

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 3053 and 3054

STATE OF NEW JERSEY
213th LEGISLATURE

ADOPTED DECEMBER 7, 2009

Sponsored by:

Senator ROBERT M. GORDON

District 38 (Bergen)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Co-Sponsored by:

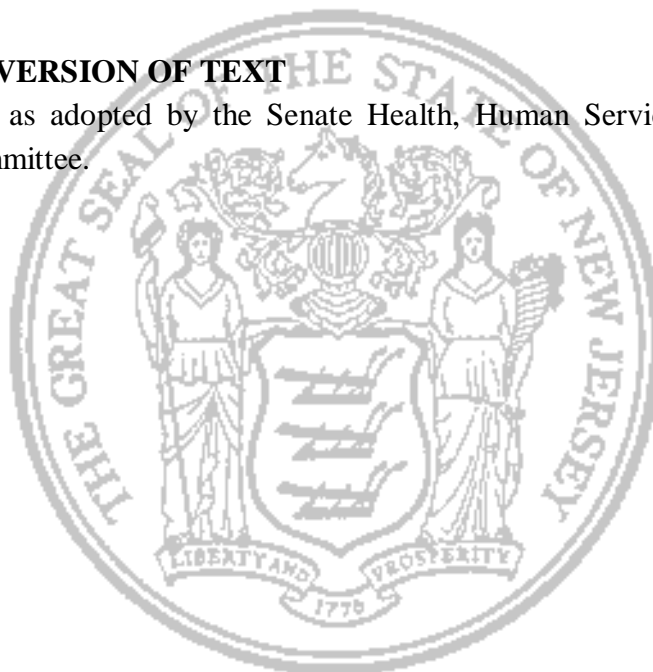
Senators Codey, Sarlo and Whelan

SYNOPSIS

Prohibits use of electronic smoking devices in indoor public places and sale to minors.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Health, Human Services and Senior Citizens Committee.



(Sponsorship Updated As Of: 12/11/2009)

1 AN ACT concerning electronic smoking devices and amending
2 P.L.2005, c.383, P.L.2000, c.87, and P.L.1999, c.90.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 2 of P.L.2005, c.383 (C.26:3D-56) is amended to
8 read as follows:

9 2. The Legislature finds and declares that: **[tobacco]**

10 a. Tobacco is the leading cause of preventable disease and
11 death in the State and the nation**[, and tobacco]**;

12 b. Tobacco smoke constitutes a substantial health hazard to the
13 nonsmoking majority of the public; **[the]**

14 c. Electronic smoking devices have not been approved as to
15 safety and efficacy by the federal Food and Drug Administration,
16 and their use may pose a health risk to persons exposed to their
17 smoke or vapor because of a known irritant contained therein and
18 other substances that may, upon evaluation by that agency, be
19 identified as potentially toxic to those inhaling the smoke or vapor;

20 d. The separation of smoking and nonsmoking areas in indoor
21 public places and workplaces does not eliminate the hazard to
22 nonsmokers if these areas share a common ventilation system; and
23 **[, therefore]**

24 e. Therefore, subject to certain specified exceptions, it is
25 clearly in the public interest to prohibit the smoking of tobacco
26 products and the use of electronic smoking devices in all enclosed
27 indoor places of public access and workplaces.

28 (cf: P.L.2005, c.383, s.2)

29

30 2. Section 3 of P.L.2005, c.383 (C.26:3D-57) is amended to
31 read as follows:

32 3. As used in this act:

33 "Bar" means a business establishment or any portion of a
34 nonprofit entity, which is devoted to the selling and serving of
35 alcoholic beverages for consumption by the public, guests, patrons
36 or members on the premises and in which the serving of food, if
37 served at all, is only incidental to the sale or consumption of such
38 beverages.

39 "Cigar bar" means any bar, or area within a bar, designated
40 specifically for the smoking of tobacco products, purchased on the
41 premises or elsewhere; except that a cigar bar that is in an area
42 within a bar shall be an area enclosed by solid walls or windows, a
43 ceiling and a solid door and equipped with a ventilation system
44 which is separately exhausted from the nonsmoking areas of the bar

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 so that air from the smoking area is not recirculated to the
2 nonsmoking areas and smoke is not backstreamed into the
3 nonsmoking areas.

4 "Cigar lounge" means any establishment, or area within an
5 establishment, designated specifically for the smoking of tobacco
6 products, purchased on the premises or elsewhere; except that a
7 cigar lounge that is in an area within an establishment shall be an
8 area enclosed by solid walls or windows, a ceiling and a solid door
9 and equipped with a ventilation system which is separately
10 exhausted from the nonsmoking areas of the establishment so that
11 air from the smoking area is not recirculated to the nonsmoking
12 areas and smoke is not backstreamed into the nonsmoking areas.

13 "Electronic smoking device" means an electronic device that can
14 be used to deliver nicotine or other substances to the person
15 inhaling from the device, including, but not limited to, an electronic
16 cigarette, cigar, cigarillo, or pipe.

17 "Indoor public place" means a structurally enclosed place of
18 business, commerce or other service-related activity, whether
19 publicly or privately owned or operated on a for-profit or nonprofit
20 basis, which is generally accessible to the public, including, but not
21 limited to: a commercial or other office building; office or building
22 owned, leased or rented by the State or by a county or municipal
23 government; public and nonpublic elementary or secondary school
24 building; board of education building; theater or concert hall; public
25 library; museum or art gallery; bar; restaurant or other
26 establishment where the principal business is the sale of food for
27 consumption on the premises, including the bar area of the
28 establishment; garage or parking facility; any public conveyance
29 operated on land or water, or in the air, and passenger waiting
30 rooms and platform areas in any stations or terminals thereof; health
31 care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et
32 seq.); patient waiting room of the office of a health care provider
33 licensed pursuant to Title 45 of the Revised Statutes; child care
34 center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.);
35 race track facility; facility used for the holding of sporting events;
36 ambulatory recreational facility; shopping mall or retail store; hotel,
37 motel or other lodging establishment; apartment building lobby or
38 other public area in an otherwise private building; or a passenger
39 elevator in a building other than a single-family dwelling.

40 "Person having control of an indoor public place or workplace"
41 means the owner or operator of a commercial or other office
42 building or other indoor public place from whom a workplace or
43 space within the building or indoor public place is leased.

44 "Smoking" means the burning of, inhaling from, exhaling the
45 smoke from, or the possession of a lighted cigar, cigarette, pipe or
46 any other matter or substance which contains tobacco or any other

1 matter that can be smoked, or the inhaling or exhaling of smoke or
2 vapor from an electronic smoking device.

3 "Tobacco retail establishment" means an establishment in which
4 at least 51% of retail business is the sale of tobacco products and
5 accessories, and in which the sale of other products is merely
6 incidental.

7 "Workplace" means a structurally enclosed location or portion
8 thereof at which a person performs any type of service or labor.

9 (cf: P.L.2005, c.383, s.3)

10

11 3. Section 1 of P.L.2000, c.87 (C.2A:170-51.4) is amended to
12 read as follows:

13 1. a. No person, either directly or indirectly by an agent or
14 employee, or by a vending machine owned by the person or located
15 in the person's establishment, shall sell, offer for sale, distribute for
16 commercial purpose at no cost or minimal cost or with coupons or
17 rebate offers, give or furnish, to a person under 19 years of age~~],]~~:

18 (1) any cigarettes made of tobacco or of any other matter or
19 substance which can be smoked, or any cigarette paper or tobacco
20 in any form, including smokeless tobacco; or

21 (2) any electronic smoking device that can be used to deliver
22 nicotine or other substances to the person inhaling from the device,
23 including, but not limited to, an electronic cigarette, cigar, cigarillo,
24 or pipe, or any cartridge or other component of the device or related
25 product.

26 b. The establishment of all of the following shall constitute a
27 defense to any prosecution brought pursuant to subsection a. of this
28 section:

29 (1) that the purchaser of the tobacco product or electronic
30 smoking device or the recipient of the promotional sample falsely
31 represented, by producing either a driver's license or non-driver
32 identification card issued by the New Jersey Motor Vehicle
33 Commission, a similar card issued pursuant to the laws of another
34 state or the federal government of Canada, or a photographic
35 identification card issued by a county clerk, that the purchaser or
36 recipient was of legal age to make the purchase or receive the
37 sample;

38 (2) that the appearance of the purchaser of the tobacco product
39 or electronic smoking device or the recipient of the promotional
40 sample was such that an ordinary prudent person would believe the
41 purchaser or recipient to be of legal age to make the purchase or
42 receive the sample; and

43 (3) that the sale or distribution of the tobacco product or
44 electronic smoking device was made in good faith, relying upon the
45 production of the identification set forth in paragraph (1) of this
46 subsection, the appearance of the purchaser or recipient, and in the

1 reasonable belief that the purchaser or recipient was of legal age to
2 make the purchase or receive the sample.

3 c. A person who violates the provisions of subsection a. of this
4 section, including an employee of a retail dealer licensee under
5 P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise
6 provides a tobacco product to a person under 19 years of age, shall
7 be liable to a civil penalty of not less than \$250 for the first
8 violation, not less than \$500 for the second violation, and \$1,000
9 for the third and each subsequent violation. The civil penalty shall
10 be collected pursuant to the "Penalty Enforcement Law of 1999,"
11 P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding
12 before the municipal court having jurisdiction. An official
13 authorized by statute or ordinance to enforce the State or local
14 health codes or a law enforcement officer having enforcement
15 authority in that municipality may issue a summons for a violation
16 of the provisions of subsection a. of this section, and may serve and
17 execute all process with respect to the enforcement of this section
18 consistent with the Rules of Court. A penalty recovered under the
19 provisions of this subsection shall be recovered by and in the name
20 of the State by the local health agency. The penalty shall be paid
21 into the treasury of the municipality in which the violation occurred
22 for the general uses of the municipality.

23 d. In addition to the provisions of subsection c. of this section,
24 upon the recommendation of the municipality, following a hearing
25 by the municipality, the Division of Taxation in the Department of
26 the Treasury may suspend or, after a second or subsequent violation
27 of the provisions of subsection a. of this section, revoke the license
28 issued under section 202 of P.L.1948, c. 65 (C.54:40A-4) of a retail
29 dealer. The licensee shall be subject to administrative charges,
30 based on a schedule issued by the Director of the Division of
31 Taxation, which may provide for a monetary penalty in lieu of a
32 suspension.

33 e. A penalty imposed pursuant to this section shall be in
34 addition to any penalty that may be imposed pursuant to section 3
35 of P.L.1999, c. 90 (C.2C:33-13.1).

36 (cf: P.L.2005, c.384, s.1)

37

38 4. Section 3 of P.L.1999, c.90 (C.2C:33-13.1) is amended to
39 read as follows:

40 3. a. A person who sells or gives to a person under 19 years of
41 age any cigarettes made of tobacco or of any other matter or
42 substance which can be smoked, or any cigarette paper or tobacco
43 in any form, including smokeless tobacco, or any electronic
44 smoking device that can be used to deliver nicotine or other
45 substances to the person inhaling from the device, including, but not
46 limited to, an electronic cigarette, cigar, cigarillo, or pipe, or any
47 cartridge or other component of the device or related product,

1 including an employee of a retail dealer licensee under P.L.1948,
2 c.65 (C.54:40A-1 et seq.) who actually sells or otherwise provides a
3 tobacco product or electronic smoking device to a person under 19
4 years of age, shall be punished by a fine as provided for a petty
5 disorderly persons offense. A person who has been previously
6 punished under this section and who commits another offense under
7 it may be punishable by a fine of twice that provided for a petty
8 disorderly persons offense.

9 b. The establishment of all of the following shall constitute a
10 defense to any prosecution brought pursuant to subsection a. of this
11 section:

12 (1) that the purchaser or recipient of the tobacco product or
13 electronic smoking device falsely represented, by producing either a
14 driver's license or non-driver identification card issued by the New
15 Jersey Motor Vehicle Commission, a similar card issued pursuant to
16 the laws of another state or the federal government of Canada, or a
17 photographic identification card issued by a county clerk, that the
18 purchaser or recipient was of legal age to purchase or receive the
19 tobacco product or electronic smoking device;

20 (2) that the appearance of the purchaser or recipient of the
21 tobacco product or electronic smoking device was such that an
22 ordinary prudent person would believe the purchaser or recipient to
23 be of legal age to purchase or receive the tobacco product or
24 electronic smoking device; and

25 (3) that the sale or distribution of the tobacco product or
26 electronic smoking device was made in good faith, relying upon the
27 production of the identification set forth in paragraph (1) of this
28 subsection, the appearance of the purchaser or recipient, and in the
29 reasonable belief that the purchaser or recipient was of legal age to
30 purchase or receive the tobacco product or electronic smoking
31 device.

32 c. A penalty imposed pursuant to this section shall be in
33 addition to any penalty that may be imposed pursuant to section 1
34 of P.L.2000, c.87 (C.2A:170-51.4).

35 (cf: P.L.2005, c.384, s.5)

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37 5. Sections 1 and 2 of this act shall take effect on the 180th day
38 after enactment, but the Commissioner of Health and Senior
39 Services may take such anticipatory administrative action in
40 advance thereof as shall be necessary for the implementation of
41 those sections. Sections 3 and 4 of this act shall take effect on the
42 60th day after enactment.