

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, Nos. 4227 and 4228**

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**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

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ADOPTED NOVEMBER 23, 2009

**Sponsored by:**

**Assemblywoman CONNIE WAGNER**

**District 38 (Bergen)**

**Assemblywoman NANCY F. MUNOZ**

**District 21 (Essex, Morris, Somerset and Union)**

**Assemblywoman JOAN M. VOSS**

**District 38 (Bergen)**

**Assemblyman PAUL D. MORIARTY**

**District 4 (Camden and Gloucester)**

**Assemblywoman MARY PAT ANGELINI**

**District 11 (Monmouth)**

**Assemblywoman LINDA STENDER**

**District 22 (Middlesex, Somerset and Union)**

**Co-Sponsored by:**

**Assemblywomen Greenstein, Evans, Senators Gordon, Vitale, 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 Assembly Health and Senior Services 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)

36

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.