

ASSEMBLY, No. 4423

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED SEPTEMBER 17, 2018

Sponsored by:

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Assemblyman KEVIN J. ROONEY

District 40 (Bergen, Essex, Morris and Passaic)

SYNOPSIS

Revises “New Jersey Smoke-Free Air Act” to prohibit smoking at certain outdoor public places.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 8/26/2019)

1 AN ACT concerning smoking at public places and amending
2 P.L.2005, c.383 and P.L.2018, c.64.

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 outdoor public places,
24 including parks and beaches, would better preserve and maintain the
25 natural assets of this State by reducing litter and increasing fire
26 safety in those areas, while lessening exposure to secondhand
27 tobacco smoke and providing for a more pleasant **[park or beach]**
28 outdoor experience for the public; and

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

34 (cf: P.L.2018, c.64, s.1)

35

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

38 3. As used in this act:

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

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

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

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

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

46 "Person having control of an indoor public place or workplace"
47 means the owner or operator of a commercial or other office

1 building or other indoor public place from whom a workplace or
2 space within the building or indoor public place is leased.

3 "Person having control of **[a] an outdoor public [park or beach]**
4 **place**" means the person having supervisory authority over **[a] an**
5 **outdoor public [park or beach] place** or that person's designee, as
6 applicable.

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

19 **["Public park or beach"** means a State park or forest, a county or
20 municipal park, or a State, county, or municipal beach, but does not
21 include any parking lot that is adjacent to, but outside of, the public
22 park or beach.**]**

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

28 "State park or forest" means any State owned or leased land,
29 water or facility administered by the Department of Environmental
30 Protection, including, but not limited to, a park, forest, recreational
31 area, marina, historic site, burial site, or natural area, but not
32 including a wildlife management area or reservoir land.

33 "Tobacco retail establishment" means an establishment in which
34 at least **[5 %] five percent** of retail business is the sale of tobacco
35 products and accessories, and in which the sale of other products is
36 merely incidental.

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

39 (cf: P.L.2018, c.64, s.2)

40

41 3. Section 4 of P.L.2005, c.383 (C.26:3D-58) is amended to 38
42 read as follows:

43 4. a. Smoking is prohibited in an indoor public place or
44 workplace or at **[a] an outdoor public [park or beach] place**, except
45 as otherwise provided in this act.

46 b. Smoking is prohibited in any area of any building of, or on
47 the grounds of, any public or nonpublic elementary or secondary

1 school, regardless of whether the area is an indoor public place or is
2 outdoors.

3 (cf: P.L.2018, c.64, s.3)

4

5 4. Section 5 of P.L.2018, c.64 (C.26:3D-61.1) is amended to
6 read as follow:

7 5. The Department of Environmental Protection, a
8 municipality, or a county in this State having jurisdiction over **【a】**
9 an outdoor public **【park or beach】** place on which smoking is
10 prohibited pursuant to this act, P.L.2018, c.64 (C.26:3D-61.1 et al.),
11 may take measures to educate the public about the prohibitions and
12 penalties herein established, to support smoke-free **【parks and**
13 **beaches】** outdoor public places. The Department of Environmental
14 Protection is directed to provide information and assistance to
15 counties and municipalities, as determined appropriate by the
16 Commissioner of Environmental Protection and within the limits of
17 resources available to the department for this purpose, to support
18 smoke-free outdoor public **【parks and beaches】** places.

19 (cf: P.L.2018, c.64, s.5)

20

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

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

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

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

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

5 d. The Superior Court or a municipal court shall have
6 jurisdiction over proceedings to enforce and collect any penalty
7 imposed because of a violation of this act if the violation has
8 occurred within the territorial jurisdiction of the court, except that
9 the Superior Court shall have exclusive jurisdiction over violations
10 that occur in an indoor public place or **[a] an outdoor public [park**
11 **or beach] place** that may be issued against a State or local
12 government entity pursuant to subsection b. of this section. The
13 proceedings shall be summary and in accordance with the "Penalty
14 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
15 Process shall be in the nature of a summons and shall issue only at
16 the suit of the Commissioner of Health, or the local board of health,
17 as the case may be, as plaintiff.

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

22 f. A penalty may be imposed and recovered for a violation at
23 **[a] an outdoor public [park or beach] place** and, if so imposed and
24 recovered, it shall be done in accordance with the provisions of this
25 section, and shall involve the person having control of **[a] an**
26 **outdoor public [park or beach] place**, the Department of Health or
27 the local board of health or the board, body, or officers exercising
28 the functions of the local board of health according to law, and the
29 courts, as provided in this section, except that any penalty recovered
30 for a violation at **[a] an outdoor public [park or beach] place** that
31 is recovered by and in the name of the Commissioner of Health or
32 by and in the name of the local board of health shall be paid 50
33 percent to the Treasury of the State and be dedicated to smoking
34 cessation programs administered by the State Department of Health,
35 and 50 percent shall be paid to the treasury of the municipality
36 where the violation occurred.

37 (cf: P.L.2018, c.64, s.6)

38
39 6. Section 9 of P.L.2005, c.383 (C.26:3D-63) is amended to 14
40 read as follows:

41 9. The provisions of this act shall supersede any other statute,
42 municipal ordinance and rule or regulation adopted pursuant to law
43 concerning smoking in an indoor public place or workplace or at
44 **[a] an outdoor public [park or beach] place**, except where smoking
45 is prohibited by municipal ordinance under authority of R.S.40:48-1
46 or 40:48-2, or by any other statute or regulation adopted pursuant to
47 law for purposes of protecting life and property from fire or

1 protecting public health, and except for those provisions of a
2 municipal ordinance which provide restrictions on or prohibitions
3 against smoking equivalent to, or greater than, those provided under
4 this act.

5 (cf: P.L.2018, c.64, s.7)

6

7 7. This act shall take effect immediately.

8

9

10 STATEMENT

11

12 This bill revises the “New Jersey Smoke-Free Air Act” to
13 prohibit smoking at certain public places. Under the revisions in
14 the bill, smoking is to be prohibited in the following locations: race
15 track facilities, facilities used for sporting events, ambulatory
16 recreational facilities, amusement parks, recreational areas, marinas,
17 historic sites, burial sites, natural areas, and boardwalks.