

# Senate Peter A. Micciche

*Alaska State Legislature*

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## Sponsor Substitute Senate Bill 1

### SECTIONAL ANALYSIS

#### Version "E"

**Section 1** creates new Article 4, *Prohibition of Smoking in Certain Places*, within AS 18.35 describing where smoking is prohibited or regulated.

#### 18.35.301 Prohibition of Smoking

- **Page 1, lines 6-14 & page 2, lines 1-3: (a)** prohibits smoking in enclosed areas in public places, including enclosed areas at an entertainment venue or sports arena; in vehicles used for public transportation; at public transportation facilities and depots; at a retail store or shopping center; at places of public assembly on property owned by the state or other unit of local government.
- **Page 2, lines 4-17: (b)** prohibits smoking in certain enclosed areas: office buildings, hotels, motels, restaurants, bars, retail stores or common areas in apartment and multiple family dwellings, a place of employment, a building or residence used to provide paid childcare, at healthcare facilities, in a vehicle that is a place of employment, at a public or private educational facility; at a residence where paid adult care is provided; at a residence in a healthcare facility, hotel, or motel; and on a marine vessel operating as a shore-based fisheries business under AS 43.75.
- **Page 2, lines 18-31: (c)** prohibits smoking outdoors in certain areas: at public or private schools; state or municipal parks primarily designated as a place for children to play; in seating areas for outdoor arenas, stadiums and amphitheatres; within 50 feet of an entrance to a healthcare facility, 20 feet of an entrance, open window, or heating or ventilation system air intake vent at a place where smoking is prohibited under this section; or within a reasonable distance of an entrance, open window, or heating or ventilation air intake on a marine vessel as determined by the vessel operator in charge.
- **Page 3, lines 1-24: (d)** 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".
- **Page 3, lines 25-30: (e)** 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.

- **Page 3, line 31 & Page 4, lines 1-8: (f)** allows smoking in a private club that does not serve alcohol and is not a place of employment, unless the club is hosting an event open to the public; defines “private club”, and; allows smoking in a private residence that is not used for paid childcare.
- **Page 4, lines 9-16: (g)** allows the department (HSS) to adopt regulations authorizing smoking in stand-alone shelters.

#### *18.35.306 Notice of Prohibition*

- **Page 4, lines 17-30:** describes the obligations of employers, owners and operators of places and vehicles where smoking is prohibited to post “no smoking” signs within those places or vehicles and at or near the entrances. This section also requires the Department of Health & Social Services to furnish signs upon request.

#### *18.35.311 Duty of employers and building managers*

- **Page 4, line 31 & Page 5, lines 1-2: (a)** an employer may not permit an employee, customer or other person to smoke inside an enclosed area at a place of employment;
- **Page 5, lines 3-5: (b)** an owner, operator, or manager of a building or other place where smoking is prohibited may not provide ashtrays or other smoking accessories for use in that building or place.

#### *18.35.316 Powers and duties of the commissioner*

- **Page 5, lines 6-16:** requires the commissioner of health and social services to administer and enforce the requirements of AS 18.35.301-18.35.399, and adopt necessary regulations to implement these requirements; allows the commissioner to delegate enforcement authority to another agency; and permits peace officers to enforce the provisions of AS 18.35.301 – 18.35.399.

#### *18.35.321 Public Education*

- **Page 5, lines 17-26:** requires the commissioner of health and social services to provide a program of education regarding AS 18.35.301 – 18.35.399 to employers, other affected parties and members of the public; and that this program may be provided in combination with the current comprehensive smoking education program established in AS 44.29.020(a)(14) which seeks in part to “prevent youth initiation of tobacco use, promote cessation among tobacco users, and educate the public about the lethal effects of exposure to secondhand smoke.”

#### *18.35.326 Nonretaliation*

- **Page 5, lines 27-31 & Page 6, lines 1-3:** prohibits employers from discriminating against current or prospective employees because the employee or applicant cooperated with or initiated enforcement of a requirement in AS 18.35.301-18.35.399; and similarly prohibits owners or operators of vehicles or other places subject to AS 18.35.301 – 18.35.399 from retaliating against customers or other members of the public due to their cooperation with or initiation of enforcement of the requirements in AS 18.35.301-18.35.399.

*18.35.331 Conflicts with local requirements*

- **Page 6, lines 4-9:** establishes a municipality may adopt and enforce local laws with additional prohibitions on smoking or additional duties for employers, owners, operators, and other persons related to enforcement of such provisions.

*18.35.336 Violations and civil penalties*

- **Page 6, lines 10-31, and Page 7, lines 1-2:** requires the commissioner of health and social services to establish regulatory process for investigating reported violations of AS 18.35.301, 18.35.306, 18.35.311, and 18.35.326; establishes that the commissioner, upon determination that a violation has occurred, may file a civil complaint in district court to enforce the requirements of AS 18.35.301, 18.35.306, 18.35.311, and 18.35.326, or designate an employee of the department to issue a citation for the violation; establishes a maximum fine of \$100 for violation of AS 18.35.301; establishes a bail schedule for violations of AS 18.35.306 or 18.35.311 to be not more than \$100 for a first failure to comply, \$200 for a second failure that occurs within 24 months of the first violation, and \$500 for the third and each consecutive failure to comply within 24 months of the second violation; establishes a civil penalty of not more than \$1,000 for a violation of AS 18.35.326; and allows the department to accept fine payments by mail.

*18.35.346 Citations; fines*

- **Page 7, lines 3-31 & Page 8, lines 1-15:** re-enacts existing law to allow a peace officer or an employee designated by the commissioner to issue citations for violations of the new law. A peace officer must personally witness a violation of AS 18.35.301 to issue a citation, but this is not the case for an employee designated by the department to issue a citation. 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. Fines for any violations alleged in a citation are subject to the same fine schedule described in Sec. 18.35.336. The supreme court will establish bail amounts for violations of AS 18.35.301, 18.35.306, 18.35.311, and 18.35.326 that do not exceed the maximum fines allowable under this section. Establishes requirements for citation format, payment of citations, and adjudication of citations.

*18.35.351 Injunctions*

- **Page 8, lines 16-18:** re-enacts existing law to permit the commissioner or another affected party to bring a civil action in superior court to enjoin a violation of the law.

*18.35.399 Definitions*

- **Page 8, lines 19-31 & page 9, lines 1-30:** Definitions are provided for business, commissioner, department, e-cigarette, employee, employer, enclosed area, health care facility, place of employment, public place, and smoking.

**Section 2** repeals existing statutes regulating smoking in public facilities (AS 18.35.300, 18.35.305, 18.35.310, 18.35.320, 18.35.330, 18.35.340, 18.35.341-343, 18.35.350, 18.35.355, and 18.35.365).

**Section 3** amends the uncodified law and clarifies that the new provisions of this bill apply to violations or failures to comply that occur on or after the effective date of Section 1 of the bill.

**Section 4** amends the uncodified law by adding a new section that permits the Department of Health and Social Services to adopt regulations to implement Section 1 of the bill. Regulations take effect under AS 44.62 (Administrative Procedure Act) cannot take effect before the effective date of Section 1 of the bill.

**Section 5** provides that Section 4 of the bill takes effect immediately under AS 01.10.070(c).

**Section 6** provides that, with the exception of Section 5, the rest of the bill will be effective on October 1, 2015.