

SENATE BILL NO. 209

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY SENATORS MICCICHE, Meyer, McGuire, Ellis

Introduced: 2/26/14

Referred: State Affairs, Health and Social Services, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act prohibiting smoking in certain locations; and providing for an effective date."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * **Section 1.** AS 18.35 is amended by adding new sections to read:

Article 4. Regulation of Smoking in Public.

(1) a sports arena, public educational facility, private educational facility, shopping mall, or other public enclosed area;

9 (2) a bus, taxicab, ferry, or other public transportation vehicle;

10 (3) a public transit depot, bus shelter, airport, or other public
11 transportation facility;

12 (4) an office building, common area, office, employee lounge, hotel,
13 motel, restaurant, bar, health care facility, retail store, or other enclosed area in a place
14 of employment;

15 (5) a room, chamber, place of meeting, or other enclosed place of

1 government or public assembly located on property that is owned or operated by the
2 state or by a board, council, commission, committee, authority, or other agency of a
3 political subdivision of the state;

4 (6) inside a building or residence that is used to provide paid child
5 care, whether or not children are present in the building or residence;

6 (7) inside a health care facility;

7 (8) an area located at a public or private school or a state or municipal
8 park that is primarily designated as a place for children to play;

9 (9) a seating area for an outdoor arena, stadium, or amphitheater;

10 (10) a marine vessel operating as a shore-based fisheries business
11 under AS 43.75;

12 (11) within 50 feet of an entrance to a health care facility;

13 (12) within 10 feet of an entrance to a bar or restaurant licensed or
14 permitted to serve alcoholic beverages; or

15 (13) within 20 feet of an entrance, open window, or heating or
16 ventilation system air intake vent at a place of employment or other enclosed area at a
17 place where smoking is prohibited under this section.

18 (b) Unless the owner or operator prohibits it, smoking is allowed in the
19 following places:

20 (1) a private club that is not licensed or permitted to serve alcoholic
21 beverages and is not a place of employment, unless the private club is hosting an event
22 that is open to the public;

23 (2) a private residence, unless it is a residence at which the care of
24 children is provided on a fee-for-service basis, a residence in a health care facility, or a
25 residence located within a hotel or motel;

26 (3) a marine vessel, when the vessel is engaged in commercial fishing
27 or sport charter fishing.

28 (c) Nothing in this section authorizes smoking prohibited under another law.

29 **Sec. 18.35.331. Obligations of employers, owners, and operators.** (a) A
30 person who owns or operates a place or vehicle where smoking is prohibited under
31 AS 18.35.301 shall conspicuously display in the place or vehicle a sign that reads

1 "Smoking Prohibited by Law--Maximum Fine \$100" and includes the international
2 symbol for no smoking or, in the alternative, the words "No Puffin" with a pictorial
3 representation of a Horned Puffin or Tufted Puffin holding a burning cigarette
4 enclosed in a red circle crossed with a red bar.

5 (b) The commissioner shall conspicuously display a sign that reads "Smoking
6 within 20 Feet of Entrance Prohibited by Law--Maximum Fine \$100" outside each
7 entrance to a building owned or operated by the state or a political subdivision of the
8 state, unless the building is a health care facility.

9 (c) The operator of a health care facility shall conspicuously display a sign
10 that reads "Smoking within 50 Feet of Entrance Prohibited by Law--Maximum Fine
11 \$100" outside each entrance to the health care facility.

12 (d) The signage requirement in (a) of this section applies to any vehicle that is
13 a place of employment.

14 (e) The owner, operator, manager, or other person who manages a building or
15 other place where smoking is prohibited under AS 18.35.301 may not provide ashtrays
16 or other smoking accessories for use in that building or place.

17 (f) An employer may not permit an employee, customer, or other person to
18 smoke inside an enclosed area at a place of employment.

19 **Sec. 18.35.344. Violations and civil penalties.** (a) The commissioner shall
20 develop and maintain a procedure for processing reports of violations of
21 AS 18.35.301, 18.35.331, and 18.35.357.

22 (b) If, after investigating a report made under this section, the commissioner
23 determines that a violation has occurred, the commissioner may

24 (1) file a civil complaint in the district court to enforce the provisions
25 of AS 18.35.301, 18.35.331, and 18.35.357; or

26 (2) issue a citation under AS 18.35.345(b).

27 (c) A person who violates AS 18.35.301 and against whom the commissioner
28 has filed a civil complaint under this section is punishable by a civil penalty of not
29 more than \$100.

30 (d) A person who fails to comply with a duty imposed on that person by
31 AS 18.35.331 and against whom the commissioner has filed a civil complaint under

1 this section is punishable by a civil penalty not to exceed
2 (1) \$100 for a first failure to comply;
3 (2) \$200 for a second failure to comply that occurs within 24 months
4 after the date the person was fined for a first failure to comply;
5 (3) \$500 for each failure to comply that occurs within 24 months after
6 the date the person was fined for a second failure to comply.

7 (e) A person who violates AS 18.35.357 and against whom the commissioner
8 has filed a civil complaint under this section is punishable by a civil penalty not to
9 exceed \$1,000.

10 (f) The department may provide for the payment of a civil penalty under this
11 section by mail.

12 **Sec. 18.35.345. Citations; fines.** (a) A peace officer may issue a citation for a
13 violation of AS 18.35.301 committed in the officer's presence or for a violation of
14 AS 18.35.331 or 18.35.357. The provisions of AS 12.25.175 - 12.25.230 apply to the
15 issuance of a citation under this subsection.

16 (b) An employee of the department designated by the commissioner to enforce
17 the provisions of AS 18.35.301, 18.35.331, or 18.35.357 may issue a citation for a
18 violation of AS 18.35.301, 18.35.331, or 18.35.357 regardless of whether the violation
19 was committed in the employee's presence. A citation issued under this subsection
20 shall be in the same form and shall be processed in the same manner as a citation
21 issued by a peace officer under (a) of this section. An employee of the department may
22 not arrest a person for a violation of AS 18.35.301, 18.35.331, or 18.35.357.

23 (c) A person who violates AS 18.35.301 as alleged in a citation under (a) or
24 (b) of this section is guilty of a violation, as defined in AS 11.81.900, and punishable
25 by a fine not to exceed \$100 for each violation.

26 (d) A person who fails to comply with a duty imposed on that person by
27 AS 18.35.331 as alleged in a citation under (a) or (b) of this section is guilty of a
28 violation as defined in AS 11.81.900(b) and punishable by a fine not to exceed

29 (1) \$100 for a first failure to comply;
30 (2) \$200 for a second failure to comply that occurs within 24 months
31 after the date the person was fined under this section for a first failure to comply;

(3) \$500 for each failure to comply that occurs within 24 months after the date the person was fined under this section for a second failure to comply.

(e) A person who violates AS 18.35.357 as alleged in a citation under (a) or (b) of this section is guilty of a violation, as defined in AS 11.81.900, and punishable by a fine not to exceed \$1,000 for each violation.

(f) The supreme court shall establish a schedule of bail amounts for violations of AS 18.35.301, 18.35.331, and 18.35.357, but in no event may the bail amount exceed the maximum fine that may be imposed for the violation under (c) - (e) of this section. The bail amount for a violation must appear on the citation.

(g) If a person cited for a violation under this section does not contest the citation, the person may, on or before the 30th day after the date of the citation, mail or personally deliver to the clerk of the court in which the citation is filed

(1) the amount of bail indicated on the citation for that violation; and

(2) a copy of the citation indicating that the right to an appearance is waived, a plea of no contest is entered, and the bail is forfeited.

(h) When bail has been forfeited under (g) of this section, a judgment of conviction shall be entered. Forfeiture of bail is a complete satisfaction for the violation. The clerk of the court accepting the bail shall provide the violator with a receipt stating that fact if requested.

(i) A person cited under this section is guilty of failure to obey a citation under AS 12.25.230 if the person fails to pay the bail amount established under (f) of this section or fails to appear in court as required.

Sec. 18.35.346. Injunctions. The commissioner or another affected party may bring a civil action in the superior court to enjoin a violation of AS 18.35.301, 18.35.331, or 18.35.357.

Sec. 18.35.351. Powers and duties of the commissioner. (a) The commissioner shall

(1) administer and enforce the requirements of AS 18.35.301 - 18.35.366;

(2) adopt regulations under AS 44.62 (Administrative Procedure Act) necessary to carry out the duties under this section.

(b) In addition to other powers granted the commissioner under AS 18.35.301 - 18.35.366, the commissioner may delegate to another agency the authority to implement and enforce one or more provisions of AS 18.35.301 - 18.35.366.

(c) Nothing in this section limits the authority of a peace officer to enforce law.

Sec. 18.35.356. Public education. (a) The commissioner shall ensure employers, property owners, property operators, and other members of the public are provided ongoing access to

(1) a program of education regarding the requirements in AS 18.35.301
- 18.35.366;

(2) an electronically published printable brochure that summarizes the requirements in AS 18.35.301 - 18.35.366.

(b) The program of education under (a) of this section may be provided in combination with the comprehensive smoking education, tobacco use prevention, and tobacco control program established in AS 44.29.020(a)(14).

Sec. 18.35.357. Nonretaliation. (a) An employer may not discharge, refuse to hire, or in any other manner retaliate against an employee or applicant for employment because the employee or applicant cooperates with or initiates enforcement of a requirement in AS 18.35.301 - 18.35.366.

(b) The owner or operator of a vehicle or other place that is subject to a requirement in AS 18.35.301 - 18.35.366 may not retaliate against a customer or other member of the public for cooperating with or initiating enforcement of a requirement in AS 18.35.301 - 18.35.366.

Sec. 18.35.359. Conflicts with local requirements. Nothing in AS 18.35.301 - 18.35.366 prohibits a municipality or other political subdivision of the state from adopting and enforcing a law that establishes

(1) additional prohibitions on smoking; or

(2) additional duties for employers, owners, operators, and other persons who are subject to the requirements of AS 18.35.331 related to smoking.

Sec. 18.35.366. Definitions. In AS 18.35.301 - 18.35.366.

(1) "business" means a for-profit or nonprofit sole proprietorship,

1 partnership, joint venture, corporation, professional corporation, private club, retail
2 seller of goods or services, or other business entity;

3 (2) "commissioner" means the commissioner of health and social
4 services or the commissioner's designee;

5 (3) "department" means the Department of Health and Social Services;

6 (4) "e-cigarette" means an electronic device that uses a heating
7 element, battery, or electronic circuit to issue a nicotine vapor for inhalation in a
8 manner that simulates smoking a lighted or heated cigar, cigarette, or pipe, or other
9 lighted or heated tobacco or plant product intended for inhalation;

10 (5) "employee" means a person who is employed by a business for
11 compensation or works for a business as a volunteer without compensation;

12 (6) "employer" means the state and its municipalities and other
13 political subdivisions, or a person or a business with one or more employees;

14 (7) "enclosed area" means space between a floor and a ceiling that is
15 bounded on two or more sides by a combination of walls, doorways, windows, or
16 other physical barriers that may be open, partially open, closed, retractable, temporary,
17 or permanent;

18 (8) "health care facility" means a private, municipal, or state hospital;
19 independent diagnostic testing facility; primary care outpatient facility; skilled nursing
20 facility; kidney disease treatment center, including freestanding hemodialysis units;
21 intermediate care facility; ambulatory surgical facility; Alaska Pioneers' Home or
22 Alaska Veterans' Home administered by the Department of Health and Social Services
23 under AS 47.55; long-term care facility; psychiatric hospital; residential psychiatric
24 treatment center, as defined in AS 18.07.111 or AS 47.32.900, and other facilities,
25 places of employment or offices operated for use by doctors, nurses, surgeons,
26 chiropractors, physical therapists, physicians, psychiatrists, or dentists or other
27 professional health care providers to provide health care;

28 (9) "place of employment" means work areas, private offices, hotel and
29 motel rooms, employee lounges, restrooms, conference rooms, classrooms, cafeterias,
30 hallways, vehicles and other employee work areas that are under the control of an
31 employer;

(10) "private club" means a building or portion of a building used only for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose by one organization that has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. 501 (Internal Revenue Code);

(11) "public place" means an area to which the public is invited or into which the public is permitted, including but not limited to, educational facilities, entertainment venues, food and beverage service establishments, offices, retail stores, and transportation facilities and vehicles accessible to the public; and

(12) "smoking" means using or operating an e-cigarette or other oral smoking device or inhaling, exhaling, or burning, a lighted or heated cigar, cigarette, or pipe or other lighted or heated tobacco or plant product intended for inhalation.

* **Sec. 2.** AS 18.35.300, 18.35.305, 18.35.310, 18.35.320, 18.35.330, 18.35.340, 18.35.341, 18.35.342, 18.35.343, 18.35.350, 18.35.355, and 18.35.365 are repealed.

* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 18.35.301 - 18.35.366, added by sec. 1 of this Act, apply to violations or failures to comply that occur on or after the effective date of sec. 1 of this Act.

* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION; REGULATIONS. The Department of Health and Social Services may adopt regulations necessary to implement AS 18.35.301 - 18.35.366, added by sec. 1 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of sec. 1 of this Act.

* **Sec. 5.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).

* **Sec. 6.** Except as provided in sec. 5 of this Act, this Act takes effect October 1, 2014.