

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 1
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY SENATORS MICCICHE, McGuire, Costello, Bishop, Stevens, Meyer, Olson, Ellis, Gardner, Hoffman, Wielechowski

Introduced: 1/30/15

Referred: Health and Social Services, State Affairs, 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 in the following places:

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 residence at which the care of adults is provided on a fee-for-
14 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) 50 feet of an entrance to a health care facility;

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

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

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

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

4 (1) means a retail store

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

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

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

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

14 (2) does not include

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

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

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

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

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

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

25 (e) Notwithstanding (b) of this section, unless the owner or operator prohibits
 26 it, smoking is allowed

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

29 (2) on a marine vessel when the vessel is engaged in commercial
 30 fishing or sport charter fishing.

31 (f) Nothing in this section prohibits smoking at

1 (1) a private club that does not serve alcoholic beverages and is not a
 2 place of employment, unless the private club is hosting an event that is open to the
 3 public; in this paragraph, "private club" means a building or portion of a building used
 4 only for a recreational, fraternal, social, patriotic, political, benevolent, or athletic
 5 purpose by one organization that has been granted an exemption from the payment of
 6 federal income tax as a club under 26 U.S.C. 501 (Internal Revenue Code);

7 (2) a private residence, except a private residence described in (b) of
 8 this section.

9 (g) Notwithstanding (b) of this section, the department may adopt regulations
 10 authorizing smoking in a stand-alone shelter. At a minimum, the regulations must
 11 provide

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

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

15 (3) for minimum distance requirements consistent with (c) of this
 16 section.

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

20 (1) reads "Smoking Prohibited by Law--Maximum Fine \$100"; and

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

24 (b) A person in charge of a building at which smoking is prohibited within a
 25 specific distance from the entrance of the building under AS 18.35.301(c) shall
 26 conspicuously display a sign that reads "Smoking within (number of feet) Feet of
 27 Entrance Prohibited by Law--Maximum Fine \$100" visible from the outside of each
 28 entrance to the building.

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

31 **Sec. 18.35.311. Duty of employers and building managers.** (a) An employer

1 may not permit an employee, customer, or other person to smoke inside an enclosed
2 area at a place of employment.

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

6 **Sec. 18.35.316. Powers and duties of the commissioner.** (a) The
7 commissioner shall

8 (1) administer and enforce the requirements of AS 18.35.301 -
9 18.35.399;

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

12 (b) In addition to other powers granted the commissioner under AS 18.35.301
13 - 18.35.399, the commissioner may delegate to another agency the authority to
14 implement and enforce one or more provisions of AS 18.35.301 - 18.35.399.

15 (c) Nothing in this section limits the authority of a peace officer to enforce the
16 provisions of AS 18.35.301 - 18.35.399.

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

20 (1) a program of education regarding the requirements in AS 18.35.301
21 - 18.35.399;

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

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

27 **Sec. 18.35.326. Nonretaliation.** (a) An employer may not discharge, refuse to
28 hire, or in any other manner retaliate against an employee or applicant for employment
29 because the employee or applicant cooperates with or initiates enforcement of a
30 requirement in AS 18.35.301 - 18.35.399.

31 (b) The owner or operator of a vehicle or other place that is subject to a

1 requirement in AS 18.35.301 - 18.35.399 may not retaliate against a customer or other
 2 member of the public for cooperating with or initiating enforcement of a requirement
 3 in AS 18.35.301 - 18.35.399.

4 **Sec. 18.35.331. Conflicts with local requirements.** Nothing in AS 18.35.301
 5 - 18.35.399 prohibits a municipality from adopting an ordinance imposing

6 (1) additional limitations on smoking; or

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

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

13 (b) If, after investigating a report made under this section, the commissioner
 14 determines that a violation has occurred, the commissioner may

15 (1) file a civil complaint in the district court to enforce the provisions
 16 of AS 18.35.301, 18.35.306, 18.35.311, and 18.35.326; or

17 (2) issue a citation under AS 18.35.346(b).

18 (c) A person who violates AS 18.35.301 and against whom the commissioner
 19 has filed a civil complaint under this section is punishable by a civil penalty of not
 20 more than \$100.

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

24 (1) \$100 for a first failure to comply;

25 (2) \$200 for a second failure to comply that occurs within 24 months
 26 after the date the person was fined for a first failure to comply;

27 (3) \$500 for each failure to comply that occurs within 24 months after
 28 the date the person was fined for a second failure to comply.

29 (e) A person who violates AS 18.35.326 and against whom the commissioner
 30 has filed a civil complaint under this section is punishable by a civil penalty of not
 31 more than \$1,000.

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

3 **Sec. 18.35.346. Citations; fines.** (a) A peace officer may issue a citation for a
4 violation of AS 18.35.301 committed in the officer's presence or for a violation of
5 AS 18.35.306, 18.35.311, or 18.35.326. The provisions of AS 12.25.175 - 12.25.230
6 apply to the issuance of a citation under this subsection.

7 (b) An employee of the department designated by the commissioner to enforce
8 the provisions of AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326 may issue a
9 citation for a violation of AS 18.35.301, 18.35.306, 18.35.311, or 18.35.326 regardless
10 of whether the violation was committed in the employee's presence. A citation issued
11 under this subsection shall be in the same form and shall be processed in the same
12 manner as a citation issued by a peace officer under (a) of this section. An employee
13 of the department may not arrest a person for a violation of AS 18.35.301, 18.35.306,
14 18.35.311, or 18.35.326.

15 (c) A person who violates AS 18.35.301 as alleged in a citation under (a) or
16 (b) of this section is guilty of a violation, as defined in AS 11.81.900(b), and upon
17 conviction is punishable by a fine of not more than \$100 for each violation.

18 (d) A person who fails to comply with a duty imposed on that person by
19 AS 18.35.306 or 18.35.311 as alleged in a citation under (a) or (b) of this section is
20 guilty of a violation as defined in AS 11.81.900(b) and punishable by a fine of not
21 more than

22 (1) \$100 for a first failure to comply;

23 (2) \$200 for a second failure to comply that occurs within 24 months
24 after the date the person was fined under this section for a first failure to comply;

25 (3) \$500 for each failure to comply that occurs within 24 months after
26 the date the person was fined under this section for a second failure to comply.

27 (e) A person who violates AS 18.35.326 as alleged in a citation under (a) or
28 (b) of this section is guilty of a violation, as defined in AS 11.81.900(b), and
29 punishable by a fine of not more than \$1,000 for each violation.

30 (f) The supreme court shall establish a schedule of bail amounts for violations
31 of AS 18.35.301, 18.35.306, 18.35.311, and 18.35.326, but in no event may the bail

1 amount exceed the maximum fine that may be imposed for the violation under (c) - (e)
2 of this section. The bail amount for a violation must appear on the citation.

3 (g) If a person cited for a violation under this section does not contest the
4 citation, the person may, on or before the 30th day after the date of the citation, mail
5 or personally deliver to the clerk of the court in which the citation is filed

6 (1) the amount of bail indicated on the citation for that violation; and

7 (2) a copy of the citation indicating that the right to an appearance is
8 waived, a plea of no contest is entered, and the bail is forfeited.

9 (h) When bail has been forfeited under (g) of this section, a judgment of
10 conviction shall be entered. Forfeiture of bail is a complete satisfaction for the
11 violation. The clerk of the court accepting the bail shall provide the violator with a
12 receipt stating that fact if requested.

13 (i) A person cited under this section is guilty of failure to obey a citation under
14 AS 12.25.230 if the person fails to pay the bail amount established under (f) of this
15 section or fails to appear in court as required.

16 **Sec. 18.35.351. Injunctions.** The commissioner or another affected party may
17 bring a civil action in the superior court to enjoin a violation of AS 18.35.301,
18 18.35.306, 18.35.311, or 18.35.326.

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

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

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

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

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

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

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

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

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

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

23 (10) "public place" includes

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

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

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

31 * **Sec. 2.** AS 18.35.300, 18.35.305, 18.35.310, 18.35.320, 18.35.330, 18.35.340, 18.35.341,

1 18.35.342, 18.35.343, 18.35.350, 18.35.355, and 18.35.365 are repealed.

2 * **Sec. 3.** 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, 18.35.331, 18.35.336, 18.35.346, 18.35.351, and 18.35.399, added by sec. 1 of this
6 Act, apply to violations or failures to comply that occur on or after the effective date of sec. 1
7 of this Act.

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

10 TRANSITION; REGULATIONS. The Department of Health and Social Services may
11 adopt regulations necessary to implement AS 18.35.301, 18.35.306, 18.35.311, 18.35.316,
12 18.35.321, 18.35.326, 18.35.331, 18.35.336, 18.35.346, 18.35.351, and 18.35.399, added by
13 sec. 1 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act),
14 but not before the effective date of sec. 1 of this Act.

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

16 * **Sec. 6.** Except as provided in sec. 5 of this Act, this Act takes effect October 1, 2015.