

**HOUSE BILL NO. 187**

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

**BY REPRESENTATIVE JOHANSEN**

**Introduced: 3/12/07**

**Referred: Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to holders of business license endorsements for sales of tobacco**  
2 **products."**

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

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

5 (d) If a person who holds an endorsement issued under this section, or an  
6 agent or an employee of a person who holds an endorsement issued under this section  
7 acting within the scope of the agency or employment, has been convicted of violating  
8 AS 11.76.100, 11.76.106, or 11.76.107, the department, **after a hearing under (m) of**  
9 **this section,** shall suspend the endorsement for a period of

10 (1) 20 days and impose a civil penalty of \$300 if the person has not  
11 been previously convicted of violating AS 11.76.100, 11.76.106, or 11.76.107 and is  
12 not otherwise subject to the sanctions described in (2) - (4) of this subsection;

13 (2) 45 days and impose a civil penalty of \$500 if, within the 24 months  
14 before the date of the department's notice under (m) of this section, the person, or an

1 agent or employee of the person while acting within the scope of the agency or  
 2 employment of the person, was convicted once of violating AS 11.76.100, 11.76.106,  
 3 or 11.76.107;

4 (3) 90 days and impose a civil penalty of \$1,000 if, within the 24  
 5 months before the date of the department's notice under (m) of this section, the person,  
 6 or an agent or employee of the person while acting within the scope of the agency or  
 7 employment of the person, was convicted twice of violating AS 11.76.100, 11.76.106,  
 8 or 11.76.107, or a provision of this section or a regulation implementing this section  
 9 adopted under AS 43.70.090; or

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

15 \* **Sec. 2.** AS 43.70.075(m) is amended to read:

16 (m) The department may initiate suspension of a business license endorsement  
 17 or the right to obtain a business license endorsement under this section by sending the  
 18 person subject to the suspension a notice by certified mail, return receipt requested, or  
 19 by delivering the notice to the person. The notice must contain information that  
 20 informs the person of the grounds for suspension, the length of any suspension sought,  
 21 and the person's right to administrative review. A suspension begins 30 days after  
 22 receipt of notice described in this subsection unless the person delivers a timely  
 23 written request for a hearing to the department in the manner provided by regulations  
 24 of the department. If a hearing is requested under this subsection, a hearing officer of  
 25 the office of administrative hearings (AS 44.64.010) shall determine the issues by  
 26 using the preponderance of the evidence test and shall, to the extent they do not  
 27 conflict with regulations adopted under AS 44.64.060, conduct the hearing in the  
 28 manner provided by regulations of the department. A hearing under this subsection is  
 29 limited to the following questions:

30 (1) was the person holding the business license endorsement, or an  
 31 agent or employee of the person while acting within the scope of the agency or

1 employment of the person, convicted by plea or judicial finding of violating  
2 AS 11.76.100, 11.76.106, or 11.76.107;

3 (2) if the department does not allege a conviction of AS 11.76.100,  
4 11.76.106, or 11.76.107, did the person, or an agent or employee of the person while  
5 acting within the scope of the agency or employment of the person, violate a provision  
6 of (a) or (g) of this section;

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

12 **(4) did the person holding the business license endorsement**  
13 **negligently violate AS 11.76.100, 11.76.106, or 11.76.107; in making this**  
14 **determination, the hearing officer may consider whether the person holding the**  
15 **business license endorsement had adopted and used an employee education,**  
16 **compliance, and disciplinary program as provided in (t) of this section;**

17 **(5) any other evidence that might tend to mitigate or aggravate the**  
18 **length of suspension and civil penalty; a period of suspension or civil penalty may**  
19 **be reduced under this paragraph if the imposition of the full suspension or civil**  
20 **penalty would not be in the public interest.**

21 \* **Sec. 3.** AS 43.70.075 is amended by adding new subsections to read:

22 (t) Based on evidence provided at the hearing under (m)(4) or (5) of this  
23 section, the department may reduce the license suspension period under (d) of this  
24 section if the person holding the business license endorsement establishes that, prior to  
25 the date of the violation, the person had adopted and enforced a written policy against  
26 selling cigarettes, cigars, tobacco, or products containing tobacco to a person under 19  
27 years of age in violation of AS 11.76.100, informed the person's agents and employees  
28 of the applicable laws and their requirements, required the employees to sign a form  
29 that the employees had been informed of and understood the written policy and the  
30 requirements of AS 11.76.100, required employees to verify the age of tobacco  
31 product customers by means of photographic identification, and established and

1 enforced disciplinary sanctions for noncompliance. A reduction in the period of  
2 suspension may not be granted more than twice in a 12-month period for any one  
3 location.

4 (u) In lieu of a hearing under (m) of this section, the department and the  
5 person holding a business license endorsement may agree to an informal disposition of  
6 a suspension based on a violation of AS 11.76.100, 11.76.106, or 11.76.107. The  
7 person holding the business license endorsement shall admit that a violation occurred  
8 and punishment under this section is proper. The department may suspend the license  
9 and impose the appropriate civil penalty under this section; the department shall  
10 consider the fact that the violation is admitted and may reduce the period of  
11 suspension based on the admission.