

CS FOR HOUSE BILL NO. 187(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/26/07

Referred: Finance

Sponsor(s): REPRESENTATIVE JOHANSEN

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to civil penalties for the improper sale of tobacco products and to**
2 **suspension of business license endorsements and the right to obtain business license**
3 **endorsements where the suspension is based on the improper sale of 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, **after a hearing under (m) of**
10 **this section**, shall suspend the endorsement for a period of

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

14 (2) 45 days and impose a civil penalty of \$500 if, within the 24 months

1 before the date of the department's notice under (m) of this section, the person, or an
 2 agent or employee of the person while acting within the scope of the agency or
 3 employment of the person, was convicted once of violating AS 11.76.100, 11.76.106,
 4 or 11.76.107;

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

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

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

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

31 (1) was the person holding the business license endorsement, or an

1 agent or employee of the person while acting within the scope of the agency or
 2 employment of the person, convicted by plea or judicial finding of violating
 3 AS 11.76.100, 11.76.106, or 11.76.107;

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

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

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

18 **(5) any other evidence that might tend to mitigate or aggravate the**
 19 **length of suspension and civil penalty.**

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

21 (t) Based on evidence provided at the hearing under (m)(4) or (5) of this
 22 section, the department may reduce the license suspension period under (d) of this
 23 section if the person holding the business license endorsement establishes that, before
 24 the date of the violation, the person had

25 (1) adopted and enforced a written policy against selling cigarettes,
 26 cigars, tobacco, or products containing tobacco to a person under 19 years of age in
 27 violation of AS 11.76.100;

28 (2) informed the person's agents and employees of the applicable laws
 29 and their requirements;

30 (3) required the employees to sign a form that the employees had been
 31 informed of and understood the written policy and the requirements of AS 11.76.100;

1 (4) required employees to verify the age of tobacco product customers
2 by means of photographic identification; and

3 (5) established and enforced disciplinary sanctions for noncompliance.

4 (u) A reduction in the period of suspension under (t) of this section may not be
5 granted more than once in a 12-month period for any one location.

6 (v) In lieu of a hearing under (m) of this section, the department and the
7 person holding a business license endorsement may agree to an informal disposition of
8 a suspension based on a violation of AS 11.76.100, 11.76.106, or 11.76.107. The
9 person holding the business license endorsement shall admit that a violation occurred
10 and punishment under this section is proper. The department may suspend the license
11 and impose the appropriate civil penalty under this section; the department shall
12 consider the fact that the violation is admitted and may reduce the period of
13 suspension based on the admission if the person has not previously received a sanction
14 under (d) of this section.

15 (w) A period of suspension may not be reduced under (t) or (v) of this section
16 to a period of less than 10 days.

17 (x) A conviction for a violation of AS 11.76.100, 11.76.106, or 11.76.107 by
18 the agent or employee of the person who holds the business license endorsement is
19 rebuttably presumed to constitute proof of the fact that the agent or employee
20 negligently sold a cigarette, a cigar, or tobacco, or a product containing tobacco to a
21 person under 19 years of age. The person who holds the business license endorsement
22 may overcome the presumption by establishing by clear and convincing evidence that
23 the agent or employee did not negligently sell a cigarette, a cigar, or tobacco, or a
24 product containing tobacco to a person under 19 years in violation of AS 11.76.100,
25 11.76.106, or 11.76.107 as alleged in the citation issued to the agent or employee. The
26 presentation of evidence authorized by this subsection does not constitute a collateral
27 attack on the conviction described in this subsection.