

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, Nos. 3798, 1703, and 4021

**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

ADOPTED JUNE 4, 2018

**Sponsored by:**

Assemblyman **VINCENT MAZZEO**

District 2 (Atlantic)

Assemblyman **CLINTON CALABRESE**

District 36 (Bergen and Passaic)

Assemblywoman **VALERIE VAINIERI HUTTLE**

District 37 (Bergen)

Assemblyman **PAUL D. MORIARTY**

District 4 (Camden and Gloucester)

**Co-Sponsored by:**

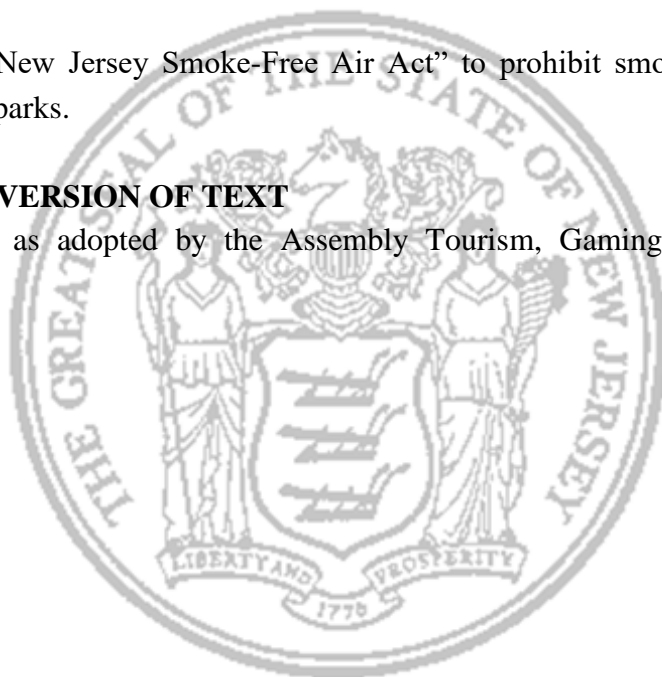
Assemblywomen **Murphy, Jimenez, Downey**, Assemblymen **DeAngelo, Conaway, McKeon, Houghtaling, Armato**, Assemblywomen **Swain, Lopez and Mosquera**

**SYNOPSIS**

Revises “New Jersey Smoke-Free Air Act” to prohibit smoking at public beaches and parks.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Assembly Tourism, Gaming and the Arts Committee.



(Sponsorship Updated As Of: 6/8/2018)

1 AN ACT concerning smoking at public beaches and parks, and  
2 amending and supplementing P.L.2005, c.383.

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:

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

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

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;

23 e. The prohibition of smoking at public parks and beaches  
24 would better preserve and maintain the natural assets of this State  
25 by reducing litter and increasing fire safety in those areas, while  
26 lessening exposure to secondhand tobacco smoke and providing for  
27 a more pleasant park or beach experience for the public; and

28 **[e.]** f. Therefore, subject to certain specified exceptions, it is  
29 clearly in the public interest to prohibit the smoking of tobacco  
30 products and the use of electronic smoking devices in all enclosed  
31 indoor places of public access and workplaces and at all public  
32 parks and beaches.

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

34

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

37 3. As used in this act:

38 "Bar" means a business establishment or any portion of a  
39 nonprofit entity, which is devoted to the selling and serving of  
40 alcoholic beverages for consumption by the public, guests, patrons  
41 or members on the premises and in which the serving of food, if  
42 served at all, is only incidental to the sale or consumption of such  
43 beverages.

44 "Cigar bar" means any bar, or area within a bar, designated  
45 specifically for the smoking of tobacco products, purchased on the

**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 premises or elsewhere; except that a cigar bar that is in an area  
2 within a bar shall be an area enclosed by solid walls or windows, a  
3 ceiling and a solid door and equipped with a ventilation system  
4 which is separately exhausted from the nonsmoking areas of the bar  
5 so that air from the smoking area is not recirculated to the  
6 nonsmoking areas and smoke is not backstreamed into the  
7 nonsmoking areas.

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

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

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

44 "Person having control of an indoor public place or workplace"  
45 means the owner or operator of a commercial or other office  
46 building or other indoor public place from whom a workplace or  
47 space within the building or indoor public place is leased.

1       “Person having control of a public park or beach” means the  
2 person having supervisory authority over a public park or beach or  
3 that person’s designee, as applicable.

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

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

13       “State park or forest” means any State owned or leased land,  
14 water or facility administered by the Department of Environmental  
15 Protection, including, but not limited to, a park, forest, recreational  
16 area, marina, historic site, burial site, or natural area, but not  
17 including a wildlife management area or reservoir land.

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

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

25  
26       3. Section 4 of P.L.2005, c.383 (C.26:3D-58) is amended to  
27 read as follows:

28       4. a. Smoking is prohibited in an indoor public place or  
29 workplace or at a public park or beach, except as otherwise  
30 provided in this act.

31       b. Smoking is prohibited in any area of any building of, or on  
32 the grounds of, any public or nonpublic elementary or secondary  
33 school, regardless of whether the area is an indoor public place or is  
34 outdoors.

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

36  
37       4. Section 5 of P.L.2005, c.383 (C.26:3D-59) is amended to  
38 read as follows:

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

40       a. any cigar bar or cigar lounge that, in the calendar year  
41 ending December 31, 2004, generated 15% or more of its total  
42 annual gross income from the on-site sale of tobacco products and  
43 the rental of on-site humidors, not including any sales from vending  
44 machines, and is registered with the local board of health in the  
45 municipality in which the bar or lounge is located. The registration  
46 shall remain in effect for one year and shall be renewable only if:  
47 (1) in the preceding calendar year, the cigar bar or lounge generated  
48 15% or more of its total annual gross income from the on-site sale

- 1 of tobacco products and the rental of on-site humidors, and (2) the  
2 cigar bar or cigar lounge has not expanded its size or changed its  
3 location since December 31, 2004;
- 4 b. any tobacco retail establishment, or any area the tobacco  
5 retail establishment provides for the purposes of smoking;
- 6 c. any tobacco business when the testing of a cigar or pipe  
7 tobacco by heating, burning or smoking is a necessary and integral  
8 part of the process of making, manufacturing, importing or  
9 distributing cigars or pipe tobacco;
- 10 d. private homes, private residences and private automobiles;
- 11 e. the area within the perimeter of:
- 12 (1) any casino as defined in section 6 of P.L.1977, c.110  
13 (C.5:12-6) approved by the Casino Control Commission that  
14 contains at least 150 stand-alone slot machines, 10 table games, or  
15 some combination thereof approved by the commission, which  
16 machines and games are available to the public for wagering; and
- 17 (2) any casino simulcasting facility approved by the Casino  
18 Control Commission pursuant to section 4 of P.L.1992, c.19  
19 (C.5:12-194) that contains a simulcast counter and dedicated seating  
20 for at least 50 simulcast patrons or a simulcast operation and at least  
21 10 table games, which simulcast facilities and games are available  
22 to the public for wagering; **and**
- 23 f. research laboratories and other facilities that have been  
24 approved by the Department of Health to permit smoking for the  
25 purpose of medical research related to the health effects of smoking,  
26 in an indoor facility that is separately ventilated for the purpose of  
27 medical or scientific research that is conducted under physician  
28 supervision and has been approved by an Investigational Review  
29 Board (IRB), if the facility is used solely and exclusively for  
30 clinical research activities;
- 31 g. a golf course; and
- 32 h. an area of a municipal or county beach, not to exceed 15  
33 percent of the total area of the beach, which is designated by the  
34 municipality or county by ordinance or resolution as a smoking  
35 area.
- 36 (cf: P.L.2017, c.271, s.1)
- 37
- 38 5. (New section) The Department of Environmental Protection,  
39 a municipality, or a county in this State having jurisdiction over a  
40 public park or beach on which smoking is prohibited pursuant to  
41 this act, P.L. , c. (C. ) (pending before the Legislature as this  
42 bill), may take measures to educate the public about the  
43 prohibitions and penalties herein established, to support smoke-free  
44 parks and beaches. The Department of Environmental Protection is  
45 directed to provide information and assistance to counties and  
46 municipalities, as determined appropriate by the Commissioner of  
47 Environmental Protection and within the limits of resources

1 available to the department for this purpose, to support smoke-free  
2 public parks and beaches.

3

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

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

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

27 c. A penalty recovered under the provisions of this act shall be  
28 recovered by and in the name of the Commissioner of Health or by  
29 and in the name of the local board of health. When the plaintiff is  
30 the Commissioner of Health, the penalty recovered shall be paid by  
31 the commissioner into the treasury of the State. When the plaintiff  
32 is a local board of health, the penalty recovered shall be paid by the  
33 local board into the treasury of the municipality where the violation  
34 occurred.

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

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

5 f. A penalty may be imposed and recovered for a violation at a  
6 public park or beach and, if so imposed and recovered, it shall be  
7 done in accordance with the provisions of this section, and shall  
8 involve the person having control of a public park or beach, the  
9 Department of Health or the local board of health or the board,  
10 body, or officers exercising the functions of the local board of  
11 health according to law, and the courts, as provided in this section,  
12 except that any penalty recovered for a violation at a public park or  
13 beach that is recovered by and in the name of the Commissioner of  
14 Health or by and in the name of the local board of health shall be  
15 paid 50 percent to the Treasury of the State and be dedicated to  
16 smoking cessation programs administered by the State Department  
17 of Health, and 50 percent shall be paid to the treasury of the  
18 municipality where the violation occurred.

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

20  
21 7. 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)

35  
36 8. (New section) The Commissioners of Health and  
37 Environmental Protection, pursuant to the "Administrative  
38 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and in  
39 consultation with each other, shall adopt rules and regulations to  
40 effectuate the purposes of this act.

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