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Strasbaugh
4/2/14

CS FOR SENATE BILL NO. 209()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS MICCICHE, Meyer, McGuire, Ellis

A BILL

FOR AN ACT ENTITLED

**"An Act relating to a prohibition on smoking in certain locations; providing for a local
option election with respect to smoking in public places; and providing for an effective
date."**

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

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

Article 4. Regulation of Smoking in Public.

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

(1) enclosed areas at or within

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

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

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

(D) an office building, common area, office, employee lounge, hotel, motel, restaurant, bar, retail store, or other enclosed area in a place of employment;

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

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

(G) a health care facility;

(H) a vehicle that is a place of employment, except as provided in (b)(4) of this section;

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

(2) at or within

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

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

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

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

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

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

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

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

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

(4) a vehicle that is a place of employment used exclusively by one employee;

(5) a retail tobacco store; in this paragraph, "retail tobacco store"

(A) means a retail store

(i) that sells primarily cigarettes, cigars, tobacco and products containing tobacco, and pipes and other smoking accessories;

(ii) in which the sale of other products is incidental;

(iii) that derives at least 90 percent of its gross revenue from the sale of cigarettes, cigars, tobacco and products containing tobacco, and pipes and other smoking accessories; and

(iv) that is a freestanding building not attached to another business or to a residence;

(B) does not include

(i) a tobacco department or section of a business that does not meet the criteria in (A) of this paragraph;

(ii) a business that is also a restaurant, a grocery store, or licensed to sell alcoholic beverages or pull-tabs; or

(iii) a retail store that is within an indoor public place or a workplace.

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

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

enclosed in a red circle crossed with a red bar.

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

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

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

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

Sec. 18.35.344. Violations and civil penalties. (a) The commissioner shall adopt by regulation procedures for filing, processing, and investigating reports of violations of AS 18.35.301, 18.35.331, and 18.35.357.

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

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

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

(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.

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

4 (1) a program of education regarding the requirements in AS 18.35.301
5 - 18.35.366;

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

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

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

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

19 **Sec. 18.35.359. Conflicts with local requirements.** Nothing in AS 18.35.301
20 - 18.35.366 prohibits a municipality adopting and enforcing a law that establishes

21 (1) additional prohibitions on smoking; or

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

24 **Sec. 18.35.361. Local option to permit smoking in public places.** (a) The
25 following question, appearing alone, may be placed before the voters of a municipality
26 in accordance with AS 18.35.363: "Shall (name of municipality) exercise its option
27 not to comply with AS 18.35.301 - 18.35.346, relating to smoking in certain public
28 places? (yes or no)."

29 (b) If a majority of the voters vote "yes" on the question set out in (a) of this
30 section, AS 18.35.301 - 18.35.346 do not apply within the boundaries of the
31 municipality.

1 **Sec. 18.35.362. Procedure for local option elections.** (a) The local governing
2 body of a municipality shall, whenever a number of registered voters equal to at least
3 10 percent of the number of votes cast at the last regular municipal election petition
4 the local governing body to do so, place on a separate ballot at the next regular
5 election or at a special election the question set out in AS 18.35.361(a) that is the
6 subject of the petition. The local governing body shall conduct the election in
7 accordance with the election ordinance of the municipality.

8 (b) Notwithstanding any other provision of law, an election under (a) of this
9 section to reverse the results imposed under AS 18.35.361 may not be conducted more
10 than once every 12 months.

11 (c) If a majority of the persons voting on the question vote to

12 (1) adopt the option to allow smoking in public places, the option is
13 effective the first day of the month following the certification of the results of the
14 election;

15 (2) remove the option to permit smoking in public places, the option is
16 repealed effective the first day of the month following certification of the results of the
17 election.

18 (d) AS 29.26.110 - 29.26.160 apply to a petition under (a) of this section in a
19 general law municipality except the

20 (1) number of required signatures is determined under (a) of this
21 section rather than under AS 29.26.130;

22 (2) application filed under AS 29.26.110 must contain the question set
23 out in AS 18.35.361 rather than containing an ordinance or resolution;

24 (3) petition must contain the question set out in AS 18.35.361 rather
25 than the material required under AS 29.26.120(a)(1) and (2).

26 **Sec. 18.35.363. Property owners may impose restrictions.** Notwithstanding
27 AS 18.35.361 and 18.35.362, an owner of property, including a local, state, or federal
28 government agency, may limit or prohibit smoking on the owner's property.

29 **Sec. 18.35.366. Definitions.** In AS 18.35.301 - 18.35.366,

30 (1) "business" means a for-profit or nonprofit sole proprietorship,
31 partnership, joint venture, corporation, professional corporation, private club, retail

1 seller of goods or services, or other business entity;

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

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

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

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

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

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

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

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

31 (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 29.10.200 is amended by adding a new paragraph to read:

(63) AS 29.35.082 (smoking).

* **Sec. 3.** AS 29.35 is amended by adding a new section to read:

Sec. 29.35.082. Smoking. (a) A municipality may regulate smoking to the extent permitted by AS 18.35.359 - 18.35.363.

(b) This section applies to home rule and general law municipalities.

* **Sec. 4.** 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. 5.** 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. 6.** 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. 7.** Section 6 of this Act takes effect immediately under AS 01.10.070(c).

* **Sec. 8.** Except as provided in sec. 7 of this Act, this Act takes effect October 1, 2014.