

HOUSE BILL NO. 328

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES TALERICO, Tuck, Millett, Lynn, Edgmon, Herron, Gattis, Foster, Muñoz, Nageak, Claman

Introduced: 2/22/16

Referred: Health and Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act prohibiting smoking in certain places; relating to education on the smoking**
2 **prohibition; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 18.35 is amended by adding new sections to read:

5 **Article 4. Prohibition of Smoking in Certain Places.**

6 **Sec. 18.35.301. Prohibition of smoking.** (a) Smoking is prohibited in an
7 enclosed area in a public place, including an enclosed area

8 (1) at an entertainment venue or a sports arena;

9 (2) on a bus, in a taxicab, on a ferry, or in another vehicle used for
10 public transportation;

11 (3) at a public transit depot, bus shelter, airport terminal, or other
12 public transportation facility;

13 (4) at a retail store or shopping center;

14 (5) at a place of government or public assembly located on property

1 that is owned or operated by the state, a municipality, or a regional educational
2 attendance area, or by an agent of the state, a municipality, or a regional educational
3 attendance area.

4 (b) Smoking is prohibited in an enclosed area

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

7 (2) in a place of employment;

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

10 (4) at a health care facility;

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

12 (6) at a public or private educational facility;

13 (7) in a building or residence that is the site of a business at which the
14 care of adults is provided on a fee-for-service basis;

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

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

18 (c) Smoking is prohibited outdoors

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

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

22 (3) within

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

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

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

31 (d) Notwithstanding (a) of this section, unless the owner or operator prohibits

1 it, smoking is allowed at a retail tobacco or e-cigarette store. In this subsection, "retail
2 tobacco or e-cigarette store"

3 (1) means a retail store

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

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

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

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

13 (2) does not include

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

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

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

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

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

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

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

30 (f) Notwithstanding (b) of this section, unless the owner or operator prohibits
31 it, smoking is allowed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 **Sec. 18.35.331. Conflicts with local requirements.** Nothing in AS 18.35.301
31 - 18.35.399 prohibits a municipality from adopting an ordinance imposing

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

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

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

12 (c) A person who violates AS 18.35.301 and against whom the commissioner
 13 has filed a civil complaint under this section is punishable by a civil penalty of \$50.

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

17 (1) \$100 for a first failure to comply;

18 (2) \$200 for a second failure to comply that occurs within 24 months
 19 after the date the person was fined for a first failure to comply;

20 (3) \$300 for each failure to comply that occurs within 24 months after
 21 the date the person was fined for a second failure to comply.

22 (e) A person who violates AS 18.35.326 and against whom the commissioner
 23 has filed a civil complaint under this section is punishable by a civil penalty of not
 24 more than \$500.

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

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

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

- 31 (1) "business" means a for-profit or nonprofit sole proprietorship,

1 partnership, joint venture, corporation, professional corporation, private club, retail
2 seller of goods or services, or other business entity;

3 (2) "commissioner" means the commissioner of health and social
4 services or the commissioner's designee;

5 (3) "department" means the Department of Health and Social Services;

6 (4) "e-cigarette" means an electronic device that uses a heating
7 element, battery, or electronic circuit to issue a vapor or aerosol for inhalation in a
8 manner that simulates smoking a lighted or heated cigar, cigarette, or pipe, or other
9 lighted or heated tobacco or plant product intended for inhalation;

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

12 (6) "employer" means the state, a municipality, a regional educational
13 attendance area, and a person or a business with one or more employees;

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

18 (8) "health care facility" means an office or institution providing care
19 or treatment for physical, mental, emotional, or other medical, dental, physiological, or
20 psychological diseases or conditions; a private, municipal, or state hospital;
21 independent diagnostic testing facility; primary care outpatient facility; skilled nursing
22 facility; kidney disease treatment center, including freestanding hemodialysis units;
23 intermediate care facility; ambulatory surgical facility; Alaska Pioneers' Home or
24 Alaska Veterans' Home administered by the Department of Health and Social Services
25 under AS 47.55; long-term care facility; psychiatric hospital; residential psychiatric
26 treatment center, as defined in AS 18.07.111 or AS 47.32.900, and other facilities,
27 places of employment or offices operated for use by doctors, nurses, surgeons,
28 chiropractors, physical therapists, physicians, psychiatrists, or dentists or other
29 professional health care providers to provide health care;

30 (9) "place of employment" means work areas, private offices, hotel and
31 motel rooms, employee lounges, restrooms, conference rooms, classrooms, cafeterias,

1 hallways, vehicles, and other employee work areas that are under the control of an
2 employer;

3 (10) "public place" includes

4 (A) an area to which the public is invited or into which the
5 public is admitted;

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

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

11 * **Sec. 2.** AS 18.35.300, 18.35.305, 18.35.310, 18.35.320, 18.35.330, 18.35.340, 18.35.341,
12 18.35.342, 18.35.343, 18.35.350, 18.35.355, and 18.35.365 are repealed.

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

15 **APPLICABILITY.** AS 18.35.301, 18.35.306, 18.35.311, 18.35.316, 18.35.321,
16 18.35.326, 18.35.331, 18.35.336, 18.35.351, and 18.35.399, added by sec. 1 of this Act, apply
17 to violations or failures to comply that occur on or after the effective date of sec. 1 of this Act.

18 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 **TRANSITION; REGULATIONS.** The Department of Health and Social Services may
21 adopt regulations necessary to implement AS 18.35.301, 18.35.306, 18.35.311, 18.35.316,
22 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
23 Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
24 before the effective date of sec. 1 of this Act.

25 * **Sec. 5.** Section 4 of this Act takes effect immediately under AS 01.10.070(c).

26 * **Sec. 6.** Except as provided in sec. 5 of this Act, this Act takes effect October 1, 2016.