

ASSEMBLY, No. 93

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen ROONEY and RUSSO

1 AN ACT concerning smoking in restaurants and amending P.L.1985,
2 c.185.

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.1985, c.185 (C.26:3E-8) is amended to read as
8 follows:

9 2. As used in this act:

10 [a.] "Bar area" means [an establishment or] a portion of a
11 restaurant, including any bar counter, contiguous lounge, seating area
12 or common area, in which the principal business is the sale and service
13 of alcoholic beverages for consumption on the premises of [such
14 establishment or in such portion of a] the restaurant. The term "bar
15 area" shall not include the dining area of a restaurant, even when food
16 is sold, served or consumed in the bar area, when alcoholic beverages
17 are sold, served or consumed in the dining area or when the dining
18 area is directly adjacent to or surrounds the bar area.

19 "Dining area" means any indoor area of a restaurant open to the
20 public or invited guests, the primary purpose and use of which is to
21 seat patrons of the restaurant for consumption of food sold on the
22 premises, whether or not table service of that food is provided. The
23 term "dining area" shall not include any bar area of a restaurant, even
24 when food is sold, served or consumed in the bar area, when alcoholic
25 beverages are sold, served or consumed in the dining area or when the
26 dining area is directly adjacent to or surrounds the bar area.

27 [b.] "Restaurant" means [an] any establishment containing an
28 indoor area open to the public in which the principal business and
29 purpose of the area is the sale of food for consumption on the
30 premises, and includes, but is not limited to, restaurants, cafeterias,
31 luncheonettes, soda fountains, coffee shops, diners, sandwich shops or
32 short order cafes and places providing food and service as for parties

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 and other privately sponsored social affairs. The term "restaurant"
2 shall not include any mobile food establishment, any temporary food
3 establishment that operates at a fixed location for a limited period of
4 time in connection with a fair, carnival, public exhibition or similar
5 transitory gathering or charitable fund raising event, or any tavern.

6 [c.] "Smoking" means the burning of a lighted cigar, [cigarette,]
7 pipe or any other matter or substance which contains tobacco except
8 cigarettes.

9 "Tavern" means any establishment containing an indoor area open
10 to the public in which the principal business and purpose of the area
11 is the sale and service of alcoholic beverages for consumption on the
12 premises and where the sale or service of food, if any, is incidental to
13 the consumption of the beverages. The sale or service of food shall be
14 considered incidental if the food sold by the establishment generates
15 less than 40 percent of the total annual gross sales for that
16 establishment. The term "tavern" shall include, but is not limited to,
17 any establishment commonly referred to as a bar where the sale of
18 food generates less than 40 percent of the total annual gross sales for
19 that establishment, but shall not include restaurants with bar areas in
20 which the total annual gross sales of food in the bar area may be less
21 than 40 percent of the total annual gross sales in that area of the
22 restaurant.

23 (cf: P.L.1985, c.185, s.2)

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25 2. Section 3 of P.L.1985, c.185 (C.26:3E-9) is amended to read as
26 follows:

27 3. a. (1) The provisions of this act shall apply to all restaurants but
28 shall not apply to any [bar] tavern. Except as provided in this section,
29 smoking shall be prohibited in all restaurants, without regard to
30 seating capacity.

31 (2) A restaurant with a bar area, an outdoor seating area or other
32 outdoor area may permit smoking in those areas. No provision of this
33 act shall be construed to restrict any owner, operator or manager of
34 any restaurant from prohibiting smoking in all areas of the restaurant,
35 or from designating smoking and nonsmoking areas within the bar
36 area, outdoor seating area or other outdoor area of the restaurant.
37 Furthermore, no provision of this act shall be construed to restrict the
38 sale, service or consumption of food in the bar area, outdoor seating
39 area or other outdoor area of a restaurant or to restrict the sale,
40 service or consumption of alcoholic beverages in the dining area of a
41 restaurant.

42 [A] (3) Every restaurant [which provides a nonsmoking section]
43 shall post a sign no smaller than eight inches by five inches at or near,
44 and readily visible from, each public entrance stating [that "This
45 restaurant offers a nonsmoking area." A restaurant which does not
46 provide a nonsmoking section shall in the same manner post a sign

1 stating that "This restaurant does not offer a nonsmoking area, as
2 permitted by law." A restaurant which is equipped with air cleaners
3 or air recirculating systems which meet the standards of the model
4 code of the Building Officials and Code Administrators International,
5 Inc., known as the "BOCA Basic National Building Code 1984," as
6 administered by the State Department of Community Affairs, shall in
7 the same manner, post a sign stating, "Approved air-cleaning
8 equipment is installed in place of a nonsmoking area." This
9 requirement]: "Smoking of cigars and pipes is not permitted in the
10 dining area of this restaurant under State law." In the case of a
11 restaurant with a bar area, outdoor seating area or other outdoor area,
12 the owner, operator or manager of the restaurant shall post
13 conspicuous indoor signs advising patrons where smoking of cigars or
14 pipes or both is permitted and prohibited.

15 (4) The provisions of paragraph 1 of this subsection shall not apply
16 [to any indoor portion of a restaurant while it is being used for a
17 privately sponsored social affair or which is outdoors] to a bar area,
18 outdoor seating area or other outdoor area of a restaurant, when the
19 owner, operator or manager of the restaurant has determined that
20 smoking shall not be prohibited in those areas.

21 b. [The size and location of a nonsmoking area shall be determined
22 by the owner or manager or person in charge in accordance with
23 patron needs.] Deleted by amendment, P.L. , c. (now pending before
24 the Legislature as this bill).

25 c. Employees of a restaurant shall be prohibited from smoking in
26 the dining area of the restaurant and in any other area of the restaurant
27 in which the owner, operator or manager of the restaurant has
28 determined smoking shall be prohibited.

29 (cf: P.L.1985, c.185, s.3)

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31 3. Section 4 of P.L.1985, c.185 (C.26:3E-10) is amended to read
32 as follows:

33 4. a. [The State or any agency or political subdivision thereof may
34 suggest guidelines for establishing nonsmoking areas in restaurants
35 which may be adopted by the owner, manager or person in charge but
36 in no case shall they be mandatory.] Deleted by amendment, P.L. ,
37 c. (now pending before the Legislature as this bill).

38 b. The provisions of this act shall supersede any other statute,
39 municipal ordinance, and rule or regulation adopted pursuant to law
40 concerning smoking in restaurants except [where smoking is
41 prohibited by municipal ordinance under authority of R.S.40:48-1 and
42 40:48-2 or by any other statute or regulation adopted pursuant to law
43 for purposes of protecting life and property from fire.] that nothing in
44 this act shall be construed to prohibit a municipality from adopting an
45 ordinance prohibiting or restricting smoking in restaurants that is more
46 stringent than that provided for in this act.

1 (cf: P.L.1985, c.185, s.4)

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3 4. Section 5 of P.L.1985, c.185 (C.26:3E-11) is amended to read
4 as follows:

5 5. a. Any local health official, including a municipal or county
6 health official , or [other public servant engaged in executing or
7 enforcing] , notwithstanding the provisions of chapter 3 of Title 26 of
8 the Revised Statutes to the contrary, a municipal law enforcement
9 officer trained and authorized by the local board of health to enforce
10 this act, shall enforce the provisions of this act. The local health
11 official or law enforcement officer, acting upon a verbal or written
12 complaint by a restaurant owner, operator, manager, employee or
13 patron, shall order any person smoking in violation of this act to
14 comply with the provisions of this act. [Thereupon any such] Any
15 person who [smokes] , after receiving this order, continues to smoke
16 in a restaurant in violation of this act is subject to a fine not to exceed
17 [\$25.00] \$50.

18 The owner, operator, manager or person in charge of the restaurant
19 or any agent thereof shall [only] be responsible for [providing signs
20 governing smoking pursuant to section 3 of this act and shall not be
21 responsible for the enforcement of the provisions of this act]
22 informing any person smoking in the dining area or other areas of the
23 restaurant in which smoking is prohibited that the person smoking may
24 be in violation of the law, and for directing the person to cease
25 smoking in that area. If there is an area of the restaurant in which the
26 person is permitted to smoke, the owner, operator, manager, person
27 in charge or agent thereof shall direct that person to that area and
28 request that the person relocate to that area if the person smoking
29 wishes to continue to smoke in the restaurant. The inability of the
30 owner, operator, manager, person in charge or agent thereof to obtain
31 compliance from the person smoking in violation of this act shall not
32 constitute a violation on the part of the restaurant for the purposes of
33 subsection b. of this section.

34 b. The State Department of Health or the local board of health or
35 any board, body or officer exercising the functions of the local board
36 of health according to law, upon written complaint and having reason
37 to suspect that any restaurant is or may be in violation of the
38 provisions of this act shall, by written notification, advise the owner,
39 operator, manager or person in charge of the restaurant accordingly
40 and order appropriate action to be taken. [Thereupon any person] A
41 local board of health shall, during the course of sanitary inspections,
42 monitor compliance with this act, and by written notification shall
43 advise the owner, operator, manager or person in charge of any
44 violation and order appropriate action to be taken. Any restaurant
45 owner, operator or manager receiving [such] a notice who knowingly
46 fails or refuses to comply with the order is subject to a fine not to

1 exceed [~~\$25.00~~] \$100 for a first offense, \$200 for a second offense
2 and \$500 for a third or subsequent offense.

3 The inability of the owner, operator or manager to exercise control
4 of the premises during an absence shall constitute a defense to a
5 prosecution under this act, provided that the respondent submits a
6 sworn affidavit by certified mail and any other proof that he could not
7 exercise actual control during that time.

8 c. Any penalty recovered under the provisions of this act shall be
9 recovered by and in the name of the Commissioner of Health of the
10 State of New Jersey or by and in the name of the local board of health.
11 When the plaintiff is the Commissioner of Health, the penalty
12 recovered shall be paid by the commissioner into the treasury of the
13 State. When the plaintiff is a local board of health, the penalty
14 recovered shall be paid by the local board into the treasury of the
15 municipality where the violation occurred.

16 d. [Every] The Superior Court and the municipal court shall have
17 jurisdiction over proceedings to enforce this act and to impose and
18 collect any penalty [imposed because of] for a violation [of any
19 provision of this act] thereof, if the violation has occurred within the
20 territorial jurisdiction of the court. The proceedings shall be summary
21 and in accordance with "the penalty enforcement law" (N.J.S.2A:58-1
22 et seq.). Process shall be in the nature of a summons or warrant and
23 shall issue only at the suit of the Commissioner of Health of the State
24 of New Jersey, or the local board of health, as the case may be, as
25 plaintiff.

26 (cf: P.L.1985, c.185, s.5)

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28 5. Section 6 of P.L.1985, c.185 (C.26:3E-12) is amended to read
29 as follows:

30 6. No owner, operator, manager or person in charge of [the] a
31 restaurant or any agent thereof who [has provided signs governing
32 smoking pursuant to section] complies with the provisions of sections
33 3 and 5 of [this act] P.L.1985, c.185 (C.26:3E-9 and C.26:3E-11) shall
34 be subject to any action in any court by any party either under [this
35 act] P.L.1985, c.185 (C.26:3E-7 et seq.) or at common law, except for
36 an action instituted by an employee pursuant to Title 34 of the Revised
37 Statutes, provided that the Commissioner of Health of the State of
38 New Jersey may bring an action against the owner, operator, manager
39 or person in charge of the restaurant or any agent thereof for failure
40 to meet the provisions of this act.

41 (cf: P.L.1985, c.185, s.6)

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43 6. Section 7 of P.L.1985, c.185 (C.26:3E-13) is amended to read
44 as follows:

45 7. The Assembly Judiciary, Law and Public Safety Committee [of
46 the General Assembly,] and the Senate Law[,] and Public Safety [and

1 Defense] Committee [of the Senate] , or their respective successors,
2 are constituted a joint committee for the purposes of monitoring and
3 evaluating the effectiveness of the implementation of [this act]
4 P.L. _____, c. _____ (now before the Legislature as this bill). The
5 Commissioner of Health of the State of New Jersey shall, one, three,
6 and five years from the effective date of [this act] P.L. _____, c. _____ (now
7 before the Legislature as this bill), report to the joint committee an
8 evaluation of the effectiveness of this act and the committee shall,
9 upon receiving such report, issue, as it may deem necessary and
10 proper, recommendations for administrative or legislative changes
11 affecting the implementation of [this act] P.L. _____, c. _____ (now before the
12 Legislature as this bill).
13 (cf: P.L.1985, c.185, s.7)

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15 7. This act shall take effect January 1, 1996.

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STATEMENT

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20 This bill prohibits smoking of cigars and pipes in the dining areas of
21 restaurants and catering establishments, regardless of seating capacity
22 commencing January 1, 1996. Taverns would be excluded from the
23 prohibition, and the owner, operator or manager of a restaurant would
24 be given discretion in permitting and regulating smoking in the bar
25 areas, outdoor seating areas and other outdoor areas of the
26 establishment. A restaurant would not be excluded from the
27 prohibition when it is being used for privately sponsored social affairs.
28 A tavern is defined in the bill as an establishment containing an indoor
29 area the principal business and purpose of which is the sale and service
30 of alcoholic beverages for consumption on the premises, and where the
31 sale of food generates less than 40 percent of its annual gross sales.
32 The owner, operator or manager of a restaurant would be required to
33 post signs at the entrances to the restaurant notifying patrons of the
34 prohibition, and to provide additional signs indicating the area of the
35 restaurant, if any, in which patrons may smoke pipes or cigars or both.

36 The bill would require the local board of health, during the course
37 of sanitary inspections, to monitor compliance with the requirements
38 of the law, and to provide written notice of any violation to the
39 restaurant's owner, operator or manager. Citations would be issued
40 by local health officers, municipal or county health officials, or
41 municipal law enforcement personnel trained and authorized by the
42 local board of health for the purposes of enforcing the law. Under
43 current law, patrons smoking in violation of the law, and restaurants
44 in violation of the law, are fined up to \$25. The bill increases these
45 fines to a maximum of \$50 for persons smoking pipes or cigars in
46 violation of the law and to a maximum of \$100 for a first offense,

1 \$200 for a second offense, and \$500 for a third or subsequent offense
2 for restaurants not in compliance with the law. The owner, operator
3 or manager of the restaurant would not be responsible for enforcement
4 of the law beyond a verbal warning and request for compliance. Under
5 the bill, the inability of the owner, operator or manager to obtain
6 patron compliance would not be deemed a violation on the part of the
7 restaurant.

8 Finally, the bill provides that the Assembly Judiciary, Law and
9 Public Safety Committee and the Senate Law and Public Safety
10 Committee would jointly monitor and evaluate implementation of this
11 law. The Commissioner of Health would be required, at intervals of
12 one, three, and five years from the effective date of the bill, to report
13 to the joint committee with an evaluation of the law's effectiveness,
14 and the joint committee may, upon receiving this report, issue
15 recommendations for administrative or legislative changes.

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20 Prohibits smoking pipes and cigars in dining areas of restaurants as of
21 January 1, 1996.