

ASSEMBLY, No. 2081

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Assemblyman JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

SYNOPSIS

Permits vapor lounges for use of electronic smoking devices to be opened under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning vapor lounges and amending P.L.2005, c.383.

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

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

8 3. As used in **[this act]** P.L.2005, c.383 (C.26:3D-55 et seq.):

9 "Bar" means a business establishment or any portion of a
10 nonprofit entity**[,]** which is devoted to the selling and serving of
11 alcoholic beverages for consumption by the public, guests, patrons,
12 or members on the premises and in which the serving of food, if
13 served at all, is only incidental to the sale or consumption of such
14 beverages.

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

24 "Cigar lounge" means any establishment, or area within an
25 establishment, designated specifically for the smoking of tobacco
26 products, purchased on the premises or elsewhere; except that a
27 cigar lounge that is in an area within an establishment shall be an
28 area enclosed by solid walls or windows, a ceiling, and a solid door
29 and equipped with a ventilation system which is separately
30 exhausted from the nonsmoking areas of the establishment so that
31 air from the smoking area is not recirculated to the nonsmoking
32 areas and smoke is not backstreamed into the nonsmoking areas.

33 "Electronic smoking device" means an electronic device that can
34 be used to deliver nicotine or other substances to the person
35 inhaling from the device, including, but not limited to, an electronic
36 cigarette **[, cigar, cigarillo, or pipe]** or personal vaporizer.

37 "Indoor public place" means a structurally enclosed place of
38 business, commerce, or other service-related activity, whether
39 publicly or privately owned or operated on a for-profit or nonprofit
40 basis, which is generally accessible to the public, including, but not
41 limited to: a commercial or other office building; office or building
42 owned, leased, or rented by the State or by a county or municipal
43 government; public and nonpublic elementary or secondary school
44 building; board of education building; theater or concert hall; public
45 library; museum or art gallery; bar; restaurant or other

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 establishment where the principal business is the sale of food for
2 consumption on the premises, including the bar area of the
3 establishment; garage or parking facility; any public conveyance
4 operated on land or water, or in the air, and passenger waiting
5 rooms and platform areas in any stations or terminals thereof; health
6 care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et
7 seq.); patient waiting room of the office of a health care provider
8 licensed pursuant to Title 45 of the Revised Statutes; child care
9 center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.);
10 race track facility; facility used for the holding of sporting events;
11 ambulatory recreational facility; shopping mall or retail store; hotel,
12 motel, or other lodging establishment; apartment building lobby or
13 other public area in an otherwise private building; or a passenger
14 elevator in a building other than a single-family dwelling.

15 "Person having control of an indoor public place or workplace"
16 means the owner or operator of a commercial or other office
17 building or other indoor public place from whom a workplace or
18 space within the building or indoor public place is leased.

19 "Smoking" means the burning of, inhaling from, exhaling the
20 smoke from, or the possession of a lighted cigar, cigarette, pipe, or
21 any other matter or substance which contains tobacco or any other
22 matter that can be smoked, or the inhaling or exhaling of [smoke
23 or] vapor from an electronic smoking device.

24 "Tobacco retail establishment" means an establishment in which
25 at least 51% of retail business is the sale of tobacco products and
26 accessories, and in which the sale of other products is merely
27 incidental.

28 "Vapor lounge" means any establishment, or area within an
29 establishment, designated specifically for the use of electronic
30 smoking devices and accessories purchased on the premises or
31 elsewhere, in which at least 51% of retail business is the sale of
32 electronic smoking device products and accessories, and in which
33 the sale of other products is merely incidental; except that a vapor
34 lounge that is in an area within an establishment shall be an area
35 enclosed by solid walls or windows, a ceiling, and a solid door, and
36 equipped with a ventilation system which is separately exhausted
37 from the nonsmoking areas of the establishment, so that air from the
38 smoking area is not recirculated to the nonsmoking areas, and
39 smoke and vapor are not backstreamed into the nonsmoking areas.

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

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

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

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

47 a. any cigar bar or cigar lounge that, in the calendar year
48 ending December 31, 2004, generated 15% or more of its total

1 annual gross income from the on-site sale of tobacco products and
2 the rental of on-site humidors, not including any sales from vending
3 machines, and is registered with the local board of health in the
4 municipality in which the bar or lounge is located. The registration
5 shall remain in effect for one year and shall be renewable only if:
6 (1) in the preceding calendar year, the cigar bar or lounge generated
7 15% or more if its total annual gross income from the on-site sale of
8 tobacco products and the rental of on-site humidors, and (2) the
9 cigar bar or cigar lounge has not expanded its size or changed its
10 location since December 31, 2004;

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

13 c. any tobacco business when the testing of a cigar or pipe
14 tobacco by heating, burning, or smoking is a necessary and integral
15 part of the process of making, manufacturing, importing, or
16 distributing cigars or pipe tobacco;

17 d. private homes, private residences, and private automobiles;

18 **[and]**

19 e. the area within the perimeter of:

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

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

31 f. any vapor lounge that is registered by the local board of
32 health in the municipality in which the lounge is located pursuant to
33 this subsection, provided that the following requirements are met:

34 (1) The governing body of a municipality may, by ordinance,
35 permit a certain number of vapor lounges to open and operate
36 within the municipality. Upon adoption of such ordinance, a
37 prospective vapor lounge may apply to the local board of health for
38 such registration.

39 (2) The local board of health shall grant an application for
40 registration pursuant to this subsection if the registration is within
41 the number of vapor lounges permitted to open and operate within
42 the municipality pursuant to paragraph (1) of this subsection, and
43 the registration provides that:

44 (a) no food or alcoholic beverages shall be sold or served in the
45 vapor lounge;

46 (b) the vapor lounge shall not be located within a bar, restaurant,
47 or other establishment in which the principal business is the sale of

1 food or alcoholic beverages for consumption anywhere on the
2 premises;

3 (c) the entrance to the vapor lounge shall be distinct from any
4 other establishment and accessible directly by the public;

5 (d) the vapor lounge shall be equipped with an exhaust system
6 appropriate to ensure worker and customer safety and to maintain
7 breathable air quality in the vapor lounge or other establishment;
8 and

9 (e) the vapor lounge shall not permit the use of any hookah to
10 smoke tobacco or non-tobacco products anywhere on the premises.

11 (3) The registration of a vapor lounge pursuant to this
12 subsection shall remain in effect for one year and shall be
13 renewable only if:

14 (a) in the preceding calendar year, the vapor lounge generated
15 51% or more of its total annual gross income from the on-site sale
16 of electronic smoking device products and accessories;

17 (b) the vapor lounge continues to satisfy all the requirements of
18 the initial grant of an application for registration set forth in
19 paragraph (2) of this subsection;

20 (c) the filter of the exhaust system has been replaced; and

21 (d) the vapor lounge has not expanded its size or changed its
22 location during the preceding registration period.

23 (4) If a vapor lounge fails to have its registration renewed after
24 one year, its owner shall not be permitted to register another vapor
25 lounge.

26 (5) for the purposes of this subsection:

27 "Establishment" means a place of business, commerce, or other
28 service-related activity, whether public or privately-owned or
29 operated on a for-profit or nonprofit basis;

30 "Hookah" means a water pipe that is used to smoke tobacco or
31 non-tobacco products by drawing the smoke through water and into
32 an attached hose for inhalation.

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

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35 3. The Commissioner of Health shall adopt rules and
36 regulations necessary to effectuate the purpose of this act pursuant
37 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
38 1 et seq.).

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40 4. This act shall take effect on the first day of the seventh
41 month next following the date of enactment, but the Commissioner
42 of Health may take such anticipatory administrative action in
43 advance thereof as shall be necessary for the implementation of this
44 act.

STATEMENT

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This bill would amend the “New Jersey Smoke Free Air Act” to authorize municipalities to permit the use of electronic smoking devices in vapor lounges. The bill defines a vapor lounge as an establishment, or area within an establishment, designated for the use of electronic smoking devices, in which at least 51 percent of retail business is the sale of electronic smoking device products and accessories, and in which the sale of other products is incidental. A vapor lounge that is within an establishment must be entirely set off from the nonsmoking areas of the establishment and equipped with a ventilation system so that air from the smoking area is not recirculated to, or backstreamed into, the nonsmoking areas. The bill would not permit smoking traditional tobacco products, such as cigarettes or cigars, in vapor lounges.

Under the bill, a municipality may adopt an ordinance to permit a certain number of vapor lounges to open and operate within the municipality. If a municipality authorizes vapor lounges within its jurisdiction, interested parties could apply to the municipality’s local board of health to register to open and operate a vapor lounge in the municipality. The local board of health would grant an application if the registration is within the number of vapor lounges authorized by ordinance and the registration provides that the vapor lounge: could not sell or serve food or alcoholic beverages; could not be located within a bar or restaurant; must have an entrance distinct from any other establishment and directly accessible by the public; must be equipped with an exhaust system appropriate to ensure worker and customer safety; and could not permit the use of any hookah to smoke tobacco or non-tobacco products anywhere on the premises.

The bill requires a vapor lounge to renew its registration after one year, and each year thereafter. The local board of health may only renew a registration if the vapor lounge generates 51 percent or more of its total annual gross income from the on-site sale of electronic smoking device products and accessories, continues to comply with all the requirements of the initial registration, replaces the filter of the exhaust system, and does not expand its size or change its location. If a vapor lounge fails to have its registration renewed, its owner would not be permitted to register another vapor lounge.