

SENATE, No. 376

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator MacINNES

1 AN ACT concerning smoking in indoor public places, supplementing
2 chapter 3D of Title 26 of the Revised Statutes and repealing
3 P.L.1981, c.318, P.L.1981, c.319, P.L.1981, c.320, P.L.1985,
4 c.184, P.L.1985, c.186, P.L.1985, c.318, P.L.1985, c.381 and
5 P.L.1985, c.185.

6

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

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10 1. This act shall be known and may be cited as the "Clean Indoor
11 Air Act."

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13 2. The Legislature finds and declares that: Tobacco is the leading
14 cause of preventable disease and death in this State and nation, and
15 tobacco smoke constitutes a substantial health hazard to the
16 nonsmoking majority of the public; the separation of smoking and
17 nonsmoking areas in indoor public places does not eliminate the hazard
18 to nonsmokers if these areas share a common ventilation system; and,
19 therefore, subject to certain specified exceptions, it is clearly in the
20 public interest to prohibit smoking in the common areas of all enclosed
21 indoor places of public access.

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23 3. As used in this act:

24 "Indoor public place" means a structurally enclosed place of
25 business, commerce or other service-related activity, whether publicly
26 or privately owned or operated on a for-profit or nonprofit basis,
27 which is generally accessible to the public, including, but not limited
28 to: a commercial or other office building; office or building owned,
29 leased or rented by the State, or a county or municipal government;
30 public and nonpublic elementary or secondary school building; board
31 of education building; theater or concert hall; public library; museum
32 or art gallery; restaurant or other establishment where the principal
33 business is the sale of food for consumption on the premises, including
34 the bar area of the establishment; garage or parking facility; any public
35 conveyance operated on land or water, or in the air, and passenger
36 waiting rooms and platform areas in any stations or terminals thereof;

1 health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1
2 et seq.); patient waiting room of the office of a health care provider
3 licensed pursuant to Title 45 of the Revised Statutes; child care center
4 licensed pursuant to the "Child Care Center Licensing Act," P.L.1983,
5 c.492 (C.30:5B-1 et seq.); race track facility; casino licensed under the
6 "Casino Control Act," P.L.1977, c.110 (C.5:12-1 et seq.); facility used
7 for the holding of sporting events; ambulatory recreational facility;
8 shopping mall or retail store; hotel, motel or other lodging
9 establishment; apartment building lobby or other public area in an
10 otherwise private building; or a passenger elevator in a building other
11 than a single family dwelling.

12 "Smoking" means the possession of a lighted cigar, cigarette, pipe
13 or any other matter or substance which contains tobacco.

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15 4. a. Smoking is prohibited in an indoor public place, except as
16 otherwise provided in this section.

17 b. Nothing in this act shall be construed to apply to a place or
18 building owned and operated by a social, fraternal or religious
19 organization when used by the members of the organization, their
20 guests or families, or when it is rented or leased for a privately
21 sponsored function from which the public is excluded or for which
22 arrangements are under the control of the sponsor of the function,
23 except that this subsection shall not apply to a nonpublic elementary
24 or secondary school.

25 c. The person having control of an indoor public place may permit
26 smoking in one or more designated areas as long as the area:

27 (1) is not generally accessible to the public;

28 (2) is enclosed by solid walls or windows, a ceiling and a solid
29 door;

30 (3) has a ventilation system which is separately exhausted from the
31 nonsmoking areas of the indoor public place so that air from the
32 smoking area is not recirculated to the nonsmoking areas and smoke
33 is not backstreamed into the nonsmoking areas; and

34 (4) in the case of a workplace, is not an area in which an employee
35 is required to work.

36 d. In the case of a public or nonpublic elementary or secondary
37 school or a theater or concert hall, the appropriate governing body,
38 board or person responsible for or having control of the administration
39 of the school, theater or concert hall may permit smoking as part of a
40 classroom instruction or a theatrical production.

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42 5. a. The provisions of this act shall not apply to a tavern, night
43 club or cabaret which is not located within a building in which there is
44 another business or service-related activity which is covered by the
45 provisions of this act, or, when located in such a building, is not
46 internally accessible therefrom.

1 As used in this subsection, "tavern, night club or cabaret" means an
2 indoor area open to the public that is primarily devoted to the sale and
3 service of alcoholic beverages for on-premises consumption, dancing
4 or entertainment, and where total annual gross sales derived from the
5 service of food, if any, are less than the aggregate amount of those
6 derived from the sale and service of alcoholic beverages and from
7 dancing and entertainment.

8 b. The provisions of this act shall not apply to a tobacconist
9 establishment which engages primarily in the sale of tobacco and
10 tobacco-related products and accessories.

11 c. The provisions of this act shall not apply to a restaurant or other
12 eating establishment which serves cigars to its customers as part of its
13 fare, except that the establishment must have an operating humidor on
14 its premises.

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16 6. The person having control of a hotel, motel or other lodging
17 establishment may permit smoking in one or more rooms, as well as in
18 a room rented or leased for a privately sponsored social function,
19 which is designated for that purpose, if the room has a ventilation
20 system which is separately exhausted from the nonsmoking areas so
21 that air from the smoking room is not recirculated to the nonsmoking
22 areas and smoke is not backstreamed into the nonsmoking areas.

23
24 7. The person having control of an indoor public place shall place
25 in every public entrance to the indoor public place a sign, which shall
26 be located so as to be clearly visible to the public and shall contain
27 letters or a symbol which contrast in color with the sign, indicating
28 that smoking is prohibited therein, except in such designated areas as
29 provided pursuant to this act. The sign shall also indicate that
30 violators are subject to a fine. The person having control of the indoor
31 public place shall post a sign stating "Smoking Permitted" in letters at
32 least one inch in height or marked by the international symbol for
33 "Smoking Permitted" in those areas where smoking is permitted.

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35 8. The provisions of this act shall supersede any other statute,
36 municipal ordinance, and rule or regulation adopted pursuant to law
37 concerning smoking in an indoor public place, except where smoking
38 is prohibited by municipal ordinance under authority of R.S.40:48-1
39 or 40:48-2, or by any other statute or regulation adopted pursuant to
40 law for purposes of protecting life and property from fire, and except
41 for those provisions of a municipal ordinance which provide
42 restrictions on smoking equivalent to, or greater than, those provided
43 under this act.

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45 9. a. The person having control of an indoor public place shall
46 order any person smoking in violation of this act to comply with the

1 provisions of this act. A person, after being so ordered, who smokes
2 in violation of this act is subject to a fine not to exceed \$100 for each
3 offense.

4 b. The Department of Health or the local board of health or the
5 board, body or officers exercising the functions of the local board of
6 health according to law, upon written complaint or having reason to
7 suspect that an indoor public place covered by the provisions of this
8 act is or may be in violation of the provisions of this act shall, by
9 written notification, advise the person having control of the place
10 accordingly and order appropriate action to be taken. A person
11 receiving that notice who fails or refuses to comply with the order is
12 subject to a fine not to exceed \$25 for the first offense, \$100 for the
13 second offense and \$200 for each subsequent offense. In addition to
14 the penalty provided herein, the court may order immediate
15 compliance with 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 and
18 in the name of the local board of health. When the plaintiff is the
19 Commissioner of Health, the penalty recovered shall be paid by the
20 commissioner into the treasury of the State. When the plaintiff is a
21 local board of health, the penalty recovered shall be paid by the local
22 board into the treasury of the municipality where the violation
23 occurred.

24 d. A municipal court shall have jurisdiction over proceedings to
25 enforce and collect any penalty imposed because of a violation of any
26 provision of this act if the violation has occurred within the territorial
27 jurisdiction of the court. The proceedings shall be summary and in
28 accordance with "the penalty enforcement law," N.J.S. 2A:58-1 et seq.
29 Process shall be in the nature of a summons or warrant and shall issue
30 only at the suit of the Commissioner of Health, or the local board of
31 health, as the case may be, as plaintiff.

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33 10. The Commissioner of Health, pursuant to the "Administrative
34 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt
35 rules and regulations to effectuate the purposes of this act.

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37 11. The following are repealed:

38 P.L.1981, c.318 (C.26:3D-1 et seq.);

39 P.L.1981, c.319 (C.26:3D-7 et seq.);

40 P.L.1981, c.320 (C.26:3D-15 et seq.);

41 P.L.1985, c.184 (C.26:3D-23 et seq.);

42 P.L.1985, c.186 (C.26:3D-32 et seq.);

43 P.L.1985, c.318 (C.26:3D-38 et seq.);

44 P.L.1985, c.381 (C.26:3D-46 et seq.); and

45 P.L.1985, c.185 (C.26:3E-7 et seq.).

1 of the school, theater or concert hall may permit smoking as part of
2 a classroom instruction or a theatrical production.

3 In addition, the bill exempts a tavern, night club or cabaret, a
4 tobacconist establishment, and a restaurant which serves cigars to its
5 customers as part of its fare, from its provisions, and also provides
6 that a hotel, motel or other lodging establishment may permit smoking
7 in one or more designated rooms, and in a room rented or leased for
8 a privately sponsored social function, if the room is ventilated
9 separately from the nonsmoking areas.

10 This bill obviates the existing statutes governing smoking in
11 passenger elevators (P.L.1981, c.318; C.26:3D-1 et seq.), health care
12 facilities and physician's offices (P.L.1981, c.319; C.26:3D-7 et seq.),
13 educational institutions (P.L.1981, c.320; C.26:3D-15 et seq.), places
14 of employment (P.L.1985, c.184; C.26:3D-23 et seq.), food and
15 marketing stores (P.L.1985, c.186; C.26:3D-32 et seq.), indoor public
16 places (P.L.1985, c.318; C.26:3D-38 et seq.), government buildings
17 (P.L.1985, c.381; C.26:3D-46 et seq.) and restaurants (P.L.1985,
18 c.185; C.26:3E-7 et seq.). A 1989 report by the Commission on
19 Smoking OR Health appointed by the Department of Health found that
20 these laws are "grossly inadequate and extraordinarily ambiguous" and
21 "do not protect the public health." These statutes are repealed by this
22 bill.

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Designated the "Clean Indoor Air Act."