been a
2 sale within the person's scope of agency or employment.

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

9 * **Sec. 10.** AS 43.70.105 is amended by adding a new subsection to read:

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

14 * **Sec. 11.** AS 44.29 is amended by adding new sections to read:

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

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

17 The Department of Health and Social Services may issue a citation for a violation of
18 AS 11.76.100, 11.76.106, or 11.76.107 if there is probable cause to believe a person
19 has violated AS 11.76.100, 11.76.106, or 11.76.107. Each day a violation continues
20 after a citation for the violation has been issued constitutes a separate violation.

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

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

27 (c) The department is responsible for the issuance of books containing the
28 appropriate form of citations and shall maintain a record of each book issued and each
29 form contained in the book. The department shall require and retain a receipt for each
30 book issued under this subsection to an agent or employee of the department.

31 (d) The department shall deposit the original or a copy of the form of citation

1 with a court having jurisdiction over the alleged offense. Upon deposit with the court,
 2 the citation may be disposed of only by trial in the court or other official action taken
 3 by the magistrate, judge, or prosecutor. The department may not dispose of a citation,
 4 copies of a citation, or the record of issuance except as required under this subsection
 5 and (e) of this section.

6 (e) The department shall require the return of a copy of each citation issued by
 7 the department and all copies of a citation that have been spoiled or upon which an
 8 entry has been made and not issued to an alleged violator. The department shall also
 9 maintain, in connection with each citation, a record of the disposition of the charge by
 10 the court where the original copy of the citation is deposited.

11 (f) If the form of citation conforms to court rules and includes the essential
 12 facts constituting the offense charged, and if the citation is sworn to as required under
 13 the state laws for a complaint charging commission of the offense alleged in the
 14 citation, then the citation, when filed with a court having jurisdiction in this state, is
 15 considered to be a lawful complaint for the purpose of prosecution.

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

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

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

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

28 TRANSITION: BUSINESS LICENSE ENDORSEMENTS FOR LOCATIONS AND
 29 OUTLETS. Notwithstanding AS 43.70.075(a), as amended by sec. 5 of this Act, a person
 30 who, on the effective date of sec. 5 of this Act, holds a business license endorsement under
 31 AS 43.70.075(a) as that subsection existed on the day before the effective date of sec. 5 of this

1 Act, does not have to obtain an additional business license endorsement for every location or
2 outlet in a location where the person offers tobacco products for sale until the current
3 endorsement expires. Upon expiration of the business license endorsement held on the
4 effective date of sec. 5 of this Act, the person shall obtain a business license endorsement for
5 every location or outlet in a location where the person offers tobacco products for sale, as
6 required by AS 43.70.075(a), as amended by sec. 5 of this Act.

7 * **Sec. 14.** Sections 3 - 5, 12, and 13 of this Act take effect immediately under
8 AS 01.10.070(c).

9 * **Sec. 15.** Sections 2 and 6 of this Act take effect July 1, 2001.

10 * **Sec. 16.** Except as provided in secs. 14 and 15 of this Act, this Act takes effect January 1,
11 2002.