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Strasbaugh/Martin
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CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 1(HSS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH AND SOCIAL SERVICES COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS MICCICHE, McGuire, Costello, Bishop, Stevens, Meyer, Olson, Ellis, Gardner, Hoffman, Wielechowski

A BILL

FOR AN ACT ENTITLED

"An Act prohibiting smoking in certain places; relating to education on the smoking prohibition; 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. Prohibition of Smoking in Certain Places.

Sec. 18.35.301. Prohibition of smoking. (a) Smoking is prohibited 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) Smoking is prohibited in an enclosed area

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

(2) in a place of employment;

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

(4) at a health care facility;

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

(6) at a public or private educational facility;

(7) in a residence at which the care of adults is provided on a fee-for-service basis;

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

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

(c) Smoking is prohibited outdoors

(1) at 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;

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

(3) within

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

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

(C) 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

(D) a reasonable distance of an entrance, open window, or heating or ventilation system air intake vent on a marine vessel covered by this section as determined by the vessel owner or operator in charge.

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

(1) means a retail store

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

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

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

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

(2) does not include

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

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

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

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

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

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

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

(f) Notwithstanding (b) of this section, unless the owner or operator prohibits

1 it, smoking is allowed

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

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

6 (g) Nothing in this section prohibits smoking at a private residence, except a
7 private residence described in (b) of this section.

8 (h) Notwithstanding (b) of this section, the department shall adopt regulations
9 authorizing smoking in a stand-alone shelter. At a minimum, the regulations must
10 provide

11 (1) that no food or drink be sold in the stand-alone shelter;

12 (2) that at least 50 percent of one side of the shelter be completely
13 open to the outside; and

14 (3) for minimum distance requirements consistent with (c) of this
15 section.

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

19 (1) reads "Smoking Prohibited by Law--Maximum Fine \$100"; and

20 (2) includes the international symbol for no smoking or the words "No
21 Puffin" with a pictorial representation of a Horned Puffin or Tufted Puffin holding a
22 burning cigarette enclosed in a red circle crossed with a red bar.

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

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

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

1 area at a place of employment.

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

5 **Sec. 18.35.316. Powers and duties of the commissioner.** (a) The
6 commissioner shall

7 (1) administer and enforce the requirements of AS 18.35.301 -
8 18.35.399;

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

11 (b) In addition to other powers granted the commissioner under AS 18.35.301
12 - 18.35.399, the commissioner may delegate to another agency the authority to
13 implement and enforce one or more provisions of AS 18.35.301 - 18.35.399.

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

17 (1) a program of education regarding the requirements in AS 18.35.301
18 - 18.35.399;

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

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

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

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

31 **Sec. 18.35.331. Conflicts with local requirements.** Nothing in AS 18.35.301

1 - 18.35.399 prohibits a municipality from adopting an ordinance imposing

2 (1) additional limitations on smoking; or

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

6 **Sec. 18.35.336. Violations and civil penalties.** (a) The commissioner shall
7 adopt by regulation procedures for filing, processing, and investigating reports of
8 violations of AS 18.35.301, 18.35.306, 18.35.311, and 18.35.326.

9 (b) If, after investigating a report made under this section, the commissioner
10 determines that a violation has occurred, the commissioner may file a civil complaint
11 in the district court to enforce the provisions of AS 18.35.301, 18.35.306, 18.35.311,
12 and 18.35.326.

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

16 (d) A person who fails to comply with a duty imposed on that person by
17 AS 18.35.306 or 18.35.311 and against whom the commissioner has filed a civil
18 complaint under this section is punishable by a civil penalty of not more than

19 (1) \$100 for a first failure to comply;

20 (2) \$200 for a second failure to comply that occurs within 24 months
21 after the date the person was fined for a first failure to comply;

22 (3) \$500 for each failure to comply that occurs within 24 months after
23 the date the person was fined for a second failure to comply.

24 (e) A person who violates AS 18.35.326 and against whom the commissioner
25 has filed a civil complaint under this section is punishable by a civil penalty of not
26 more than \$1,000.

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

29 **Sec. 18.35.351. Injunctions.** The commissioner or another affected party may
30 bring a civil action in the superior court to enjoin a violation of AS 18.35.301,
31 18.35.306, 18.35.311, or 18.35.326.

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 an electronic device that uses a heating element, battery, or electronic circuit to issue a vapor or aerosol 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 an office or institution providing care or treatment for physical, mental, emotional, or other medical, dental, physiological, or psychological diseases or conditions; 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 motel rooms, employee lounges, restrooms, conference rooms, classrooms, cafeterias, hallways, vehicles, and other employee work areas that are under the control of an employer;

(10) "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;

(11) "smoking" means using an e-cigarette or other oral smoking device or inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette, pipe, or 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, 18.35.306, 18.35.311, 18.35.316, 18.35.321, 18.35.326, 18.35.331, 18.35.336, 18.35.351, and 18.35.399, 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, 18.35.306, 18.35.311, 18.35.316, 18.35.321, 18.35.326, 18.35.331, 18.35.336, 18.35.351, and 18.35.399, 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, 2015.