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Martin

4/9/18

HOUSE CS FOR CS FOR SENATE BILL NO. 63(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS MICCICHE, Meyer, Gardner, Giessel, Stevens, Bishop, Costello, Begich,
Wielechowski

REPRESENTATIVES Kopp, Spohnholz, Guttenberg, Kito, Foster, Grenn, Kawasaki, Birch, Drummond,
Gara, Josephson, Ortiz, Millett, Pruitt, Johnston, Johnson, Wool, Tarr, Kreiss-Tomkins, Parish, Fansler,
Zulkosky

A BILL**FOR AN ACT ENTITLED**

"An Act prohibiting smoking in certain places; relating to education on the smoking prohibition; relating to municipal regulation of smoking in certain places; relating to established villages and local option elections to allow smoking in public places; and providing for an effective date."

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

* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT. It is the intent of the legislature that nothing in this Act is intended to alter applicable law relating to liability of a manufacturer, dispenser, or other person for a cause of action that may arise from smoking tobacco in an enclosed area or to otherwise limit the state immunity from liability provided for in state law. In this section, "enclosed area" and "smoking" have the meanings given to those terms in AS 18.35.399.

* **Sec. 2.** AS 18.35 is amended by adding new sections to read:

Article 4. Prohibition of Smoking in Certain Places.

Sec. 18.35.301. Prohibition of smoking. (a) An individual may not smoke in an enclosed area in a public place, including an enclosed area

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

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

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

(4) at a retail store or shopping center;

(5) at a 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 an agent of the state, a municipality, or a regional educational attendance area.

(b) An individual may not smoke in an enclosed area

(1) in an office building, office, hotel, motel, restaurant, bar, retail store, or shopping center;

(2) in a common area in an apartment building or multiple-family dwelling;

(3) in a place of employment, including a vehicle;

(4) at a public or private educational facility;

(5) at a health care facility, including residential units in the health care facility;

(6) in a building or residence that is used to provide paid child care, whether or not children are present in the building or residence, or care for adults on a fee-for-service basis; however, nothing in this paragraph is intended to prohibit an individual from smoking in a private residence that is in a building where another residence provides paid child care or care for adults;

(7) on a vessel operating as a shore-based fisheries business under AS 43.75.

(c) An individual may not smoke outdoors

(1) within 10 feet of playground equipment located at a public or

private school or a state or municipal park while children are present;

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

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

(4) within

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

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

(C) a reasonable distance, as determined by the owner or operator, of an entrance, open window, or heating or ventilation system air intake vent of

(i) a vessel covered by this section; or

(ii) a long-term care facility as defined in AS 47.62.090.

(d) Notwithstanding (a) and (b) of this section, unless the owner or operator prohibits it, an individual may smoke at a retail tobacco or e-cigarette store that

(1) is in a building that

(A) is freestanding; or

(B) if it is attached to another business or building,

(i) has a separate entrance;

(ii) is separated from the other business or building in a manner that does not allow smoke to travel into the other business or building; and

(iii) the other business or building does not serve as a residence, child care facility, facility providing care for adults on a fee-for-service basis, school, or health care facility;

(2) is not

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

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

1 or

2 (C) a retail store that is within an indoor public place or
3 workplace.

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

10 (f) Notwithstanding (b) of this section, unless the owner or operator prohibits
11 it, an individual may smoke

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

14 (2) on a vessel when the vessel is engaged in commercial fishing or
15 sport charter fishing.

16 (g) Notwithstanding (a) and (b) of this section, an individual may smoke at a
17 private club if the private club

18 (1) has been in continuous operation at the same location since
19 January 1, 2017;

20 (2) is not licensed to serve alcoholic beverages; and

21 (3) is not a place of employment.

22 (h) Nothing in this section prohibits an individual from smoking

23 (1) at a private residence, except a private residence described in (b) of
24 this section or while a health care provider is present;

25 (2) in a stand-alone shelter if the stand-alone shelter meets the
26 following requirements:

27 (A) food or drink may not be sold or served in the stand-alone
28 shelter; and

29 (B) the stand-alone shelter meets the minimum distance
30 requirements of (c) of this section; or

31 (3) in an establishment licensed under AS 17.38 that is freestanding if

the smoking is in accordance with regulations adopted by the Marijuana Control Board created under AS 17.38.080.

(i) In this section,

(1) "freestanding" means a building that is not supported by another structure and does not share ventilation or internal air space with an adjoining structure and smoke from the building cannot travel into the adjoining structure;

(2) "health care provider" has the meaning given in AS 09.65.300;

(3) "private club" means an organization, legal entity, or informal association of persons that

(A) is the owner, lessee, or occupant of a building or portion of a building used exclusively for club purposes at all times;

(B) is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose; and

(C) has been granted exemption from the payment of federal income tax as a club under 26 U.S.C. 501;

(4) "retail tobacco"

(A) means a store

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

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

(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;

(B) does not include

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

(ii) a business that is also a restaurant or grocery store.

Sec. 18.35.306. Notice of prohibition. (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

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

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

(3) includes the words "No Puffin" with a pictorial representation of a 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(c)(4) shall conspicuously display a sign that reads "Smoking within (number of feet) Feet of Entrance Prohibited by Law--Fine \$50" visible from the outside of each entrance to the building.

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

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

(b) 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.

(c) An employer may not require an employee, customer, or other person to enter a stand-alone shelter as defined in AS 18.35.301(h) for a purpose other than smoking.

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

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

(2) may 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 - 18.35.399, the commissioner may delegate to another agency the authority to implement and enforce one or more provisions of AS 18.35.301 - 18.35.399.

Sec. 18.35.321. Public education. (a) The commissioner shall ensure that 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 - 18.35.399;

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

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

(b) The owner or operator of a vehicle or other place that is subject to a requirement in AS 18.35.301 - 18.35.399 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 - 18.35.399.

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

(1) limitations on smoking;

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

(3) limitations on smoking in an outdoor area at a municipal park designated as a children's playground.

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

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

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

(b) If, after investigating a report made under this section, the commissioner determines that a violation has occurred, (1) the commissioner may file a civil complaint in the district court to enforce the provisions of AS 18.35.301 - 18.35.399 [AS 18.35.300 - 18.35.365]; or (2) an employee of the department designated by the commissioner to enforce the provisions of AS 18.35.301 - 18.35.399 [AS 18.35.300 -

1 18.35.365] may issue a citation under AS 18.35.341(b). If an employee of the
2 department issues a citation, the violation shall be processed and disposed of under
3 AS 18.35.341.

4 * **Sec. 5.** AS 18.35.340(c) is amended to read:

5 (c) A person who violates **AS 18.35.301** [AS 18.35.300 OR 18.35.305] and
6 against whom the commissioner has filed a civil complaint under this section is
7 punishable by a civil fine of [NOT LESS THAN \$10 NOR MORE THAN] \$50. A
8 person who violates **AS 18.35.306 or 18.35.311** [AS 18.35.330] and against whom the
9 commissioner has filed a civil complaint under this section is punishable by a civil
10 fine of not less than **\$50** [\$20] nor more than \$300. Each day a violation of
11 **AS 18.35.306 or 18.35.311** [AS 18.35.330] continues after a civil complaint for the
12 violation has been filed and served on the defendant constitutes a separate violation. **A**
13 **person who violates AS 18.35.326 and against whom the commissioner has filed a**
14 **civil complaint under this section is punishable by a civil fine of not more than**
15 **\$500.**

16 * **Sec. 6.** AS 18.35.341(a) is amended to read:

17 (a) A peace officer may issue a citation for a violation of **AS 18.35.301,**
18 **18.35.311, or 18.35.326** [AS 18.35.300 OR 18.35.305] committed in the officer's
19 presence or for a violation of **AS 18.35.306** [AS 18.35.330]. The provisions of
20 AS 12.25.175 - 12.25.230 apply to the issuance of a citation under this subsection.

21 * **Sec. 7.** AS 18.35.341(b) is amended to read:

22 (b) An employee of the department designated by the commissioner to enforce
23 the provisions of **AS 18.35.301 - 18.35.399** [AS 18.35.300 - 18.35.365] may issue a
24 citation for a violation of **AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326**
25 [AS 18.35.300, 18.35.305, OR 18.35.330] regardless of whether the violation was
26 committed in the employee's presence. A citation issued under this subsection shall be
27 in the same form and shall be processed in the same manner as a citation issued by a
28 peace officer under (a) of this section. An employee of the department may not arrest a
29 person for a violation of **AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326**
30 [AS 18.35.300, 18.35.305, OR 18.35.330].

31 * **Sec. 8.** AS 18.35.341(c) is amended to read:

(c) A person who violates AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326 [AS 18.35.300, 18.35.305, OR 18.35.330] is guilty of a violation as defined in AS 11.81.900(b) and upon conviction is punishable by a fine of [NOT LESS THAN \$10 NOR MORE THAN] \$50 for a violation of AS 18.35.301, [AS 18.35.300 OR 18.35.305 AND] by a fine of not less than \$50 [\$20] nor more than \$300 for a violation of AS 18.35.306 or 18.35.311, and by a fine of not more than \$500 for a violation of AS 18.35.326 [AS 18.35.330]. Each day a violation of AS 18.35.306 and 18.35.311 [AS 18.35.330] continues after a citation for the violation has been issued constitutes a separate violation.

* **Sec. 9.** AS 18.35.341(d) is amended to read:

(d) The supreme court shall establish a schedule of bail amounts for violations of AS 18.35.301, 18.35.306, 18.35.311, and 18.35.326 [AS 18.35.300, 18.35.305, AND 18.35.330], but in no event may the bail amount exceed the maximum fine that may be imposed for the violation under (c) of this section. The bail amount for a violation must appear on the citation.

* **Sec. 10.** AS 18.35.342 is amended to read:

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

* **Sec. 11.** AS 18.35.343 is amended to read:

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

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

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

* **Sec. 13.** AS 18.35 is amended by adding new sections to read:

Sec. 18.35.357. Municipal regulation. A municipality may, by ordinance ratified by voters in a regular municipal election, exempt the municipality from the

provisions of AS 18.35.301 - 18.35.350. Unless the municipality has adopted an ordinance banning smoking in certain public places, if a municipality exempts itself from the provisions of AS 18.35.301 - 18.35.350, former AS 18.35.300 - 18.35.365 apply in the municipality as those statutes provided on September 30, 2018.

Sec. 18.35.359. Local option election by an established village. (a) If a majority of the voters voting on the question vote to approve the option, AS 18.35.301 - 18.35.350 do not apply within the boundaries of the established village and former AS 18.35.300 - 18.35.365 apply in the village as those statutes provided on September 30, 2018.

(b) A ballot question to adopt a local option under this section must at least contain language substantially similar to the following: "Shall (name of village) adopt a local option not to comply with AS 18.35.301 - 18.35.350, relating to smoking in certain public places? (yes or no)."

(c) If a majority of the voters voting on the question vote to remove the option, an established village shall remove a local option previously adopted under (a) of this section. The option is repealed effective the first day of the month following certification of the results of the election.

(d) A ballot question to remove a local option under (c) of this section must at least contain language substantially similar to the following: "Shall (name of village) remove the local option currently in effect, that permits smoking in certain public places, so that there is no longer any local option in effect? (yes or no)."

(e) An election to adopt a local option under (a) of this section or remove a local option under (c) of this section shall be conducted as required in this section.

(f) Upon receiving a petition of 35 percent or more of the registered voters residing within an established village, the lieutenant governor shall place on a separate ballot at a special election the local option or removal of local option that constitutes the subject of the petition. The lieutenant governor shall conduct the election under AS 15.

(g) An election under (f) of this section to remove a local option may not be conducted during the first 24 months after the local option was adopted or more than once in a 36-month period.

(h) After a petition has been certified as sufficient to meet the requirements of (f) of this section, another petition may not be filed or certified until after the question presented in the first petition has been voted on.

(i) Except as provided under (j) and (k) of this section, for purposes of this section, the perimeter of an established village is a circle around the established village that includes an area within a five-mile radius of the post office of the established village. If the established village does not have a post office, the perimeter of an established village is a circle around the established village that includes an area within a five-mile radius of another site selected by the local governing body or by the department if the established village does not have a local governing body.

(j) If the perimeter of an established village determined under (i) of this section includes an area that is within the perimeter of another established village, and the other established village has not adopted a local option under (a) of this section, the local option does not apply in the overlapping area.

(k) If the department determines that the perimeter of an established village determined under (i) of this section does not accurately reflect the perimeter of the established village, the department may establish the perimeter of the established village and the overlapping areas described under (j) of this section for purposes of applying a local option selected under this section.

(l) If a majority of the voters vote to adopt a local option under (a) of this section or remove a local option under (c) of this section, the lieutenant governor shall notify the department of the results of the election immediately after the results are certified. The department shall immediately notify the Department of Law and the Department of Public Safety of the results of the election.

* **Sec. 14.** AS 18.35 is amended by adding a new section to read:

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

(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 any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person through inhalation of vapor or aerosol from the product, of any size or shape, whether the product is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, or any other product name or descriptor; "e-cigarette" does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration as those terms are defined in 21 U.S.C. 301 - 392 (Food, Drug, and Cosmetic Act), unless the use of those products simulate smoking or expose others to vapor or aerosol;

(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) "established village" means an area that does not contain any part of an incorporated city or another established village, that is an unincorporated community in the unorganized borough, and that has 25 or more permanent residents;

(9) "health care facility" means an office or institution providing care or treatment for physical, mental, emotional, or other medical, dental, physiological, or psychological diseases or conditions; 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 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;

(10) "marijuana" has the meaning given in AS 11.71.900;

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

(12) "public place" includes

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

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

(13) "smoking" means inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette, pipe, or tobacco or plant product intended for inhalation, but does not include using an e-cigarette or other oral smoking device or the use of marijuana.

* **Sec. 15.** AS 18.35.300, 18.35.305, 18.35.310, 18.35.320, 18.35.330, 18.35.355, and 18.35.365 are repealed.

* **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 18.35.301, 18.35.306, 18.35.311, 18.35.316, 18.35.321, 18.35.326, and 18.35.331, added by sec. 2 of this Act, AS 18.35.340(a) - (c), as amended by secs. 3 - 5 of this Act, AS 18.35.341(a) - (d), as amended by secs. 6 - 9 of this Act, AS 18.35.342, as amended by sec. 10 of this Act, AS 18.35.343, as amended by sec. 11 of this Act, AS 18.35.350, as amended by sec. 12 of this Act, and AS 18.35.399, added by sec. 14 of this Act, apply to violations or failures to comply that occur on or after the effective date of secs. 2 - 12 and 14 of this Act.

* **Sec. 17.** 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, 18.35.306, 18.35.311, 18.35.316,

1 18.35.321, 18.35.326, and 18.35.331, added by sec. 2 of this Act, AS 18.35.340(a) - (c), as
2 amended by secs. 3 - 5 of this Act, AS 18.35.341(a) - (d), as amended by secs. 6 - 9 of this
3 Act, AS 18.35.342, as amended by sec. 10 of this Act, AS 18.35.343, as amended by sec. 11
4 of this Act, AS 18.35.350, as amended by sec. 12 of this Act, AS 18.35.357 and 18.35.359,
5 added by sec. 13 of this Act, and AS 18.35.399, added by sec. 14 of this Act. The regulations
6 take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date
7 of the section being implemented.

8 * **Sec. 18.** Section 17 of this Act takes effect immediately under AS 01.10.070(c).

9 * **Sec. 19.** Except as provided in sec. 18 of this Act, this Act takes effect October 1, 2018.