

BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY DEPARTMENT OF COMMERCE, COMMUNITY AND
ECONOMIC DEVELOPMENT

In the Matter of:)
)
SAFEWAY STORES, INC.,)
)
Respondent.) OAH No. 04-0283-TOB
) [0500-04-051]

PROPOSED DECISION

I. Introduction

This case is a tobacco enforcement proceeding by the Department of Commerce, Community and Economic Development. On July 27, 2004, an employee at a Safeway fuel station located at 3101 Penland Parkway in Anchorage was cited and later convicted for selling tobacco to a minor in violation of AS 11.76.100(a)(1). Under AS 43.70.075, the department issued a Notice of Suspension of Tobacco Endorsement to Safeway affecting the tobacco license endorsement at the premises (# 271192-1).

Safeway requested a hearing. The department transferred the case to the Office of Administrative Hearings,¹ and a hearing was held in conformance with regulations at 12 AAC 12.800 – 12 AAC 12.990.² This document is the proposed decision for the department in accordance with AS 43.70.075(m) and (n). Based on the evidence and in accordance with AS 43.70.075(d)(1), it is recommended that tobacco endorsement # 271192-1 at Safeway's fuel station be suspended for a period of 20 days and that a fine of \$300 be imposed.

II. Facts

Richard Watts, Paul Kasha and Don Faulkenburry testified as witnesses at the hearing under oath and subject to cross-examination. Exhibits admitted as evidence include: State's

¹ The Office of Administrative Hearings (OAH) was created in 2004. See AS 44.64.010. Under a transitional provision relating to transfer of employees, the hearing officer for the Department of Commerce, Community and Economic Development was transferred to OAH.

² This case was consolidated with another tobacco enforcement case involving a fuel station at a Juneau Safeway store (OAH 04-0282-TOB [O/L Case No. 0500-04-019]). Safeway withdrew its request for hearing in OAH 04-0282-TOB and agreed to sanctions before the hearing commenced.

Exhibits 1 through 5; Respondent's Exhibits A through Z and AA through HH.³ References are made in the fact findings to the audiocassette tapes comprising the record made at the hearing, which are not transcribed. The following findings are based on the record in this case:

1. Safeway Stores, Inc. is a corporation engaged in retail sales. Five types of Safeway stores operate in Alaska: Carrs / Safeway grocery stores, Eagle Quality Centers grocery stores, Oaken Keg liquor stores, The Great Alaskan Tobacco Co., and fuel stations. In total, 58 Safeway outlets in Alaska sell tobacco products. Each location is required to have its own tobacco endorsement issued by the Department of Commerce, Community and Economic Development. (Cross-examination of Watts, tape 1B; Direct exam of Kasha, tape 2B; Exh. 1)

2. Safeway operates a fuel station (# 0520) at 3101 Penland Parkway in Anchorage next to the Northway Mall Carrs / Safeway store. The location has business license # 271192 and tobacco endorsement # 271192-1. Employee Ryan Byers worked at fuel station # 0520. He was trained by Safeway to sell tobacco products as part of his job. On July 27, 2004, Byers sold a pack of cigarettes to a young woman who was a minor. A photo and video of the July 27, 2004, transaction exhibited at the hearing (Exh. FF) show that the customer was young in appearance and that she wore a bright orange West High School sweatshirt. Byers did not ask her for identification, and he did not otherwise seek to determine her age. Instead, he entered a generic fictitious date of birth into Safeway's computer when responding to the date of birth / ID prompt. He placed money he received from the customer into Safeway's cash drawer. He also made change for her from the cash drawer. After the sale was completed, Byers was cited by local police for violating 11.76.100(a)(1), which prohibits the sale of tobacco products to a minor. Safeway's store manager Paul Kasha was notified by another employee that day regarding Byers' citation. Kasha notified district manager Richard Watts of the unlawful tobacco sale later that day. Safeway's Loss Prevention Department commenced an investigation of the matter. Byers was placed on temporary suspension. His employment was terminated on July 30, 2004, for violating company policy. On August 4, 2004, he was convicted by a plea of no contest and fined \$300 for Citation No. C 2050013. The district judge suspended \$150 of the \$300 fine. (Direct and cross-exam of Watts, tapes 1A, 1B; Direct and cross-exam of Kasha, tapes 2B, 3A; Exhs. 3, EE, FF, GG, HH)

3. Based on Byers' conviction, the division of occupational licensing gave notice to Safeway that under AS 43.70.075(d)(1), the State of Alaska was suspending the corporation's

³ Exhibits "II" through "RR" were withdrawn.

tobacco endorsement for fuel station # 0520 and imposing a civil fine. Safeway requested a hearing and was represented by counsel during proceedings. Watts and Kasha testified at the hearing for Safeway. Prior to Byers' conviction, no Safeway employee at fuel station # 0520 had previously been convicted for violating AS 11.76.100(a)(1). (Notice of Suspension; Notice of Defense; Exh. 3)

4. Safeway's internal investigation of the unlawful sale that Byers was cited for revealed that he used the same fictitious date of birth in computer entries to sell tobacco during 14 customer transactions that day. The facts in this case establish that Byers intentionally circumvented Safeway company policy governing tobacco sales to minors. Safeway conceded that employees other than Byers also used fictitious dates of birth to sell tobacco products. According to Watts, 10 to 12 Safeway employees were suspended for tobacco sales violating company policy. (Direct, cross and re-direct exam of Watts, tapes 1A, 1B, 3B; Cross-exam of Kasha, tape 3B; Exhs. 5, EE, FF, GG [attached as Appendix "A"])

III. Discussion

A. Applicable Law

In this tobacco enforcement case, the Department of Commerce, Community and Economic Development is exercising state regulatory authority under the Alaska Business License Act (AS 43.70). The department grants business licenses in accordance with AS 43.70.020 and 12 AAC 12.020. Under AS 43.70.075(a), the agency issues endorsements to business licenses allowing the retail sale of "cigarettes, cigars, tobacco, or products containing tobacco." AS 11.76.100 provides that it is unlawful under any circumstances to sell tobacco products to a minor (less than 19 years of age). Under AS 43.70.075(d), a violation of AS 11.76.100 subjects the person holding the license to mandatory suspension of the endorsement along with a civil penalty. AS 43.70.075(r) establishes a rebuttable presumption that the unlawful tobacco sale at issue was within the scope of agency or employment.

AS 43.70.075(m) and 12 AAC 12.835 address the standard of proof in a tobacco enforcement proceeding. The department has the legal burden in this case to prove by a preponderance of the evidence that Safeway's employee Ryan Byers was convicted of violating AS 11.76.100 for a tobacco sale that occurred while he was acting within the scope of employment. Under AS 43.70.075(q), the Administrative Procedure Act in AS 44.62 does not apply to this case.

B. Sanctions Are Warranted Under AS 43.70.075(d)(1).

The Notice of Suspension in this case contains one count. It alleges that Byers sold tobacco to a minor while working at Safeway's fuel station # 0520. It further alleges that he was cited for violating AS 11.76.100(a)(1) and later convicted on the charge. Testimony and other evidence from the hearing in this case establish these allegations as true.

Safeway's defense in this case rested on the argument that Byers was acting outside the scope of his employment and, therefore, no basis for sanctions exists under AS 43.70.075(d)(1). Safeway argued that it adequately trained Byers to sell tobacco products, and he was not authorized to sell cigarettes to a minor. The division of occupational licensing responded that Byers was acting within the scope of his employment, and that Safeway may not rely on the reasonableness of the employer's conduct as a defense.

Safeway's argument lacks merit. AS 43.70.075(d) and (m) both use the criterion "within the scope of the agency or employment." The term is not statutorily defined.⁴ In Godfrey v. State of Alaska, Superior Court Judge Collins recently upheld sanctions imposed in a tobacco enforcement case, rejecting a tobacco licensee's due process arguments.⁵ The court recognized that Alaska law "generally holds that so long as the conduct at issue arises out of and is reasonably incidental to the employee's legitimate work activities and motivation to serve the company, otherwise unlawful conduct may properly be found to be within the scope of employment."⁶ Further, the liability issue in Godfrey was described as "not general civil liability based on principles of respondeat superior but, rather, civil administrative penalties associated with employee misconduct."⁷ It is noted that strict liability of employers is sometimes permitted for criminal offenses involving heavily regulated activities where societal interests are paramount.⁸

In this case, the facts establish that Byers was acting within the scope of his employment when he made the unlawful sale on July 27, 2004. He was at work and selling Safeway's tobacco product, a task for which he was trained. Byers was stationed on Safeway's work

⁴ The tort standard for this concept is set forth in Laidlaw Transit, Inc. v. Crouse, 53 P.3d 1093, 1098-99 (Alaska 2002)(vicarious liability of employer for acts of employee).

⁵ See Richard Godfrey d/b/a Mendenhall Valley Tesoro, 1JU-04-00375 CI, p. 23 (2/14/05 Order on Appeal).

⁶ See id. at 19-20 (citing Laidlaw, 53 P.3d at 1098).

⁷ See id. at 23.

⁸ See, e.g., State of Alaska v. Hazelwood, 946 P.2d 875, 880-83 (Alaska 1997); Cole v. State of Alaska, 828 P.2d 175, 178 (Alaska App. 1992); Loeb v. Rasmussen, 822 P.2d 914, 918 (Alaska 1991); Godfrey, 1JU-04-00375 CI, pp. 21-24 (2/14/05 Order on Appeal). See also Alesna v. LaGrue, 614 P.2d 1387, 1390 (Alaska 1980) (strict liability of liquor licensee for civil damages from improper sales of alcohol); AS 08.80.157(h) (pharmacy subject to suspension or revocation of license based on employee unlawfully dispensing prescription drugs).

premises at a location for which a tobacco endorsement was issued, and he used store equipment to conduct the sale. He used his employer's cash register to enter a date of birth. He placed money he received from the sale in Safeway's cash drawer. He also made change for the customer from the cash drawer.

Safeway was allowed the opportunity to assert defenses at the hearing in this case, including defenses based on the questions enumerated at AS 43.70.075(m)(1), (2) and (3). It did not present sufficient evidence, however, to overcome the presumption of AS 43.70.075(r) that the unlawful sale was within the scope of employment.

During its closing argument in this case, Safeway argued that the "course of employment" rule from Laidlaw Transit, Inc. v. Crouse did not apply to this case, and that "the complicity rule" from the Restatement of Torts and Restatement of Agency should apply to preclude imposition of sanctions under AS 43.70.075(d).⁹ The complicity rule requires at least some degree of employer complicity before vicarious liability attaches arising from the conduct of a non-supervisory employee. Alaska courts have not yet adopted this rule, and it will not be applied at this stage in the administrative proceeding. The language of AS 43.70.075(d) ("acting within the scope of the agency or employment") does not address the degree or reasonableness of an employer's conduct. Areas of questioning at the hearing as set forth in AS 43.70.075(m) do not allow inquiry into the reasonableness of the endorsement holder's conduct as a defense to discipline under AS 43.70.075(d). Judge Collins noted in Godfrey that imposition of an administrative sanction through strict liability for employers who sell tobacco to minors has the "same social policy rationale" as that recognized by the supreme court "for improper sales of yet another dangerous and highly regulated substance, alcohol."¹⁰

Safeway also argued in closing that considerations of fairness toward the employer require a result in its favor on the scope of employment issue, citing cases in Idaho and Utah. Those cases have no precedential effect in the current proceeding.¹¹ The public policy goal behind AS 43.70.075 is strong, as identified by Judge Collins. "[I]t can hardly be disputed that

⁹ See Laidlaw Transit, Inc., 53 P.3d at 1098 (citing Restatement (Second) of Torts § 909 (1979) and Restatement (Second) of Agency, § 217C (1958)).

¹⁰ See Godfrey, 1JU-04-00375 CI, pp. 22-23 (2/14/05 Order on Appeal) (quoting Alesna, 614 P.2d at 1391).

¹¹ See Anderson v. Spalding, 50 P.3d 1004 (Id. 2002) (due process was adequate in claim by former employee against Department of Corrections supervisor); D.D.Z. v. Mollerway Freight Lines, Inc., 880 P.2d 1 (Ct. App. Utah 1994) (employer not liable under respondeat superior for claims arising from employee's sexual assault of co-employee at company party).

the government has a very significant interest in the health of children and that the instant statute was designed to achieve a laudable and compelling goal, reduction in tobacco use by children.”¹²

For an initial violation of AS 11.76.100, AS 43.70.075(d)(1) provides that “the department shall suspend the endorsement for a period of 20 days and impose a civil penalty of \$300.” (emphasis added) The plain language of the statute indicates that the disciplinary sanctions are mandatory. Legislative history for AS 43.70.075 also supports this policy determination.¹³ Consequently, the Commissioner has no discretion to impose a penalty less than what the legislature has provided.

V. Conclusion

A Safeway employee was acting within the scope of employment when he sold tobacco products to a minor in violation of AS 11.76.100. The division proved the allegations in the Notice of Suspension by a preponderance of the evidence. The following sanctions are recommended to the department in accordance with AS 43.70.075(d)(1).

1. Suspension of Safeway’s tobacco endorsement # 271192-1 at fuel station # 0520 for a period of 20 consecutive days;
2. Imposition of a civil penalty in the amount of \$300.

Unless the parties otherwise agree in writing or this decision is stayed by an appeal, the suspension must commence within 90 days from the date of the final administrative action in this case. The fine must be paid in full before the license returns to active status.

DATED this 13th day of April, 2005.

By: _____

David G. Stebing
Administrative Law Judge

¹² See Godfrey, 1JU-04-00375 CI, p. 24 (2/14/05 Order on Appeal).

¹³ See HB 228, House Judiciary Committee minutes, 4/21/01, log entry 1124; HB 228, House Labor & Commerce Committee minutes, 4/18/01, log entry 1515; SSHB 189, House Judiciary Committee minutes, 5/5/97, log entry 1332; HB 189, House Health, Education and Social Services Committee minutes, 1/16/98, log entry 0900.

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Respondent.) OAH No. 04-0283-TOB
) [0500-04-051]
_____)

FINAL AGENCY ACTION

Having reviewed the proposed decision of the administrative law judge in: **Matter of Safeway Stores, Inc., OAH Case No. 04-0283-TOB**, the Commissioner:

Option 1: adopts the proposed decision in its entirety under AS 43.70.075(n)(1).

Date: April 19, 05 By: _____
Commissioner,
Department of Commerce, Community
and Economic Development

Option 2: remands the matter to the same/different administrative law judge for further proceedings under AS 43.70.075(n)(2), to receive additional evidence on the following issues:

Date: _____ By: _____
Commissioner,
Department of Commerce, Community
and Economic Development

Option 3: rejects the proposed decision under AS 43.70.075(n)(3), and orders that the entire record be prepared for review.

Date: _____ By: _____
Commissioner,
Department of Commerce, Community
and Economic Development



EMPLOYEE INTERVIEW RECAP

DATE: _____ STORE 520
NUMBER _____ TIME _____ am/pm

(name) Ryan Byers, currently reside at: _____

(number and street) _____ (city and state) _____ (zip code) _____

1. Briefly write how long you have been working at Safeway and your employment history with the company (i.e. department(s) worked in and position(s) held up to your current position with the company).

5 year ² bar Baker, ~~SMOKE~~ ^{3 year} SMOKE SHOP,
GAS MAN

2. Please describe in detail what matters were discussed during your interview with Security. (Be specific regarding individuals involved, dates of occurrence(s), number of occurrences and the method(s) in which they occurred).

It was busy I was selling gas and
oil's it was a blur ~~SMOKE~~ ~~SMOKE~~ ~~SMOKE~~
she ar
she walk up, gas, coke and SMOKE
Birthday, I.D. she gave me the
Birthday, I tippin the birthday
Make the deal she left a seci sholdup
a for minimal halter he ~~SMOKE~~ band he

(Use reverse side of page if more comments are needed)

INITIALS OF EMPLOYEE: _____ INITIALS OF INTERVIEWER: _____
INITIALS OF WITNESS: _____

APPENDIX "A"

Original to Security File
SEC02
EMPLOYEE INTERVIEW RECAP

3. Give an explanation for what happened and why, regarding the occurrence(s):

I thought I twigg in the birthday
the guy ² me it was April 24, 1957
² I had no idea how I
enter four 24 1957 I don't know what was going on

(Use reverse side of page if more comments are needed)

4. Did you understand that your actions violated company policy?

Yes I do not check the ID
I tip the wrong birthday

5. (If applicable), list total dollar amount in merchandise \$ N/A; cash \$ _____
for which Safeway should be reimbursed. How did you arrive at this figure?

6. How did you feel about the interview with Security and how were you treated?

OK

7. Have you described the matters previously discussed in your interview completely and accurately?

No I admit that I was insistent
a generic birthday 4/24/57 for Tabasco Sauce
throughout my white
INITIALS OF EMPLOYEE: (B) White INITIALS OF INTERVIEWER: _____

INITIALS OF WITNESS _____

EMPLOYEE INTERVIEW RECAP

EMPLOYEE COMMENTS: What could Safeway have done to prevent these activities/
What can Safeway do in the future to prevent these activities from occurring?

(use the reverse side of page if more comments are needed)

NOTE: ~~PLEASE INITIAL ALL ERRORS AND CROSSOUTS ON PAGE.~~

NAME: _____

SIGNATURE: _____

DATE: ^(Printed) 7/28/04 _____

STORE NUMBER YOU ARE ASSIGNED TO: 570

INTERVIEWER'S SIGNATURE: _____

WITNESS SIGNATURE: _____

NOTE: THIS EMPLOYEE INTERVIEW RECAP IS A COMPILATION OF FACTS THAT I HAVE VERBALLY ADMITTED TO IN AN INTERVIEW WITH SECURITY. I HAVE ANSWERED THESE QUESTIONS OF MY OWN FREE WILL WITHOUT ANY PROMISES OR THREATS (VERBALLY OR IMPLIED) TOWARDS MYSELF.

SIGNATURE: _____ TIME: _____

INITIALS OF INTERVIEWER: GG

INITIALS OF WITNESS: _____

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_____)

CERTIFICATE OF MAILING

Molly Benson certifies that she is employed by the State of Alaska, Department of Administration, Office of Administrative Hearings, in Anchorage, Alaska; that on the 7th day of April, 2005, she mailed via first class mail true and accurate copies of the **Proposed Decision in the Matter of Safeway Stores, Inc., OAH No. 04-0283-TOB** to:

- Lt. Governor's Office
- Edgar Blatchford, Commissioner
- Rick Urion, Director of Occupational Licensing
- Terry Thurbon, Chief Administrative Law Judge
- Acting Chief Investigator for Occupational Licensing
- Safeway Stores, Inc., Respondent
- David Mayberry and Kyle Parker, Attorneys for Respondent
- Cynthia Drinkwater, Assistant Attorney General

By: _____
Molly Benson

RULES OF APPELLATE PROCEDURE

Rule 602. Time — Venue — Notice — Bonds.

(a) When Taken.

(1) *Appeals from the District Court.* An appeal may be taken to the superior court from the district court within 30 days from the date shown in the clerk's certificate of distribution on the judgment.

(2) *Appeals from Administrative Agencies.* An appeal may be taken to the superior court from an administrative agency within 30 days from the date that the decision appealed from is mailed or otherwise distributed to the appellant. If a request for agency reconsideration is timely filed before the agency, the notice of appeal must be filed within 30 days after the date the agency's reconsideration decision is mailed or otherwise distributed to the appellant, or after the date the request for reconsideration is deemed denied under agency regulations whichever is earlier. The 30-day period for taking an appeal does not begin to run until the agency has issued a decision that clearly states that it is a final decision and that the claimant has thirty days to appeal. An appeal that is taken from a final decision that does not include such a statement is not a premature appeal.

(3) Rule 204(a)(2) — (6) concerning the timing of appeals applies to appeals to superior court.

(b) Venue.

(1) *Appeals from the District Court.* Venue for an appeal from a district court decision shall be at the superior court location within the same judicial district as the district court that would best serve the convenience of the parties.

(2) *Appeals from Administrative Agencies.* Unless otherwise provided by law, venue for an appeal from an administrative agency decision shall be at the superior court location that would best serve the convenience of the parties.

(c) Notice of Appeal.

(1) A party may appeal from a judgment or agency decision by filing a notice of appeal with the superior court. The notice of appeal must specify the parties taking the appeal and their current addresses, designate the judgment, agency decision or part thereof appealed from, and name the court to which the appeal is taken. At the time the notice of appeal is served and filed, it must be accompanied by:

(A) a statement of points on which appellant intends to rely on appeal. The grounds for appeal stated in the statement of points on appeal constitute the sole basis for review by the superior court. On motion in the superior court, and for cause, the statement of points may be supplemented;

(B) if required, the filing fee as provided by Administrative Rule 9;

(C) if required, a bond for costs on appeal as provided by paragraph (d) of this rule;

(D) a copy of the district court judgment or agency decision from which the appeal is taken; and

(E) proof of service on all parties to the appeal. In an appeal from an agency decision, the notice of appeal must be served on the head of the agency and, if the agency is a state agency, on the Attorney General of Alaska, at Juneau, Alaska.

(2) An appellant seeking to have the cost bond waived or reduced, an extension of time to file the bond, or to appeal at public expense shall file an appropriate motion at the time the notice of appeal is filed.

(3) The clerk of the superior court shall refuse to accept for filing any notice of appeal not conforming with the requirements of this rule.

(d) Notification by Clerk.

(1) In an appeal from a district court which is not at the same location as the superior court, the clerk shall send a copy of the notice of appeal to the district court and shall notify the district court of the date by which it must

forward the record on appeal as provided by Rule 604(a)(1).

(2) In an appeal from an administrative agency, the clerk shall send a copy of the notice of appeal to the agency and request the agency to submit a list of the names and addresses of all counsel who appeared in the matter before the agency, and of all persons who appeared therein pro se. The agency shall file the list with the clerk within ten days of service of the request. The clerk also shall notify the agency of the date by which it must prepare the record in accordance with Rule 604(b)(1).

(e) Cost Bond.

(1) In a civil case or an appeal from an administrative agency, unless a party is exempted by law, or has filed an approved supersedeas bond under Rule 603(a)(2), a bond for costs on appeal must be filed in superior court with the notice of appeal. The amount and terms of the bond are governed by Rule 204(c)(1) and Civil Rule 80.

(2) The cost bond exemptions provided by Rule 204(c)(2) apply in appeals to superior court.

(f) Supersedeas Bond. The appellant may file a supersedeas bond pursuant to Rule 603(a)(2) in lieu of a cost bond.

(g) Cash Deposit. The appellant may deposit cash in the amount of the bond with the court in lieu of filing a cost or supersedeas bond. At the time of the deposit, appellant also shall file a written instrument properly executed and acknowledged by the owner of the cash, or by the owner's attorney or the owner's authorized agent, setting forth the ownership of the fund; agreement to the terms of Civil Rule 80(f); and satisfaction of the conditions specified in Rule 204(c)(1) if the deposit is in lieu of a cost bond, or Rule 204(d) if the deposit is in lieu of a supersedeas bond.

(h) Parties to the Appeal. All parties to the trial court or agency action when the final order or judgment was entered are parties to the appeal. A party who files a notice of

appeal, whether separately or jointly, is an appellant under these rules. All other parties, including the agency in an appeal from an administrative agency decision, are deemed to be appellees. An appellee may elect at any time not to participate in the appeal by filing and serving a notice of non-participation. The filing of a notice of non-participation shall not affect whether the party is bound by the decision on appeal.

(i) Joint or Consolidated Appeals. If two or more parties are entitled to appeal from a judgment or order of a court or agency and their interests are such as to make joinder practical, they may file a joint notice of appeal. Appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party.

(j) Service of Documents. Papers filed or served in the appeal must be served on all parties, except appellees who have elected not to participate in the action.

(SCO 439 effective November 15, 1980; amended by SCO 460 effective June 1, 1981; by SCO 495 effective January 4, 1982; by SCO 510 effective August 30, 1982; by SCO 514 effective October 1, 1982; by SCO 554 effective April 4, 1983; by SCO 575 effective February 1, 1984; by SCO 847 effective January 15, 1988; by SCO 888 effective July 15, 1988; by SCO 1015 effective January 15, 1990; by SCO 1250 effective July 15, 1996; by SCO 1284 effective January 15, 1998; by SCO 1385 effective April 15, 2000; by SCO 1411 effective October 15, 2000; and by SCO 1476 effective October 15, 2002)

Note: Ch. 77 SLA 2002 (HB 157), Section 2, adds new Chapter 26 to Title 6 of the Alaska Statutes, concerning providers of fiduciary services. According to Section 9 of the Act, AS 06.26.760(b)(2) has the effect of amending Appellate Rule 602 by postponing the deadlines for the filing of appeals to the superior court from a district court or an administrative agency by a trust company when the Department of Community and Economic Development has taken possession of the trust company.