

ASSEMBLY, No. 1703

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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Assemblywoman VALERIE VAINIERI HUTTLE

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Assemblywoman ANGELICA M. JIMENEZ

District 32 (Bergen and Hudson)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblywoman JOANN DOWNEY

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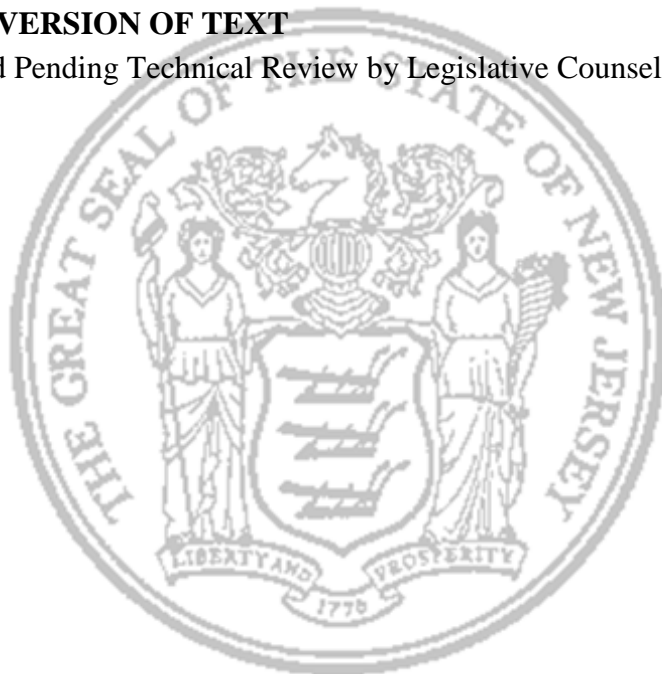
Assemblymen DeAngelo, Conaway, McKeon and Houghtaling

SYNOPSIS

Prohibits smoking at public parks and beaches.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning smoking at public parks and beaches and
2 amending the title and body of, and supplementing, P.L.2005,
3 c.383.

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

7
8 1. The Title of P.L.2005, c.383 is amended to read as follows
9 Title.

10 AN ACT concerning smoking in **[indoor]** certain public places and
11 workplaces and revising parts of statutory law.
12 (cf: P.L.2005, c.383, Title)

13
14 2. Section 2 of P.L.2005, c.383 (C.26:3D-56) is amended to
15 read as follows:

16 2. The Legislature finds and declares that:

17 a. Tobacco is the leading cause of preventable disease and
18 death in the State and the nation;

19 b. Tobacco smoke constitutes a substantial health hazard to the
20 nonsmoking majority of the public;

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

27 d. The separation of smoking and nonsmoking areas in indoor
28 public places and workplaces does not eliminate the hazard to
29 nonsmokers if these areas share a common ventilation system;

30 e. the prohibition of smoking at public parks and beaches
31 would better preserve the natural assets of this State by reducing
32 litter and increasing fire safety in those areas, while lessening
33 exposure to secondhand tobacco smoke among the public; and

34 **[e.]** f. Therefore, subject to certain specified exceptions, it is
35 clearly in the public interest to prohibit the smoking of tobacco
36 products and the use of electronic smoking devices in all enclosed
37 indoor places of public access and workplaces and at all public
38 parks and beaches.

39 (cf: P.L.2009, c.182, s.1)

40
41 3. Section 3 of P.L.2005, c.383 (C.26:3D-57) is amended to read
42 as follows:

43 3. As used in this act:

44 "Bar" means a business establishment or any portion of a nonprofit
45 entity, which is devoted to the selling and serving of alcoholic

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 beverages for consumption by the public, guests, patrons or members
2 on the premises and in which the serving of food, if served at all, is
3 only incidental to the sale or consumption of such beverages.

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

12 "Cigar lounge" means any establishment, or area within an
13 establishment, designated specifically for the smoking of tobacco
14 products, purchased on the premises or elsewhere; except that a cigar
15 lounge that is in an area within an establishment shall be an area
16 enclosed by solid walls or windows, a ceiling and a solid door and
17 equipped with a ventilation system which is separately exhausted from
18 the nonsmoking areas of the establishment so that air from the
19 smoking area is not recirculated to the nonsmoking areas and smoke is
20 not backstreamed into the nonsmoking areas.

21 "Electronic smoking device" means an electronic device that can
22 be used to deliver nicotine or other substances to the person inhaling
23 from the device, including, but not limited to, an electronic cigarette,
24 cigar, cigarillo, or pipe.

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

47 "Person having control of an indoor public place or workplace or a
48 public park or beach" means the owner or operator of a commercial or

1 other office building or other indoor public place from whom a
2 workplace or space within the building or indoor public place is
3 leased, or the person having supervisory authority over a public park
4 or beach or that person's designee, as applicable.

5 "Public park or beach" means a State park or forest, a county or
6 municipal park, or a State, county, or municipal beach, but does not
7 include any parking lot that is adjacent to but outside the public park
8 or beach.

9 "Smoking" means the burning of, inhaling from, exhaling the
10 smoke from, or the possession of a lighted cigar, cigarette, pipe or any
11 other matter or substance which contains tobacco or any other matter
12 that can be smoked, or the inhaling or exhaling of smoke or vapor
13 from an electronic smoking device.

14 "State park or forest" means any State owned or leased land, water
15 or facility administered by the Department of Environmental
16 Protection, including, but not limited to, a park, forest, recreational
17 area, marina, historic site, burial site or natural area, but not including
18 a wildlife management area or reservoir land.

19 "Tobacco retail establishment" means an establishment in which at
20 least 51% of retail business is the sale of tobacco products and
21 accessories, and in which the sale of other products is merely
22 incidental.

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

25 (cf: P.L.2009, c.182, s.2)

26

27 4. Section 4 of P.L.2005, c.383 (C.26:3D-58) is amended to
28 read as follows:

29 4. a. Smoking is prohibited in an indoor public place or
30 workplace or at a public park or beach, except as otherwise
31 provided in this act.

32 b. Smoking is prohibited in any area of any building of, or on
33 the grounds of, any public or nonpublic elementary or secondary
34 school, regardless of whether the area is an indoor public place or is
35 outdoors.

36 (cf: P.L.2005, c.383, s.4)

37

38 5. Section 5 of P.L.2005, c.383 (C.26:3D-59) is amended to
39 read as follows:

40 5. The provisions of this act shall not apply to:

41 a. any cigar bar or cigar lounge that, in the calendar year
42 ending December 31, 2004, generated 15% or more of its total
43 annual gross income from the on-site sale of tobacco products and
44 the rental of on-site humidors, not including any sales from vending
45 machines, and is registered with the local board of health in the
46 municipality in which the bar or lounge is located. The registration
47 shall remain in effect for one year and shall be renewable only if:
48 (1) in the preceding calendar year, the cigar bar or lounge generated

1 15% or more if its total annual gross income from the on-site sale of
2 tobacco products and the rental of on-site humidors, and (2) the
3 cigar bar or cigar lounge has not expanded its size or changed its
4 location since December 31, 2004;

5 b. any tobacco retail establishment, or any area the tobacco
6 retail establishment provides for the purposes of smoking;

7 c. any tobacco business when the testing of a cigar or pipe
8 tobacco by heating, burning or smoking is a necessary and integral
9 part of the process of making, manufacturing, importing or
10 distributing cigars or pipe tobacco;

11 d. private homes, private residences and private automobiles;
12 and

13 e. the area within the perimeter of:

14 (1) any casino as defined in section 6 of P.L.1977, c.110
15 (C.5:12-6) approved by the Casino Control Commission that
16 contains at least 150 stand-alone slot machines, 10 table games, or
17 some combination thereof approved by the commission, which
18 machines and games are available to the public for wagering; **[and]**

19 (2) any casino simulcasting facility approved by the Casino
20 Control Commission pursuant to section 4 of P.L.1992, c.19
21 (C.5:12-194) that contains a simulcast counter and dedicated seating
22 for at least 50 simulcast patrons or a simulcast operation and at least
23 10 table games, which simulcast facilities and games are available
24 to the public for wagering **[.]**;

25 f. A golf course; and

26 g. An area of a municipal or county beach, not to exceed 15
27 percent of the total area of the beach, which is designated by the
28 municipality or county by ordinance or resolution as a smoking
29 area.

30 (cf: P.L.2005, c.383, s.5)

31

32 6. Section 7 of P.L.2005, c.383 (C.26:3D-61) is amended to
33 read as follows:

34 7. a. The person having control of an indoor public place or
35 workplace or a public park or beach shall place in every public
36 entrance to the indoor public place or workplace or the public park
37 or beach a sign, which shall be located so as to be clearly visible to
38 the public and shall contain letters or a symbol which contrast in
39 color with the sign, indicating that smoking is prohibited therein,
40 except in such designated areas as provided pursuant to this act.
41 The sign shall also indicate that violators are subject to a fine. The
42 person having control of the indoor public place or workplace or the
43 public park or beach shall post a sign stating "Smoking Permitted"
44 in letters at least one inch in height or marked by the international
45 symbol for "Smoking Permitted" in those areas where smoking is
46 permitted.

47 b. The provisions of this section shall not be construed to
48 prevent a lessee of the workplace, or space within the building or

1 indoor public place, from enforcing the smoking restrictions
2 imposed by the owner or operator of a commercial or other office
3 building or other indoor public place.

4 (cf: P.L.2005, c.383, s.7)

5

6 7. (New section) The Department of Environmental Protection
7 is directed to provide information and assistance to counties and
8 municipalities, as determined appropriate by the Commissioner of
9 Environmental Protection and within the limits of resources
10 available to the department for this purpose, to support smoke-free
11 public parks and beaches.

12

13 8. Section 8 of P.L.2005, c.383 (C.26:3D-62) is amended to read
14 as follows:

15 8. a. The person having control of an indoor public place or
16 workplace or a public park or beach shall order any person smoking in
17 violation of this act to comply with the provisions of this act. A
18 person, after being so ordered, who smokes in violation of this act is
19 subject to a fine of not less than \$250 for the first offense, \$500 for the
20 second offense and \$1,000 for each subsequent offense. A penalty
21 shall be recovered in accordance with the provisions of subsections c.
22 and d. of this section.

23 b. The Department of Health or the local board of health or the
24 board, body, or officers exercising the functions of the local board of
25 health according to law, upon written complaint or having reason to
26 suspect that an indoor public place or workplace or a public park or
27 beach covered by the provisions of this act is or may be in violation of
28 the provisions of this act, shall, by written notification, advise the
29 person having control of the place accordingly, and order appropriate
30 action to be taken. A person receiving that notice who fails or refuses
31 to comply with the order is subject to a fine of not less than \$250 for
32 the first offense, \$500 for the second offense, and \$1,000 for each
33 subsequent offense. In addition to the penalty provided herein, the
34 court may order immediate compliance with the provisions of this act.

35 c. A penalty recovered under the provisions of this act shall be
36 recovered by and in the name of the Commissioner of Health or by and
37 in the name of the local board of health. When the plaintiff is the
38 Commissioner of Health, the penalty recovered shall be paid by the
39 commissioner into the treasury of the State. When the plaintiff is a
40 local board of health, the penalty recovered shall be paid by the local
41 board into the treasury of the municipality where the violation
42 occurred.

43 d. **[A]** The Superior Court or municipal court shall have
44 jurisdiction over proceedings to enforce and collect any penalty
45 imposed because of a violation of this act if the violation has occurred
46 within the territorial jurisdiction of the court, except that the Superior
47 Court shall have exclusive jurisdiction over violations that occur in an
48 indoor public place or public park or beach that may be issued against

1 a State or local government entity pursuant to subsection b. of this
2 section. The proceedings shall be summary and in accordance with the
3 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et
4 seq.). Process shall be in the nature of a summons **【or warrant】** and
5 shall issue only at the suit of the Commissioner of Health, or the local
6 board of health, as the case may be, as plaintiff.

7 e. The penalties provided in subsections a. and b. of this section
8 shall be the only civil remedy for a violation of this act, and there shall
9 be no private right of action against a party for failure to comply with
10 the provisions of this act.

11 (cf: P.L.2012, c.17, s.331)

12

13 9. Section 9 of P.L.2005, c.383 (C.26:3D-63) is amended to
14 read as follows:

15 9. The provisions of this act shall supersede any other statute,
16 municipal ordinance and rule or regulation adopted pursuant to law
17 concerning smoking in an indoor public place or workplace or at a
18 public park or beach, except where smoking is prohibited by
19 municipal ordinance under authority of R.S.40:48-1 or 40:48-2, or
20 by any other statute or regulation adopted pursuant to law for
21 purposes of protecting life and property from fire or protecting
22 public health, and except for those provisions of a municipal
23 ordinance which provide restrictions on or prohibitions against
24 smoking equivalent to, or greater than, those provided under this
25 act.

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

27

28 10. Section 10 of P.L.2005, c.383 (C.26:3D-64) is amended to
29 read as follows:

30 10. The **【Commissioner】** Commissioners of Health and
31 Environmental Protection, pursuant to the "Administrative
32 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and in
33 consultation with each other, shall adopt rules and regulations to
34 effectuate the purposes of this act.

35 (cf: P.L.2012, c.17, s.332)

36

37 11. This act shall take effect on the 180th day after enactment,
38 but the Commissioners of Health and Environmental Protection
39 may take such anticipatory administrative action in advance thereof
40 as shall be necessary for the implementation of this act.

41

42

43

STATEMENT

44

45 This bill extends the provisions of the "New Jersey Smoke Free
46 Air Act," P.L.2005, c.383 (C.26:3D-55 et seq.), which generally
47 prohibit smoking in indoor public places and workplaces, to apply to
48 public parks and beaches throughout the State.

1 The bill provides specifically as follows:

- 2 • The smoking prohibition provided for under this bill would apply
3 to any State park or forest, county or municipal park, or State, county,
4 or municipal beach, but would not include any parking lot that is
5 adjacent to but outside the public park or beach. The prohibition
6 would not apply to a golf course, or to an area of a municipal or county
7 beach, not to exceed 15 percent of the total area of the beach, which is
8 designated by the municipality or county by ordinance or resolution as
9 a smoking area.
 - 10 • The bill defines “State park or forest” to mean any State owned or
11 leased land, water or facility administered by the Department of
12 Environmental Protection, including, but not limited to, a park, forest,
13 recreational area, marina, historic site, burial site or natural area, but
14 not including a wildlife management area or reservoir land.
 - 15 • The Department of Environmental Protection is directed to provide
16 information and assistance to counties and municipalities, as
17 determined appropriate by the Commissioner of Environmental
18 Protection and within the limits of resources available to the
19 department for this purpose, to support smoke-free public parks and
20 beaches.
 - 21 • The penalties that currently apply to a person who smokes in an
22 indoor public place or workplace, or a person having control of the
23 place who fails to comply with an order to enforce the smoking
24 prohibition, in violation of the “New Jersey Smoke Free Air Act,”
25 would apply to a comparable violation of this bill. These include a
26 fine of not less than \$250 for the first offense, \$500 for the second
27 offense and \$1,000 for each subsequent offense. (As currently
28 provided under the “New Jersey Smoke Free Air Act,” a penalty
29 recovered through enforcement would be paid to the State Treasury if
30 the plaintiff is the Commissioner of Health, and to the treasury of the
31 municipality in which the violation occurred if the plaintiff is the local
32 board of health.)
 - 33 • The Commissioners of Health and Environmental Protection,
34 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
35 (C.52:14B-1 et seq.) and in consultation with each other, are directed
36 to adopt rules and regulations to effectuate the purposes of this bill.
- 37 The bill takes effect on the 180th day after enactment, but
38 authorizes the Commissioners of Health and Environmental Protection
39 to take anticipatory administrative action in advance as necessary for
40 its implementation.