ASSEMBLY, No. 4423

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED SEPTEMBER 17, 2018

Sponsored by:
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District 7 (Burlington)
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SYNOPSIS
Revises “New Jersey Smoke-Free Air Act” to prohibit smoking at certain outdoor public places.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning smoking at public places and amending P.L.2005, c.383 and P.L.2018, c.64.

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

1. Section 2 of P.L.2005, c.383 (C.26:3D-56) is amended to read as follows:
   2. The Legislature finds and declares that:
      a. Tobacco is the leading cause of preventable disease and death in the State and the nation;
      b. Tobacco smoke constitutes a substantial health hazard to the nonsmoking majority of the public;
      c. Electronic smoking devices have not been approved as to safety and efficacy by the federal Food and Drug Administration, and their use may pose a health risk to persons exposed to their smoke or vapor because of a known irritant contained therein and other substances that may, upon evaluation by that agency, be identified as potentially toxic to those inhaling the smoke or vapor;
      d. The separation of smoking and nonsmoking areas in indoor public places and workplaces does not eliminate the hazard to nonsmokers if these areas share a common ventilation system;
      e. The prohibition of smoking at outdoor public places, including parks and beaches, would better preserve and maintain the natural assets of this State by reducing litter and increasing fire safety in those areas, while lessening exposure to secondhand tobacco smoke and providing for a more pleasant outdoor experience for the public; and
      f. Therefore, subject to certain specified exceptions, it is clearly in the public interest to prohibit the smoking of tobacco products and the use of electronic smoking devices in all enclosed indoor places of public access and workplaces and at all outdoor public places.

2. Section 3 of P.L.2005, c.383 (C.26:3D-57) is amended to read as follows:
   3. As used in this act:
      "Bar" means a business establishment or any portion of a nonprofit entity, which is devoted to the selling and serving of 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.

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.
"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" 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.

"Person having control of an outdoor public place" means the person having supervisory authority over an outdoor public place or that person’s designee, as applicable.

“Outdoor public place” means 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. “Outdoor public place” also means any State, county, or municipal-owned or leased park, forest, beach, boardwalk, 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. An outdoor public place does not include a parking lot that is adjacent to but not part of its premises.

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

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

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

4. a. Smoking is prohibited in an indoor public place or workplace or at an outdoor public place, 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
section 5 of P.L.2018, c.64 (C.26:3D-61.1) is amended to read as follows:

5. The Department of Environmental Protection, a municipality, or a county in this State having jurisdiction over an outdoor public place on which smoking is prohibited pursuant to this act, P.L.2018, c.64 (C.26:3D-61.1 et al.), may take measures to educate the public about the prohibitions and penalties herein established, to support smoke-free parks and beaches. 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 outdoor public places. (cf: P.L.2018, c.64, s.5)

5. 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 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 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. The Superior Court or 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, except that the Superior Court shall have exclusive jurisdiction over violations that occur in an indoor public place or an outdoor public place that may be issued against a State or local government entity pursuant to subsection b. of this section. 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 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.

f. A penalty may be imposed and recovered for a violation at an outdoor public place and, if so imposed and recovered, it shall be done in accordance with the provisions of this section, and shall involve the person having control of an outdoor public place, 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, and the courts, as provided in this section, except that any penalty recovered for a violation at an outdoor public place that is recovered by and in the name of the Commissioner of Health or by and in the name of the local board of health shall be paid 50 percent to the Treasury of the State and be dedicated to smoking cessation programs administered by the State Department of Health, and 50 percent shall be paid to the treasury of the municipality where the violation occurred.

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

6. Section 9 of P.L.2005, c.383 (C.26:3D-63) is amended to 14 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 an outdoor public place, 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
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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.2018, c.64, s.7)

7. This act shall take effect immediately.

STATEMENT

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