

SENATE, No. 1772

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED MARCH 17, 2014

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator LORETTA WEINBERG

District 37 (Bergen)

SYNOPSIS

Prohibits smoking at public parks and beaches.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/13/2014)

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 would
31 better preserve the natural assets of this State by reducing litter and
32 increasing fire safety in those areas, while lessening exposure to
33 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 read
42 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.

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

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 or municipal beach, but does not include
11 any parking lot that is adjacent to but outside the public park or
12 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 7 of P.L.2005, c.383 (C.26:3D-61) is amended to
43 read as follows:

44 7. a. The person having control of an indoor public place or
45 workplace or a public park or beach shall place in every public
46 entrance to the indoor public place or workplace or the public park
47 or beach a sign, which shall be located so as to be clearly visible to
48 the public and shall contain letters or a symbol which contrast in

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

9 b. The provisions of this section shall not be construed to
10 prevent a lessee of the workplace, or space within the building or
11 indoor public place, from enforcing the smoking restrictions
12 imposed by the owner or operator of a commercial or other office
13 building or other indoor public place.

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

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16 6. (New section) The Department of Environmental Protection
17 is directed to provide information and assistance to counties and
18 municipalities, as determined appropriate by the Commissioner of
19 Environmental Protection and within the limits of resources
20 available to the department for this purpose, to support smoke-free
21 public parks and beaches.

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

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

33 b. The Department of Health or the local board of health or the
34 board, body, or officers exercising the functions of the local board
35 of health according to law, upon written complaint or having reason
36 to suspect that an indoor public place or workplace or a public park
37 or beach covered by the provisions of this act is or may be in
38 violation of the provisions of this act, shall, by written notification,
39 advise the person having control of the place accordingly, and order
40 appropriate action to be taken. A person receiving that notice who
41 fails or refuses to comply with the order is subject to a fine of not
42 less than \$250 for the first offense, \$500 for the second offense, and
43 \$1,000 for each subsequent offense. In addition to the penalty
44 provided herein, the court may order immediate compliance with
45 the provisions of this act.

46 c. A penalty recovered under the provisions of this act shall be
47 recovered by and in the name of the Commissioner of Health or by
48 and in the name of the local board of health. When the plaintiff is

1 the Commissioner of Health, the penalty recovered shall be paid by
2 the commissioner into the treasury of the State. When the plaintiff
3 is a local board of health, the penalty recovered shall be paid by the
4 local board into the treasury of the municipality where the violation
5 occurred.

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

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

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

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

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

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

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

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

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

44

45 10. This act shall take effect on the 180th day after enactment,
46 but the Commissioners of Health and Environmental Protection
47 may take such anticipatory administrative action in advance thereof
48 as shall be necessary for the 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 generally prohibit smoking in indoor public places and workplaces, to apply to public parks and beaches throughout the State.

The bill provides specifically as follows:

- The smoking prohibition provided for under this bill would apply to any State park or forest, county or municipal park, or State or municipal beach, but would not include any parking lot that is adjacent to but outside the public park or beach.
- 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 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 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 takes effect on the 180th day after enactment, but authorizes the Commissioners of Health and Environmental Protection to take anticipatory administrative action in advance as necessary for its implementation.