

CS FOR HOUSE BILL NO. 328(HSS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH AND SOCIAL SERVICES COMMITTEE

Offered: 4/1/16

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES TALERICO, Tuck, Millett, Lynn, Edgmon, Herron, Gattis, Foster, Muñoz, Nageak, Claman

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

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

12 * **Sec. 2.** AS 18.35 is amended by adding new sections to read:

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

14 **Sec. 18.35.301. Prohibition of smoking.** (a) Smoking is prohibited in an

1 enclosed area in a public place, including an enclosed area

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

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

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

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

8 (5) at a place of government or public assembly located on property
9 that is owned or operated by the state, a municipality, or a regional educational
10 attendance area, or by an agent of the state, a municipality, or a regional educational
11 attendance area.

12 (b) Smoking is prohibited in an enclosed area

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

15 (2) in a place of employment;

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

18 (4) at a health care facility;

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

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

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

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

24 (9) on a vessel operating as a shore-based fisheries business under
25 AS 43.75.

26 (c) Smoking is prohibited outdoors

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

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

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

1 (4) within

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

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

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

10 (d) Notwithstanding (a) of this section, unless the owner or operator prohibits
11 it, smoking is allowed at a retail tobacco or e-cigarette store. In this subsection, "retail
12 tobacco or e-cigarette store"

13 (1) means a retail store

14 (A) that sells primarily cigarettes, e-cigarettes, cigars, tobacco
15 and products containing tobacco, and pipes and other smoking or e-cigarette
16 accessories;

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

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

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

23 (2) does not include

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

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

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

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

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

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

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

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

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

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

15 (g) Nothing in this section prohibits smoking

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

18 (2) in a stand-alone shelter if the stand-alone shelter meets the
19 following requirements:

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

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

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

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

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

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

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

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

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

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

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

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

17 **Sec. 18.35.316. Powers and duties of the commissioner.** (a) The
 18 commissioner

19 (1) shall administer and enforce the requirements of AS 18.35.301 -
 20 18.35.399;

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

23 (b) In addition to other powers granted the commissioner under AS 18.35.301
 24 - 18.35.399, the commissioner may delegate to another agency the authority to
 25 implement and enforce one or more provisions of AS 18.35.301 - 18.35.399.

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

29 (1) a program of education regarding the requirements in AS 18.35.301
 30 - 18.35.399;

31 (2) an electronically published printable brochure that summarizes the

1 requirements in AS 18.35.301 - 18.35.399.

2 (b) The commissioner shall consult with the Department of Health and Social
3 Services

4 (1) to achieve compliance by employers, property owners, property
5 operators, and other members of the public with the requirements of AS 18.35.301 -
6 18.35.399;

7 (2) to provide the program of education as required under (a) of this
8 section; the program of education may be provided in combination with the
9 comprehensive smoking education, tobacco use prevention, and tobacco control
10 program established in AS 44.29.020(a)(14).

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

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

18 **Sec. 18.35.331. Conflicts with local requirements.** Nothing in AS 18.35.301
19 - 18.35.399 prohibits a municipality from adopting an ordinance imposing

20 (1) additional limitations on smoking; or

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

24 * **Sec. 3.** AS 18.35.340(a) is amended to read:

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

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

29 (b) If, after investigating a report made under this section, the commissioner
30 determines that a violation has occurred, (1) the commissioner may file a civil
31 complaint in the district court to enforce the provisions of AS 18.35.301 - 18.35.399

1 [AS 18.35.300 - 18.35.365]; or (2) an employee of the department designated by the
 2 commissioner to enforce the provisions of AS 18.35.301 - 18.35.399 [AS 18.35.300 -
 3 18.35.365] may issue a citation under AS 18.35.341(b). If an employee of the
 4 department issues a citation, the violation shall be processed and disposed of under
 5 AS 18.35.341.

6 * **Sec. 5.** AS 18.35.340(c) is amended to read:

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

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

16 (a) A peace officer may issue a citation for a violation of AS 18.35.301,
 17 18.35.311, or 18.35.326 [AS 18.35.300 OR 18.35.305] committed in the officer's
 18 presence or for a violation of AS 18.35.306 [AS 18.35.330]. The provisions of
 19 AS 12.25.175 - 12.25.230 apply to the issuance of a citation under this subsection.

20 * **Sec. 7.** AS 18.35.341(b) is amended to read:

21 (b) An employee of the department designated by the commissioner to enforce
 22 the provisions of AS 18.35.301 - 18.35.399 [AS 18.35.300 - 18.35.365] may issue a
 23 citation for a violation of AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326
 24 [AS 18.35.300, 18.35.305, OR 18.35.330] regardless of whether the violation was
 25 committed in the employee's presence. A citation issued under this subsection shall be
 26 in the same form and shall be processed in the same manner as a citation issued by a
 27 peace officer under (a) of this section. An employee of the department may not arrest a
 28 person for a violation of AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326
 29 [AS 18.35.300, 18.35.305, OR 18.35.330].

30 * **Sec. 8.** AS 18.35.341(c) is amended to read:

31 (c) A person who violates 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] is guilty of a violation as defined in
 2 AS 11.81.900(b) and upon conviction is punishable by a fine of [NOT LESS THAN
 3 \$10 NOR MORE THAN] \$50 for a violation of AS 18.35.301, 18.35.311, or
 4 18.35.326 [AS 18.35.300 OR 18.35.305] and by a fine of not less than \$50 [\$20] nor
 5 more than \$300 for a violation of AS 18.35.306 [AS 18.35.330]. Each day a violation
 6 of AS 18.35.306 [AS 18.35.330] continues after a citation for the violation has been
 7 issued constitutes a separate violation.

8 * **Sec. 9.** AS 18.35.341(d) is amended to read:

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

14 * **Sec. 10.** AS 18.35.342 is amended to read:

15 **Sec. 18.35.342. Multiple fines prohibited.** A person may not be fined more
 16 than once for each violation of AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326
 17 [AS 18.35.300, 18.35.305, OR 18.35.330].

18 * **Sec. 11.** AS 18.35.343 is amended to read:

19 **Sec. 18.35.343. Injunctions.** The commissioner or any affected party may
 20 institute an action in the superior court to enjoin repeated violations of AS 18.35.301,
 21 18.35.306, 18.35.311, or 18.35.326 [AS 18.35.300, 18.35.305, or 18.35.330].

22 * **Sec. 12.** AS 18.35.350 is amended to read:

23 **Sec. 18.35.350. Enforcement authority.** The commissioner or the
 24 commissioner's designee is responsible for enforcing the provisions of AS 18.35.301 -
 25 18.35.399 [AS 18.35.300 - 18.35.365]. This section does not limit the authority of
 26 peace officers.

27 * **Sec. 13.** AS 18.35 is amended by adding a new section to read:

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

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

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

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

5 (4) "e-cigarette" means any product containing or delivering nicotine
6 or any other substance intended for human consumption that can be used by a person
7 through inhalation of vapor or aerosol from the product, of any size or shape, whether
8 the product is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-
9 pipe, e-hookah, vape pen, or any other product name or descriptor; "e-cigarette" does
10 not include drugs, devices, or combination products authorized for sale by the United
11 States Food and Drug Administration as those terms are defined in 21 U.S.C. 301 -
12 392 (Food, Drug, and Cosmetic Act), unless the use of those products simulate
13 smoking or expose others to vapor or aerosol;

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

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

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

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

1 chiropractors, physical therapists, physicians, psychiatrists, or dentists or other
2 professional health care providers to provide health care;

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

7 (10) "public place" includes

8 (A) an area to which the public is invited or into which the
9 public is admitted;

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

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

15 * **Sec. 14.** AS 18.35.300, 18.35.305, 18.35.310, 18.35.320, 18.35.330, 18.35.355, and
16 18.35.365 are repealed.

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

19 APPLICABILITY. AS 18.35.301, 18.35.306, 18.35.311, 18.35.316, 18.35.321,
20 18.35.326, and 18.35.331, added by sec. 2 of this Act, AS 18.35.340(a) - (c), as amended by
21 secs. 3 - 5 of this Act, AS 18.35.341(a) - (d), as amended by secs. 6 - 9 of this Act,
22 AS 18.35.342, as amended by sec. 10 of this Act, AS 18.35.343, as amended by sec. 11 of this
23 Act, AS 18.35.350, as amended by sec. 12 of this Act, and AS 18.35.399, added by sec. 13 of
24 this Act, apply to violations or failures to comply that occur on or after the effective date of
25 secs. 2 - 13 of this Act.

26 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 TRANSITION; REGULATIONS. The Department of Environmental Conservation
29 may adopt regulations necessary to implement AS 18.35.301, 18.35.306, 18.35.311,
30 18.35.316, 18.35.321, 18.35.326, and 18.35.331, added by sec. 2 of this Act, AS 18.35.340(a)
31 - (c), as amended by secs. 3 - 5 of this Act, AS 18.35.341(a) - (d), as amended by secs. 6 - 9 of

1 this Act, AS 18.35.342, as amended by sec. 10 of this Act, AS 18.35.343, as amended by sec.
2 11 of this Act, AS 18.35.350, as amended by sec. 12 of this Act, and AS 18.35.399, added by
3 sec. 13 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure
4 Act), but not before the effective date of the section being implemented.

5 * **Sec. 17.** Section 16 of this Act takes effect immediately under AS 01.10.070(c).

6 * **Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect October 1, 2016.