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STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files. .

Mary Van Nimwegen

SB 222

H HESS
H HESS
H HESS

4/18/90
4/25/90
4/24/90

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 5, 1990

FURTHER REFERRALS:

Date of Committee Action: 4/26/90

The HESS Committee considered:

CSSB 222(SA)am

CS SB NO. 222 (State Affairs) am

AMENDMENTS TO NO-SMOKING LAWS

"An Act relating to smoking in certain vehicles and indoor places."

RECOMMENDATIONS:

- be replaced with HCS CS SB 222 (HESS) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) 3/20/90 / DFC
- zero fn/analysis _____

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend

[Signature]
Chairman's Signature

Amendment # 3

To: CSSB 222 (SA) Am.

Page 2, line 16:

After "boarding" Add: OR "baggage"

A M E N D M E N T

New # 2

OFFERED IN THE HOUSE

TO: CSSB 222 (State Affairs) am

Page 3, lines 5 - 7

Delete all material and insert:

"apply to a designated smoking area^{which is properly ventilated or equipped with an EXHAUST FAN} in a public or private elementary or secondary school if the area is located in a room where minors are not permitted and ^{if} a smoking area must be designated in the school ~~[in order]~~ to comply with ~~[the terms of]~~ a collective bargaining agreement covering employees who work in the school;"

Page 6, following line 9:

Insert a new bill section to read:

"* Sec. 15. This Act does not supercede the provisions of a collective bargaining agreement in effect on the effective date of this Act. However, a collective bargaining agreement in effect on the effective date of this Act may not be renewed or extended by agreement on or after the effective date of this Act with provisions that require the employer to provide smoking areas that would not be in compliance with this Act."

April 23, 1990
P.O. Box 91694
Anchorage, Alaska 99509

House H.E.S.S. Committe
P.O. Box V
Juneau, Alaska 99811

Subject: Ban Smoking In Shopping Malls

Gentlemen:

Several weeks ago my pulmonary doctor, George Stewart, told me that Jan Faiks had introduced a bill to "ban smoking in shopping malls - SB 222. I was elated.

I have asthmatic-bronchitis and had to retire last year. I have to wear a heavy industrial face mask every where I go. This mask will filter out most things but it will not filter out cigarette smoke. So, I have difficulty in shopping malls and rarely go to them.

In checking the status of SB 222, I find the portion to "ban smoking in shopping malls has been taken out.

I am requesting this committe to please support reinstating the language that was taken out of SB 222 in referance to banning smoking in shopping malls. Please reinstate this.

I have come across so many people this year who have asthma and, like myself, have to carry their broncho-dilator inhalers with them at all times. I never realized how restricting asthmatic-bronchitis can be as to where you can go or what you can do, until it happened to me.

I live one mile from the Dimond Shopping Center and it would be wonderful to be able to go there just to get out of the house. Kind of like a recreation area.

Smoking is a public health hazard and affects all within it's area - babies, small children, asthmatics as well as others. Smoking a cigarette takes such a short time and yet that smoke affects so many.

The airlines have realized this and have banned smoking on all flights six hours or less. Now, we people with respiratory problems can fly.

Hopefully, our Alaska Legislature will ban smoking in shopping malls and we people with respiratory problems will be able to use our wonderful shopping malls. Especially in the winter when we are so shut in.

Thank you so very much for your help.

Sincerely,

Willye Jane Luna

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 222 (State Affairs) am

Page 3, lines 11 - 13

Delete all material and insert:

"(3) an office where dental care, health care, or the healing arts are practiced, a public or private laboratory associated with dental care, health care or the healing arts if the laboratory is located within the same premises as an office where dental care, health care, or the healing arts are practiced, and a public or private hospital, or other nonresidential health"



Alaska State Legislature

Please enter into the record my testimony to the HOUSE H.E.S.S.
committee name

Committee on SB 222 (SMOKING), dated April 25, 1990 8:30 AM
bill/subject

OR PASSAGE WAY

1. I SUGGEST AMENDING PAGE 1 LINES 15 & 16 TO READ "... AND A WAITING, BOARDING OR BAGGAGE AREA...". THE BAGGAGE AREA IN THE SITKA AIRPORT IS DESIGNATED FOR SMOKING, WHICH IS NOT GOOD.
2. I STRONGLY URGE AMENDING PAGE 2 LINES 10 & 11 TO READ SOMETHING LIKE, "AN ESTABLISHMENT SERVING FOOD OR DRINK TO THE PUBLIC OR PROVIDING PUBLIC ENTERTAINMENT, INCLUDING BUT NOT LIMITED TO DANCING, CONCERTS, AND MOVIES."
 - I HAVE STOPPED GOING TO DANCES BECAUSE THE SMOKE IS OFTEN SO THICK IT HURTS TO BREATHE, AND MY CLOTHES AND HAIR REEK OF SMOKE WHEN I GET HOME. THIS NUISANCE AND HEALTH HAZARD SHOULD BE PREVENTED.
 - BARS SHOULD NOT BE EXEMPTED FROM REGULATION. SMOKING IS NO MORE LINKED TO DRINKING ALCOHOL THAN IT IS TO EATING FOOD. THE AIR IS USUALLY FAR WORSE IN A BAR THAN IT USED TO BE IN RESTAURANTS.
 - THE EXEMPTION FOR RESTAURANTS SEATING LESS THAN PEOPLE SHOULD BE REMOVED. THE SMALL ESTABLISHMENTS ARE ~~THE~~ ALMOST ALWAYS CONDUCE TO PROBLEMS WITH SMOKE, AND SHOULD AT LEAST BE WELL VENTILATED IF THEY ALLOW SMOKING.

Signed: Larry Edwards (LARRY EDWARDS)
Testifier

SELF

Representing (Optional)

Box 6001 SITKA 99835

Address

747-8996

Phone No.

MY NAME IS DENNIS VETTESE. AND I AM A SITKA SCHOOL BOARD MEMBER.

I SUPPORT THE PASSAGE OF CSSB-222 FOR SEVERAL REASONS.

I DONT FEEL THERE SHOULD BE ANY SMOKING AT ALL IN SCHOOLS.

FIRST, PASSAGE OF THIS LEGISLATION WOULD SEND A CLEAR MESSAGE TO OUR YOUTH- THAT IS THAT WE DO NOT CONDONE SMOKING. OUR TEACHERS ARE VIEWED AS ROLE MODELS AND IF THESE INDIVIDUALS ARE OBSERVED SMOKING OR SMELL LIKE THEY HAVE BEEN SMOKING THEN THIS COULD BE TAKEN BY OUR HIGHLY IMPRESSIONABLE YOUTH THAT IT IS OK FOR THEM TO ALSO START SMOKING. THEY COULD RATIONALIZE THAT IF THEIR ROLE MODELS SMOKE- THEN SMOKING MUST NOT BE THE TERRIBLE HABIT THAT EVERYONE KEEPS TELLING THEM ALL ABOUT.

SECOND, WE MUST DO ALL WE CAN TO STOP OUR YOUTH FROM STARTING TO SMOKE. THIS BILL WILL HELP INFLUENCE THAT DECISION. ONCE A TEENAGER STARTS SMOKING (WHICH IS IN ITSELF A NICOTINE ADDICTION), THIS SMOKING OFTEN LEADS TO THE USE OF OTHER DRUGS SUCH AS MARIJUANA AND COCAINE. THIS IS WHY SMOKING OR NICOTINE ADDICTION IS OFTEN VIEWED AS A GATEWAY DRUG. IF WE WANT OUR SCHOOLS TO BE TRULY DRUG FREE- THEN WE SHOULD PROHIBIT SMOKING IN THEM.

LAST OF ALL, NO SMOKING IN SCHOOLS WILL CREATE A HEALTHIER LEARNING ENVIRONMENT FOR STUDENTS AND A HEALTHIER WORKING ENVIRONMENT FOR TEACHERS.

2-42

A M E N D M E N T 1 2

OFFERED IN THE HOUSE

TO: CSSB 222 (State Affairs) am

Page 1, line 25, after "(3)":

Insert "a public or private elementary or secondary school in which the prohibition under AS 18.35.305(1) does not apply because of a collective bargaining agreement or"

A M E N D M E N T #1

OFFERED IN THE HOUSE

TO: CSSB 222 (SA) am

Page 3, lines 11 - 12:

Delete all material and insert:

"(3) an office associated with dental care, health care, or the healing arts, a public or private laboratory associated with dental care, health care, or the healing arts if the laboratory is located within the same premises as an office associated with dental care, health care, or the healing"

April 23, 1990
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P.O. Box V
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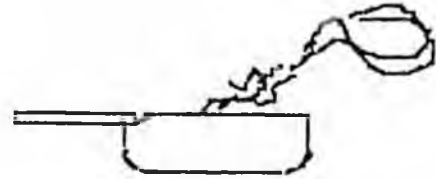
Thank you so very much for your help.

Sincerely,



MAT SU SMOKERS ALLIANCE

PO BOX 87-3214
WASILLA, ALASKA 99687



PHONE (907)376-8734

FAX (907)373-0787

April 25, 1990

Mr. Chairman, Members of the House Health, Education and Social Services Committee:

My name is Dee Loesche, I live at MP 51 on the Parks Highway, and I am the president of the Mat Su Smokers Alliance in Wasilla. I would like to express the views of our members on Senate Bill 222.

Although much of the bill appears to be an attempt to clean up the language of the present statute, we do oppose the additions and one amendment to that statute. Specifically, the addition under SEC. 18.35.300 of (7) A COMMERCIAL ESTABLISHMENT WHOSE PREMISES ARE OPEN TO THE GENERAL PUBLIC, INCLUDING A RETAIL STORE, FINANCIAL INSTITUTION, OR SHOPPING MALL. We feel that the restriction of smoking in these places are unnecessary for the protection of the public health as retail stores and financial institutions already have discouraged smoking on their premises to a point where almost no smoking is done in those establishments. A shopping mall public area is usually of such a vast area and so well ventilated that the small amount of smoking done in these places should pose no threat whatsoever to anyone. Under Sec. 5. AS 18.35.320 (c) the amendment removing "FOR THE NEEDS OF THE SMOKERS" and replacing it with "TO PROTECT THE HEALTH OF THE" NONSMOKERS takes away any legal recognition that the needs of a segment of the population is in anyway considered and appears that the State of Alaska views those people who choose to smoke as not worthy of being citizens of this State.

We believe that these ~~additions and amendments~~ to the existing statute are unnecessary to protect the public health and merely harassing tactics of non smokers against those of us who have chosen to use tobacco products. There is a large portion of the public who enjoy the use of these historically legal products and resent the hysterical view that promotes the discrimination against that use and the people who use them. It is well recognized that the non smoking public has rights. What is feared by the smoking public is that one day we will find ourselves criminals for doing something that, for the last four hundred years in this country, has been legal and widely accepted.

Thank you for allowing us to share our concerns about this bill.

Respectfully,
MAT SU SMOKERS ALLIANCE

Dee Loesche
Dee Loesche, President



Alaska State Legislature

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committee name

committee on SB 222 (SMOKING), dated April 25, 1990 8:30 AM
bill/subject OR PASSAGE WAY

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Signed: Larry Edwards (LARRY EDWARDS)
Testifier

SELF
Representing (Optional)
Box 6001 SITKA 99835
Address
747-8996
Phone No.

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FISCAL NOTE

REQUEST:

Revision Date: 02-23-90
Title: "An Act relating to smoking in certain vehicles and places"
Sponsor: Faiks
Requestor: _____

Agency Affected: Environmental Conservation
BRU: Environmental Health
Components: Sanitation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS : (Attach a separate page if necessary)

The fiscal impact of CSSB 222(HESS) will be zero.

Prepared by: Douglas C. Donegan, Director
Division: Environmental Health

Phone: 465-2609
Date: 02-27-90

Approved by Commissioner: _____
Agency: _____

Date: 2/27/90

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Alaska State Legislature



Senate Judiciary Committee

April 13, 1990

MEMORANDUM

TO: Representative Johnny Ellis, Chairman
House HESS Committee

FROM: Senator Jan Faiks, Chairman
Senate Judiciary Committee

SUBJECT: SB 222 "An Act relating to smoking in certain
vehicles and indoor places."

Senate Bill 222 has been referred to the HESS Committee for consideration. This bill amends Alaska law relating to smoking in certain public places. It was introduced at the request of the American Lung Association of Alaska, as part of their Tobacco Free Alaska 2000 program.

At the present time, approximately 26% of Americans over the age of 16 smoke cigarettes. Alaskans smoke at a rate 5% greater than the national rate.

According to the Surgeon General, cigarette smoking is the single most important environmental factor contributing to premature mortality in the United States. Each year, smoking causes the deaths of more than 300,000 Americans, principally from heart disease, cancer and chronic obstructive lung disease. In 1985, there were estimated to be 261 smoking attributable deaths in Alaska. This was 14% of the state's mortality that year. The estimated total for medical care due to smoking in Alaska in 1985 was \$52.7 million. This does not take into account lost wages due to illness, or losses to employers because of increased insurance premiums and absenteeism.

The tremendous social harms caused directly or indirectly by cigarette smoking cannot be disputed. In an effort to

encourage people not to smoke, and to protect the health and well being of non-smokers who must breathe secondary smoke, many jurisdictions including Alaska have enacted laws restricting smoking in public places.

At the present time, 42 states and the District of Columbia restrict smoking in some manner in public places. These laws range from simple, limited prohibitions to comprehensive clean indoor air laws that limit or ban smoking in virtually all public places. Alaska's law was enacted in 1984, and was predicated on the following legislative finding.:

1. numerous studies have shown second-hand smoke to be a significant health hazard;
2. recent court decisions recognize an emerging right of employees to work in a smoke-free environment; and
3. smoking results in increased costs to employers and the public in the form of more frequent absenteeism by employees who smoke and higher costs for health insurance, fire insurance, life insurance and workers' compensation.

In order to address these findings, current law specifies certain public places and vehicles in which smoking is regulated. In these specified places, smoking and non-smoking areas must be designated. Signs must be posted to accomplish this. Persons who violate the requirement to post signs or who smoke in a designated non-smoking area are subject to civil penalties.

CSSB 222 (SA) am revises current law by establishing two categories of public place: those in which smoking is regulated, as with current law, and those in which smoking is absolutely prohibited. The bill takes some of the places currently on the regulated smoking list and moves them to the new smoking prohibited list. It adds several types of places not currently mentioned in the law to the regulated smoking list. Finally, it provides that a person in charge of a place on the regulated smoking list must consider only the health of non-smokers in designating a smoking area, and not the convenience of smokers. A sectional analysis of the bill is attached.

CSSB 222 (SA) am will close loopholes in the current law, and more adequately address the findings contained in the 1984 legislation. It protects the health of non-smokers, the prime duty of government in this area, and it moves us one step closer to a smoke-free Alaska.

SECTIONAL ANALYSIS

CSSB 222 (SA) am

Section 1. Makes changes to AS 18.35.300, which lists vehicles and places in which smoking must be regulated by the designation of smoking and non-smoking areas. New places added to this list include the following:

- an interstate aircraft flight;
- a public or private post-secondary educational institution or adult day care facility;
- a room, chamber or other place under the control of the Senate or House if no public meeting is in progress;
- a residential health care facility, or a public or private office or facility that is engaged primarily in providing mental health services;
- a correctional facility; and
- a Pioneers' Home.

A number of places currently on this list are deleted, and moved to new AS 18.35.305, which prohibits any smoking (see section 2).

Section 2. Adds new AS 18.35.305, which lists places in which smoking is absolutely prohibited. These places include the following:

- a public or private elementary or secondary school, pre-school, or children's day care facility. If the school or day care facility is in a private residence, then the prohibition only applies during the hours when the residence is being used as a school or day care facility, and in the rooms used as a school or day care facility. This section does not apply to an elementary or secondary school to the extent that it conflicts with a collective bargaining agreement;
- a room, chamber, or other place under the control of the state or a political subdivision of the state while a public meeting or public assembly is in progress; and
- a public or private laboratory or office associated with dental care, health care, or the healing arts, and a public or private hospital, or other nonresidential health care institution or facility. This section does not apply to an office or facility engaged primarily in providing mental health services; and
- an elevator.

Sections 3 and 4. Makes a technical change to AS 18.35.310, to provide that smoking on stage as part of a theatrical production is not prohibited by new AS 18.35.305.

Section 5. Amends AS 13.35.320(c). Current law provides that in designating a smoking area, a person shall accommodate the needs of smokers and non-smokers. This section provides that in designating a smoking area, a person shall only consider the health consequences to the non-smokers using the facility.

Sections 6 - 14. These sections make technical changes to the current law to reflect the addition of new AS 18.35.305.

(5) "special events" means events involving public gathering and shall include athletic and sporting events where the public congregates, which shall include but not be limited to dog sled racing, horse racing, snowmobile races, skiing events, salmon derbies, and other activities;

(6) "tavern" means a place maintained or held out to the public for purposes of sale and on-premise consumption of alcoholic beverages;

(7) "toilet accommodations" means a facility available to the public consisting of an approved flush-type commode, urinal, privy, self-contained privy or any other device approved by the department for containment and disposal of human wastes and shall include lavatory facilities where practical. (§ 1 ch 58 SLA 1974; am § 3 ch 78 SLA 1976; am E.O. No. 51, § 36 (1981))

Revisor's notes. — Reorganized in 1986 to alphabetize the defined terms.

Article 4. Health Nuisances.

<p>Section 300. Smoking in certain vehicles and indoor places prohibited 310. Exemptions 320. Designation of smoking sections 330. Display of smoking and no smoking signs 340. Civil complaints; penalties</p>	<p>Section 341. Citations; penalty 342. Multiple fines prohibited 343. Injunctions 350. Enforcement authority 355. Public education 365. Definitions</p>
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Cross references. — For legislative findings in connection with ch. 34, SLA 1984, see § 1, ch. 34, SLA 1984 in the Temporary and Special Acts.

Opinions of attorney general. — In light of the repeal of former AS 18.35.360, which granted the Department of Environmental Conservation's authority to write regulations in implementation of this article, the department may promulgate legislative-type regulations which are truly necessary to implementation of

the article; (2) the department may not promulgate other legislative-type regulations, such as those which are helpful but not strictly necessary to the statutory scheme; and (3) the department may issue interpretive regulations which offer suggested guidelines on implementing the article. June 22, 1984, Op. Att'y Gen.

Collateral references. — 39 Am. Jur. 2d, Health, §§ 24, 25, 41-44.

39A C.J.S., Health and Environment, §§ 26, 27.

Sec. 18.35.300. Smoking in certain vehicles and indoor places prohibited. Smoking in any form is a nuisance and a public health hazard and is prohibited in the following vehicles and indoor places, except as otherwise provided by this chapter:

(1) a vehicle of public transportation and a waiting or boarding area for a vehicle of public transportation, including a bus, ferry vessel, train, limousine for hire, taxicab, or scheduled intrastate aircraft flight when consistent with federal law;

- (2) an elevator;
- (3) a place of employment, a building or other structure, or a portion of them, owned, leased, or operated by the state or a political subdivision of the state, including an office, library, museum, theater, concert hall, convention hall, gymnasium, swimming pool, or other place of entertainment or recreation;
- (4) a public or private school, pre-school, or day care facility;
- (5) a courtroom or jury deliberation room;
- (6) a room, chamber, or other place under the control of the state or a political subdivision of the state while a public meeting or public assembly is in progress;
- (7) a patients' or visitors' waiting room or restroom of a public or private laboratory or office associated with dental care, health care, or the healing arts, and a waiting room, restroom, lobby, or hallway of a public or private hospital, nursing home, rest home, or other health care institution or facility;
- (8) a food service establishment that has a seating capacity of at least 50 persons;
- (9) a grocery store or other store maintained primarily for the retail sale of food products; and
- (10) a place of employment in which the owner, manager, proprietor, or other person who has control of the premises posts a sign stating that smoking is prohibited by law. (§ 1 ch 125 SLA 1975; am § 2 ch 34 SLA 1984)

Effect of amendments. — The 1984 amendment rewrote this section.

Sec. 18.35.310. Exemptions. The prohibition set out in AS 18.35.300 does not apply to

- (1) a portion of a place or vehicle that is designated as a smoking section under AS 18.35.320;
- (2) a limousine for hire or taxicab, if the driver consents and the driver ascertains that all passengers consent to smoking in the vehicle;
- (3) smoking by performers on the stage as part of a theatrical or entertainment production. (§ 1 ch 125 SLA 1975; am § 3 ch 34 SLA 1984)

Effect of amendments. — The 1984 amendment rewrote this section.

Sec. 18.35.320. Designation of smoking sections. (a) A person in charge of an indoor place or vehicle of public transportation described in AS 18.35.300 may designate portions of the place or vehicle as smoking sections. For purposes of this section, "vehicle of public transportation" does not include a taxicab or limousine for hire, and "indoor place" does not include an elevator.

(b) The person who chairs the Rules Committee in a house of the legislature is responsible for the designation of smoking sections under this section in the legislative offices, committee rooms, and other places under the control of that house. The authority to designate a smoking section may not be used to impede the work of a conference committee.

(c) A person who designates a smoking section under this section shall make reasonable accommodations for the needs of the smokers and nonsmokers who use the place or vehicle.

(d) Notwithstanding any other provision in this chapter, a smoking section may not be designated under this section for students on the grounds of or in an elementary or secondary school, indoors or outdoors. (§ 1 ch 125 SLA 1975; am § 4 ch 34 SLA 1984)

Effect of amendments. — The 1984 amendment rewrote this section.

Sec. 18.35.330. Display of smoking and no smoking signs. (a) A person in charge of a place or vehicle described in AS 18.35.300, except a limousine for hire or taxicab, shall conspicuously display in the place or vehicle a sign that reads "Smoking Prohibited by Law — Maximum Fine \$50" and that includes the international symbol for no smoking.

(b) In a place or vehicle in which a smoking section has been designated under AS 18.35.320, the person in charge of the place or vehicle shall conspicuously display signs that specify the portions of the place or vehicle in which smoking is allowed by law and in which smoking is prohibited by law.

(c) A sign required by this section must be at least 18 inches wide and six inches high, with lettering at least 1.25 inches high.

(d) The department shall furnish signs required under this section to a person who requests them with the intention of displaying them. (§ 1 ch 125 SLA 1975; am § 5 ch 34 SLA 1984)

Effect of amendments. — The 1984 amendment rewrote this section.

Sec. 18.35.340. Civil complaints; penalties. (a) The commissioner shall develop and maintain a procedure for processing reports of violations of AS 18.35.300 and 18.35.330.

(b) If, after investigating a report made under this section, the commissioner determines that a violation has occurred, (1) the commissioner may file a civil complaint in the district court to enforce the provisions of AS 18.35.300 — 18.35.365; or (2) an employee of the department designated by the commissioner to enforce the provisions of AS 18.35.300 — 18.35.365 may issue a citation under AS 18.35.341(b). If an employee of the department issues a citation, the violation shall be processed and disposed of under AS 18.35.341.

(c) A person who violates AS 18.35.300 and against whom the commissioner has filed a civil complaint under this section is punishable by a civil fine of not less than \$10 nor more than \$50. A person who violates AS 18.35.330 and against whom the commissioner has filed a civil complaint under this section is punishable by a civil fine of not less than \$20 nor more than \$300. Each day a violation of AS 18.35.330 continues after a civil complaint for the violation has been filed and served on the defendant constitutes a separate violation.

(d) The department may provide for the payment of civil fines under this section by mail. (§ 1 ch 125 SLA 1975; am § 6 ch 34 SLA 1984)

Revisor's notes. — In subsections (a) and (b) of this section, the phrase "or of a regulation adopted under AS 18.35.360" was deleted from each subsection in 1984 to correct a manifest error made when

SCS CSHB 84 (Fin) was amended to effect the repeal of AS 18.35.360. The amended bill became ch. 34, SLA 1984.

Effect of amendments. — The 1984 amendment rewrote this section.

Sec. 18.35.341. Citations; penalty. (a) A peace officer may issue a citation for a violation of AS 18.35.300 committed in the officer's presence or for a violation of AS 18.35.330. The provisions of AS 12.25.180(b) and 12.25.190 — 12.25.230 apply to the issuance of a citation under this subsection.

(b) An employee of the department designated by the commissioner to enforce the provisions of AS 18.35.300 — 18.35.365 may issue a citation for a violation of AS 18.35.300 or 18.35.330 regardless of whether the violation was committed in the employee's presence. A citation issued under this subsection shall be in the same form and shall be processed in the same manner as a citation issued by a peace officer under (a) of this section. An employee of the department may not arrest a person for a violation of AS 18.35.300 or 18.35.330.

(c) A person who violates AS 18.35.300 or 18.35.330 is guilty of a violation as defined in AS 11.81.900(b) and upon conviction is punishable by a fine of not less than \$10 nor more than \$50 for a violation of AS 18.35.300 and by a fine of not less than \$20 nor more than \$300 for

a violation of AS 18.35.330. Each day a violation of AS 18.35.330 continues after a citation for the violation has been issued constitutes a separate violation.

(d) The supreme court shall establish a schedule of bail amounts for violations of AS 18.35.300 and 18.35.330, but in no event may the bail amount exceed the maximum fine that may be imposed for the violation under (c) of this section. The bail amount for a violation shall appear on the citation.

(e) A person cited for a violation under this section may, within 15 days after the date of the citation, mail or personally deliver to the clerk of the court in which the citation is filed

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

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

(f) When bail has been forfeited under (e) of this section, a judgment of conviction shall be entered. Forfeiture of bail is a complete satisfaction for the violation. The clerk of the court accepting the bail shall provide the violator with a receipt stating that fact.

(g) If the person cited fails to pay the bail amount established under (d) of this section or to appear in court as required, the citation is considered a summons for a misdemeanor. (§ 7 ch 34 SLA 1984)

Sec. 18.35.342. Multiple fines prohibited. A person may not be fined more than once for each violation of AS 18.35.300 or 18.35.330. (§ 7 ch 34 SLA 1984)

Sec. 18.35.343. Injunctions. The commissioner or any affected party may institute an action in the superior court to enjoin repeated violations of AS 18.35.300 or 18.35.330. (§ 7 ch 34 SLA 1984)

Revisor's notes. — The phrase "or of a regulation adopted under AS 18.35.360" was deleted from this section in 1984 to correct a manifest error made when SCS

CSHB 84 (Fin) was amended to effect the repeal of AS 18.35.360. The amended bill became ch. 34, SLA 1984.

Sec. 18.35.350. Enforcement authority. The commissioner or the commissioner's designee is responsible for enforcing the provisions of AS 18.35.300 — 18.35.365. This section does not limit the authority of peace officers. (E.O. No. 51 § 37 (1981); am § 8 ch 34 SLA 1984)

Revisor's notes. — The phrase "and the regulations adopted under AS 18.35.360" was deleted from this section in 1984 to correct a manifest error made when SCS CSHB 84 (Fin) was amended to effect the repeal of AS 18.35.360. The

amended bill became ch. 34, SLA 1984. The word "section" was added in the second sentence in 1981.

Effect of amendments. — The 1984 amendment rewrote the first section, which read "The commissioner of environ-

mental conservation or his designee is responsible for enforcing the provisions of AS 18.35.300 — 18.35.340 and the regulations adopted under AS 18.35.360."

Sec. 18.35.355. Public education. The commissioner shall take appropriate measures to inform the public of the provisions of AS 18.35.300 — 18.35.365. (§ 9 ch 34 SLA 1984)

Sec. 18.35.360. Regulations. [Repealed, § 10 ch 34 SLA 1984.]

Sec. 18.35.365. Definitions. In AS 18.35.300 — 18.35.365,

(1) "commissioner" means commissioner of environmental conservation;

(2) "department" means the Department of Environmental Conservation. (§ 11 ch 34 SLA 1984)

Chapter 40. Shelter Cabins and Comfort Stations.

Section

- 10. Shelter cabins and comfort stations on airports
- 20. Shelter cabins on roads and trails
- 30. Inspection of cabins
- 40. Cabins and furnishings property of state

Section

- 50. Prohibited acts and penalties
- 60. Exception
- 70. Damages for destruction of or injury to shelter cabins

Collateral references. — Establishment, maintenance, and regulation of tourist or trailer camps by public authorities. 22 ALR2d 774.

Racial or religious discrimination in furnishing of public utilities, services, or facilities. 53 ALR3d 1027.

Validity of statutes, ordinances, and regulation requiring the installation or maintenance of various bathroom facilities in dwelling units. 79 ALR3d 716.

Sec. 18.40.010. Shelter cabins and comfort stations on airports. The Department of Transportation and Public Facilities may erect and maintain shelter cabins and comfort stations for the accommodation of travelers on the airports throughout the state where the facilities are required and necessary out of funds appropriated for the construction and maintenance of roads and aviation fields. Each shelter cabin or comfort station shall contain a suitable stove and other facilities considered necessary by the Department of Transportation and Public Facilities. (§ 40-10-1 ACLA 1949; am § 9 art VII title II ch 152 SLA 1957)

(9) "nonattainment area" means a geographic area where the air quality is shown by monitored data to exceed national air quality standards for any air pollutant;

(10) "pollutant emissions" means unburned hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter;

(11) "proper maintenance" means the use of maintenance practices set out in this chapter;

(12) "qualified mechanic" means a mechanic who meets competency requirements imposed by the implementing agency for persons who repair vehicles subject to this chapter;

(13) "repair cost ceiling" means a limit that the implementing agency may establish on the cost of repairs necessary to obtain a certificate of inspection when repair work is done by a qualified mechanic; and

(14) "unauthorized modification" means an engine or emissions control system-related modification that has not been performed according to a recall campaign or service bulletin authorized by a vehicle's manufacturer; "unauthorized modification" includes the use of a replacement emissions-related part that is not functionally equivalent to the original equipment part that it replaces, and the use of any added part or system unless that part or system has been specifically approved for use by the U.S. Environmental Protection Agency, the California Air Resources Board, or by the Alaska Department of Environmental Conservation. (Eff. 5/19/85, Register 94; am 6/2/88, Register 106)

Authority: AS 11.56.210 AS 46.03.190
 AS 46.03.020(10) AS 46.03.790(a)
 AS 46.03.140

Editor's note. — A list of approved parts and systems mentioned in 18 AAC 52.900(14) can be found in the State Air Quality Plan, Volume III, which is avail-

able for viewing at state libraries and regional offices of the Department of Environmental Conservation.

CHAPTER 55. SMOKING IN PUBLIC PLACES

Section	Section
10. Exemptions from smoking prohibition	50. Complaint procedure
20. Smoking areas	60. Waiver of provisions
30. Signs	900. Definitions
40. Penalties	

18 AAC 55.010. EXEMPTIONS FROM SMOKING PROHIBITION. (a) An area may be designated as a smoking area under AS 18.35.310(1) only by the owner, manager, proprietor, or other person who has control over the premises.

(b) An exemption under AS 18.35.310(4) must be in writing, contain a description of the exempted area and its location, and be based upon documentation by a mechanical engineer registered in the state that

(1) the building or room has total air circulation which meets the minimum standards established by ASHRAE Standard 62-73 (1973); or

(2) an electrostatic precipitator, a high-efficiency filter, or other device yields air quality in the building or room which meets the minimum standards established by ASHRAE Standard 62-73 (1973).

(c) A copy of an exemption and appropriate documentation under (b) of this section must be filed with the department before the exemption becomes effective.

(d) The department will, in its discretion, revoke an exemption described in (b) of this section if the ventilating equipment or other device upon which the exemption is based is not properly maintained or is not used while the room or building is occupied.

(e) A state agency or department which exempts a room or building under AS 18.35.310(4) must provide for and designate a clearly separate no-smoking area in the room or building to which the exemption applies. (Eff. 8/28/81, Register 79)

Authority: AS 18.35.310 AS 46.03.020
AS 18.35.360 AS 46.03.140

Editor's notes. — Copies of ASHRAE Standard 62-73 (1973) are available from ASHRAE, 345 East 47th Street, New York, N.Y. 10017.

18 AAC 55.020. SMOKING AREAS. (a) Subject to (d) and (e) of this section and where smoking is not otherwise prohibited by law, the owner, manager, proprietor, or other person who has control of a vehicle or place described in AS 18.35.300(1), (4) or (6) may designate a smoking area in the vehicle or place.

(b) Subject to (d) and (e) of this section and where smoking is not otherwise prohibited by law, the owner, manager, proprietor, or person who has control of a building described in AS 18.35.300(2), (3), or (5), or which contains a room described in AS 18.35.300(2), (3), or (5), must designate at least one smoking area in the building.

(c) A smoking area designated under this section must be a separate room, hallway, or entrance area. However, in a building described in AS 18.35.300(5), or which contains a room described in AS 18.35.300(5), the designated smoking area may not be a lobby or hallway.

(d) If a smoking area designated is in a bus, it must be clearly separated from the part of the bus in which smoking is prohibited, and it may not occupy more than one-half of the total passenger area of the

bus. A smoking area may not be designated in a limousine for hire or in an elevator.

(e) A smoking area may not be designated in a building, vehicle, or other place if the department determines in writing that prohibiting the designation is necessary to protect the public safety or to protect and preserve the building, vehicle, or place and its contents. The department will deliver a written determination under this subsection to the owner, manager, proprietor, or person who has control of the building, vehicle, or place. (Eff. 8/28/81, Register 79)

Authority: AS 18.35.310 AS 46.03.020
AS 18.35.320 AS 46.03.140
AS 18.35.360

18 AAC 55.030. SIGNS. (a) An owner, manager, proprietor, or other person who has control of a vehicle or place described in AS 18.35.300(1) — (5) shall conspicuously display in the vehicle or place signs reading "Smoking Prohibited by Law," unless smoking is permitted in the vehicle or place under AS 18.35.310. The person shall display the signs so that at least one sign is legible from any part of the vehicle or place in which smoking is prohibited. A sign required by this subsection must include the international smoking-prohibited symbol.

(b) An 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 designating the area as one in which smoking is permitted. These signs may not be larger than the "Smoking Prohibited by Law" signs in the same vehicle or place. Signs required by this subsection must include the international smoking-permitted symbol.

(c) "Smoking Prohibited by Law" signs in elevators must be permanently and conspicuously mounted under glass or other clear, durable, and protective material.

(d) Additional signs of the appropriate type may be posted at entrances to vehicles, places, and areas of vehicles and places. (Eff. 8/28/81, Register 79)

Authority: AS 18.35.330 AS 46.03.020
AS 18.35.360 AS 46.03.140

18 AAC 55.040. PENALTIES. (a) A person who willfully violates AS 18.35.300 by smoking where smoking is prohibited is punishable by a civil fine of \$15 for the first offense and by a civil fine of \$25 for each subsequent offense.

(b) A person who willfully violates AS 18.35.330 or 18 AAC 55.030 by not displaying the required sign is punishable by a civil fine of \$50 for the first offense and by a civil fine of \$100 for each subsequent

offense. However, the department may dismiss a first offense complaint without payment of a fine if the defendant demonstrates that the required sign has been posted. (Eff. 8/28/81, Register 79)

Authority: AS 18.35.340 AS 46.03.020
AS 18.35.360 AS 46.03.140

18 AAC 55.050. COMPLAINT PROCEDURE. (a) A person who observes a violation of this chapter or of AS 18.35.300 — 18.35.360 may notify an 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, will, in its discretion, file a complaint in small claims court for a civil fine, court costs, and attorney's fees against the person who was observed violating this chapter or AS 18.35.300 — 18.35.360. (Eff. 8/28/81, Register 79)

Authority: AS 18.35.340 AS 46.03.020
AS 18.35.350 AS 46.03.140
AS 18.35.360

18 AAC 55.060. WAIVER OF PROVISIONS. (a) The department will, in its discretion, waive a provision of 18 AAC 55.010 — 18 AAC 55.900 if it determines that the public health and the satisfaction of the purpose of the provision are reasonably assured and that the requirements of AS 18.35.300 — 18.35.360 are satisfied.

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

- (1) identification of the provision for which the waiver is requested;
- (2) reasons why the provision cannot be satisfied; and
- (3) a description of an alternative method, if any, proposed for meeting the purpose of the provision to be waived.

(c) The department will answer a request for a waiver in writing within 30 days after receipt of the request. (Eff. 8/28/81, Register 79)

Authority: AS 18.35.350 AS 46.03.020
AS 18.35.360 AS 46.03.140

18 AAC 55.900. 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 "public meeting" means a regular or special meeting of a legislative body, a board of regents, or an administrative body of the state, including but not limited to their boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions, committees, offices, organizations, and other subordinate units, advisory or otherwise, supported in whole or in part by public money or authorized to spend public money; however, "public meeting" does not include a meeting of

(1) a judicial or quasi-judicial body solely to make a decision in an adjudicatory proceeding;

(2) a jury;

(3) a parole or pardon board;

(4) the medical staff of a hospital; or

(5) the governing body or a committee of a hospital solely to act upon matters of professional qualifications, privileges, or discipline.

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

(1) "bus" means a self-propelled vehicle with capacity for carrying more than 10 passengers which is used on public highways to transport passengers for compensation;

(2) "limousine for hire" means a self-propelled vehicle with capacity for carrying six to 10 passengers which is used on public highways to transport passengers for compensation between a transportation terminal and other designated points;

(3) "other person who has control" means the agent of the owner, manager, or proprietor authorized to give administrative direction to and exercise general supervision of the activities in a vehicle or place; in a state office building, "other person who has control" means a division director who has authority over the office or his designee.

(4) "room" means an 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 and except for windows and vents;

(5) "smoking" means holding or carrying a lighted cigar, cigarette, pipe, or other lighted smoking equipment or material. (Eff. 8/28/81, Register 79)

Authority: AS 18.35.360
AS 46.03.020
AS 46.03.140