

Statutes and Regulations **Business Licensing**

October 2009

(Centralized Statutes and Regulations not included)



DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT

***DIVISION OF CORPORATIONS, BUSINESS
AND PROFESSIONAL LICENSING***

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CHAPTER 70.
ALASKA BUSINESS LICENSE ACT.

Section

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Sec. 43.70.020. Application for license. (a) For the privilege of engaging in a business in the state, a person shall first apply, upon forms prescribed by the commissioner, and obtain a license, and pay the license fee provided for in AS 43.70.030. A license issued to a firm for a particular line of business covers all its operations in the state in the line of business regardless of the number of its establishments. A license issued under this subsection must include

- (1) the name and address of the licensee;
- (2) the line of business to be conducted;
- (3) the dates for which the license is issued; and (4) the business name to be used by the licensee.

(b) *[Repealed, § 10 ch 45 SLA 1988.]*

(c) *[Repealed, § 10 ch 45 SLA 1988.]*

(d) A person engaging in a business subject to licensing provisions of a regulatory nature (for example, the requirement of posting a bond before beginning business as a collection agency) must, in addition to filing the regular application required by this section, comply with those regulatory provisions before being entitled to a license under this chapter. The department may establish that a license that is issued under this section expires at the same time as a license, certificate, permit, registration, or similar document issued under AS 08.

(e) If a person knowingly engages in a business in the state without having a current license issued under (a) of this section, the department may impose a civil fine of up to \$300. In this subsection, "knowingly" has the meaning given in AS 11.81.900.

Sec. 43.70.030. Levy and computation of license fee. (a) The fee for each business license is \$50 a year, except that the fee is \$25 if

- (1) the business is a sole proprietorship; and

(2) the sole proprietor is 65 years of age or older when the sole proprietor applies for the license or will reach 65 years of age at any time during the year for which the license is issued.

(b) *[Repealed, § 1 ch 98 SLA 1984.]*

(c) The license for the privilege of taking orders through use of catalogs and by mail order offices in the state is the same as set out in this chapter for business generally.

(d) *[Repealed, § 72 ch 14 SLA 1987.]*

Sec. 43.70.075. License endorsement. (a) Unless a person has a business license endorsement issued under this section for each location or outlet in a location where the person offers tobacco products for sale, a person may not sell or allow a vending machine to sell in its location or outlet cigarettes, cigars, tobacco, or other products containing tobacco as a retailer at that location or outlet. Each endorsement required under this section is in addition to any other license or endorsement required by law. A person may not apply for an endorsement under this section for a location or outlet if an endorsement issued for the same location or outlet is currently suspended or revoked. An endorsement issued for a location or outlet to a person in violation of this subsection is void.

(b) The department, upon payment of a fee of \$100, shall issue a business license endorsement to a person who applies for a business license under this chapter, and may renew the endorsement issued under this subsection for a fee of \$100. The endorsement expires at the same time as the license to which it attaches. Upon issuance of an endorsement, the department shall also issue to the person receiving the endorsement notice of the penalties that may be imposed under this section.

(c) The department may refuse to issue an endorsement under this section if there is reasonable cause to believe that the information submitted in the application is false or misleading and is not made in good faith.

(d) If a person who holds an endorsement issued under this section, or an agent or an employee of a person who holds an endorsement issued under this section acting within the scope of the agency or employment, has been convicted of violating AS 11.76.100, 11.76.106, or 11.76.107, the department shall impose a civil penalty as set out in this subsection. However, following a hearing under (m) of this section, and based on evidence admitted at that hearing concerning questions specified in (m)(4) and (6) of this section, the department may reduce by not more than 10 days a suspension under (1) of this subsection, or by not more than 20 days a suspension under (2) of this subsection, or increase by not more than 10 days a suspension under (1) of this subsection, or by not more than 20 days a suspension under (2) of this subsection. If a hearing is not requested, or if a hearing is requested and the

department determines that the evidence admitted does not support increasing or decreasing the suspension, the department shall suspend the endorsement for a period of

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

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

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

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

(e) If a person who receives an endorsement under this section has multiple retail locations or outlets in a location, a suspension or revocation imposed under this section applies only to the retail outlet in the location in which the violation occurs.

(f) A person who holds a license endorsement issued under this section shall post on the licensed premises a warning sign as described in this subsection. A warning sign required by this subsection must be at least 6 inches by 18 inches and must read, in lettering at least 1.25 inches high: "The sale of tobacco products to persons under age 19 is illegal." A person holding an endorsement issued under this section shall display the sign in a manner conspicuous to a person purchasing or consuming tobacco products on the licensed premises. The department shall, without charge, furnish warning signs required under this section to a person who holds an endorsement issued under this section or a person who requests the sign with the intention of displaying it.

(g) A person who is required to hold a business license endorsement under this section, or who is required to be licensed or agrees to be licensed under AS 43.50.010, or an agent or employee of the person, may not

(1) sell cigarettes to another person unless the cigarettes are sold in groups of at least 20 and the cigarettes are in the manufacturer's original cigarette pack or contained in a cigarette carton or box; or

(2) sell or possess cigarettes if the cigarette package

(A) differs in any respect from the requirements of 15 U.S.C. 1331 - 1341 (Cigarette Labeling and Advertising Act) for the placement of warnings or of any other information upon a package of cigarettes that is sold within the United States;

(B) is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S.," or with similar wording indicating that the manufacturer did not intend that the product be sold in the United States; this subparagraph does not apply to cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise under 19 U.S.C. 1555(b); however, this subparagraph does apply to duty-free cigarettes that are brought back into the state for resale in the state;

(C) has been altered by adding, masking, or deleting wording described in (B) of this paragraph.

(h) A violation of (g) of this section is an unfair or deceptive act or practice under AS 45.50.471 .

(i) The commissioner or the commissioner of revenue may seize cigarettes that do not comply with this section. After notice and an opportunity for a hearing, the commissioner or the commissioner of revenue shall destroy cigarettes seized under this subsection.

(j) A person who violates (g) of this section is guilty of a class B misdemeanor.

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

(1) 45 days; or

(2) 90 days if, within the 24 months before the date of the department's notice under (m) of this section, the person, or an agent or employee of the person while acting within the scope of the agency or employment of the person, violates a provision of (a) or (g) of this section.

(l) Notwithstanding (a) of this section, a person owning vending machines that offer tobacco products for sale need obtain only one business license endorsement under this section even if the person has vending machines in more than one outlet or location in the state. The person who owns a vending machine that offers tobacco products for sale and the person who owns the premises where the vending machine is located are both required to obtain a business license endorsement issued under this section. If the endorsement of the person owning the vending machine is suspended or revoked, the person may not sell cigarettes, cigars, or other products containing tobacco during the period of suspension or revocation through the use of vending machines at the location or outlet where the violation occurred. During the period of suspension or revocation, the person owning that vending machine may not use that machine to sell tobacco products at another location or outlet.

(m) The department may initiate suspension of a business license endorsement or the right to obtain a business license endorsement under this section by sending the person subject to the suspension a notice by certified mail, return receipt requested, or by delivering the notice to the person. The notice must contain information that informs

the person of the grounds for suspension, the length of any suspension sought, and the person's right to administrative review. A suspension begins 30 days after receipt of notice described in this subsection unless the person delivers a timely written request for a hearing to the department in the manner provided by regulations of the department. If a hearing is requested under this subsection, an administrative law judge of the office of administrative hearings (AS 44.64.010) shall determine the issues by using the preponderance of the evidence test and shall, to the extent they do not conflict with regulations adopted under AS 44.64.060, conduct the hearing in the manner provided by regulations of the department. A hearing under this subsection is limited to the following questions:

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

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

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

(4) did the person holding the business license endorsement establish that the person holding the business license endorsement had adopted and enforced an education, a compliance, and a disciplinary program for agents and employees of the person as provided in (t) of this section;

(5) did the person holding the business license endorsement overcome the rebuttable presumption established in (w) of this section;

(6) within five years before the date of the violation that is the subject of the hearing, did the department establish that the person holding the business license endorsement

(A) previously violated (a) or (g) of this section;

(B) previously violated AS 11.76.100, 11.76.106, or 11.76.107 at a location or outlet in a location for which the person holds a business license endorsement, or had an agent or employee previously violate AS 11.76.100, 11.76.106, or 11.76.107; this subparagraph does not apply to a prior conviction that served to enhance a suspension period under (d)(2) - (4) of this section; or

(C) engaged at a location owned by the person in other conduct that was or is likely to result in the sale of tobacco to a person under 19 years of age in violation of AS 11.76.100, 11.76.106, or 11.76.107.

(n) The commissioner may

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

(2) remand the matter for further proceedings; or

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

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

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

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

(r) For purposes of this section, the sale of a product containing tobacco by an agent or employee of a person who holds or is required to hold a business license endorsement under this section at the location or outlet in a location for which the endorsement was or was required to be issued is rebuttably presumed to have been a sale within the person's scope of agency or employment.

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

(t) Based on evidence provided at the hearing under (m)(4) - (6) of this section, the department may reduce the license suspension period under (d) of this section if the person holding the business license endorsement establishes that, before the date of the violation, the person had

(1) adopted and enforced a written policy against selling cigarettes, cigars, tobacco, or products containing tobacco to a person under 19 years of age in violation of AS 11.76.100, 11.76.106, or 11.76.107;

(2) informed the person's agents and employees of the applicable laws and their requirements and conducted training on complying with the laws and requirements;

(3) required each agent and employee of the person to sign a form stating that the agent and employee has been informed of and understands the written policy and the requirements of AS 11.76.100, 11.76.106, and 11.76.107;

(4) determined that the agents and employees of the person had sufficient experience and ability to comply with the written policy and requirements of AS 11.76.100, 11.76.106, and 11.76.107;

(5) required the agents and employees of the person to verify the age of purchasers of cigarettes, cigars, tobacco, or other products containing tobacco by means of a valid government issued photographic identification;

(6) established and enforced disciplinary sanctions for noncompliance with the written policy or the requirements of AS 11.76.100, 11.76.106, and 11.76.107; and

(7) monitored the compliance of the agents and employees of the person with the written policy and the requirements of AS 11.76.100, 11.76.106, and 11.76.107.

(u) A reduction in the period of suspension under this section may not be granted more than once in a 12-month period for a location or outlet in a location for which the person holds a business license.

(v) Notwithstanding (d) of this section, in place of a hearing under (m) of this section, the department and the person holding the business license endorsement may enter into a memorandum of agreement regarding the imposition of a suspension and civil penalties based on a violation of AS 11.76.100, 11.76.106, or 11.76.107. The memorandum of agreement must contain a provision that the person holding the business license endorsement admits or does not contest that a violation of AS 11.76.100, 11.76.106, or 11.76.107 occurred and accepts the imposition of suspension and civil penalty under this section. Based on the memorandum of agreement, the department may reduce the period of suspension. For violations involving AS 11.76.100, 11.76.106, or 11.76.107, the department may not reduce the period of suspension by more than 10 days under (d)(1) of this section or by more than 20 days under (d)(2) of this section. The department may not agree to a reduction in the period of suspension more than once in a 12-month time period for a location or outlet in a location for which the person holds a business license endorsement.

(w) For purposes of (m)(5) of this section, a conviction for a violation of AS 11.76.100, 11.76.106, or 11.76.107 by the agent or employee of the person who holds the business license endorsement is rebuttably presumed to constitute proof of the fact that the agent or employee negligently sold a cigarette, a cigar, or tobacco, or a product containing tobacco to a person under 19 years of age. The person who holds the business license endorsement may overcome the presumption by establishing by clear and convincing evidence that the agent or employee did not negligently sell a cigarette, a cigar, or tobacco, or a product containing tobacco to a person under 19 years of age in violation of AS 11.76.100, 11.76.106, or 11.76.107 as alleged in the citation issued to the agent or employee. The presentation of evidence authorized by this subsection does not constitute a collateral attack on the conviction described in this subsection.

(x) Notwithstanding (d), (t), or (v) of this section, a period of suspension may not be reduced for a violation of AS 11.76.100(a)(4).

Sec. 43.70.080. Disposal of money. All money collected by the department under this chapter shall be deposited in the general fund.

Sec. 43.70.090. Regulations. The department may adopt regulations necessary to implement this chapter.

Sec. 43.70.105. Exemptions. (a) This chapter does not apply to

- (1) a fisheries business;
- (2) the sale of liquor under a license issued under AS 04.11;
- (3) an insurance business;
- (4) a mining business;
- (5) supplying services as an employee;
- (6) furnishing goods or services by a person who does not represent to be regularly engaged in furnishing goods or services;

(7) the activities of an investment club; in this paragraph,

(A) "investment club" means a group of individuals, incorporated or otherwise organized, that engages primarily in investing in securities, that does not sell investment services to another person, that does not advertise, the primary purpose of which is educational;

(B) "security" has the meaning given in AS 45.55.990.

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

Sec. 43.70.110. Definitions. In this chapter, unless the context otherwise requires

- (1) “business” means a for profit or nonprofit entity engaging or offering to engage in a trade, a service, a profession, or an activity with the goal of receiving a financial benefit in exchange for the provision of services, or goods, or other property;
- (2) “commissioner” means the commissioner of commerce, community, and economic development;
- (3) “department” means the Department of Commerce, Community, and Economic Development; and
- (4) “person” includes an individual, firm, partnership, joint adventure, association, corporation, estate trust, business trust, receiver, or any group or combination acting as a unit.

Sec. 43.70.120. Short title. This chapter may be cited as the Alaska Business License Act.

TRANSITION: BUSINESS LICENSE ENDORSEMENTS FOR LOCATIONS AND OUTLETS. Notwithstanding AS 43.70.075(a), as amended by sec. 4 of this Act, a person who, on the effective date of sec. 4 of this Act, holds a business license endorsement under AS 43.70.075(a) as that subsection existed on the day before the effective date of sec. 4 of this Act, does not have to obtain an additional business license endorsement for every location or outlet in a location where the person offers tobacco products for sale until the current endorsement expires. Upon expiration of the business license endorsement held on the effective date of sec. 4 of this Act, the person shall obtain a business license endorsement for every location or outlet in a location where the person offers tobacco products for sale, as required by AS 43.70.075(a), as amended by sec. 4 of this Act.

CRIMINAL PENALTIES

Sec. 43.05.290. Criminal penalties.

(h) A person engaging in or attempting to engage in a business, trade, profession, or occupation for which a license is required under this title, who willfully fails to obtain the license, is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than \$2,000, or by imprisonment for not more than six months, or by both. This subsection does not apply to a violation of AS 43.70.020.

(i) In this section “person” includes, but is not limited to, an officer or employee of a corporation or a member or employee of a partnership, who, as officer, employee, or member, is under a duty to perform the act in respect to which the violation occurs. (§ 5 ch 113 SLA 1980; am § 114 ch 6 SLA 1984)

**CHAPTER 12.
BUSINESS LICENSING.**

Article

- 1. Application Requirements and Licensing (12 AAC 12.010 – 12 AAC 12.050)**
- 2. Business License Endorsement for Sale of Tobacco Products: Administrative Hearing and Review Procedures (12 AAC 12.800 – 12 AAC 12.855)**
- 3. General Provisions (12 AAC 12.990)**

**ARTICLE 1.
APPLICATION REQUIREMENTS AND LICENSING.**

Section

- 10. Business license fees**
- 20. Business license**
- 30. Application for business license**
- 40. Term of business license; license renewal**
- 50. Changes in business license**

12 AAC 12.010. BUSINESS LICENSE FEES. (a) The fee for a business license, for all or part of the initial (1) annual license period, is \$100 if a person seeks an annual license, except that the fee is \$50 if the person seeks an annual license for which the fee is reduced under AS 43.70.030(a)(1) - (2); or

(2) biennial license period, is \$200 if a person seeks a biennial license, except that the fee is \$100 if the person seeks a biennial license for which the fee is reduced under AS 43.70.030(a)(1) - (2).

(b) The business license renewal fee is \$100 if a person seeks to renew for the next annual license period, or \$200 if a person seeks to renew for the next biennial license period, except that the business license renewal fee is \$50 if the person seeks to renew, for the next annual license period, a license for which the fee is reduced under AS 43.70.030(a)(1) - (2), or \$100 if the person seeks to renew, for the next biennial license period, a license for which the fee is reduced under AS 43.70.030(a)(1) - (2). Notwithstanding 12 AAC 02.020 and 12 AAC 02.030, the department will not prorate the first license renewal fee for a business license following initial licensure.

(c) The fee for written confirmation of a current business license or a business license that is renewable under 12 AAC 02.040(c) is \$1 for each name for which confirmation is requested. The department will waive the fee under this subsection for a request for a written confirmation of three or fewer business licenses, per day, per requester.

(d) The fee under AS 43.70.075 for a business license endorsement or for the renewal of an endorsement is \$100 for each location or outlet in a location where the person offers tobacco products for sale, regardless of whether the business license to which each endorsement is attached is annual or biennial.

Authority: AS 08.01.010 AS 43.70.020 AS 43.70.075
AS 08.01.065 AS 43.70.030 AS 43.70.090
AS 08.01.100

12 AAC 12.020. BUSINESS LICENSE. (a) A separate business license is required for each line of business in which the applicant seeks to engage in the state.

(b) An independent contractor must have a business license separate from the person to whom the contractor provides goods or services.

(c) A business that receives revenue for the performance of contracts with the State, its political subdivisions, or the federal government is not exempt from the business licensing requirements of AS 43.70 and this chapter.

(d) Upon proper application, as described in 12 AAC 12.030, the department will issue a business license to a business that is exempt from business licensing requirements under AS 43.70.105.

(e) If a business license applicant has applied for licensure as a hearing aid dealer under AS 08.55.010 and 12 AAC 02 and is approved for licensure as a hearing aid dealer, the department will issue the business license at the same time and in the same name as the hearing aid dealer license.

(f) A request for written or oral confirmation of more than three business licenses per day, per requester, must be made in writing.

(g) In advertising and operating, a business license holder must use the business name that appears on the business license.

(h) A business license holder is authorized to conduct business activities only within the line of business specified on the business license.

(i) The business license or a photocopy of the business license must be displayed in a conspicuous location at each business establishment.

Authority: AS 08.55.010 AS 43.70.090 AS 43.70.110

12 AAC 12.030. APPLICATION FOR BUSINESS LICENSE. An applicant for a business license shall submit the business license fee specified in 12 AAC 12.010 and a completed application on a form provided by the department. To be complete a business license application must include

- (1) the business name;
- (2) the line of business to be conducted;
- (3) the names of the persons engaging in the business;
- (4) the mailing address and physical address of the principal place of business;
- (5) information regarding other licenses or permits, if applicable;
- (6) a statement as to whether the business will sell tobacco products as a retailer and the physical address of each outlet or location where tobacco products will be sold;
- (7) the name of the natural person completing the application on behalf of the business and that person's title or position in the business.
- (8) specification whether the applicant seeks an annual initial license, a biennial initial license, renewal for an annual license period, or renewal for a biennial license period.

Authority: AS 08.01.050 AS 08.01.080 AS 43.70.075
AS 08.01.060 AS 43.70.020 AS 43.70.090

12 AAC 12.040. TERM OF BUSINESS LICENSE; LICENSE RENEWAL. (a) A person may seek an annual or a biennial business license. A new business license will be assigned a renewal year by the department at the time the initial license is issued. Except as provided in (b) of this section, the initial

(1) annual license period includes the remainder of the calendar year in which the business license is issued; or

(2) biennial license period includes the remainder of the calendar year in which the business license is issued and all of the following calendar year.

(b) If the department issues an initial business license on or after October 1, the

(1) annual license period includes the remainder of the calendar year in which the business license is issued and all of the following calendar year; or

(2) biennial license period includes the remainder of the calendar year in which the business license is issued and all of the following two calendar years.

(c) The department will renew a business license that has been lapsed for two years or less if the applicant for renewal of the business license pays the business license renewal fee specified in 12 AAC 12.010(b) in a manner specified by the department on the renewal application.

(d) The department will not renew a business license that has been lapsed for more than two years. The previous holder of a business license that has been lapsed for more than two years may apply for a new business license under this chapter.

Authority: AS 08.01.050 AS 08.01.100 AS 43.70.090
AS 08.01.080

12 AAC 12.050. CHANGES IN BUSINESS LICENSE. (a) A new business license under 12 AAC 12.030 is required if

(1) there is a change in the name of the business, unless the change is limited to the addition or removal of a

(A) professional title of a business owner used in the name of the business; or

(B) word describing the legal form of organization of the business and the ownership of the business has not changed;

(2) the activities of the business are no longer within the line of business specified on the business license; or

(3) there is a change in the ownership of the business.

(b) If the business license holder submits the fees specified in 12 AAC 02.105(3) along with the updated information on a form provided by the department, the department will update a business license to show a change in

(1) the business license holder's legal name;

(2) the business name as described in (a)(1)(A) or (B) of this section; or

(3) the address of a business.

(c) A business license is not transferable or assignable.

Authority: AS 08.01.080 AS 43.70.020 AS 43.70.090

ARTICLE 2.
BUSINESS LICENSE ENDORSEMENT FOR SALE OF TOBACCO PRODUCTS:
ADMINISTRATIVE HEARING AND REVIEW PROCEDURES.

Section

- 800. Applicability**
- 805. Request for hearing**
- 810. Notice of appearance by attorney for aggrieved person**
- 815. Time and place of hearing**
- 820. Discovery**
- 825. Continuances**
- 830. Motions**
- 835. Hearing**
- 840. Evidence**
- 845. Final decision and reconsideration**
- 850. Contacts with the commissioner or hearing officer**
- 855. Time periods and methods for filing**

12 AAC 12.800. APPLICABILITY. The provisions of 12 AAC 12.800 - 12 AAC 12.855 apply to an administrative hearing regarding a department action under AS 43.70.075, including a notice of suspension and a refusal by the department to issue a business license endorsement.

Authority: AS 43.70.075 AS 43.70.090

12 AAC 12.805. REQUEST FOR HEARING. (a) To obtain administrative review of a department action under AS 43.70.075, an aggrieved person must file with the department, in accordance with this section and 12 AAC 12.855, a request for an administrative hearing. The request must be filed within 20 days after the notice of department action is issued.

- (b) A request for an administrative hearing must
- (1) be in writing;
 - (2) be signed by the aggrieved person or the aggrieved person's attorney;
 - (3) be correctly addressed;
 - (4) set out the jurisdictional heading and case caption; the case caption must state the aggrieved person's own name; in addition, if the aggrieved person does business under another name, the case caption must state that name under a "d/b/a" designation;
 - (5) set out the case reference number used by the department;
 - (6) set out, underneath the case reference number and centered, the title of the request;
 - (7) specify the basis upon which the department action is being challenged;
 - (8) specify the relief sought;
 - (9) set out, at the end of the request, the
 - (A) signature of the aggrieved person or the aggrieved person's attorney; and
 - (B) date that the request was signed;
 - (10) include the aggrieved person's mailing address and daytime telephone number; the aggrieved person may include an electronic mail address and a telephone number for facsimile transmissions; and
 - (11) include a request for any special procedures to be used at the hearing, including the use of a translator.

(c) The aggrieved person is responsible for notifying the department in writing of any change in the aggrieved person's mailing address, daytime telephone number, electronic mail address, or telephone number for facsimile transmissions. For purposes of any requirement in 12 AAC 12.800 - 12 AAC 12.855 to provide the aggrieved person with a copy of filed or decisional documents, and for purposes of any other attempt to contact the aggrieved person, the department and the hearing officer may consider current any information that the aggrieved person most recently provided with respect to the aggrieved person's mailing address, daytime telephone number, electronic mail address, or telephone number for facsimile transmissions.

Authority: AS 43.70.075 AS 43.70.090

12 AAC 12.810. NOTICE OF APPEARANCE BY ATTORNEY FOR AGGRIEVED PERSON. An attorney representing an aggrieved person must file with the hearing officer a notice of appearance that provides the attorney's mailing address, the attorney's telephone number, and any telephone number for the attorney to receive facsimile transmissions.

Authority: AS 43.70.075 AS 43.70.090

12 AAC 12.815. TIME AND PLACE OF HEARING. (a) Unless the aggrieved person and the department stipulate, with the hearing officer's approval, to the time and place of the hearing and to pre-hearing deadlines, the

hearing officer shall conduct a telephonic pre-hearing conference to

- (1) schedule the time and place of the hearing; and
- (2) determine pre-hearing deadlines for the close of discovery, the exchange of witness and exhibit lists, the filing of motions, and the filing of optional hearing memoranda.

(b) The hearing shall be held in Anchorage, Fairbanks, or Juneau, whichever location is closest to the aggrieved person, unless the aggrieved person and the department stipulate, with the hearing officer's approval, to a different location for the hearing.

Authority: AS 43.70.075 AS 43.70.090

12 AAC 12.820. DISCOVERY. The aggrieved person and the department may obtain discovery of unprivileged documentary evidence relevant to the issues identified in AS 43.70.075(m)(1), (2), and (3). Discovery requests and responses are not required to be filed with the hearing officer. Upon a motion with good cause shown, the hearing officer may compel discovery or issue protective orders concerning discovery.

Authority: AS 43.70.075 AS 43.70.090

12 AAC 12.825. CONTINUANCES. To seek a continuance in an administrative hearing, the aggrieved person or the department must file a motion that sets out the grounds for the request. The administrative hearing may only be continued for good cause shown.

Authority: AS 43.70.075 AS 43.70.090

12 AAC 12.830. MOTIONS. (a) To make a motion or submit a memorandum, the aggrieved person or the department must file the motion or memorandum in writing with the hearing officer and provide a copy to the opposing party. The filing of a motion or memorandum with the hearing officer is subject to the requirements of 12 AAC 12.855, as applicable. The filing must include signed proof that a copy was provided to the opposing party, identifying the motion or memorandum provided, and setting out the date and the method by which the copy was provided. A copy to the opposing party may be provided by personal delivery, first class mail, or facsimile transmission. A copy provided by electronic mail shall not be considered to have been provided in accordance with this subsection.

(b) A written motion is subject to opposition and reply memoranda,

- (1) except as otherwise set out in 12 AAC 12.800 - 12 AAC 12.855;
- (2) unless the aggrieved person and the department, with the hearing officer's approval, stipulate otherwise; or
- (3) unless the commissioner or hearing officer order otherwise.

(c) Unless the commissioner or hearing officer orders a different schedule for the filing of memoranda, and except as provided in (d) of this section,

(1) an opposition memorandum may be filed with the hearing officer no later than 10 days after the date the motion was provided to the opposing party; and

(2) a reply memorandum may be filed with the hearing officer no later than three business days after the date the opposition memorandum was provided to the opposing party.

(d) If a motion or memorandum is provided to the opposing party by first class mail, three days shall be added to the time for filing an opposition or reply memorandum.

Authority: AS 43.70.075 AS 43.70.090

12 AAC 12.835. HEARING. (a) For purposes of the preponderance of the evidence test required under AS 43.70.075(m), the department bears the burden of proof.

(b) Unless the aggrieved person and the department agree otherwise, the department will present its case first. The aggrieved person and the department each may make an opening statement and a closing argument. A closing argument may be oral or written, and with the hearing officer's approval, may be filed or take place after the final day of testimony. Each witness shall testify under oath and with an opportunity for cross-examination. An aggrieved person who is not represented by counsel may testify in a narrative form, under oath and subject to cross-examination. Upon request by the aggrieved person or the department, and with the hearing officer's approval, a witness, the aggrieved person, or the department may testify or otherwise participate in the hearing process telephonically. Any long distance charge for telephonic testimony or participation must be incurred by the party who made the request.

(c) A hearing held under this section shall be recorded and may be transcribed at the request and expense of the party requesting the transcript.

(d) After the record for the hearing is closed, the hearing officer shall issue a written proposed decision with findings of fact and conclusions of law.

Authority: AS 43.70.075 AS 43.70.090

12 AAC 12.840. EVIDENCE. (a) Oral evidence may be taken only on oath or affirmation.

(b) The aggrieved person and the department may each

- (1) call and examine witnesses;
- (2) introduce exhibits, with the department using numbers and the aggrieved person using letters to identify exhibits;
- (3) cross-examine opposing witnesses on matters relevant to the issues, even if an issue was not covered in the direct examination;
- (4) impeach a witness regardless of which party first called the witness to testify;
- (5) rebut any adverse evidence; and
- (6) introduce evidence to rebut or support the presumption set out in AS 43.70.075(r).

(c) If the aggrieved person does not choose to testify on direct examination, the aggrieved person may be called and examined as if under cross-examination.

(d) The administrative hearing need not be conducted according to technical rules relating to evidence and witnesses. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be used to supplement or explain direct evidence but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action. The rules of privilege are effective to the same extent that they are recognized in a civil action. Irrelevant and unduly repetitious evidence shall be excluded.

Authority: AS 43.70.075 AS 43.70.090

12 AAC 12.845. FINAL DECISION AND RECONSIDERATION. (a) For purposes of appeal to the superior court, the commissioner's decision under AS 43.70.075(n) is a final administrative order and decision on the last day when reconsideration of that decision can be ordered. The decision becomes effective 30 days after it is issued under 12 AAC 12.855(c), unless

- (1) a different effective date is stated in the decision; or
- (2) the aggrieved person and the department, with the approval of the commissioner, agree to a different effective date; the commissioner may delegate to the hearing officer a decision to approve a different effective date.

(b) Within no more than 20 days after the commissioner's decision is issued under 12 AAC 12.855(c), the aggrieved person or the department may file, in accordance with 12 AAC 12.830 and 12 AAC 12.855, a motion for reconsideration of the decision. The motion must set out the grounds upon which the aggrieved person or the department believes the decision to be erroneous, unlawful, or defective.

(c) Within 30 days after the commissioner's decision is issued under 12 AAC 12.855(c), the commissioner may order reconsideration on the commissioner's own motion or upon the filing of a motion in accordance with (b) of this section. Upon reconsideration, the commissioner may affirm the decision, issue a new or modified decision, or remand the matter to the hearing officer for additional proceedings. If the commissioner does not act on a motion for reconsideration within the 30-day period, the motion for reconsideration is denied.

(d) The commissioner may grant, upon a motion by the aggrieved person or the department, a stay for a particular purpose at any time before the decision becomes effective or before any appeal is filed with the superior court. A motion for a stay must set out the reasons that a stay is sought. The commissioner will grant a stay only for good cause shown.

(e) Any filing after issuance of the hearing officer's proposed decision shall be made with the hearing officer. The hearing officer shall forward those filings to the commissioner.

Authority: AS 43.70.075 AS 43.70.090

12 AAC 12.850. CONTACTS WITH COMMISSIONER AND HEARING OFFICER. An aggrieved person, the department, or a person acting on behalf of the aggrieved person or department may contact the commissioner or hearing officer concerning a matter that is the subject of a pending or in-progress administrative hearing only through the procedures set out in 12 AAC 12.800 - 12 AAC 12.855. The commissioner will not, and hearing officer may not, make a communication without both parties present concerning a matter that is the subject of a pending or in-progress administrative hearing to which the aggrieved person and the department are a party.

Authority: AS 43.70.075 AS 43.70.090

12 AAC 12.855. TIME PERIODS AND METHODS FOR FILING. (a) If a document must be filed on or before a specified date under a provision of 12 AAC 12.800 - 12 AAC 12.855, the document may be filed by personal delivery, first class mail, or facsimile transmission. If the document is filed by

- (1) mail, the date of filing is the date when the department receives the document; or
- (2) personal delivery or facsimile transmission, the document will not be considered timely filed unless the department receives the document before the time the department closes for regular business on the specified date.

(b) If a date on or before which a document must be filed under 12 AAC 12.800 - 12 AAC 12.855 is a Saturday, Sunday, or state holiday, the document must be filed on or before the next regular business day.

(c) For purposes of calculating a time period under AS 43.70.075 and 12 AAC 12.800 - 12 AAC 12.855, the date when a notice of a department action is issued to an aggrieved person is the date that the department personally delivers the notice, sends it by first class mail, or transmits it by facsimile transmission, whichever occurs first. An aggrieved person represented by an attorney will be presumed to have been issued the decision if the decision is issued to the attorney by one of the means in this subsection.

(d) A document may not be filed by electronic mail or by any other electronic means except facsimile transmission.

Authority: AS 43.70.075 AS 43.70.090

ARTICLE 3. GENERAL PROVISIONS.

Section

990. Definitions

12 AAC 12.990. DEFINITIONS. (a) In this chapter, unless the context requires otherwise,

- (1) "aggrieved person" means a person against whom the department takes action under AS 43.70.075;
 - (2) "business day" means a day other than Saturday, Sunday, or a state holiday;
 - (3) "commissioner" means the commissioner of commerce, community, and economic development;
 - (4) "department" means the Department of Commerce, Community, and Economic Development;
 - (5) "independent contractor" means a person who provides goods or services for compensation but does not have the status of an employee while providing those goods or services;
 - (6) "line of business" means a business category in which one or more related business activities, indicated by a business classification code specified by the department, may be conducted under a business license; a "line of business" is considered to be one the following business categories:
 - (A) accommodation and food services;
 - (B) administrative, support, waste management, and remediation services;
 - (C) agriculture, forestry, and fishing and hunting;
 - (D) arts, entertainment, and recreation;
 - (E) construction;
 - (F) educational services;
 - (G) finance and insurance;
 - (H) health care and social assistance;
 - (I) information;
 - (J) management of companies and enterprises;
 - (K) manufacturing;
 - (L) mining;
 - (M) professional, scientific, and technical services;
 - (N) public administration;
 - (O) real estate, rental, and leasing;
 - (P) services;
 - (Q) trade;
 - (R) transportation and warehousing;
 - (S) utilities;
 - (7) "motion" means any written request of the commissioner or hearing officer seeking a ruling on an issue in a case;
 - (8) "telephonically" means by telephone or video teleconferencing, as available.
- (b) As used in AS 43.70.105, "regularly engaged in furnishing goods or services" includes seasonal activities and reoccurring activities.

Authority: AS 08.01.080 AS 43.70.090 AS 43.70.110
AS 08.70.075 AS 43.70.105