

HB

10

COMMITTEE REPORT

HOUSE

<sup>4</sup>  
2/7/81  
(5)

FURTHER:

Date: May 20, 1981  
~~April 20, 1981~~

Mr. Speaker:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had HR 10

"An Act prohibiting smoking in certain businesses in which food is sold."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HR 10  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SI.  
DO PASS

John Clack  
Scott Gato  
Larry Martin  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

John Clack  
 CHAIRMAN

6 copies  
for HB  
10  
/

LAW OFFICES

BIRCH, HORTON, BITTNER, MONROE  
PESTINGER AND ANDERSON

A PROFESSIONAL CORPORATION

1110 REWARD STREET, SUITE 411

JUNEAU, ALASKA 99901

(907) 988-2111

1127 WEST SEVENTH AVENUE  
ANCHORAGE, ALASKA 99501

(907) 278-1150

TELEX 25-155

711 GAVINNEY BLVD

FAIRBANKS, ALASKA 99701

(907) 452-1886

1140 CONNECTICUT AVE. N.W. SUITE 1100

WASHINGTON, D.C. 20036

(202) 659-9800

NOT ADMITTED IN ALASKA

RONALD S. BIRCH  
RALPH HORTON  
WILLIAM P. BITTNER  
SUZANNE C. PESTINGER  
LYDIA V. ANDERSON  
W. BRUCE MONROE  
RODNEY E. CARRAN  
MICHAEL R. SPART  
JOSEPH W. CROMBIE  
DOUGLAS J. BERGHELY  
WINSTON S. BURDANS  
CAROL A. JOHNSON  
JOSEPH W. EVANS  
E. BUDD SIMPSON  
CONSTANCE F. BROOKS  
JACK D. CLARK  
PAUL W. GRANT  
MIRIAM M. OWEN  
DANIEL W. WESTERBURG  
WILLIAM P. HORTON  
C. FLOYD MATHEWS  
KATHRYN A. BLACH  
PAUL L. BILLEN  
STANLEY T. LEWIS  
MARC W. JUNE  
SUSAN P. BEHRE

March 2, 1981

The Honorable Mike Miller  
Alaska House of Representatives  
Pouch V  
Juneau, Alaska 99911

Re: House Bill No. 10 - An Act Prohibiting  
Smoking in Certain Businesses in Which Food  
is Sold.

Dear Mike:

I am the registered lobbyist for the Tobacco Institute. We are interested in House Bill 10 which proposes to amend AS 18.35.300 by adding a new paragraph which reads as follows: "(7) A place of business which sells food for consumption other than the premises of the business."

In attempting to analyze the bill, I find that its meaning and intent is not clear. I have been told the intent is to prohibit smoking in grocery stores. If that is the case, it is suggested that perhaps a redrafting of the bill would be in order because that intent is not clear. In the event the bill is adopted in its present form, it could cause confusion.

To date, the Tobacco Institute has not formed a position on the merits of the bill and do not feel it would be possible until the intent of the bill is clarified. I would very much appreciate your comments as to the intent of the bill and perhaps

The Honorable Mike Miller  
March 2, 1981  
Page 2

a legislative redrafting for clarification. In any event, I respectfully request that the Tobacco Institute's interest in the bill be noted and that your staff be requested to notify me when any legislative action is scheduled on the bill.

May I thank you in advance for your kind attention to this matter.

Very truly yours,

BRUCE, HORTON, BITTNER, MONROE,  
PESTINGER AND ANDERSON



Bruce Monroe

BM:pc



DONALD J. ALLAN, Special Agent

Martin S. Polhemus, CLU, General Agent

April 24, 1981

Representative Don Clocksin  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Representative Clocksin:

This letter is to express support for HB 10 entitled "An Act prohibiting smoking in certain businesses in which food is sold" and to request scheduling of the bill in the HESS Committee at the earliest possible date.

Legislation to provide a smoke-free environment in supermarkets and grocery stores is long overdue. I hope that you will consider the following needs for this legislation when HB 10 is reviewed in the HESS Committee:

1. Supermarkets and grocery stores, unlike cocktail lounges, restaurants and most retail stores, provide the basic necessities of life and must be visited by smokers and non-smokers alike. The very young, the very old and those with especially vulnerable lungs have no choice but to visit these stores which provide the essentials of life. Now that second hand smoke has been demonstrated to be dangerous to non-smokers, we should not require people to breathe it in the course of shopping for the food they need.
2. Smoking presents a very real danger of fire in supermarkets and grocery stores. I have observed people with cigarettes concentrate on what they are looking for on the shelves and forget about the cigarette in their hand off to the side which has come close to igniting the highly combustible paper products on other nearby shelves.
3. Smoking in food stores prevents cleanliness, not only of the air but of the floor and shelves as well. One supermarket owner mentioned to me a problem with ashes found in the fresh produce.
4. The contamination of the air can be substantial at times. This unnecessary exposure of meats before they are packaged detracts from their purity. Similarly, the fresh produce accumulates some contaminants from the air.

Representative Don Clocksin  
April 24, 1981  
Page Two

5. One supermarket owner I talked to said he was concerned about losing business as a result of complaints from smokers if he would put up NO SMOKING signs and the other supermarkets did not do the same. At the same time, he said he was surprised there was not already a health law prohibiting smoking in supermarkets. He acknowledged a real problem with cleanliness resulting from the smoking. He felt the state would be doing the supermarket owners a favor by prohibiting smoking in supermarkets for health reasons. He favors a law that would require smoking to be prohibited in all food stores. If fear of competition prevents food store owners from taking steps toward maximum cleanliness, they truly need legislation to protect the public interest.
6. Last spring in one specific incident in a large supermarket in Juneau, the pungent odor of "something burning" filled the air around the check-out lanes. Several customers inquired about this odor to the store managers who were unable to account for the odor. Finally, the burning odor was traced to a push-broom and pile of trash in a back room. The hairs on the push-broom had ignited after it had been used to sweep the aisles in the store; a lighted cigarette butt was among the sweepings. If this trash pile had smoldered until after the closing hours of the store, a devastating fire might have resulted.

Thank you for your consideration.

Sincerely,



Donald J. Allan

# Fairbanks Clinic

1867 Airport Road • P.O. Box 1330 • Fairbanks, Alaska 99707 • (907) 452-1761

April 29, 1981

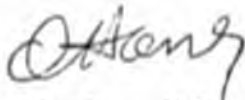
Representative Don Clocksin  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Representative Clocksin:

I urge you to support House Bill #10 entitled, "An Act Prohibiting Smoking in Certain Businesses in which Food is Sold". In my specialty of pulmonary medicine, a large number of my patients with asthma, emphysema, obstructive lung disease, and cardiac conditions are extremely sensitive to the aggravating effect of cigarette smoke on their disease. They are able to avoid many other occasions where the smoke of others is polluting the air, but it is hard for them to avoid supermarkets and grocery stores. They have no choice but to patronize these stores which provide the essentials of life.

I would appreciate your efforts to schedule this bill before the Health Education and Social Services Committee.

Sincerely,



Owen Q. Hanley, M.D.  
Internal Medicine

OQH:cmu

LAW OFFICES

BIRCH, HORTON, BITTNER, MONROE  
PESTINGER AND ANDERSON

A PROFESSIONAL CORPORATION

130 SEWARD STREET, SUITE 400

JUNEAU, ALASKA 99801

(907) 580-2800

January 21, 1981

122 WEST SEVENTH AVENUE  
ANCHORAGE, ALASKA 99501  
(907) 276-1550  
TELETYPE 276-356

THE GARDNER HOUSE  
FAIRBANKS, ALASKA 99701  
(907) 452-1888

1140 CONNECTICUT AVE. N.W. SUITE 400  
WASHINGTON, D. C. 20036  
(202) 690-1500

\*NOT ADMITTED IN ALASKA

ALICE BIRCH  
BILLY BIRCH  
MICHAEL B. BITTNER  
SUZANNE C. FEIST, GEN.  
LEONARD V. ANDERSON  
W. BRUCE HORTON  
ROBERT H. GARMAN  
MICHAEL R. SPAAN  
JOSEPH M. CHOMSKI  
DOUGLAS J. BERDAHEL  
WINSTON S. BURHANK  
CAROL A. JOHNSON  
JOSEPH W. TSAI  
E. JUDY SIMPSON  
CONSTANCE F. BROOKS  
JACK O. CLARK  
PAUL H. GRANT  
PATRICK H. OWEN  
DANIEL W. WESTERBURG  
WILLIAM P. HORTON  
C. FLOYD MATHEWS  
HARRIS A. BEACH  
PAUL L. DILLON  
STANLEY I. LEWIS  
MARC W. JUIE  
SUSAN P. BEHLKE

Mr. Joe Cladouhos, Chief  
Environmental Sanitation  
Alaska Department of Environmental Conservation  
Pouch O  
Juneau, Alaska 99811

Re: Proposed Regulations 18 AAC 55.010-070

Dear Mr. Cladouhos:

We represent the Tobacco Institute. Thank you for the opportunity to comment regarding the proposed new regulations effecting smoking in public places. This testimony is prepared on behalf of the Tobacco Institute and reflects their concern that the proposed regulations are poorly drafted. Further, they violate established principles of law, procedure and statutory construction. Additionally, the proposed regulations are ambiguous in part, unnecessarily redundant of existing law and exceed the scope of legislation incorporated in AS 18.35.300-340.

The proposed regulations are presented in an uncommon fashion. Two distinct departments of the state government, the Department of Health and Social Services and the Department of Environmental Conservation, are promulgating regulations jointly. Together the departments have solicited public comments on the regulations through the Alaska Department of Environmental Conservation. The legislative language the regulations address is found at AS 18.35.300, et seq. Title 18 is captioned "Health and Safety" and grants power to the Department of Health and Social Services to carry out designated duties.

The Department of Environmental Conservation receives its grant of authority in Title 46 of the Alaska Statutes captioned as "Water, Air and Environmental Conservation." A reading of DEC's declaration of policy found in AS 46.03.010(a) reveals:

"It is the policy of the state to conserve, improve and protect its natural resources and environment and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economy and social well-being."

Mr. Joe Cladouhos, Chief  
Environmental Sanitation  
January 21, 1981  
Page 2

While Title 46 mentions the word: "health and safety," it is in the context of the Department of Environmental Conservation's purpose. That purpose is to conserve, improve and protect the natural resources and environment of the state. The proposed regulations cite as authority AS 46.03.020(10)(A), AS 46.03.020(10)(B) and AS 46.03.140 as properly enabling the Department of Environmental Conservation to promulgate the proposed regulations. Use of these sections of the Alaska Statutes is an overreaching attempt by the Department of Environmental Conservation to regulate conduct of the general public. The Department's authority is relegated to pollution problems within the context of the natural environment.

A review of relevant Alaskan law reveals no authority for the Department of Environmental Conservation's regulation of smoking. What authority exists can only be located in Title 18 as it impacts on the health of Alaskan citizens. For the above enumerated reasons, there is no question that the only agency lawfully able to promulgate regulations with respect to AS 18.35.300-340 is the Alaska Department of Health and Social Services. Executive order number 51 introduced in the Alaska Senate on January 13, 1981, by Governor Hammond recognizes and acknowledges that the Department of Health and Social Services and not the Department of Environmental Conservation has sole authority relating to Title 18 under present law. Executive order number 51 will not be effective until July 1, 1981, if at all. Until then, the Department of Environmental Conservation has no authority to adopt or enforce regulations under AS 18.35.300-370.

With respect to proposed 18 AAC 55.010, it is not apparent what purpose is served by including this section. The proposed regulations in this section are an almost verbatim quote of AS 18.35.300. The proposed regulations do not clarify any possible ambiguities existing in current law. At best the inclusion of this portion of the regulations would be unnecessarily duplicative of existing law.

If the Department of Health and Social Services believes there is a need to clarify the existing statute, then an effort should be made in that direction. Proposed 18 AAC 55.010(3), (AS 18.35.300(3)) provides a splendid example of this need for clarification as opposed to redundancy. The proposed regulation omits the word "state" following the words "under the control." While the statute seemingly contemplates a broad categorical

Mr. Joe Gladouhos, Chief  
Environmental Sanitation  
January 21, 1981  
Page 3

inclusion of the smoking ban during public meetings, at state facilities, the regulations retreat from this standard. By excluding "state" and including "state departments and agencies," the condition of selective enforcement is created. The regulation, if enacted, would create a judicial double standard. Additionally, section 18 AAC 55.010(3) of the proposed regulations greatly confuses the already ambiguous statutory language. For example, does the smoking ban apply to any meeting at a state facility, or to a state meeting at any place (public or private facilities included) or both? If there is a need to regulate at all, this is a section that requires extensive clarification. As written, however, this portion of the proposed regulations does nothing to promote understanding of the law. In fact it tends to cloud the issue.

Likewise, proposed 18 AAC 55.020, part (a) suffers from a needless duplication of existing statutory law. This portion of the proposed regulation is so nearly identical to AS 18.35.310 as to be unnecessary. What benefit is gained by simply quoting a statute in a regulation? If the purpose of regulations is to implement or to flesh out the statute, then copying the language of the statute in the regulation accomplishes nothing. We certainly question the need to add to the burgeoning body of regulatory law in such a manner.

Subsection (b) of proposed 18 AAC 55.020 raises additional questions. ASHRAE standards are given the unconditional force of law with respect to air circulation. This incorporation of industrial standards in both the present and as to the future is an impermissive allocation of regulatory power. Nowhere in the current statute is an industry association granted future regulatory decision-making authority. The blanket incorporation of ASHRAE standards without durational limit is vague, indefinite and violates state law. One reason for the prohibition against delegation of the future lawmaking power of the state to private groups is that when amendments are adopted by those groups, the public does not necessarily receive notice of or have an opportunity to comment on or criticize the amendments, as it does when they are adopted by the legislature or promulgated under law. Northern Lights Hotel, Inc. v. Sweeney, 561 P.2d 1176, aff'd on rehearing 563 P.2d 256 (Alaska 1977).

Subsection (b)(?) of the proposed 18 AAC 55.020 also provides for an exemption of part of the standards upon documentation by a mechanical engineer registered in Alaska. In view of

Mr. Joe Gladounos, Chief  
Environmental Sanitation  
January 21, 1981  
Page 4

recent U.S. Supreme Court decisions striking down protectionist legislation in Alaska, it is possible that a regulation specifying an Alaskan engineer is violative of the commerce clause and other portions of the U.S. Constitution.

The most troublesome part of the entire proposed regulations is 18 AAC 55.060, entitled "enforcement procedure." Nowhere does AS 18.35.300, et seq., empower the Alaska Health and Social Services Department or any other Department to promulgate enforcement procedures with respect to smoking violations. Indeed the agency has omitted any citation of general statutory authority under which the regulation may be adopted, as required by AS 44.62.040(b).

The proposed enforcement procedure regulations are a blatant intrusion into existing criminal and civil procedure portions of the Alaska Statutes and Supreme Court Rules of Procedure. The Supreme Court of Alaska in reviewing regulations will first ascertain whether the regulation is consistent with and reasonably necessary to the purposes of the statutes, and second whether the statute is reasonable and not arbitrary. Kelly v. Zamarello, 486 P.2d 906 (1971). The proposed enforcement procedure portion of the regulations fails both parts of the test articulated by the Supreme Court. Lacking authority to regulate procedure, the Department also arbitrarily tramples substantive rights of possible defendants charged under the proposed scheme. The regulatory scheme outlined at 18 AAC 55.060(c) purports to charge costs and fees against a person violating any of the portions of the smoking in public places statute. The Courts, not the Department, have the authority to award costs and fees as outlined in Alaska Civil Rule 79. Because the enforcement procedure provision is clearly outside the scope of the Department's regulatory authority, it should not be included in any regulatory scheme.

The provision under which defendants may be charged with court costs, also raises substantial questions with respect to the right to a jury trial. Despite the nominal "civil" nature of the penalty, any fine which may indicate criminality can only be levied after trial by jury. Small claims court procedure does not provide for jury trial. Therefore, since court costs obviously may exceed the dollar limitation for nonjury matters, the regulations may violate a defendant's right to a jury trial. Again, the wisdom of leaving the enforcement mechanism in the hands of the courts becomes apparent.

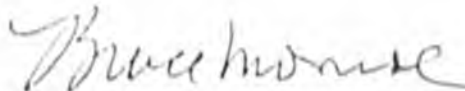
Mr. Joe Cladouhos, Chief  
Environmental Sanitation  
January 21, 1981  
Page 5

In conclusion, while there may be some need to clarify the existing state smoking statute, the proposed regulations are a long way from providing meaningful clarity. As written, the regulations serve to confuse existing rights instead of illuminating the public purpose under the law. The unnecessary intrusion of the Department into the Court's procedural area is troublesome, as is the repetitive nature of the proposed regulations. Regulations should do more than mirror existing state law. The regulations should clarify statutory language within the scope of the enacted legislation.

For the reasons outlined above, we believe that a substantial revision of the proposed regulations is in order. If you have further questions, please feel free to call me at your earliest convenience.

Very truly yours,

BIRCH, HORTON, BITTNER, MONROE,  
PESTINGER AND ANDERSON



Bruce Monroe

BM:pc

## DEPT. OF ENVIRONMENTAL CONSERVATION

POUCH 0  
 JUNEAU, ALASKA 99811  
 PHONE:

February 11, 1981

Mr. Bruce Monroe  
 BIRCH, HORTON, BITTNER, MONROE,  
 PESTINGER AND ANDERSON  
 130 Seward Street, Suite 411  
 Juneau, AK 99801



Dear Mr. Monroe:

Re: Proposed Regulations:  
 "Smoking In Public Places"

Thank you for your helpful comments on the subject regulations. Many comments and recommendations have been incorporated into the attached revision. Some suggestions were not legally possible (e.g. control of smoking in airline terminals, restaurants, food stores, etc.) because regulations may not exceed the authority of the statute.

You will be notified if further modifications are made or if the Department intends to adopt the attachment (after July 1, 1981).

Thanks again for your interest and assistance.

Sincerely,

*Joe Cladouhos*  
 Joe Cladouhos, Chief  
 Environmental Sanitation

Enclosure

P.S. Please feel free to contact me  
 at your convenience (465-2656)  
 after March 2<sup>nd</sup> if you have  
 further comments or recommendations. Thanks.

Chapter 55. SMOKING IN  
PUBLIC PLACES

Section

- 10. Exemptions
- 20. Smoking Areas
- 30. Signs
- 40. Penalties
- 50. Complaint Procedure
- 60. Waiver of Requirements
- 70. Definitions

18 AAC 55.010. EXEMPTIONS. (a) Smoking is permitted in the vehicles and places set out in AS 18.35.300 only if

(1) the smoking is confined to areas which are specifically designated under 18 AAC 55.030 as smoking areas by the owner, manager, proprietor or other person who has control over the premises;

(2) the place or vehicle is being used for a private gathering or affair which is privately sponsored and is not open to the general public;

(3) the smoking is done by performers upon the stage as part of a theatrical production; or

(4) The department has granted a written exemption under (b) of this section for a building or room, on the basis that it is sufficiently well-ventilated by natural or mechanical means.

(b) Written exemptions for well ventilated buildings or rooms will be granted

(1) upon documentation by a mechanical engineer registered in Alaska that the building or room has total air circulation the minimum standards established by ASHRAE Standards 62-73 (1973).

(2) upon documentation by a mechanical engineer registered in Alaska that devices, such as electrostatic precipitator or high efficiency filters, yield air quality which meets the minimum standards established by ASHRAE standard 62-73 (1973).

(c) Application for a written exemption under (b) of this section must be made in writing and must include

(1) a description, including the location, of the vehicle, room or building for which the written exemption is defined; and

(2) a description of the ventilation equipment or other device which is the basis for the application.

(d) All requests for a written exemption under (b) of this section will be answered in writing.

(c) A designated smoking area which is required by (b) of this section must be a separate room, hallway, or entrance area, except as provided by (d) of this section.

(d) In a building covered by AS 35.300(5) and in a building which contains a room covered by that subsection, the designated smoking area which is required by (b) of this section may not be a lobby or hallway.

(e) If a smoking area is designated in a bus it must be clearly separated from the part of the bus in which smoking is prohibited. The smoking area may not occupy more than half the total area of the bus.

(Eff. Reg. )

AUTHORITY: AS 18.35.320

AS 18.35.360

AS 46.03.020

AS 46.03.140

18 AAC 55.030. SIGNS. (a) Every owner, manager, proprietor or other person who has control of a vehicle or place covered by AS 18.35.300(1)-(5) shall conspicuously display in the vehicle or place signs reading "Smoking Prohibited by Law", unless the vehicle or place is exempted under 18 AAC 55.010. At least one sign must be visible and legible from any part of the vehicle or place. A sign required by this subsection must include the international no smoking symbol.

(b) Every owner, manager, proprietor, or other person who has control of a vehicle or place in which a smoking area has been designated under 18 AAC 55.020 shall conspicuously display in the smoking area signs reading "Smoking Permitted in this Area". These signs must be identical in size to the "Smoking Prohibited by Law" signs in the same building. A sign required by this subsection must include the international smoking permitted symbol.

(c) Additional signs of the appropriate type may be posted at entrances to vehicles and areas. (Eff. Reg. )

AUTHORITY: AS 18.35.330

AS 18.35.360

AS 46.03.020

AS 46.03.140

18 AAC 55.040. PENALTIES. A person who violates this chapter is subject to civil fines as provided by AS 18.35.340. (Eff. Reg. )

AUTHORITY: AS 18.35.340

AS 18.35.360

AS 46.03.020

AS 46.03.140

18 AAC 55.050. COMPLAINT PROCEDURE. (a) Any person who observes a violation of THIS CHAPTER OR OF AS 18.35.300 - 18.35.360 may notify any office of the department.

(b) The department will provide an affidavit in which the complainant may describe the observed violation, and a form agreement in which the complainant may promise to testify in court under subpoena concerning the observed violation, if testimony becomes necessary.

(c) If the complainant executes both documents, the department, with the assistance of the attorney general's office, may file a complaint in small claims court for a civil fine and any court costs and attorney's fees against the person who was observed violating this chapter or AS 18.35.300 - 18.35.360. (Eff. 1/1/81, Reg. )

- AUTHORITY: AS 18.35.340
- AS 18.35.350
- AS 18.35.360
- AS 46.03.020
- AS 46.03.140

18 AAC 55.060. WAIVER OF REQUIREMENTS. (a) The department may, at its discretion, waive a requirement of 18 AAC 55.010 - 18 AAC 55.070 if it determines that the public health and welfare and the satisfaction of the purpose of the requirement is reasonably assured.

(b) Application for a waiver must be made in writing and must include

(1) identification of the provision for which waiver is requested;

and

(2) reasons why the provision cannot be met; and

(3) a description of any alternative method proposed for meeting the purpose of the provision to be waived.

(c) All requests for waiver will be answered in writing. (Eff. Reg.

)

Authority: AS 18.35.350

AS 18.35.360

AS 46.03.020

AS 46.03.140

18 AAC 55.070. DEFINITIONS. (a) In this chapter

(1) "ASHRAE" means the American Society of Heating, Refrigeration and Air Conditioning Engineers;

(2) "complainant" means a person who has observed a violation of this chapter and notifies the department.

(3) "Department" means the Department of Environmental Conservation.

(b) In AS 18.35.300 - 18.35.360

(1) "public meeting" means any regular or special meeting or hearing of the state or any department, division, agency, board, commission, council or committee of the executive or legislative branches of state government<sup>f.</sup> exercise, consider, or discuss any governmental power.

(c) In this chapter and in AS 18.35.300 - 18.35.360

(1) "bus" means a bus or motor bus as defined in 3 AAC 66.39.;

(2) "limousine for hire" means a limousine common carrier as defined in 3 AAC 66.380(3).

(3) "other person who has control" means the agent of the owner, manager or proprietor authorized to perform administrative direction to and general supervision of the activities in a vehicle or place at any given time. In a state office, "other person who has control" means the division director with authority over the office or his designee.

(4) "room" means any indoor area which is bordered on all sides by walls or partitions which are continuous and solid except for door portals for entry and exit;

(5) "smoking" includes holding or carrying a lighted cigar, cigarette, pipe or other lighted smoking equipment or material.

(Eff. / /81, Reg. )

ARTICLE 4. HEALTH NUISANCES.

Section	Section
300. Smoking in public places, vehicles prohibited	320. Smoking areas provided
310. Exemptions	330. Display of smoking prohibited signs
	340. Penalties

Sec. 13.25.200. Smoking in public places, vehicles prohibited. Smoking in any form may constitute a nuisance and is prohibited in the following areas, unless otherwise exempted by this chapter:

- (1) a train, limousine for hire, bus, state operated ferry vessel, or elevator;
- (2) a library, indoor theater, museum, lecture or concert hall, gymnasium, or swimming pool or other indoor publicly owned and operated place of entertainment or recreation;
- (3) a public school; or in a room, chamber, place of meeting or public assembly under the control of the state, or a department or agency of the state, while a public meeting held under the auspices of the state, or a department or agency of the state, is in progress;
- (4) the public waiting room of laboratories associated with health care or the healing arts;
- (5) the waiting room, restroom, lobby or hallway of a hospital, nursing home, rest home or other health care institution or facility; or
- (6) a place of business in which the owner, manager, proprietor, or other person who has control of the premises posts a sign conveying the message that smoking is prohibited by law. (S 1 ch 125 SLA 1975)

Sec. 13.25.310. Exemptions. Smoking in the places or vehicles set out in 300 of this chapter is permitted if

- (1) the smoking is confined to areas which are specifically designated as smoking areas;
- (2) the place, vehicle, or passenger car is being used for a private gathering or affair which is privately sponsored and is not open to the general public;
- (3) the smoking is done by performers upon the stage as part of a theatrical production; or
- (4) the state, or a department or agency of the state, has exempted the building or room in which it has control on the basis that the building or room is sufficiently well ventilated by natural or mechanical means. (S 1 ch 125 SLA 1975)

Sec. 13.25.320. Smoking not prohibited. (a) In a building covered by § 300(1), (3) or (4) of this chapter, reasonable smoking areas must be provided, unless prohibited for the protection of the public safety, or the protection and preservation of the building and its contents.

(b) To the extent practicable, the state shall require its licensees or sublicensees to provide separate smoking areas. (S 1 ch 125 SLA 1975)

Sec. 13.25.330. Display of smoking prohibited sign. Every owner, manager, proprietor or other person who has control of a place or vehicle set out in § 300(1) - (4) of this chapter shall conspicuously display in the place or vehicle a sign reading, "Smoking Prohibited by Law" (S 1 ch 125 SLA 1975)

Sec. 13.25.340. Penalties. (a) A person who willfully violates the provisions of § 300 of this chapter is punishable by a civil fine of not less than \$5 nor more than \$25 for each offense.

(b) A person who willfully violates § 310 of the chapter is punishable by a civil fine of not less than \$10 nor more than \$100 for each offense.

(c) Punishment under this section shall be assessed only by civil complaint or citation. The court may establish procedures for payment of fines by instalment. (S 1 ch 125 SLA 1975)

POSITION PAPER

HOUSE BILL NO. 10

"An Act prohibiting smoking in certain businesses in which food is sold."

HB No. 10 expands that category of Public Health nuisances dealing with smoking in public places.

Public Health Impact

Annually the secondary effects of smoking take a tremendous toll of our state's resources in the form of illness and death. With the illnesses associated with smoking there is a high financial cost.

We are beginning to receive reports from the U. S. Department of Health and Human Services (formally DHEW) of a much higher than anticipated health risk to nonsmokers when they are forced to breathe the smoke generated by smokers.

Public Acceptance of Smoking Laws

We are finding, as the public becomes more aware of the laws covering smoking in public places, we are receiving more contacts from the public requesting assistance.

Applicability of Proposed Law

The proposed law as worded could effect businesses such as: food stores, bakeries, liquor stores, take-out restaurants with no seating capacity, delicatessens, meat and fish markets, dairies, food warehouses selling retail, candy shops and other similar operations.

Department Position

The Department of Health and Social Services is aware of the public health problems associated with inhaling cigarette smoke and does recognize the discomfort of nonsmokers who, in public places, are forced to inhale this cigarette smoke. We endorse the passage of this bill.

**POSITION PAPER/Department of Health & Social Services**

Recommended by:

David Bruce  
David Bruce, Deputy Director  
Division of Public Health

Date:

January 20, 1981

Approved by:

Helen D. Beirne  
Helen D. Beirne  
Commissioner

Date:

Feb 1, 1981

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NGTE

**I. REQUEST**

Bill/Resolution No. House Bill No. 10  
 Title "An Act prohibiting smoking in certain businesses in which food is prepared"  
 Requested by Commissioner's Office Date 01/22/81

**II. FISCAL DETAIL**

Agency Affected Department of Health & Social Services  
 Program Category Affected Health/Division of Public Health  
 BRU, Program, or Subprogram(s) Affected \_\_\_\_\_

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

**EXPENDITURES** (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0

**TOTAL**

**FUNDING** (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0

**POSITIONS**

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**III. ANALYSIS** (See Fiscal Note Preparation Instructions, Section III)

IV. DATE 04/20/81 PREPARED BY David Bruce  
 AGENCY Public Health Administration  
 PHONE 465-3000  
 Original: Legislative Finance  
 Budget and Management  
 cc: Prime Sponsor (First Legislature Named) 1/23/81

## FACTS ABOUT NONSMOKERS

It just seems as if everyone smokes. Most people don't.

More than 30 million adult Americans have kicked the cigarette habit. Millions more are trying. Among adults, only one in three still smokes. In the population as a whole, it's one in four. Even counting cigar and pipe smokers, nonsmokers are a clear majority.

Nonsmokers are no longer a silent majority, though. They mind if you smoke. And they're speaking up. They see tobacco smoke as a pollutant that defiles their air. And new research gives them ammunition to defend themselves. It shows that second-hand smoke can have harmful effects on nonsmokers.

## OPEN BURNING

Tobacco smoke is a very complex mixture of gases, liquids, and particles. There are hundreds of chemical compounds in tobacco and hundreds more created when tobacco burns.

Some of the most hazardous compounds are tar, nicotine, carbon monoxide, cadmium, nitrogen dioxide, ammonia, benzene, formaldehyde, and hydrogen sulphide. And dozens of others. Any one alone can assault the body and cause trouble. Together, they make smoking the menace it is.

Even when a smoker inhales, researchers have calculated that two-thirds of the smoke from the burning cigarette goes into the environment. The percentage of pollution from cigar and pipe smoke is even higher.

The amount of carbon monoxide generated from one cigar, in fact, is twice as high as from three cigarettes smoked simultaneously.

## SIDESTREAM SMOKE

Every time anyone lights a cigarette or cigar or pipe, tobacco smoke enters the atmosphere from two sources. Most important for nonsmokers, there is sidestream smoke, which goes directly into the air from the burning end. Then, there is mainstream smoke, which the smoker pulls through the mouthpiece when he or she inhales or puffs. Non-

smokers are also exposed to mainstream smoke after the smoker exhales it.

A cigarette smoker inhales—and exhales—mainstream smoke eight or nine times with each cigarette for a total of about 24 seconds. But the cigarette burns for 12 minutes and pollutes the air continuously with sidestream smoke. Smokers can keep cigars and pipes burning for a much longer time. The pollution lingers long after.

The fascinating fact is that sidestream smoke—the smoke from the burning end—has higher concentrations of noxious compounds than the mainstream smoke inhaled by the smoker. Some studies show there is *twice* as much tar and nicotine in sidestream smoke compared to mainstream. And *three* times as much of a compound called 3-4 benzpyrene, which is suspected as a cancer-causing agent. *Five* times as much carbon monoxide, which robs the blood of oxygen. And *50* times as much ammonia.

There is also evidence that there is even more cadmium in sidestream smoke than in mainstream. Cadmium is now under investigation as one of the compounds in cigarette smoke that damages the air sacs of the lungs and causes emphysema. Once cadmium gets into your lungs, it stays there.

## CARBON MONOXIDE

Carbon monoxide is a colorless, odorless gas created by incomplete combustion. Car exhaust puts it in the air. So does tobacco smoke.

While it is extremely difficult to measure the amount of tar or cadmium in someone's lungs or body before death, it is relatively easy to measure the levels of carbon monoxide in the blood.

When you inhale carbon monoxide, the gas bumps oxygen molecules out of your red blood cells and forms a new compound called carboxyhemoglobin, which can be measured. As the amount of this compound increases in your blood, the cells of the body become starved for oxygen.

One study shows that after only thirty min-

utes in a smoke-filled room the carbon monoxide level in the nonsmoker's blood increases as well as the blood pressure and heart beat.

## HAZARDOUS LEVELS

What levels of carbon monoxide are hazardous? In industry, the maximum concentrations of carbon monoxide in the air cannot average out to more than 50 p.p.m. (parts per million); and efforts are now underway to reduce the maximum to 25. The Federal Air Quality Standards for the *outside air* limit concentrations to an average of 9 p.p.m.

Given this as a baseline, how much carbon monoxide do cigarettes send into the air?

Researchers have found that smoking seven cigarettes in one hour—even in a ventilated room—created carbon monoxide levels of 20 p.p.m. In the seat next to the smoker, the level shot up to 90 p.p.m., almost twice the maximum set for industry. Smoking ten cigarettes in an enclosed car also produced carbon monoxide levels up to 90 p.p.m. The carbon monoxide level in the blood of nonsmokers as well as smokers in the car doubled.

When nonsmokers were exposed to these levels, the carbon monoxide level in their blood not only doubled within the first hour, but doubled again during the second hour.

When nonsmokers leave a smoky environment, it takes hours for the carbon monoxide to leave the body. Unlike oxygen which is breathed in and then out again in minutes, carbon monoxide in the blood lasts for hours. After three or four hours, half of the excess carbon monoxide is still in the bloodstream.

## EFFECTS OF THE GAS

Some studies indicate that with these levels of carbon monoxide in the blood, people—including drivers—cannot distinguish relative brightness, lose some ability to judge time intervals, and take longer to respond to tail lights. They also show impaired performance on some psychomotor tests. These levels of carbon monoxide in the blood create physiologic stress in heart disease patients. The re-

sultant lack of oxygen can also add distress for people who already have lung disease.

Animals exposed to carbon monoxide (levels from 50 to 100 p.p.m.) continuously for weeks showed damage to heart and brain.

## OTHER COMPOUNDS

Not enough research has been done yet on the effects on nonsmokers of other compounds in tobacco smoke. For example, hydrogen cyanide is a poison that attacks respiratory enzymes. It is not found in ordinary air pollution. But the concentration in cigarette smoke itself is 1600 p.p.m. Long-term exposure to levels above 10 p.p.m. is considered dangerous.

Nitrogen dioxide is an acutely irritating gas that can damage the lungs. Levels of 5 p.p.m. in the air are considered dangerous. Cigarette smoke contains 250 p.p.m.

## ANIMAL RESEARCH

Some researchers have exposed mice to second-hand smoke over a period of one or two years. A significant number of mice developed severe bronchitis, an inflammation of the bronchial tubes that connect the windpipe with the lungs. Rabbits exposed to smoke from 20 cigarettes per day for two to five years developed emphysema, destruction of the air sacs in the lungs.

Dogs exposed to cigarette smoke ten times per week for one year suffered a breakdown in lung tissues. Rats exposed to second-hand smoke for 45 minutes a day for two to six months showed twice as many lung tumors as a control group.

The exact parallel between animal and human exposure in smoke-filled rooms is difficult to determine at this stage of research. But some of the implications are serious indeed.

## EFFECTS ON CHILDREN AND ASTHMATICS

Parents who smoke at home can aggravate symptoms in some asthmatic children and even trigger asthma attacks. There are millions of people, adults as well as children,

who are sensitive to tobacco smoke and suffer smoke-caused asthma attacks. Parents should limit their smoking to separate rooms away from these children or, better yet, should quit smoking altogether.

Even among nonasthmatic children, a team of researchers found that respiratory illnesses happened twice as often to young children whose parents smoked at home compared to those with nonsmoking parents.

In a study of 441 nonsmokers divided into two groups—those with a history of allergies and those without—70 percent of *both* groups suffered from eye irritations caused by smoke. Even among the nonallergic groups, 30 percent developed headaches and nasal discomfort, while 25 percent experienced coughs as a result of the smoke.

#### TOBACCO SMELLS

Contamination and odors are immediately created by such elements in tobacco smoke as ammonia and pyridine. Pyridine is a strong irritant that is produced when nicotine burns. The presence of a minute amount in the air produces distinctly unpleasant odors.

The contamination is so intense that when someone lights a cigarette, cigar or pipe in an air-conditioned environment, the air-conditioning demands can jump as much as 600 percent to control odor.

Another intriguing finding from air-conditioning research is that the human body attracts tobacco smoke. Burning tobacco smoke creates a high electrical potential, whereas the water-filled human body has a low one. The smoke in a room gravitates and clings to people in much the same way as iron filings are drawn to a magnet.

And the odors linger on. Chemicals in tobacco smoke called aldehydes and ketones supply the penetrating smell, while the tars hold them to your skin and your clothes. But the smoker is not sensitive to the smell because of the destructive effects of smoke on the inner lining of his or her nose.

#### BILL OF RIGHTS

In January, 1974, the National Interagency Council on Smoking and Health signed and adopted a Nonsmoker's Bill of Rights. The Council is composed of 34 organizations, including the American Lung Association, concerned about the effects of tobacco smoking. The Bill declared these three basic rights:

##### The Right to Breathe Clean Air

Nonsmokers have the right to breathe clean air, free from harmful and irritating tobacco smoke. This right supersedes the right to smoke when the two conflict.

##### The Right to Speak Out

Nonsmokers have the right to express—firmly but politely—their discomfort and adverse reactions to tobacco smoke. They have the right to voice their objections when smokers light up without asking permission.

##### The Right to Act

Nonsmokers have the right to take action through legislative channels, social pressures or any other legitimate means—as individuals or in groups—to prevent or discourage smokers from polluting the atmosphere and to seek the restriction of smoking in public places.

Here's what nonsmokers can do:

- Let family, friends, co-workers and strangers know you mind if they smoke.
- Put stickers, buttons, and signs in your home, car, and office.
- Always request seating in nonsmoking sections when you travel.
- Support legislation to restrict smoking or set up smoke-free areas in public places.
- Ask your doctor and dentist to restrict smoking in their waiting rooms and to establish no-smoking regulations in all health care facilities, including hospitals.
- Propose no-smoking resolutions at organizations and club meetings.
- Encourage hotels and restaurants to establish no-smoking areas.
- Contact your lung association to organize a group to help provide a smokeless environment for most people, who do not smoke.



Ask your  
Lung Association  
for any of  
these leaflets

Air Pollution  
Asthma  
Bronchiectasis  
Chronic Bronchitis  
Chronic Cough  
Cigarette Smoking  
Cocci (Coccidioidomycosis)  
Common Cold  
Dust Disease  
Emphysema  
Farmer's Lung  
Flu (Influenza)

Hay Fever  
Histoplasmosis  
Pipe & Cigar Smoking  
Pleurisy  
Pneumonia  
Sarcoidosis  
Second-Hand Smoke  
Shortness of Breath  
TB Outside the Lungs  
Tuberculosis  
Your Lungs

A community service paid for by "Christmas Seals"

Distributed by  
**AMERICAN LUNG ASSOCIATION**  
Affiliate  The Christmas Seal Program  
Use a new seal of quality from the year before.

# Second- Hand Smoke

Are you a nonsmoker who is shy about defending yourself against inconsiderate smokers?

Or are you a smoker who doesn't realize the distress you inflict on nonsmokers?

Find out the effects of tobacco smoke on nonsmokers.

## Take A Look At The Facts