

**CS FOR HOUSE BILL NO. 276(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered: 4/10/06**

**Referred: Finance**

**Sponsor(s): REPRESENTATIVE KOTT**

**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 this section, or an  
7 agent or an employee of a person who holds an endorsement issued under this section  
8 acting within the scope of the agency or employment, has been convicted of violating  
9 AS 11.76.100, 11.76.106, or 11.76.107, the department

10 **(1) may, after a hearing under (t) of this section,** [SHALL] suspend  
11 the endorsement for **up to** [A PERIOD OF

12 (1)] 20 days and impose a civil penalty of **not more than \$750** [\$300]  
13 if the person has not been previously convicted of violating AS 11.76.100, 11.76.106,  
14 or 11.76.107 [AND IS NOT OTHERWISE SUBJECT TO THE SANCTIONS

1 DESCRIBED IN (2) - (4) OF THIS SUBSECTION];

2 (2) **shall suspend the endorsement for** 45 days and impose a civil  
3 penalty of \$500 if, within the 24 months before the date of the department's notice  
4 under (m) of this section, the person, or an agent or employee of the person while  
5 acting within the scope of the agency or employment of the person, was convicted  
6 once of violating AS 11.76.100, 11.76.106, or 11.76.107;

7 (3) **shall suspend the endorsement for** 90 days and impose a civil  
8 penalty of \$1,000 if, within the 24 months before the date of the department's notice  
9 under (m) of this section, the person, or an agent or employee of the person while  
10 acting within the scope of the agency or employment of the person, was convicted  
11 twice of violating AS 11.76.100, 11.76.106, or 11.76.107, or a provision of this  
12 section or a regulation implementing this section adopted under AS 43.70.090; or

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

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

19 (n) The commissioner may

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

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

22 (3) reject the proposed decision, review the record, and issue a  
23 decision **under this section** based on the record.

24 \* **Sec. 3.** AS 43.70.075 is amended by adding a new subsection to read:

25 (t) Notwithstanding (m) of this section, this subsection governs the imposition  
26 on a person by the department of the business license endorsement suspension and  
27 civil penalty under (d)(1) of this section. The department shall, on request of either  
28 party, conduct a hearing on the imposition of the suspension and civil penalty and  
29 shall initiate the hearing by sending the person a notice by certified mail, return receipt  
30 requested, or by delivering the notice to the person. The notice must inform the person  
31 of the grounds for the suspension and the penalty, the length of the suspension that

1 may be imposed, and the amount of the penalty that may be imposed. The office of  
2 administrative hearings (AS 44.64.010) shall set the date and time of the hearing and  
3 notify the parties. A hearing officer of the office of administrative hearings  
4 (AS 44.64.010) shall determine the issues by using the preponderance of the evidence  
5 test and shall, to the extent the department's regulations do not conflict with  
6 regulations adopted under AS 44.64.060, conduct the hearing in the manner provided  
7 by regulations of the department. When making a decision under this subsection about  
8 the imposition or duration of the suspension or the imposition or amount of the civil  
9 penalty, the hearing officer shall consider

10 (1) whether the person had, on or before the date the department  
11 initiates the hearing under this subsection, an education, compliance, and disciplinary  
12 program in effect to ensure compliance with this section, AS 11.76.100, 11.76.106,  
13 and 11.76.107;

14 (2) the nature, scope, and extent of the program described in (1) of this  
15 subsection; and

16 (3) mitigating factors presented by the person.