

§5 - C.26:3D-61.1

§8 - Note to

C.26:3D-64

§9 - Note

P.L. 2018, CHAPTER 64, *approved July 20, 2018*

Senate, No. 2534 (*First Reprint*)

1 AN ACT concerning smoking at public beaches <sup>1</sup>and parks<sup>1</sup>, 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 <sup>1</sup>parks and<sup>1</sup> 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 <sup>1</sup>park or<sup>1</sup> 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 <sup>1</sup>parks and<sup>1</sup> 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:

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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly floor amendments adopted June 7, 2018.

1       3. As used in this act:

2       "Bar" means a business establishment or any portion of a  
3 nonprofit entity, which is devoted to the selling and serving of  
4 alcoholic beverages for consumption by the public, guests, patrons  
5 or members on the premises and in which the serving of food, if  
6 served at all, is only incidental to the sale or consumption of such  
7 beverages.

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

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

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

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

1 ambulatory recreational facility; shopping mall or retail store; hotel,  
 2 motel or other lodging establishment; apartment building lobby or  
 3 other public area in an otherwise private building; or a passenger  
 4 elevator in a building other than a single-family dwelling.

5 "Person having control of an indoor public place or workplace  
 6 <sup>1</sup>["or a public beach"]<sup>1</sup>" means the owner or operator of a  
 7 commercial or other office building or other indoor public place  
 8 from whom a workplace or space within the building or indoor  
 9 public place is leased <sup>1</sup>["or the person having supervisory authority  
 10 over a public beach or that person's designee, as applicable"]<sup>1</sup>.

11 <sup>1</sup>["Public beach" means a State, county, or municipal beach, but  
 12 does not include any parking lot that is adjacent to, but outside of,  
 13 the public beach.] "Person having control of a public park or  
 14 beach" means the person having supervisory authority over a public  
 15 park or beach or that person's designee, as applicable.

16 "Public park or beach" means a State park or forest, a county or  
 17 municipal park, or a State, county, or municipal beach, but does not  
 18 include any parking lot that is adjacent to, but outside of, the public  
 19 park or beach.<sup>1</sup>

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

25 <sup>1</sup>"State park or forest" means any State owned or leased land,  
 26 water or facility administered by the Department of Environmental  
 27 Protection, including, but not limited to, a park, forest, recreational  
 28 area, marina, historic site, burial site, or natural area, but not  
 29 including a wildlife management area or reservoir land.<sup>1</sup>

30 "Tobacco retail establishment" means an establishment in which  
 31 at least 51~~["%"]~~ <sup>1</sup>~~["percent"]~~ %<sup>1</sup> of retail business is the sale of  
 32 tobacco products and accessories, and in which the sale of other  
 33 products is merely incidental.

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

37  
 38 3. Section 4 of P.L.2005, c.383 (C.26:3D-58) is amended to  
 39 read as follows:

40 4. a. Smoking is prohibited in an indoor public place or  
 41 workplace or at a public <sup>1</sup>park or<sup>1</sup> beach, except as otherwise  
 42 provided in this act.

43 b. Smoking is prohibited in any area of any building of, or on  
 44 the grounds of, any public or nonpublic elementary or secondary  
 45 school, regardless of whether the area is an indoor public place or is  
 46 outdoors.

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

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

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

4       a. any cigar bar or cigar lounge that, in the calendar year  
5 ending December 31, 2004, generated 15~~[%]~~<sup>1</sup>~~percent~~ %<sup>1</sup> or  
6 more of its total annual gross income from the on-site sale of  
7 tobacco products and the rental of on-site humidors, not including  
8 any sales from vending machines, and is registered with the local  
9 board of health in the municipality in which the bar or lounge is  
10 located. The registration shall remain in effect for one year and  
11 shall be renewable only if: (1) in the preceding calendar year, the  
12 cigar bar or lounge generated 15% or more of its total annual gross  
13 income from the on-site sale of tobacco products and the rental of  
14 on-site humidors, and (2) the cigar bar or cigar lounge has not  
15 expanded its size or changed its location since December 31, 2004;

16       b. any tobacco retail establishment, or any area the tobacco  
17 retail establishment provides for the purposes of smoking;

18       c. any tobacco business when the testing of a cigar or pipe  
19 tobacco by heating, burning or smoking is a necessary and integral  
20 part of the process of making, manufacturing, importing or  
21 distributing cigars or pipe tobacco;

22       d. private homes, private residences and private automobiles;

23       e. the area within the perimeter of:

24       (1) any casino as defined in section 6 of P.L.1977, c.110  
25 (C.5:12-6) approved by the Casino Control Commission that  
26 contains at least 150 stand-alone slot machines, 10 table games, or  
27 some combination thereof approved by the commission, which  
28 machines and games are available to the public for wagering; and

29       (2) any casino simulcasting facility approved by the Casino  
30 Control Commission pursuant to section 4 of P.L.1992, c.19  
31 (C.5:12-194) that contains a simulcast counter and dedicated seating  
32 for at least 50 simulcast patrons or a simulcast operation and at least  
33 10 table games, which simulcast facilities and games are available  
34 to the public for wagering; ~~and~~

35       f. research laboratories and other facilities that have been  
36 approved by the Department of Health to permit smoking for the  
37 purpose of medical research related to the health effects of smoking,  
38 in an indoor facility that is separately ventilated for the purpose of  
39 medical or scientific research that is conducted under physician  
40 supervision and has been approved by an Investigational Review  
41 Board (IRB), if the facility is used solely and exclusively for  
42 clinical research activities; <sup>1</sup>~~and~~

43       g. <sup>1</sup>~~An~~ a golf course; and

44       h. <sup>1</sup>an area of a municipal or county beach, not to exceed 15  
45 percent of the total area of the beach, which is designated by the

1 municipality or county by ordinance or resolution as a smoking  
2 area.

3 (cf: P.L.2017, c.271, s.1)  
4

5 <sup>1</sup>【5. Section 7 of P.L.2005, c.383 (C.26:3D-61) is amended to  
6 read as follows:

7 7. a. The person having control of an indoor public place or  
8 workplace or a public beach shall place in every public entrance to  
9 the indoor public place or workplace or the public beach a sign,  
10 which shall be located so as to be clearly visible to the public and  
11 shall contain letters or a symbol which contrast in color with the  
12 sign, indicating that smoking is prohibited therein, except in such  
13 designated areas as provided pursuant to this act. The sign shall  
14 also indicate that violators are subject to a fine. The person having  
15 control of the indoor public place or workplace or the public beach  
16 shall post a sign stating "Smoking Permitted" in letters at least one  
17 inch in height or marked by the international symbol for "Smoking  
18 Permitted" in those areas where smoking is permitted.

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

24 (cf: P.L.2005, c.383, s.7)】<sup>1</sup>  
25

26 <sup>1</sup>【6.】 <sup>1</sup>5. <sup>1</sup>(New section) <sup>1</sup>The Department of Environmental  
27 Protection, a municipality, or a county in this State having  
28 jurisdiction over a public park or beach on which smoking is  
29 prohibited pursuant to this act, P.L. , c. (C. ) (pending before the  
30 Legislature as this bill), may take measures to educate the public  
31 about the prohibitions and penalties herein established, to support  
32 smoke-free parks and beaches. <sup>1</sup>The Department of Environmental  
33 Protection is directed to provide information and assistance to  
34 counties and municipalities, as determined appropriate by the  
35 Commissioner of Environmental Protection and within the limits of  
36 resources available to the department for this purpose, to support  
37 smoke-free public <sup>1</sup>parks and <sup>1</sup>beaches.  
38

39 <sup>1</sup>【7.】 <sup>1</sup>6. <sup>1</sup>Section 8 of P.L.2005, c.383 (C.26:3D-62) is amended  
40 to read as follows:

41 8. a. The person having control of an indoor public place or  
42 workplace <sup>1</sup>【or a public beach】<sup>1</sup> shall order any person smoking in  
43 violation of this act to comply with the provisions of this act. A  
44 person, after being so ordered, who smokes in violation of this act is  
45 subject to a fine of not less than \$250 for the first offense, \$500 for  
46 the second offense and \$1,000 for each subsequent offense. A

1 penalty shall be recovered in accordance with the provisions of  
2 subsections c. and d. of this section.

3 b. The Department of Health or the local board of health or the  
4 board, body, or officers exercising the functions of the local board  
5 of health according to law, upon written complaint or having reason  
6 to suspect that an indoor public place or workplace <sup>1</sup>~~or a public~~  
7 ~~beach~~<sup>1</sup> covered by the provisions of this act is or may be in  
8 violation of the provisions of this act, shall, by written notification,  
9 advise the person having control of the place accordingly, and order  
10 appropriate action to be taken. A person receiving that notice who  
11 fails or refuses to comply with the order is subject to a fine of not  
12 less than \$250 for the first offense, \$500 for the second offense, and  
13 \$1,000 for each subsequent offense. In addition to the penalty  
14 provided herein, the court may order immediate compliance with  
15 the provisions of this act.

16 c. A penalty recovered under the provisions of this act shall be  
17 recovered by and in the name of the Commissioner of Health or by  
18 and in the name of the local board of health. When the plaintiff is  
19 the Commissioner of Health, the penalty recovered shall be paid by  
20 the commissioner into the treasury of the State. When the plaintiff  
21 is a local board of health, the penalty recovered shall be paid by the  
22 local board into the treasury of the municipality where the violation  
23 occurred.

24 d. **[A]** The Superior Court or a municipal court shall have  
25 jurisdiction over proceedings to enforce and collect any penalty  
26 imposed because of a violation of this act if the violation has  
27 occurred within the territorial jurisdiction of the court, except that  
28 the Superior Court shall have exclusive jurisdiction over violations  
29 that occur in an indoor public place or public <sup>1</sup>park or<sup>1</sup> beach that  
30 may be issued against a State or local government entity pursuant to  
31 subsection b. of this section. The proceedings shall be summary  
32 and in accordance with the "Penalty Enforcement Law of 1999,"  
33 P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall be in the nature  
34 of a summons **[or warrant]** and shall issue only at the suit of the  
35 Commissioner of Health, or the local board of health, as the case  
36 may be, as plaintiff.

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

41 <sup>1</sup>f. A penalty may be imposed and recovered for a violation at a  
42 public park or beach and, if so imposed and recovered, it shall be  
43 done in accordance with the provisions of this section, and shall  
44 involve the person having control of a public park or beach, the  
45 Department of Health or the local board of health or the board,  
46 body, or officers exercising the functions of the local board of  
47 health according to law, and the courts, as provided in this section,

1 except that any penalty recovered for a violation at a public park or  
2 beach that is recovered by and in the name of the Commissioner of  
3 Health or by and in the name of the local board of health shall be  
4 paid 50 percent to the Treasury of the State and be dedicated to  
5 smoking cessation programs administered by the State Department  
6 of Health, and 50 percent shall be paid to the treasury of the  
7 municipality where the violation occurred.<sup>1</sup>

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

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10 <sup>1</sup>**[8.] 7.**<sup>1</sup> Section 9 of P.L.2005, c.383 (C.26:3D-63) is amended  
11 to read as follows:

12 9. The provisions of this act shall supersede any other statute,  
13 municipal ordinance and rule or regulation adopted pursuant to law  
14 concerning smoking in an indoor public place or workplace or at a  
15 public <sup>1</sup>park or<sup>1</sup> beach, except where smoking is prohibited by  
16 municipal ordinance under authority of R.S.40:48-1 or <sup>1</sup>**[R.S.]**<sup>1</sup>  
17 40:48-2, or by any other statute or regulation adopted pursuant to  
18 law for purposes of protecting life and property from fire or  
19 protecting public health, and except for those provisions of a  
20 municipal ordinance which provide restrictions on or prohibitions  
21 against smoking equivalent to, or greater than, those provided under  
22 this act.

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

24  
25 <sup>1</sup>**[9.] 8.**<sup>1</sup> (New section) The Commissioners of Health and  
26 Environmental Protection, pursuant to the "Administrative  
27 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and in  
28 consultation with each other, shall adopt rules and regulations to  
29 effectuate the purposes of this act.

30  
31 <sup>1</sup>**[10.] 9.**<sup>1</sup> This act shall take effect on the 180th day after  
32 enactment, but the Commissioners of Health and Environmental  
33 Protection may take such anticipatory administrative action in  
34 advance thereof as shall be necessary for the implementation of this  
35 act.

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40 Revises "New Jersey Smoke-Free Air Act" to prohibit smoking  
41 at public beaches and parks.