

28-LS1336\U
Strasbaugh
3/21/14

CS FOR HOUSE BILL NO. 360()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HOLMES, Olson, Millett, Edgmon, Higgins, Peggy Wilson, Herron, Muñoz

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to a prohibition on smoking in certain locations; and providing for an**
2 **effective date."**

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

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

5 **Article 4. Regulation of Smoking in Public.**

6 **Sec. 18.35.301. Prohibition of smoking.** (a) Except as provided in (b) of this
7 section, smoking is prohibited in the following places:

8 (1) enclosed areas at or within

9 (A) a sports arena, public educational facility, private
10 educational facility, shopping mall, or other enclosed public place;

11 (B) a bus, taxicab, ferry, or other public transportation vehicle;

12 (C) a public transit depot, bus shelter, airport, or other public
13 transportation facility;

14 (D) an office building, common area, office, employee lounge,

1 hotel, motel, restaurant, bar, retail store, or other enclosed area in a place of
2 employment;

3 (E) a room, chamber, place of meeting, or other enclosed place
4 of government or public assembly located on property that is owned or
5 operated by the state, a municipality, or a regional educational attendance area,
6 or by a board, council, commission, committee, authority, or other agency of
7 the state, a municipality, or regional educational attendance area;

8 (F) a building or residence that is used to provide paid child
9 care, whether or not children are present in the building or residence;

10 (G) a health care facility;

11 (H) a vehicle that is a place of employment unless the vehicle is
12 used exclusively by one employee;

13 (I) a marine vessel operating as a shore-based fisheries business
14 under AS 43.75;

15 (2) at or within

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

18 (B) a seating area for an outdoor arena, stadium, or
19 amphitheater;

20 (C) 50 feet of an entrance to a health care facility;

21 (D) 10 feet of an entrance to a bar or restaurant licensed or
22 permitted to serve alcoholic beverages; or

23 (E) 20 feet of an entrance, open window, or heating or
24 ventilation system air intake vent at a place of employment or other enclosed
25 area at a place where smoking is prohibited under this section.

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

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

31 (2) a private residence, unless it is a residence at which the care of

1 children or adults is provided on a fee-for-service basis, a residence in a health care
2 facility, or a residence located within a hotel or motel;

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

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

6 **Sec. 18.35.331. Obligations of employers, owners, and operators.** (a) A
7 person who is in charge of a place or vehicle where smoking is prohibited under
8 AS 18.35.301 shall conspicuously display in the place or vehicle a sign that reads
9 "Smoking Prohibited by Law--Maximum Fine \$100" and includes the international
10 symbol for no smoking or, in the alternative, the words "No Puffin" with a pictorial
11 representation of a Horned Puffin or Tufted Puffin holding a burning cigarette
12 enclosed in a red circle crossed with a red bar.

13 (b) A person in charge of a building at which smoking is prohibited within a
14 specific distance from the entrance of the building under AS 18.35.301 shall
15 conspicuously display a sign that reads "Smoking within (number of feet) Feet of
16 Entrance Prohibited by Law--Maximum Fine \$100" outside each entrance to the
17 building.

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

21 (d) The department shall furnish signs required under this section to a person
22 who requests them with the intention of displaying them.

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

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

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

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

31 (c) A person who violates AS 18.35.301 and against whom the commissioner

has filed a civil complaint under this section is punishable by a civil penalty of not more than \$100.

(d) A person who fails to comply with a duty imposed on that person by AS 18.35.331 and against whom the commissioner has filed a civil complaint under this section is punishable by a civil penalty not to exceed

(1) \$100 for a first failure to comply;

(2) \$200 for a second failure to comply that occurs within 24 months after the date the person was fined 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 for a second failure to comply.

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

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

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

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

(c) A person who violates AS 18.35.301 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 \$100 for each violation.

(d) A person who fails to comply with a duty imposed on that person by AS 18.35.331 as alleged in a citation under (a) or (b) of this section is guilty of a

violation as defined in AS 11.81.900(b) and punishable by a fine not to exceed

(1) \$100 for a first failure to comply;

(2) \$200 for a second failure to comply that occurs within 24 months 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 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, partnership, joint venture, corporation, professional corporation, private club, retail seller of goods or services, or other business entity;

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

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

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

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

(6) "employer" means the state, a municipality, a regional educational attendance area, and a person or a business with one or more employees;

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

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

(9) "place of employment" means work areas, private offices, hotel and

1 motel rooms, employee lounges, restrooms, conference rooms, classrooms, cafeterias,
2 hallways, vehicles and other employee work areas that are under the control of an
3 employer;

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

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

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

15 * **Sec. 2.** AS 18.35.300, 18.35.305, 18.35.310, 18.35.320, 18.35.330, 18.35.340, 18.35.341,
16 18.35.342, 18.35.343, 18.35.350, 18.35.355, and 18.35.365 are repealed.

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

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

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

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

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

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