

**HOUSE BILL NO. 276**

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

**BY REPRESENTATIVE KOTT**

**Introduced: 4/19/05**

**Referred: Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to business license endorsements for tobacco products, to holders of**  
2 **business license endorsements for tobacco products, and to the employees and agents of**  
3 **holders of business license endorsements for tobacco products."**

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

5 \* **Section 1.** AS 43.70.075(d) is amended to read:

6 (d) If [A PERSON WHO HOLDS AN ENDORSEMENT ISSUED UNDER  
7 THIS SECTION, OR] an agent or an employee of a person who holds an endorsement  
8 issued under this section **is** acting within the scope of the agency or employment **and**  
9 [,] has been convicted of violating AS 11.76.100, 11.76.106, or 11.76.107, the  
10 department **may impose on the agent or employee, in addition to any penalty**  
11 **imposed under AS 11.76.100(f), a civil penalty of** [SHALL SUSPEND THE  
12 ENDORSEMENT FOR A PERIOD OF]

13 (1) [20 DAYS AND IMPOSE A CIVIL PENALTY OF] \$300 if the  
14 person has not been previously convicted of violating **this section,** AS 11.76.100,

1 11.76.106, or 11.76.107 and is not otherwise subject to the **penalty** [SANCTIONS]  
2 described in (2) - (4) of this subsection;

3 (2) [45 DAYS AND IMPOSE A CIVIL PENALTY OF] \$500 if,  
4 within the 24 months before the date of the department's notice **to the agent or**  
5 **employee** under **(x)** [(m)] of this section, the [PERSON, OR AN] agent or employee  
6 [OF THE PERSON WHILE ACTING WITHIN THE SCOPE OF THE AGENCY OR  
7 EMPLOYMENT OF THE PERSON,] was convicted once of violating **this section,**  
8 AS 11.76.100, 11.76.106, or 11.76.107;

9 (3) [90 DAYS AND IMPOSE A CIVIL PENALTY OF] \$1,000 if,  
10 within the 24 months before the date of the department's notice **to the agent or**  
11 **employee** under **(x)** [(m)] of this section, the [PERSON, OR AN] agent or employee  
12 [OF THE PERSON WHILE ACTING WITHIN THE SCOPE OF THE AGENCY OR  
13 EMPLOYMENT OF THE PERSON,] was convicted twice of violating **this section,**  
14 AS 11.76.100, 11.76.106, or 11.76.107 [, OR A PROVISION OF THIS SECTION OR  
15 A REGULATION IMPLEMENTING THIS SECTION ADOPTED UNDER  
16 AS 43.70.090]; or

17 (4) [ONE YEAR AND IMPOSE A CIVIL PENALTY OF] \$2,500 if,  
18 within the 24 months before the date of the department's notice **to the agent or**  
19 **employee** under **(x)** [(m)] of this section, the [PERSON, OR AN] agent or employee  
20 [OF THE PERSON WHILE ACTING WITHIN THE SCOPE OF THE AGENCY OR  
21 EMPLOYMENT OF THE PERSON,] was convicted **three or** more **times** [THAN  
22 TWICE] of violating **this section,** AS 11.76.100, 11.76.106, or 11.76.107.

23 \* **Sec. 2.** AS 43.70.075(n) is amended to read:

24 (n) The commissioner may

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

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

27 (3) reject the proposed decision, review the record, and issue a  
28 decision **under the provisions of this section** based on the record.

29 \* **Sec. 3.** AS 43.70.075(p) is amended to read:

30 (p) If a person who holds an endorsement issued under this section violates (f)  
31 **or (t)** of this section, the department may impose a civil penalty not to exceed \$250 for

1 each day of the violation, but the department may not suspend or revoke a business  
 2 license endorsement. The total civil penalty imposed under this subsection for each  
 3 violation may not exceed \$5,000.

4 \* **Sec. 4.** AS 43.70.075 is amended by adding new subsections to read:

5 (t) A person who holds a license endorsement issued under this section shall

6 (1) obtain a signed acknowledgment from each of the person's agents  
 7 and employees who may be in the position of selling tobacco products that

8 (A) the employee or agent understands that it is a violation of  
 9 state law to sell tobacco products to persons under 19 years of age; and

10 (B) compliance with state law is a condition of employment or  
 11 agency; and

12 (2) certify that the person has an education, compliance, and  
 13 disciplinary program in effect to ensure compliance with this section, AS 11.76.100,  
 14 11.76.106, and 11.76.107.

15 (u) If a person holds a license endorsement issued under this section and if an  
 16 agent or employee of the person is arrested or given a citation for a violation of  
 17 AS 11.76.100, 11.76.106, or 11.76.107, the department may impose a sanction on the  
 18 person under (v) or (w) of this section. To impose the sanction, the department shall  
 19 initiate a proceeding against the person under (x) of this section. The proceeding is  
 20 separate from and not related to the proceeding for which the agent or employee is  
 21 arrested or given a citation.

22 (v) In a proceeding under (u) of this section against a person who holds a  
 23 license endorsement issued under this section, if the person has a program  
 24 substantially similar to the program required by (t)(2) of this section in effect on or  
 25 before the date of the arrest or citation of the agent or employee, the department may  
 26 not impose a penalty under (p) of this section on the person, and the sanctions that the  
 27 department may impose on the person in the proceeding are limited to a civil penalty  
 28 of

29 (1) \$750 if the person has not been previously convicted of violating  
 30 this section, AS 11.76.100, 11.76.106, or 11.76.107 and is not otherwise subject to the  
 31 sanctions described in (2) - (4) of this subsection;

1 (2) \$1,000 if, within the 24 months before the date of the department's  
2 notice under (x) of this section, the person was convicted once of violating this  
3 section, AS 11.76.100, 11.76.106, or 11.76.107;

4 (3) \$2,500 if, within the 24 months before the date of the department's  
5 notice under (x) of this section, the person was convicted twice of violating this  
6 section, AS 11.76.100, 11.76.106, or 11.76.107; or

7 (4) \$3,500 if, within the 24 months before the date of the department's  
8 notice under (x) of this section, the person was convicted of three or more times of  
9 violating this section, AS 11.76.100, 11.76.106, or 11.76.107.

10 (w) In a proceeding under (u) of this section against a person who holds a  
11 license endorsement issued under this section, if the person does not have a program  
12 substantially similar to the program required by (t)(2) of this section in effect on or  
13 before the date of the arrest or citation of the agent or employee, the department may  
14 not impose a penalty under (p) of this section on the person, and the sanctions that the  
15 department may impose on the person in the proceeding are limited to a suspension of  
16 the person's endorsement for a period of

17 (1) 20 days and a civil penalty of not less than \$500 or more than \$750  
18 if the person has not been previously convicted of violating this section, AS 11.76.100,  
19 11.76.106, or 11.76.107 and is not otherwise subject to the sanctions described in (2) -  
20 (4) of this subsection;

21 (2) 45 days and a civil penalty of not less than \$750 and not more than  
22 \$1,000 if, within the 24 months before the date of the department's notice under (m) of  
23 this section, the person was convicted one time of violating this section, AS 11.76.100,  
24 11.76.106, or 11.76.107;

25 (3) 90 days and a civil penalty of not less than \$1,500 and not more  
26 than \$2,500 if, within the 24 months before the date of the department's notice under  
27 (m) of this section, the person was convicted two times of violating this section,  
28 AS 11.76.100, 11.76.106, or 11.76.107; or

29 (4) one year and a civil penalty of not less than \$2,500 and not more  
30 than \$3,500 if, within the 24 months before the date of the department's notice under  
31 (m) of this section, the person was convicted three or more times of violating this

1 section, AS 11.76.100, 11.76.106, or 11.76.107.

2 (x) Notwithstanding (m) of this section, to initiate a proceeding against an  
 3 agent or employee under (d) of this section or against a person under (u) of this section  
 4 who holds an endorsement issued under this section, the department shall send the  
 5 person, agent, or employee a notice by certified mail, return receipt requested, or  
 6 deliver the notice to the person, agent, or employee. The notice must contain  
 7 information that informs the person, agent, or employee of the grounds for the  
 8 proceedings, the amount of any penalty, the length of any suspension sought, and the  
 9 right of the person, agent, or employee to administrative review before the department.  
 10 A suspension begins and a penalty is due 30 days after receipt of notice described in  
 11 this subsection unless the person, agent, or employee delivers a timely written request  
 12 for administrative review to the department in the manner provided by regulations of  
 13 the department. If a hearing is requested under this subsection, a hearing officer of the  
 14 office of administrative hearings (AS 44.64.010) shall determine the issues by using  
 15 the clear and convincing evidence test and shall, to the extent the regulations of the  
 16 department do not conflict with regulations adopted under AS 44.64.060, conduct the  
 17 hearing in the manner provided by the regulations of the department. In a hearing  
 18 under (u) of this section, the hearing officer may not consider a conviction against an  
 19 agent or employee for violation of this section, AS 11.76.100, 11.76.106, or 11.76.107  
 20 arising out of the same transaction that resulted in the initiation of the proceedings  
 21 under (u) of this section against the person.

22 (y) When making a decision under (u) of this section, the hearing officer shall  
 23 consider

24 (1) whether the person is in compliance with (t) of this section on or  
 25 before the date the department initiates a proceeding under (u) of this section;

26 (2) mitigating factors presented by the person; and

27 (3) the scope and extent of the person's education, compliance, and  
 28 disciplinary program under (t)(2) of this section.

29 (z) A municipality may not adopt an ordinance or other requirement that  
 30 suspends or revokes an endorsement issued under this section for an act that is  
 31 substantially similar to the acts prohibited by this section, AS 11.76.100, 11.76.106, or

1           11.76.107.

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

4           **APPLICABILITY.** AS 43.70.075(d), as amended by sec. 1 of this Act, 43.70.075(n),  
5 as amended by sec. 2 of this Act, 43.70.075(p), as amended by sec. 3 of this Act, and  
6 43.70.075(t), 43.70.075(u), 43.70.075(v), 43.70.075(w), 43.70.075(x), and 43.70.075(y), as  
7 enacted by sec. 4 of this Act, apply to a proceeding by the department that is pending under  
8 AS 43.70.075, as that section reads before the effective date of this Act, as well as to actions  
9 that occur on or after the effective date of this Act.