Sponsored by:
Senator SHIRLEY K. TURNER
District 15 (Hunterdon and Mercer)
Senator JOSEPH F. VITALE
District 19 (Middlesex)

SYNOPSIS
Prohibits smoking at public parks and beaches.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 5/3/2016)
AN ACT concerning smoking at public parks and beaches and amending the title and body of, and supplementing, P.L.2005, c.383.

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

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

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

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

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

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

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

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

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

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

“Public park or beach” means a State park or forest, a county or municipal park, or a State or municipal beach, but does not include any parking lot that is adjacent to but outside the public park or beach.

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

“State park or forest” means 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.

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

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

4. Section 4 of P.L.2005, c.383 (C.26:3D-58) is amended to read as follows:
   a. Smoking is prohibited in an indoor public place or workplace or at a public park or beach, except as otherwise provided in this act.
   b. Smoking is prohibited in any area of any building of, or on the grounds of, any public or nonpublic elementary or secondary school, regardless of whether the area is an indoor public place or is outdoors.

5. The provisions of this act shall not apply to:
   a. any cigar bar or cigar lounge that, in the calendar year ending December 31, 2004, generated 15% or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending
machines, and is registered with the local board of health in the
municipality in which the bar or lounge is located. The registration
shall remain in effect for one year and shall be renewable only if:
(1) in the preceding calendar year, the cigar bar or lounge generated
15% or more if its total annual gross income from the on-site sale of
tobacco products and the rental of on-site humidors, and (2) the
cigar bar or cigar lounge has not expanded its size or changed its
location since December 31, 2004;
   b. any tobacco retail establishment, or any area the tobacco
   retail establishment provides for the purposes of smoking;
   c. any tobacco business when the testing of a cigar or pipe
tobacco by heating, burning or smoking is a necessary and integral
part of the process of making, manufacturing, importing or
distributing cigars or pipe tobacco;
   d. private homes, private residences and private automobiles;
   and
   e. the area within the perimeter of:
      (1) any casino as defined in section 6 of P.L.1977, c.110
      (C.5:12-6) approved by the Casino Control Commission that
      contains at least 150 stand-alone slot machines, 10 table games, or
      some combination thereof approved by the commission, which
      machines and games are available to the public for wagering; [and]
      (2) any casino simulcasting facility approved by the Casino
      Control Commission pursuant to section 4 of P.L.1992, c.19
      (C.5:12-194) that contains a simulcast counter and dedicated seating
      for at least 50 simulcast patrons or a simulcast operation and at least
      10 table games, which simulcast facilities and games are available
to the public for wagering [.]1;
   f. A golf course; and
   g. An area of a municipal or county beach, not to exceed 15
   percent of the total area of the beach, which is designated by the
   municipality or county by ordinance or resolution as a smoking
   area.
   (cf: P.L.2005, c.383, s.5)

6. Section 7 of P.L.2005, c.383 (C.26:3D-61) is amended to
read as follows:
7. a. The person having control of an indoor public place or
workplace or a public park or beach shall place in every public
entrance to the indoor public place or workplace or the public park
or beach a sign, which shall be located so as to be clearly visible to
the public and shall contain letters or a symbol which contrast in
color with the sign, indicating that smoking is prohibited therein,
except in such designated areas as provided pursuant to this act.
The sign shall also indicate that violators are subject to a fine. The
person having control of the indoor public place or workplace or the
public park or beach shall post a sign stating "Smoking Permitted"
in letters at least one inch in height or marked by the international
symbol for "Smoking Permitted" in those areas where smoking is permitted.

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

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

7. (New section) 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.

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

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

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

c. A penalty recovered under the provisions of this act shall be recovered by and in the name of the Commissioner of Health or by and in the name of the local board of health. When the plaintiff is the Commissioner of Health, the penalty recovered shall be paid by the commissioner into the treasury of the State. When the plaintiff is a local board of health, the penalty recovered shall be paid by the local board into the treasury of the municipality where the violation occurred.
d. A municipal court shall have jurisdiction over proceedings
to enforce and collect any penalty imposed because of a violation of
this act if the violation has occurred within the territorial
jurisdiction of the court. The proceedings shall be summary and in
accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
c.274 (C.2A:58-10 et seq.). Process shall be in the nature of a
summons or warrant and shall issue only at the suit of the
Commissioner of Health, or the local board of health, as the case
may be, as plaintiff.

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

9. Section 9 of P.L.2005, c.383 (C.26:3D-63) is amended to
read as follows:
9. The provisions of this act shall supersede any other statute,
municipal ordinance and rule or regulation adopted pursuant to law
concerning smoking in an indoor public place or workplace or at a
public park or beach, except where smoking is prohibited by
municipal ordinance under authority of R.S.40:48-1 or 40:48-2, or
by any other statute or regulation adopted pursuant to law for
purposes of protecting life and property from fire or protecting
public health, and except for those provisions of a municipal
ordinance which provide restrictions on or prohibitions against
smoking equivalent to, or greater than, those provided under this
act.
(cf: P.L.2005, c.383, s.9)

10. Section 10 of P.L.2005, c.383 (C.26:3D-64) is amended to
read as follows:
10. 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, shall adopt rules and regulations to
effectuate the purposes of this act.
(cf: P.L.2012, c.17, s.332)

11. This act shall take effect on the 180th day after enactment,
but the Commissioners of Health and Environmental Protection
may take such anticipatory administrative action in advance thereof
as shall be necessary for the implementation of this act.
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 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 takes effect on the 180th day after enactment, but it authorizes the Commissioners of Health and Environmental Protection to take anticipatory administrative action in advance of the effective date, as necessary for the bill’s implementation.