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Sectional Analysis – House Bill 328()

“An Act prohibiting smoking in certain places; relating to education on the smoking prohibition; and providing for an effective date.”

Sec. 1 – AS 18.35

Creates a new article in AS 18.35: Prohibition of Smoking in Certain Places. The new Article 4 will consist of the following sections:

AS 18.35.301: Prohibition of smoking

- (a) Creates a new section that would prohibit smoking in an enclosed public area, including enclosed areas
- (1) At an entertainment venue
 - (2) On any vehicle used for public transportation
 - (3) Any public transportation facility
 - (4) At a retail store or shopping center
 - (5) At a public building located on property owned or operated by the state, a municipality, or a regional educational attendance area
- (b) Creates a new section that prohibits smoking in the following enclosed areas:
- (1) An office building, office, hotel, motel, restaurant, bar, retail store, or common area of an apartment or multiple-family dwelling.
 - (2) Any place of employment, including a vehicle used for employment or marine vessel used as a shore-based business
 - (3) Any building used for paid child care or the care of adults
 - (4) A health care facility
 - (5) A public or private educational facility
 - (6) At a residence in a health care facility, hotel, or motel
- (c) Creates a new section that prohibits outdoors in the following areas:
- (1) A public or private school, or at a park that is designated 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 property to be smoke-free
- (4) Within 10 feet of the entrance of a bar or restaurant that serves alcohol, within 20 feet of an entrance, open window, or air intake vent at a place where smoking is prohibited, or within a reasonable distance from an entrance, open window, or air intake vent on a marine vessel covered by this bill.
- (d)** Creates a new section that allows smoking at a retail tobacco or e-cigarette store unless the owner or operator prohibits it, and defines “retail tobacco or e-cigarette store” to include:
 - (1) Where cigarettes or other tobacco related products are the primary products sold and the sale of other products is incidental
 - (2) A freestanding building not attached to another business or to a residence and that is not within an indoor public place
 - (3) No business that is also a restaurant, grocery store, one that serves alcohol at an outdoor location, or one that sells pull-tabs
- (e)** Creates a new section that permits an enclosed smoking area at Alaska International Airport System airports for international passengers who are in-transit and restricted by federal law from leaving the airport and establishes ventilation requirements.
- (f)** Creates a new section that allows smoking in a vehicle that is a place of employment used exclusively by one person and on a marine vessel when it is engaged in commercial fishing or sport charter fishing or is otherwise used as a place of employment.
- (g)** Creates a new section that allows smoking in
 - (1) A private residence that is not used for paid childcare, adult care, or in a healthcare facility.
 - (2) A stand-alone shelter where food or drink is not sold, at least 50 percent of one side is open, and that meets the distance requirements in (c) of this section.

AS 18.35.306: Notice of prohibition

- (a)** Creates a new section requiring a person in charge of a place or vehicle where smoking is prohibited to post a sign indicating that smoking is prohibited. Gives three different options for signs that can be posted.
- (b)** Creates a new section requiring a person in charge of a building at which smoking is prohibited within a certain distance under AS 18.35.301(c)(4) to post signs at each entrance stating that smoking within that certain distance is not allowed.
- (c)** Creates a new section requiring DEC to provide signs to a person that requests for the purpose of displaying them.

AS 18.35.311: Duty of employers and building managers

- (a)** Creates a new section stating that an employer may not permit any person to smoke inside an enclosed area at the place of employment.
- (b)** Creates a new section prohibiting a building manager, owner, or operator from providing smoking accessories within a building where smoking is prohibited.

AS 18.35.316: Powers and duties of the commissioner

- (a) Creates a new section requiring the commissioner of DEC to enforce the requirements of this act and allowing DEC to adopt regulations if necessary.
- (b) Creates a new section allowing the commissioner of DEC to delegate the authority under this section to another agency.

AS 18.35.321: Public Education

- (a) Creates a new section requiring the commissioner of DEC to provide ongoing access to educational programs to employers, property owners or operators, and other members of the public.
- (b) Creates a new section allowing the commissioner to consult with the Department of Health and Social Services (DHSS) to achieve compliance under (a) and provide education programs under (a) to be provided alongside other smoking and tobacco use education under AS 44.29.020(a)(14).

AS 18.35.326: Nonretaliation

- (a) Creates new section prohibiting an employer from retaliating against an employee due to their cooperation or enforcement of this act.
- (b) Creates a new section prohibiting an owner or operator of a vehicle or other place where smoking is prohibited from retaliating against a customer or any other person due to their cooperation or enforcement of this act.

AS 18.35.331: Conflicts with local requirements

Creates a new section stating that a municipality is not prohibited from adopting and enforcing local laws with additional prohibitions on smoking or additional duties for employers, owners, operators, and other persons subject to the requirements of AS 18.35.306 and 18.35.311.

Sec. 2 – AS 18.35.340(a)

Amends this section to require the DEC commissioner to create a procedure for processing violations of this act. This section adds references to new sections created in this bill and deletes references to sections that are repealed by this bill.

Sec. 3 – AS 18.35.340(b)

Amends this section to allow the DEC commissioner to file a civil complaint or another designated employee to issue a citation to enforce the provisions of this bill. References to new sections are added and references to repealed sections are deleted.

Sec. 4 – AS 18.35.340(c)

Amends this section to set a minimum fine of \$50 for a violation of AS 18.35.301 (Prohibition of smoking), 18.35.311 (Duties of employer), or 18.35.326 (Nonretaliation). This section also increases the minimum fine for a violation of AS 18.35.306 (Notice of prohibition) to \$50 and requires that each day a violation continues constitutes a separate violation. References to new sections are added and references to repealed sections are deleted.

Sec. 5 – AS 18.35.341(a)

Amends this section to allow a peace officer to issue a citation for a violation of this bill. References to new sections are added and references to repealed sections are deleted.

Sec. 6 – AS 18.35.341(b)

Amends this section to allow a designated DEC employee to issue a citation for a violation of this bill, but prohibits the employee from arresting a violator. References to new sections are added and references to repealed sections are deleted.

Sec. 7 – AS 18.35.341(c)

Amends this section to establish that violations of AS 18.35.301, 18.35.306, 18.35.311, and 18.35.326 are non-criminal offenses. Sets a minimum fine of \$50 for a violation of AS 18.35.301, 18.35.311, or 18.35.326 and increases the fine for a violation of AS 18.35.306 to be \$50. This section also requires that each day that a violation of AS 18.35.306 continues, it is a separate violation.

Sec. 8 – AS 18.35.341(d)

Amends this section to require the Alaska Supreme Court to establish bail amounts for violations of this bill by adding references to the new sections and deleting the repealed sections.

Sec. 9 – AS 18.35.342

Amends this section so that a person may not be fined more than once for each violation of this bill by adding references to the new sections and deleting the repealed sections.

Sec. 10 – AS 18.35.343

Amends this section to allow the DEC commissioner or another affected party to take action in superior court to enjoin repeated violations of this bill by adding references to the new sections and deleting the repealed sections.

Sec. 11 – AS 18.35.350

Amends this section to require the DEC commissioner or their designee to enforce the provisions of this bill by adding references to the new sections and deleting references to the repealed sections.

Sec. 12 – AS 18.35

Creates a new section that defines the following terms used in this act: business, commissioner, department, e-cigarette, employee, employer, enclosed area, health care facility, place of employment, public place, and smoking.

Sec. 13 – Uncodified Law

Repeals AS 18.35.300, 18.35.305, 18.35.310, 18.35.320, 15.35.330, 18.35.355, and 18.35.365 within the current laws regulating smoking in public facilities.

Sec. 14 – Uncodified Law

Creates uncodified law stating that the changes made in Sections 1-12 only apply to violations or failures to comply with this act that occur on or after the effective date of Sections 1-12 of this act.

Sec. 15 – Uncodified Law

Creates uncodified law allowing the Department of Environmental Conservation to adopt regulations that are necessary to implement Sections 1-12 of this act.

Sec. 16 – Effective Date

Creates an immediate effective date for Section 15 of this act.

Sec. 17 – Effective Date

Creates an effective date for Sections 1-14 of this act to be October 1, 2016.

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