

AMENDMENT # 1

OFFERED IN THE SENATE
TO: SCS HB 289(FIN)

BY SENATOR ELLIS

1 Page 1, line 1:

2 Delete "and"

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4 Page 1, line 2, following "optometry":

5 Insert "; prohibiting smoking in certain places; relating to education on the
6 smoking prohibition; and providing for an effective date"

7

8 Page 1, following line 3:

9 Insert a new bill section to read:

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

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

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19 Page 1, line 4:

20 Delete "Section 1"

21 Insert "Sec. 2"

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23 Renumber the following bill sections accordingly.

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Page 3, following line 23:

Insert new bill sections to read:

**** Sec. 9.** 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 vessel operating as a shore-based fisheries business under AS 43.75.

1 (c) Smoking is prohibited outdoors

2 (1) at an area located at a public or private school or a state or
3 municipal park that is designated as a place for children to play;

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

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

7 (4) within

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

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

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

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

18 (e) Notwithstanding (a) and (i)(1)(D) of this section, unless a municipality or
19 the owner or operator prohibits it, smoking of e-cigarettes is allowed in a retail
20 tobacco or e-cigarette store that is located in a building that is attached to another
21 business or residence if the retail store

22 (1) does not sell cigarettes, cigars, tobacco, products containing
23 tobacco, and pipes and tobacco smoking accessories;

24 (2) provides proof sufficient to the department that the retail store was
25 in business at that location on or before June 1, 2016; and

26 (3) has not changed ownership or location since June 1, 2016.

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

1 section.

2 (g) Notwithstanding (b) of this section, unless the owner or operator prohibits
3 it, smoking is allowed

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

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

8 (h) Nothing in this section prohibits smoking

9 (1) at a private residence, except a private residence described in (b) of
10 this section;

11 (2) in a stand-alone shelter if the stand-alone shelter meets the
12 following requirements:

13 (A) food or drink may not be sold in the stand-alone shelter;

14 (B) at least 50 percent of one side of the shelter is completely
15 open to the outside; and

16 (C) the stand-alone shelter meets the minimum distance
17 requirements of (c) of this section; or

18 (3) in an establishment licensed under AS 17.38 that is a freestanding
19 building.

20 (i) In this section, "retail tobacco or e-cigarette store"

21 (1) means a retail store

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

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

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

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

31 (2) does not include

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

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

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

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

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

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

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

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

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

16 (3) includes the words "No Puffin" with a pictorial representation of a
17 Horned Puffin or Tufted Puffin holding a burning cigarette enclosed in a red circle
18 crossed with a red bar.

19 (b) A person in charge of a building at which smoking is prohibited within a
20 specific distance from the entrance of the building under AS 18.35.301(c)(4) shall
21 conspicuously display a sign that reads "Smoking within (number of feet) Feet of
22 Entrance Prohibited by Law--Fine \$50" visible from the outside of each entrance to
23 the building.

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

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

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

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

3 (1) shall administer and enforce the requirements of AS 18.35.301 -
4 18.35.399;

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

7 (b) In addition to other powers granted the commissioner under AS 18.35.301
8 - 18.35.399, the commissioner may delegate to another agency the authority to
9 implement and enforce one or more provisions of AS 18.35.301 - 18.35.399.

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

13 (1) a program of education regarding the requirements in AS 18.35.301
14 - 18.35.399;

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

17 (b) The commissioner shall consult with the Department of Health and Social
18 Services

19 (1) to achieve compliance by employers, property owners, property
20 operators, and other members of the public with the requirements of AS 18.35.301 -
21 18.35.399;

22 (2) to provide the program of education as required under (a) of this
23 section; the program of education may be provided in combination with the
24 comprehensive smoking education, tobacco use prevention, and tobacco control
25 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

1 in AS 18.35.301 - 18.35.399.

2 **Sec. 18.35.331. Conflicts with local requirements.** Nothing in AS 18.35.301
3 - 18.35.399 prohibits a municipality from adopting an ordinance imposing

4 (1) additional limitations on smoking; or

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

8 * **Sec. 10.** AS 18.35.340(a) is amended to read:

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

12 * **Sec. 11.** AS 18.35.340(b) is amended to read:

13 (b) If, after investigating a report made under this section, the commissioner
14 determines that a violation has occurred, (1) the commissioner may file a civil
15 complaint in the district court to enforce the provisions of AS 18.35.301 - 18.35.399
16 [AS 18.35.300 - 18.35.365]; or (2) an employee of the department designated by the
17 commissioner to enforce the provisions of AS 18.35.301 - 18.35.399 [AS 18.35.300 -
18 18.35.365] may issue a citation under AS 18.35.341(b). If an employee of the
19 department issues a citation, the violation shall be processed and disposed of under
20 AS 18.35.341.

21 * **Sec. 12.** AS 18.35.340(c) is amended to read:

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

30 * **Sec. 13.** AS 18.35.341(a) is amended to read:

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

1 **18.35.311, or 18.35.326** [AS 18.35.300 OR 18.35.305] committed in the officer's
 2 presence or for a violation of **AS 18.35.306** [AS 18.35.330]. The provisions of
 3 AS 12.25.175 - 12.25.230 apply to the issuance of a citation under this subsection.

4 * **Sec. 14.** AS 18.35.341(b) is amended to read:

5 (b) An employee of the department designated by the commissioner to enforce
 6 the provisions of **AS 18.35.301 - 18.35.399** [AS 18.35.300 - 18.35.365] may issue a
 7 citation for a violation of **AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326**
 8 [AS 18.35.300, 18.35.305, OR 18.35.330] regardless of whether the violation was
 9 committed in the employee's presence. A citation issued under this subsection shall be
 10 in the same form and shall be processed in the same manner as a citation issued by a
 11 peace officer under (a) of this section. An employee of the department may not arrest a
 12 person for a violation of **AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326**
 13 [AS 18.35.300, 18.35.305, OR 18.35.330].

14 * **Sec. 15.** AS 18.35.341(c) is amended to read:

15 (c) A person who violates **AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326**
 16 [AS 18.35.300, 18.35.305, OR 18.35.330] is guilty of a violation as defined in
 17 AS 11.81.900(b) and upon conviction is punishable by a fine of [NOT LESS THAN
 18 \$10 NOR MORE THAN] \$50 for a violation of **AS 18.35.301, 18.35.311, or**
 19 **18.35.326** [AS 18.35.300 OR 18.35.305] and by a fine of not less than **\$50** [\$20] nor
 20 more than \$300 for a violation of **AS 18.35.306** [AS 18.35.330]. Each day a violation
 21 of **AS 18.35.306** [AS 18.35.330] continues after a citation for the violation has been
 22 issued constitutes a separate violation.

23 * **Sec. 16.** AS 18.35.341(d) is amended to read:

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

29 * **Sec. 17.** AS 18.35.342 is amended to read:

30 **Sec. 18.35.342. Multiple fines prohibited.** A person may not be fined more
 31 than once for each violation of **AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326**

1 [AS 18.35.300, 18.35.305, OR 18.35.330].

2 * **Sec. 18.** AS 18.35.343 is amended to read:

3 **Sec. 18.35.343. Injunctions.** The commissioner or any affected party may
4 institute an action in the superior court to enjoin repeated violations of AS 18.35.301,
5 18.35.306, 18.35.311, or 18.35.326 [AS 18.35.300, 18.35.305, or 18.35.330].

6 * **Sec. 19.** AS 18.35.350 is amended to read:

7 **Sec. 18.35.350. Enforcement authority.** The commissioner or the
8 commissioner's designee is responsible for enforcing the provisions of AS 18.35.301 -
9 18.35.399 [AS 18.35.300 - 18.35.365]. This section does not limit the authority of
10 peace officers.

11 * **Sec. 20.** AS 18.35 is amended by adding a new section to read:

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

13 (1) "business" means a for-profit or nonprofit sole proprietorship,
14 partnership, joint venture, corporation, professional corporation, private club, retail
15 seller of goods or services, or other business entity;

16 (2) "commissioner" means the commissioner of environmental
17 conservation or the commissioner's designee;

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

20 (4) "e-cigarette" means any product containing or delivering nicotine
21 or any other substance intended for human consumption that can be used by a person
22 through inhalation of vapor or aerosol from the product, of any size or shape, whether
23 the product is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-
24 pipe, e-hookah, vape pen, or any other product name or descriptor; "e-cigarette" does
25 not include drugs, devices, or combination products authorized for sale by the United
26 States Food and Drug Administration as those terms are defined in 21 U.S.C. 301 -
27 392 (Food, Drug, and Cosmetic Act), unless the use of those products simulate
28 smoking or expose others to vapor or aerosol;

29 (5) "employee" means a person who is employed by a business for
30 compensation or works for a business as a volunteer without compensation;

31 (6) "employer" means the state, a municipality, a regional educational

1 attendance area, and a person or a business with one or more employees;

2 (7) "enclosed area" means space between a floor and a ceiling that is
3 bounded on two or more sides by a combination of walls, doorways, windows, or
4 other physical barriers that may be open, partially open, closed, retractable, temporary,
5 or permanent;

6 (8) "health care facility" means an office or institution providing care
7 or treatment for physical, mental, emotional, or other medical, dental, physiological, or
8 psychological diseases or conditions; private, municipal, or state hospital; independent
9 diagnostic testing facility; primary care outpatient facility; skilled nursing facility;
10 kidney disease treatment center, including freestanding hemodialysis units;
11 intermediate care facility; ambulatory surgical facility; Alaska Pioneers' Home or
12 Alaska Veterans' Home administered by the Department of Health and Social Services
13 under AS 47.55; long-term care facility; psychiatric hospital; residential psychiatric
14 treatment center, as defined in AS 18.07.111 or AS 47.32.900, and other facilities,
15 places of employment, or offices operated for use by doctors, nurses, surgeons,
16 chiropractors, physical therapists, physicians, psychiatrists, or dentists or other
17 professional health care providers to provide health care;

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

22 (10) "public place" includes

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

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

27 (11) "smoking" means using an e-cigarette or other oral smoking
28 device or inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette,
29 pipe, or tobacco or plant product intended for inhalation.

30 * **Sec. 21.** AS 18.35.300, 18.35.305, 18.35.310, 18.35.320, 18.35.330, 18.35.355, and
31 18.35.365 are repealed.

1 * **Sec. 22.** AS 18.35.301(e) is repealed June 2, 2019.

2 * **Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 APPLICABILITY. AS 18.35.301, 18.35.306, 18.35.311, 18.35.316, 18.35.321,
5 18.35.326, and 18.35.331, added by sec. 9 of this Act, AS 18.35.340(a) - (c), as amended by
6 secs. 10 - 12 of this Act, AS 18.35.341(a) - (d), as amended by secs. 13 - 16 of this Act,
7 AS 18.35.342, as amended by sec. 17 of this Act, AS 18.35.343, as amended by sec. 18 of this
8 Act, AS 18.35.350, as amended by sec. 19 of this Act, and AS 18.35.399, added by sec. 20 of
9 this Act, apply to violations or failures to comply that occur on or after the effective date of
10 secs. 9 - 20 of this Act."
11

11

12 Renumber the following bill sections accordingly.

13

14 Page 3, line 27:

15 Delete "sec. 1"

16 Insert "sec. 2"

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18 Page 3, line 28:

19 Delete "sec. 1"

20 Insert "sec. 2"

21

22 Page 3, lines 29 - 30:

23 Delete "sec. 1"

24 Insert "sec. 2"

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26 Page 3, line 30:

27 Delete "sec. 1"

28 Insert "sec. 2"

29

30 Page 3, line 31:

31 Delete "sec. 1"

1 Insert "sec. 2"

2

3 Page 4, line 3:

4 Delete "sec. 1" in both places

5 Insert "sec. 2" in both places

6

7 Page 4, following line 4:

8 Insert new bill sections to read:

9 "* **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 TRANSITION; REGULATIONS. The Department of Environmental Conservation
12 may adopt regulations necessary to implement AS 18.35.301, 18.35.306, 18.35.311,
13 18.35.316, 18.35.321, 18.35.326, and 18.35.331, added by sec. 9 of this Act, AS 18.35.340(a)
14 - (c), as amended by secs. 10 - 12 of this Act, AS 18.35.341(a) - (d), as amended by secs. 13 -
15 16 of this Act, AS 18.35.342, as amended by sec. 17 of this Act, AS 18.35.343, as amended
16 by sec. 18 of this Act, AS 18.35.350, as amended by sec. 19 of this Act, and AS 18.35.399,
17 added by sec. 20 of this Act. The regulations take effect under AS 44.62 (Administrative
18 Procedure Act), but not before the effective date of the section being implemented.

19 * **Sec. 26.** Section 25 of this Act takes effect immediately under AS 01.10.070(c).

20 * **Sec. 27.** Sections 1 and 9 - 23 of this Act take effect October 1, 2016."