

SENATE, No. 1629

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED MARCH 17, 2014

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Prohibits smoking in certain outdoor public places.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning smoking in certain outdoor public places and
2 amending the title and body of P.L.2005, c.383.

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

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

8 Title. AN ACT concerning smoking in indoor and outdoor public
9 places and workplaces and revising parts of statutory law.

10 (cf: P.L.2005, c.383, Title)

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

14 2. The Legislature finds and declares that:

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

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

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

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

28 e. The prohibition of smoking in outdoor places frequented by
29 the public, such as parks, beaches, sports facilities, amusement
30 parks, and other recreation facilities, would protect more people
31 from the dangers of environmental tobacco smoke and have the
32 effect of reducing litter and improving fire safety; and

33 **[e.] f.** Therefore, subject to certain specified exceptions, it is
34 clearly in the public interest to prohibit the smoking of tobacco
35 products and the use of electronic smoking devices in all enclosed
36 indoor places of public access and workplaces and in those outdoor
37 public places designated under the laws of this State.

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

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

42 3. As used in this act:

43 "Bar" means a business establishment or any portion of a
44 nonprofit entity, which is devoted to the selling and serving of
45 alcoholic beverages for consumption by the public, guests, patrons

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 or members on the premises and in which the serving of food, if
2 served at all, is only incidental to the sale or consumption of such
3 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
7 within a bar shall be an area enclosed by solid walls or windows, a
8 ceiling and a solid door and equipped with a ventilation system
9 which is separately exhausted from the nonsmoking areas of the bar
10 so that air from the smoking area is not recirculated to the
11 nonsmoking areas and smoke is not backstreamed into the
12 nonsmoking areas.

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

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

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

1 “Outdoor public place” means an outdoor area within any of the
2 following places, whether publicly or privately owned or operated
3 on a for-profit or nonprofit basis: a race track facility, facility used
4 for the holding of sporting events, ambulatory recreational facility,
5 or amusement park. “Outdoor public place” also means any State,
6 county, or municipal-owned or leased park, forest, beach,
7 recreational area, marina, historic site, burial site, natural area, or
8 other State-owned or leased land, water, or facility administered by
9 the Department of Environmental Protection, but not including a
10 wildlife management area or reservoir land. An outdoor public
11 place does not include a parking lot that is adjacent to, but not part
12 of, its premises.

13 “Person having control of an indoor public place or workplace or
14 an outdoor public place” means the owner or operator of a
15 commercial or other office building or other indoor public place
16 from whom a workplace or space within the building or indoor
17 public place is leased, or the person having supervisory authority
18 over an outdoor public place or the person’s designee, as applicable.

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

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

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

34 4. a. Smoking is prohibited in an indoor public place or
35 workplace or in an outdoor public place, except as otherwise
36 provided in this act.

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

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

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

45 7. a. The person having control of an indoor public place or
46 workplace or an outdoor public place shall place in every public
47 entrance to the indoor public place or workplace or the outdoor
48 public place a sign, which shall be located so as to be clearly visible

1 to the public and shall contain letters or a symbol which contrast in
2 color with the sign, indicating that smoking is prohibited therein,
3 except in such designated areas as provided pursuant to this act.
4 The sign shall also indicate that violators are subject to a fine. The
5 person having control of the indoor public place or workplace or the
6 outdoor public place shall post a sign stating "Smoking Permitted"
7 in letters at least one inch in height or marked by the international
8 symbol for "Smoking Permitted" in those areas where smoking is
9 permitted.

10 b. The provisions of this section shall not be construed to
11 prevent a lessee of the workplace, or space within the building or
12 indoor public place, from enforcing the smoking restrictions
13 imposed by the owner or operator of a commercial or other office
14 building or other indoor public place.
15 (cf: P.L.2005, c.383, s.7)

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

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

1 d. A municipal court shall have jurisdiction over proceedings
2 to enforce and collect any penalty imposed because of a violation of
3 this act if the violation has occurred within the territorial
4 jurisdiction of the court. The proceedings shall be summary and in
5 accordance with the "Penalty Enforcement Law of 1999,"
6 P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall be in the nature
7 of a summons or warrant and shall issue only at the suit of the
8 Commissioner of Health and Senior Services, or the local board of
9 health, as the case may be, as plaintiff.

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

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

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

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

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

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

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

38 (cf: P.L.2005, c.383, s.10)

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40 9. This act shall take effect on the 180th day after enactment,
41 but the Commissioners of Health and Senior Services and
42 Environmental Protection may take such anticipatory administrative
43 action in advance thereof as shall be necessary for the
44 implementation of this act.

STATEMENT

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This bill extends the provisions of the “New Jersey Smoke Free Air Act,” P.L.2005, c.383 (C.26:3D-55 et seq.), which prohibit smoking in most indoor public places and workplaces, to apply to certain outdoor public places.

The bill defines an “outdoor public place” that is subject to the smoking prohibition to: (1)include an outdoor area within any of the following places, whether publicly or privately owned or operated on a for-profit or nonprofit basis: a race track facility, facility used for the holding of sporting events, ambulatory recreational facility, or amusement park; (2) include any State, county, or municipal-owned or leased park, forest, beach, recreational area, marina, historic site, burial site, natural area, or other State-owned or leased land, water, or facility administered by the Department of Environmental Protection, but not including a wildlife management area or reservoir land; and (3) exclude any parking lot that is adjacent to, but not part of the premises of, an outdoor public place is excluded from the smoking prohibition.

The penalties that currently apply to a person who smokes in an indoor public place or workplace, or 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 in the statute, a penalty recovered through enforcement would be paid to the State Treasury if the Commissioner of Health and Senior Services is the plaintiff, and to the applicable municipal treasury if the local board of health is the plaintiff.)

The Commissioners of Health and Senior Services and Environmental Protection are to adopt rules and regulations to effectuate the purposes of this bill in consultation with each other.

The bill takes effect on the 180th day after enactment, but the two commissioners are authorized to take administrative action in advance as necessary for implementation.