

SENATE, No. 2534

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 10, 2018

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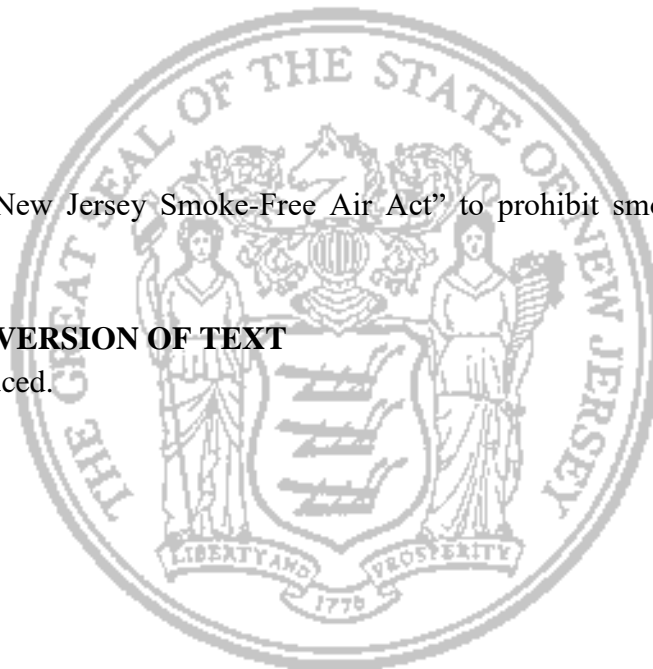
Assemblywomen Murphy, Jimenez, Downey, Assemblymen DeAngelo, Conaway, McKeon, Houghtaling, Armato, Assemblywomen Swain, Lopez, Mosquera and Senator Turner

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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

S2534 SWEENEY, GOPAL

2

1 AN ACT concerning smoking at public beaches, and amending and
2 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 beaches would better
24 preserve and maintain the natural assets of this State by reducing
25 litter and increasing fire safety in those areas, while lessening
26 exposure to secondhand tobacco smoke and providing for a more
27 pleasant 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 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 or
45 a public beach" means the owner or operator of a commercial or
46 other office building or other indoor public place from whom a
47 workplace or space within the building or indoor public place is

1 leased, or the person having supervisory authority over a public
2 beach or that person's designee, as applicable.

3 "Public beach" means a State, county, or municipal beach, but
4 does not include any parking lot that is adjacent to, but outside of,
5 the public beach.

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

11 "Tobacco retail establishment" means an establishment in which
12 at least 51【%】 percent of retail business is the sale of tobacco
13 products and accessories, and in which the sale of other products is
14 merely incidental.

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

17 (cf: P.L.2009, c.182, s.2)

18

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

21 4. a. Smoking is prohibited in an indoor public place or
22 workplace or at a public beach, except as otherwise provided in this
23 act.

24 b. Smoking is prohibited in any area of any building of, or on
25 the grounds of, any public or nonpublic elementary or secondary
26 school, regardless of whether the area is an indoor public place or is
27 outdoors.

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

29

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

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

33 a. any cigar bar or cigar lounge that, in the calendar year
34 ending December 31, 2004, generated 15【%】 percent or more of its
35 total annual gross income from the on-site sale of tobacco products
36 and the rental of on-site humidors, not including any sales from
37 vending machines, and is registered with the local board of health in
38 the municipality in which the bar or lounge is located. The
39 registration shall remain in effect for one year and shall be
40 renewable only if: (1) in the preceding calendar year, the cigar bar
41 or lounge generated 15% or more of its total annual gross income
42 from the on-site sale of tobacco products and the rental of on-site
43 humidors, and (2) the cigar bar or cigar lounge has not expanded its
44 size or changed its location since December 31, 2004;

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

47 c. any tobacco business when the testing of a cigar or pipe
48 tobacco by heating, burning or smoking is a necessary and integral

1 part of the process of making, manufacturing, importing or
2 distributing cigars or pipe tobacco;

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

4 e. the area within the perimeter of:

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

10 (2) any casino simulcasting facility approved by the Casino
11 Control Commission pursuant to section 4 of P.L.1992, c.19
12 (C.5:12-194) that contains a simulcast counter and dedicated seating
13 for at least 50 simulcast patrons or a simulcast operation and at least
14 10 table games, which simulcast facilities and games are available
15 to the public for wagering; **[and]**

16 f. research laboratories and other facilities that have been
17 approved by the Department of Health to permit smoking for the
18 purpose of medical research related to the health effects of smoking,
19 in an indoor facility that is separately ventilated for the purpose of
20 medical or scientific research that is conducted under physician
21 supervision and has been approved by an Investigational Review
22 Board (IRB), if the facility is used solely and exclusively for
23 clinical research activities; and

24 g. An area of a municipal or county beach, not to exceed 15
25 percent of the total area of the beach, which is designated by the
26 municipality or county by ordinance or resolution as a smoking
27 area.

28 (cf: P.L.2017, c.271)

29

30 5. Section 7 of P.L.2005, c.383 (C.26:3D-61) is amended to
31 read as follows:

32 7. a. The person having control of an indoor public place or
33 workplace or a public beach shall place in every public entrance to
34 the indoor public place or workplace or the public beach a sign,
35 which shall be located so as to be clearly visible to the public and
36 shall contain letters or a symbol which contrast in color with the
37 sign, indicating that smoking is prohibited therein, except in such
38 designated areas as provided pursuant to this act. The sign shall
39 also indicate that violators are subject to a fine. The person having
40 control of the indoor public place or workplace or the public beach
41 shall post a sign stating "Smoking Permitted" in letters at least one
42 inch in height or marked by the international symbol for "Smoking
43 Permitted" in those areas where smoking is permitted.

44 b. The provisions of this section shall not be construed to
45 prevent a lessee of the workplace, or space within the building or
46 indoor public place, from enforcing the smoking restrictions

1 imposed by the owner or operator of a commercial or other office
2 building or other indoor public place.

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

4

5 6. (New section) The Department of Environmental Protection
6 is directed to provide information and assistance to counties and
7 municipalities, as determined appropriate by the Commissioner of
8 Environmental Protection and within the limits of resources
9 available to the department for this purpose, to support smoke-free
10 public beaches.

11

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

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

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

35 c. A penalty recovered under the provisions of this act shall be
36 recovered by and in the name of the Commissioner of Health or by
37 and in the name of the local board of health. When the plaintiff is
38 the Commissioner of Health, the penalty recovered shall be paid by
39 the commissioner into the treasury of the State. When the plaintiff
40 is a local board of health, the penalty recovered shall be paid by the
41 local board into the treasury of the municipality where the violation
42 occurred.

43 d. **[A]** The Superior Court or a municipal court shall have
44 jurisdiction over proceedings to enforce and collect any penalty
45 imposed because of a violation of this act if the violation has
46 occurred within the territorial jurisdiction of the court, except that
47 the Superior Court shall have exclusive jurisdiction over violations
48 that occur in an indoor public place or public beach that may be

1 issued against a State or local government entity pursuant to
2 subsection b. of this section. The proceedings shall be summary
3 and in accordance with the "Penalty Enforcement Law of 1999,"
4 P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall be in the nature
5 of a summons **【or warrant】** and shall issue only at the suit of the
6 Commissioner of Health, or the local board of health, as the case
7 may be, as plaintiff.

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

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

13

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

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

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

27

28 9. (New section) The Commissioners of Health and
29 Environmental Protection, pursuant to the "Administrative
30 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and in
31 consultation with each other, shall adopt rules and regulations to
32 effectuate the purposes of this act.

33

34 10. This act shall take effect on the 180th day after enactment,
35 but the Commissioners of Health and Environmental Protection
36 may take such anticipatory administrative action in advance thereof
37 as shall be necessary for the implementation of this act.

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39

40

STATEMENT

41

42 This bill would extend the provisions of the "New Jersey Smoke
43 Free Air Act," P.L.2005, c.383 (C.26:3D-55 et seq.), which
44 generally prohibit smoking in indoor public places and workplaces,
45 to apply to public beaches throughout the State.

46 The smoking prohibition provided for under this bill would apply
47 to any State, county, or municipal beach, but would not apply to any
48 parking lot that is adjacent to, but outside of, the public beach; or

1 any area of a municipal or county beach, not exceeding 15 percent
2 of the total area, which is designated by the municipality or county
3 by ordinance or resolution as a smoking area.

4 The Department of Environmental Protection is directed to
5 provide information and assistance to counties and municipalities,
6 as determined to be appropriate by the Commissioner of
7 Environmental Protection, and within the limits of resources
8 available to the department for this purpose, to support smoke-free
9 public beaches.

10 The penalties that currently apply to a person who smokes in an
11 indoor public place or workplace, or to a person having control of
12 the place who fails to comply with an order to enforce the smoking
13 prohibition, in violation of the "New Jersey Smoke Free Air Act,"
14 would apply to a comparable violation of this bill. These include a
15 fine of not less than \$250 for the first offense, \$500 for the second
16 offense and \$1,000 for each subsequent offense. As currently
17 provided under the "New Jersey Smoke Free Air Act," a penalty
18 recovered through enforcement would be paid to the State Treasury
19 if the plaintiff is the Commissioner of Health, and to the treasury of
20 the municipality in which the violation occurred if the plaintiff is
21 the local board of health. The bill provides that process for a
22 violation may only be served by summons, and not by a summons
23 or warrant as provided under current law. The bill requires that the
24 Superior Court will have exclusive jurisdiction over violations that
25 may be issued against a State or local government entity.

26 The Commissioners of Health and Environmental Protection,
27 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
28 (C.52:14B-1 et seq.) and in consultation with each other, are
29 directed to adopt rules and regulations to effectuate the purposes of
30 this bill.

31 The bill takes effect on the 180th day after enactment, but it
32 authorizes the Commissioners of Health and Environmental
33 Protection to take anticipatory administrative action in advance of
34 the effective date, as necessary for the bill's implementation.