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Martin
3/18/16

CS FOR HOUSE BILL NO. 328()

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

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES TALERICO, Tuck, Millett, Lynn, Edgmon, Herron, Gattis, Foster, Muñoz, Nageak

A BILL

FOR AN ACT ENTITLED

1 **"An Act prohibiting smoking in certain places; relating to education on the smoking**
2 **prohibition; and providing for an 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. Prohibition of Smoking in Certain Places.**

6 **Sec. 18.35.301. Prohibition of smoking.** (a) Smoking is prohibited in an
7 enclosed area in a public place, including an enclosed area

8 (1) at an entertainment venue or a sports arena;

9 (2) on a bus, in a taxicab, on a ferry, or in another vehicle used for
10 public transportation;

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

13 (4) at a retail store or shopping center;

14 (5) at a place of government or public assembly located on property

1 that is owned or operated by the state, a municipality, or a regional educational
2 attendance area, or by an agent of the state, a municipality, or a regional educational
3 attendance area.

4 (b) Smoking is prohibited in an enclosed area

5 (1) at an office building, office, hotel, motel, restaurant, bar, retail
6 store, or common area in an apartment building or multiple-family dwelling;

7 (2) in a place of employment;

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

10 (4) at a health care facility;

11 (5) in a vehicle that is a place of employment;

12 (6) at a public or private educational facility;

13 (7) in a building or residence that is the site of a business at which the
14 care of adults is provided on a fee-for-service basis;

15 (8) at a residence in a health care facility, hotel, or motel;

16 (9) on a marine vessel operating as a shore-based fisheries business
17 under AS 43.75.

18 (c) Smoking is prohibited outdoors

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

21 (2) in a seating area for an outdoor arena, stadium, or amphitheater;

22 (3) at a place of employment or health care facility that has declared
23 the entire campus or outside grounds or property to be smoke-free;

24 (4) within

25 (A) 10 feet of an entrance to a bar or restaurant that serves
26 alcoholic beverages;

27 (B) 20 feet of an entrance, open window, or heating or
28 ventilation system air intake vent at an enclosed area at a place where smoking
29 is prohibited under this section; or

30 (C) a reasonable distance of an entrance, open window, or
31 heating or ventilation system air intake vent on a marine vessel covered by this

1 section as determined by the vessel owner or operator in charge.

2 (d) Notwithstanding (a) of this section, unless the owner or operator prohibits
3 it, smoking is allowed at a retail tobacco or e-cigarette store. In this subsection, "retail
4 tobacco or e-cigarette store"

5 (1) means a retail store

6 (A) that sells primarily cigarettes, e-cigarettes, cigars, tobacco
7 and products containing tobacco, and pipes and other smoking or e-cigarette
8 accessories;

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

10 (C) that derives at least 90 percent of its gross revenue from the
11 sale of cigarettes, e-cigarettes, cigars, tobacco and products containing tobacco,
12 and pipes and other smoking or e-cigarette accessories; and

13 (D) that is a freestanding building not attached to another
14 business or to a residence;

15 (2) does not include

16 (A) a tobacco or e-cigarette department or section of a business
17 that does not meet the criteria in (1) of this subsection;

18 (B) a business that is also a restaurant or grocery store;

19 (C) a business that is licensed under AS 04.11 to serve
20 alcoholic beverages at an outdoor location;

21 (D) a business that is licensed under AS 05.15 to sell pull-tabs;

22 (E) a business that is licensed under AS 43.70.075 to sell
23 tobacco but that does not meet the requirements of this subsection; or

24 (F) a retail store that is within an indoor public place or
25 workplace.

26 (e) Notwithstanding (a) and (b) of this section, smoking may be permitted in a
27 separate enclosed smoking area located in a terminal for international passengers who
28 are in transit in a state-owned and state-operated international airport and who are
29 restricted by federal law from leaving the airport, if the smoking area is vented directly
30 to an outdoor area that is not an area where smoking is prohibited under (c) of this
31 section.

1 (f) Notwithstanding (b) of this section, unless the owner or operator prohibits
2 it, smoking is allowed

3 (1) in a vehicle that is a place of employment when the vehicle is used
4 exclusively by one person;

5 (2) on a marine vessel when the vessel is engaged in commercial
6 fishing or sport charter fishing or is otherwise used as a place of employment.

7 (g) Nothing in this section prohibits smoking

8 (1) at a private residence, except a private residence described in (b) of
9 this section; or

10 (2) in a stand-alone shelter if the stand-alone shelter meets the
11 following requirements:

12 (A) food or drink may not be sold in the stand-alone shelter;

13 (B) at least 50 percent of one side of the shelter is completely
14 open to the outside; and

15 (C) the stand-alone shelter meets the minimum distance
16 requirements in (c) of this section.

17 **Sec. 18.35.306. Notice of prohibition.** (a) A person who is in charge of a place
18 or vehicle where smoking is prohibited under AS 18.35.301 shall conspicuously
19 display in the place or vehicle a sign that

20 (1) reads "Smoking Prohibited by Law--Fine \$50";

21 (2) includes the international symbol for no smoking; or

22 (3) includes the words "No Puffin" with a pictorial representation of a
23 Horned Puffin or Tufted Puffin holding a burning cigarette enclosed in a red circle
24 crossed with a red bar.

25 (b) A person in charge of a building at which smoking is prohibited within a
26 specific distance from the entrance of the building under AS 18.35.301(c)(4) shall
27 conspicuously display a sign that reads "Smoking within (number of feet) Feet of
28 Entrance Prohibited by Law--Fine \$50" visible from the outside of each entrance to
29 the building.

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

1 **Sec. 18.35.311. Duty of employers and building managers.** (a) An employer
2 may not permit an employee, customer, or other person to smoke inside an enclosed
3 area at a place of employment.

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

7 **Sec. 18.35.316. Powers and duties of the commissioner.** (a) The
8 commissioner

9 (1) shall administer and enforce the requirements of AS 18.35.301 -
10 18.35.399;

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

13 (b) In addition to other powers granted the commissioner under AS 18.35.301
14 - 18.35.399, the commissioner may delegate to another agency the authority to
15 implement and enforce one or more provisions of AS 18.35.301 - 18.35.399.

16 **Sec. 18.35.321. Public education.** (a) The commissioner shall ensure that
17 employers, property owners, property operators, and other members of the public are
18 provided ongoing access to

19 (1) a program of education regarding the requirements in AS 18.35.301
20 - 18.35.399;

21 (2) an electronically published printable brochure that summarizes the
22 requirements in AS 18.35.301 - 18.35.399.

23 (b) The commissioner shall consult with the Department of Health and Social
24 Services

25 (1) to achieve compliance by employers, property owners, property
26 operators, and other members of the public with the requirements of AS 18.35.301 -
27 18.35.399;

28 (2) to provide the program of education as required under (a) of this
29 section; the program of education may be provided in combination with the
30 comprehensive smoking education, tobacco use prevention, and tobacco control
31 program established in AS 44.29.020(a)(14).

1 **Sec. 18.35.326. Nonretaliation.** (a) An employer may not discharge or in any
2 other manner retaliate against an employee because the employee cooperates with or
3 initiates enforcement of a requirement in AS 18.35.301 - 18.35.399.

4 (b) The owner or operator of a vehicle or other place that is subject to a
5 requirement in AS 18.35.301 - 18.35.399 may not retaliate against a customer or other
6 member of the public for cooperating with or initiating enforcement of a requirement
7 in AS 18.35.301 - 18.35.399.

8 **Sec. 18.35.331. Conflicts with local requirements.** Nothing in AS 18.35.301
9 - 18.35.399 prohibits a municipality from adopting an ordinance imposing

10 (1) additional limitations on smoking; or

11 (2) additional duties on employers, owners, operators, and other
12 persons who are subject to the requirements of AS 18.35.306 or 18.35.311 related to
13 smoking.

14 * **Sec. 2.** AS 18.35.340(a) is amended to read:

15 (a) The commissioner shall develop and maintain a procedure for processing
16 reports of violations of AS 18.35.301, 18.35.306, 18.35.311, and 18.35.326
17 [AS 18.35.300, 18.35.305, AND 18.35.330].

18 * **Sec. 3.** AS 18.35.340(b) is amended to read:

19 (b) If, after investigating a report made under this section, the commissioner
20 determines that a violation has occurred, (1) the commissioner may file a civil
21 complaint in the district court to enforce the provisions of AS 18.35.301 - 18.35.399
22 [AS 18.35.300 - 18.35.365]; or (2) an employee of the department designated by the
23 commissioner to enforce the provisions of AS 18.35.301 - 18.35.399 [AS 18.35.300 -
24 18.35.365] may issue a citation under AS 18.35.341(b). If an employee of the
25 department issues a citation, the violation shall be processed and disposed of under
26 AS 18.35.341.

27 * **Sec. 4.** AS 18.35.340(c) is amended to read:

28 (c) A person who violates AS 18.35.301, 18.35.311, or 18.35.326
29 [AS 18.35.300 OR 18.35.305] and against whom the commissioner has filed a civil
30 complaint under this section is punishable by a civil fine of [NOT LESS THAN \$10
31 NOR MORE THAN] \$50. A person who violates AS 18.35.306 [AS 18.35.330] and

1 against whom the commissioner has filed a civil complaint under this section is
2 punishable by a civil fine of not less than \$50 [\$20] nor more than \$300. Each day a
3 violation of AS 18.35.306 [AS 18.35.330] continues after a civil complaint for the
4 violation has been filed and served on the defendant constitutes a separate violation.

5 * **Sec. 5.** AS 18.35.341(a) is amended to read:

6 (a) A peace officer may issue a citation for a violation of AS 18.35.301,
7 18.35.311, or 18.35.326 [AS 18.35.300 OR 18.35.305] committed in the officer's
8 presence or for a violation of AS 18.35.306 [AS 18.35.330]. The provisions of
9 AS 12.25.175 - 12.25.230 apply to the issuance of a citation under this subsection.

10 * **Sec. 6.** AS 18.35.341(b) is amended to read:

11 (b) An employee of the department designated by the commissioner to enforce
12 the provisions of AS 18.35.301 - 18.35.399 [AS 18.35.300 - 18.35.365] may issue a
13 citation for a violation of AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326
14 [AS 18.35.300, 18.35.305, OR 18.35.330] regardless of whether the violation was
15 committed in the employee's presence. A citation issued under this subsection shall be
16 in the same form and shall be processed in the same manner as a citation issued by a
17 peace officer under (a) of this section. An employee of the department may not arrest a
18 person for a violation of AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326
19 [AS 18.35.300, 18.35.305, OR 18.35.330].

20 * **Sec. 7.** AS 18.35.341(c) is amended to read:

21 (c) A person who violates AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326
22 [AS 18.35.300, 18.35.305, OR 18.35.330] is guilty of a violation as defined in
23 AS 11.81.900(b) and upon conviction is punishable by a fine of [NOT LESS THAN
24 \$10 NOR MORE THAN] \$50 for a violation of AS 18.35.301, 18.35.311, or
25 18.35.326 [AS 18.35.300 OR 18.35.305] and by a fine of not less than \$50 [\$20] nor
26 more than \$300 for a violation of AS 18.35.306 [AS 18.35.330]. Each day a violation
27 of AS 18.35.306 [AS 18.35.330] continues after a citation for the violation has been
28 issued constitutes a separate violation.

29 * **Sec. 8.** AS 18.35.341(d) is amended to read:

30 (d) The supreme court shall establish a schedule of bail amounts for violations
31 of AS 18.35.301, 18.35.306, 18.35.311, and 18.35.326 [AS 18.35.300, 18.35.305,

1 AND 18.35.330], but in no event may the bail amount exceed the maximum fine that
2 may be imposed for the violation under (c) of this section. The bail amount for a
3 violation must appear on the citation.

4 * **Sec. 9.** AS 18.35.342 is amended to read:

5 **Sec. 18.35.342. Multiple fines prohibited.** A person may not be fined more
6 than once for each violation of AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326
7 [AS 18.35.300, 18.35.305, OR 18.35.330].

8 * **Sec. 10.** AS 18.35.343 is amended to read:

9 **Sec. 18.35.343. Injunctions.** The commissioner or any affected party may
10 institute an action in the superior court to enjoin repeated violations of AS 18.35.301,
11 18.35.306, 18.35.311, or 18.35.326 [AS 18.35.300, 18.35.305, or 18.35.330].

12 * **Sec. 11.** AS 18.35.350 is amended to read:

13 **Sec. 18.35.350. Enforcement authority.** The commissioner or the
14 commissioner's designee is responsible for enforcing the provisions of AS 18.35.301 -
15 18.35.399 [AS 18.35.300 - 18.35.365]. This section does not limit the authority of
16 peace officers.

17 * **Sec. 12.** AS 18.35 is amended by adding a new section to read:

18 **Sec. 18.35.399. Definitions.** In AS 18.35.301 - 18.35.399,

19 (1) "business" means a for-profit or nonprofit sole proprietorship,
20 partnership, joint venture, corporation, professional corporation, private club, retail
21 seller of goods or services, or other business entity;

22 (2) "commissioner" means the commissioner of environmental
23 conservation or the commissioner's designee;

24 (3) "department" means the Department of Environmental
25 Conservation;

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

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

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

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

7 (8) "health care facility" means an office or institution providing care
8 or treatment for physical, mental, emotional, or other medical, dental, physiological, or
9 psychological diseases or conditions; a private, municipal, or state hospital;
10 independent diagnostic testing facility; primary care outpatient facility; skilled nursing
11 facility; kidney disease treatment center, including freestanding hemodialysis units;
12 intermediate care facility; ambulatory surgical facility; Alaska Pioneers' Home or
13 Alaska Veterans' Home administered by the Department of Health and Social Services
14 under AS 47.55; long-term care facility; psychiatric hospital; residential psychiatric
15 treatment center, as defined in AS 18.07.111 or AS 47.32.900, and other facilities,
16 places of employment or offices operated for use by doctors, nurses, surgeons,
17 chiropractors, physical therapists, physicians, psychiatrists, or dentists or other
18 professional health care providers to provide health care;

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

23 (10) "public place" includes

24 (A) an area to which the public is invited or into which the
25 public is admitted;

26 (B) a place where services, goods, or facilities are offered to
27 the public;

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

31 * **Sec. 13.** AS 18.35.300, 18.35.305, 18.35.310, 18.35.320, 18.35.330, 18.35.355, and

1 18.35.365 are repealed.

2 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 APPLICABILITY. AS 18.35.301, 18.35.306, 18.35.311, 18.35.316, 18.35.321,
5 18.35.326, and 18.35.331, added by sec. 1 of this Act, AS 18.35.340(a) - (c), as amended by
6 secs. 2 - 4 of this Act, AS 18.35.341(a) - (d), as amended by secs. 5 - 8 of this Act,
7 AS 18.35.342, as amended by sec. 9 of this Act, AS 18.35.343, as amended by sec. 10 of this
8 Act, AS 18.35.350, as amended by sec. 11 of this Act, and AS 18.35.399, added by sec. 12 of
9 this Act, apply to violations or failures to comply that occur on or after the effective date of
10 secs. 1 - 12 of this Act.

11 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 TRANSITION; REGULATIONS. The Department of Environmental Conservation
14 may adopt regulations necessary to implement AS 18.35.301, 18.35.306, 18.35.311,
15 18.35.316, 18.35.321, 18.35.326, and 18.35.331, added by sec. 1 of this Act, AS 18.35.340(a)
16 - (c), as amended by secs. 2 - 4 of this Act, AS 18.35.341(a) - (d), as amended by secs. 5 - 8 of
17 this Act, AS 18.35.342, as amended by sec. 9 of this Act, AS 18.35.343, as amended by sec.
18 10 of this Act, AS 18.35.350, as amended by sec. 11 of this Act, and AS 18.35.399, added by
19 sec. 12 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure
20 Act), but not before the effective date of the section being implemented.

21 * **Sec. 16.** Section 15 of this Act takes effect immediately under AS 01.10.070(c).

22 * **Sec. 17.** Except as provided in sec. 16 of this Act, this Act takes effect October 1, 2016.