

SENATE, No. 1235

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED JANUARY 25, 2018

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Prohibits smoking at public parks and beaches.

CURRENT VERSION OF TEXT

As introduced.



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2

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)

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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)

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

43 3. As used in this act:

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

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.

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

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

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

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

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

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1 other public area in an otherwise private building; or a passenger
2 elevator in a building other than a single-family dwelling.

3 "Person having control of an indoor public place or workplace or
4 a public park or beach" means the owner or operator of a
5 commercial or other office building or other indoor public place
6 from whom a workplace or space within the building or indoor
7 public place is leased, or the person having supervisory authority
8 over a public park or beach or that person's designee, as applicable.

9 "Public park or beach" means a State park or forest, a county or
10 municipal park, or a State , county, or municipal beach, but does not
11 include any parking lot that is adjacent to but outside the public
12 park or beach.

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

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

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

27 "Workplace" means a structurally enclosed location or portion
28 thereof at which a person performs any type of service or labor.
29 (cf: P.L.2009, c.182, s.2)

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

33 4. a. Smoking is prohibited in an indoor public place or
34 workplace or at a public park or beach, except as otherwise
35 provided in this act.

36 b. Smoking is prohibited in any area of any building of, or on
37 the grounds of, any public or nonpublic elementary or secondary
38 school, regardless of whether the area is an indoor public place or is
39 outdoors.

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

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

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

45 a. any cigar bar or cigar lounge that, in the calendar year
46 ending December 31, 2004, generated 15% or more of its total
47 annual gross income from the on-site sale of tobacco products and
48 the rental of on-site humidors, not including any sales from vending

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

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

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

15 d. private homes, private residences and private automobiles;
16 and

17 e. the area within the perimeter of:

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

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

29 f. A golf course; and

30 g. An area of a municipal or county beach, not to exceed 15
31 percent of the total area of the beach, which is designated by the
32 municipality or county by ordinance or resolution as a smoking
33 area.

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

35

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

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

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1 symbol for "Smoking Permitted" in those areas where smoking is
2 permitted.

3 b. The provisions of this section shall not be construed to
4 prevent a lessee of the workplace, or space within the building or
5 indoor public place, from enforcing the smoking restrictions
6 imposed by the owner or operator of a commercial or other office
7 building or other indoor public place.

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

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

16
17 8. Section 8 of P.L.2005, c.383 (C.26:3D-62) is amended to
18 read as follows:

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

27 b. The Department of Health or the local board of health or the
28 board, body, or officers exercising the functions of the local board
29 of health according to law, upon written complaint or having reason
30 to suspect that an indoor public place or workplace or a public park
31 or beach covered by the provisions of this act is or may be in
32 violation of the provisions of this act, shall, by written notification,
33 advise the person having control of the place accordingly, and order
34 appropriate action to be taken. A person receiving that notice who
35 fails or refuses to comply with the order is subject to a fine of not
36 less than \$250 for the first offense, \$500 for the second offense, and
37 \$1,000 for each subsequent offense. In addition to the penalty
38 provided herein, the court may order immediate compliance with
39 the provisions of this act.

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

1 d. **[A]** The Superior Court or municipal court shall have
2 jurisdiction over proceedings to enforce and collect any penalty
3 imposed because of a violation of this act if the violation has
4 occurred within the territorial jurisdiction of the court , except that
5 the Superior Court shall have exclusive jurisdiction over violations
6 that occur in an indoor public place or public park or beach that
7 may be issued against a State or local government entity pursuant to
8 subsection b. of this section. The proceedings shall be summary
9 and in accordance with the "Penalty Enforcement Law of 1999,"
10 P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall be in the nature
11 of a summons **[or warrant]** and shall issue only at the suit of the
12 Commissioner of Health, or the local board of health, as the case
13 may be, as plaintiff.

14 e. The penalties provided in subsections a. and b. of this
15 section shall be the only civil remedy for a violation of this act, and
16 there shall be no private right of action against a party for failure to
17 comply with the provisions of this act.
18 (cf: P.L.2012, c.17, s.331)

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

22 9. The provisions of this act shall supersede any other statute,
23 municipal ordinance and rule or regulation adopted pursuant to law
24 concerning smoking in an indoor public place or workplace or at a
25 public park or beach, except where smoking is prohibited by
26 municipal ordinance under authority of R.S.40:48-1 or 40:48-2, or
27 by any other statute or regulation adopted pursuant to law for
28 purposes of protecting life and property from fire or protecting
29 public health, and except for those provisions of a municipal
30 ordinance which provide restrictions on or prohibitions against
31 smoking equivalent to, or greater than, those provided under this
32 act.
33 (cf: P.L.2005, c.383, s.9)

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

37 10. The **[Commissioner]** Commissioners of Health and
38 Environmental Protection, pursuant to the "Administrative
39 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and in
40 consultation with each other, shall adopt rules and regulations to
41 effectuate the purposes of this act.
42 (cf: P.L.2012, c.17, s.332)

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

STATEMENT

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

The bill’s smoking prohibition would apply to any State park or forest, county or municipal park, or State, county, or municipal beach, but would not apply to any parking lot that is adjacent to but outside the public park or beach; any golf course; or any area of a municipal or county beach, not exceeding 15 percent of the total area, which is designated by the municipality or county by ordinance or resolution as a smoking area.

The bill defines “State park or forest” to mean any State owned or leased land, water or facility administered by the Department of Environmental Protection, including, but not limited to, a park, forest, recreational area, marina, historic site, burial site, or natural area, but not including a wildlife management area or reservoir land.

The Department of Environmental Protection is directed to provide information and assistance to counties and municipalities, as determined to be appropriate by the Commissioner of Environmental Protection, and within the limits of resources available to the department for this purpose, to support smoke-free public parks and beaches.

The penalties that currently apply to a person who smokes in an indoor public place or workplace, or to a person having control of the place who fails to comply with an order to enforce the smoking prohibition, in violation of the “New Jersey Smoke Free Air Act,” would apply to a comparable violation of this bill. These include a fine of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense. (As currently provided under the “New Jersey Smoke Free Air Act,” a penalty recovered through enforcement would be paid to the State Treasury if the plaintiff is the Commissioner of Health, and to the treasury of the municipality in which the violation occurred if the plaintiff is the local board of health.)

The Commissioners of Health and Environmental Protection, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and in consultation with each other, are directed to adopt rules and regulations to effectuate the purposes of this bill. The bill would take effect on the 180th day after enactment, but the Commissioners of Health and Environmental Protection would be authorized to take anticipatory administrative action in advance of the effective date, as necessary for the bill’s implementation.