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Wallace/Martin
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CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 1(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE 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 building or residence that is the site of a business 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) 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 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 it, smoking is allowed

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

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

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

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

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

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

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

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 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(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.

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 shall

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

11 (2) adopt regulations under AS 44.62 (Administrative Procedure Act)
12 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 program of education under (a) of this section may be provided in
24 combination with the comprehensive smoking education, tobacco use prevention, and
25 tobacco control program established in AS 44.29.020(a)(14).

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

29 (b) The owner or operator of a vehicle or other place that is subject to a
30 requirement in AS 18.35.301 - 18.35.399 may not retaliate against a customer or other
31 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

(1) additional limitations on smoking; or

(2) additional 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.

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

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

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

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

(a) A peace officer may issue a citation for a violation of AS 18.35.301,

18.35.311, or 18.35.326 [AS 18.35.300 OR 18.35.305] committed in the officer's presence or for a violation of **AS 18.35.306** [AS 18.35.330]. The provisions of AS 12.25.175 - 12.25.230 apply to the issuance of a citation under this subsection.

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

(b) 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 - 18.35.365] may issue a citation for a 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] 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, 18.35.306, 18.35.311, or 18.35.326** [AS 18.35.300, 18.35.305, OR 18.35.330].

* **Sec. 7.** 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, 18.35.311, or 18.35.326** [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** [AS 18.35.330]. Each day a violation of **AS 18.35.306** [AS 18.35.330] continues after a citation for the violation has been issued constitutes a separate violation.

* **Sec. 8.** 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. 9.** 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. 10.** 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. 11.** 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. 12.** 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 environmental conservation or the commissioner's designee;

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

(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. 13.** 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. 14.** 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. 1 of this Act, AS 18.35.340(a) - (c), as amended by secs. 2 - 4 of this Act, AS 18.35.341(a) - (d), as amended by secs. 5 - 8 of this Act,

AS 18.35.342, as amended by sec. 9 of this Act, AS 18.35.343, as amended by sec. 10 of this Act, AS 18.35.350, as amended by sec. 11 of this Act, and AS 18.35.399, added by sec. 12 of this Act, apply to violations or failures to comply that occur on or after the effective date of secs. 1 - 12 of this Act.

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

TRANSITION; REGULATIONS. The Department of Environmental Conservation 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, and 18.35.331, added by sec. 1 of this Act, AS 18.35.340(a) - (c), as amended by secs. 2 - 4 of this Act, AS 18.35.341(a) - (d), as amended by secs. 5 - 8 of this Act, AS 18.35.342, as amended by sec. 9 of this Act, AS 18.35.343, as amended by sec. 10 of this Act, AS 18.35.350, as amended by sec. 11 of this Act, and AS 18.35.399, added by sec. 12 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the section being implemented.

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

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