

SENATE, No. 880

STATE OF NEW JERSEY

INTRODUCED MARCH 7, 1996

By Senator ADLER

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 1 of P.L.1985, c.185 (C.26:3E-7) is amended to read as
8 follows:

9 1. The Legislature finds and declares that the resolution of the
10 conflict between the [right] interest of the smoker [to smoke] and the
11 [right] interest of the nonsmoker to breathe clean air involves a
12 determination of when and where, rather than whether, a smoker may
13 legally smoke. It is not the public policy of this State to deny
14 [anyone] adults the [right] opportunity to smoke in appropriate
15 locations. In addition to the deleterious effects upon smokers, tobacco
16 smoke is not only (1) [at least] an annoyance and a nuisance to a
17 substantial percentage of the nonsmoking public, [and] but also (2) a
18 substantial health hazard to [a smaller segment of] the nonsmoking
19 public. Therefore, the Legislature finds that it is in the interest of the
20 public health to [encourage] initially require restaurants to establish
21 nonsmoking areas and to progressively limit smoking areas until all
22 smoking is prohibited on the premises.

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

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25 2. Section 2 of P.L.1985, c.185 (C.26:3E-8) is amended to read as
26 follows:

27 2. As used in this act:

28 a. ["Bar"] "Tavern" means [an establishment or portion of a
29 restaurant, including any contiguous lounge or common area in which
30 the principal business is the sale of alcoholic beverages for
31 consumption on the premises of such establishment or in such portion
32 of a restaurant] any indoor area open to the public that is primarily
33 devoted to the sale and service of alcoholic beverages for on-premises
34 consumption and where the service of food, if any, is incidental to the

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 consumption of the beverages. Service of food shall be considered
2 incidental if the food service generates less than 40% of the total
3 annual gross sales for that area. The term "bar counter," when it
4 refers to an area within a tavern or restaurant, shall not include the
5 dining area of an establishment, even when the dining area is directly
6 adjacent to or surrounds the bar counter.

7 b. "Restaurant" means [an establishment] any indoor area open to
8 the public in which the principal business is the sale of food for
9 consumption on the premises and includes but is not limited to a
10 restaurant, cafeteria, luncheonette, soda fountain, coffee shop, diner,
11 sandwich shop or short order cafe. The term shall not include a
12 mobile food establishment or any temporary food establishment which
13 operates at a fixed location for a limited period of time in connection
14 with a fair, carnival, public exhibition or similar transitory gathering or
15 charitable fund raising event or a tavern.

16 c. "Smoking" means the burning of a lighted cigar, cigarette, pipe
17 or any other matter or substance which contains tobacco.

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

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

22 3. a. The provisions of this act shall apply to all restaurants but
23 shall not apply to any [bar] tavern. A restaurant [which provides a]
24 with or without a contiguous bar counter that has an indoor seating
25 capacity of 40 or more persons, excluding any bar counter seating,
26 shall provide [a] one or more nonsmoking [section] sections which
27 shall contain at least 60% of its seating capacity, excluding its bar
28 counter seating, no later than one year after the effective date of
29 P.L. , c. (pending before the Legislature as this bill), and at least
30 80% of its seating capacity, excluding any bar counter seating, no later
31 than two years after the effective date of P.L. , c. (pending before
32 the Legislature as this bill). Smoking shall be prohibited, except as
33 provided in this section, in all restaurants, without regard to seating
34 capacity, no later than three years after the effective date of P.L. ,
35 c. (pending before the Legislature as this bill). Prior to the
36 prohibition of restaurant smoking, such a restaurant shall post a sign
37 no smaller than eight inches by five inches at or near and readily visible
38 from each public entrance stating [that]: "This restaurant offers a
39 nonsmoking area." A restaurant with an indoor seating capacity of
40 fewer than 40 persons, excluding bar counter seating, which lawfully
41 [does] chooses not to provide a nonsmoking section prior to the
42 prohibition of restaurant smoking shall in the same manner post a sign
43 stating that "This restaurant does not offer a nonsmoking area, as
44 permitted by law."

45 [A restaurant which is equipped with air cleaners or air
46 recirculating systems which meet the standards of the model code of

1 the Building Officials and Code Administrators International, Inc.,
2 known as the "BOCA Basic National Building Code 1984," as
3 administered by the State Department of Community Affairs, shall in
4 the same manner, post a sign stating, "Approved air-cleaning
5 equipment is installed in place of a nonsmoking area" This
6 requirement] The provisions of P.L. , c. (pending before the
7 Legislature as this bill) shall not apply to any enclosed portion of a
8 restaurant while it is being used for a privately sponsored social affair
9 or which is outdoors.

10 b. A restaurant with an indoor seating capacity of fewer than 40
11 persons, excluding bar counter seating, which chooses to provide a
12 nonsmoking section prior to the prohibition on restaurant smoking
13 shall post a sign no smaller than eight inches by five inches at or near,
14 and readily visible from, each public entrance stating: "This
15 establishment offers a nonsmoking area." The size and location of a
16 nonsmoking area in a restaurant of this size shall be determined by the
17 owner or manager or person in charge in accordance with patron
18 needs.

19 c. A restaurant which chooses to prohibit smoking throughout its
20 seating area prior to the prohibition of restaurant smoking shall post
21 a sign no smaller than eight inches by five inches at or near, and readily
22 visible from, each public entrance stating: "This restaurant does not
23 permit smoking."

24 d. No later than three years after the effective date of P.L. ,
25 c. (pending before the Legislature as this bill), a restaurant shall post
26 a sign no smaller than eight inches by five inches at or near, and readily
27 visible from, each public entrance stating: "Smoking is not permitted
28 in restaurants under State law."

29 e. A restaurant which has not prohibited smoking prior to the
30 prohibition of restaurant smoking shall keep on its premises and have
31 available for inspection a written certification of seating capacity. The
32 certification shall include the name and address of the establishment
33 and the name of the principal owner or owners, or a corporate officer
34 or any other responsible authorized party. The certification shall be
35 amended as necessary within 10 days after any change in seating
36 capacity.

37 f. Prior to the prohibition of restaurant smoking, a restaurant with
38 a nonsmoking area shall give each patron, prior to being seated, an
39 opportunity to state his preference to be seated in a smoking or
40 nonsmoking area. The owner or operator of the restaurant shall be
41 responsible for making a good faith effort to ensure that employees
42 responsible for seating arrangements comply with this subsection and
43 with subsection g. of this section.

44 g. Prior to the prohibition of restaurant smoking, the owner or
45 operator of a restaurant shall post conspicuous indoor signs advising
46 patrons where smoking is permitted and prohibited.

1 h. Employees of a restaurant shall be prohibited from smoking in
2 any nonsmoking area of the restaurant.

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

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

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

12 b. 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 restaurants except where smoking is subject to
15 greater restrictions [prohibited] by municipal ordinance prior to the
16 date of the restaurant smoking prohibition, under authority of
17 R.S.40:48-1 and 40:48-2 or by any other statute or regulation adopted
18 pursuant to law for purposes of protecting life and property from fire.
19 (cf: P.L.1985, c.185, s.4)

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

23 5. a. Any municipal or county health official or other public
24 servant engaged in executing or enforcing this act, including a
25 municipal law enforcement officer, trained in the enforcement of this
26 act by the local board of health notwithstanding the provisions of
27 chapter 3 of Title 26 of the Revised Statutes, and acting upon a verbal
28 or written complaint by a restaurant or patron, shall order any person
29 smoking in violation of this act to comply with the provisions of this
30 act. Thereupon any such person who smokes in a restaurant in
31 violation of this act is subject to a fine not to exceed[~~\$25.00~~] \$50.
32 The owner, manager or person in charge of the restaurant or any agent
33 thereof shall [only] be responsible for [providing signs governing
34 smoking pursuant to section 3 of this act and shall not be responsible
35 for the enforcement of the provisions of this act] informing any person
36 smoking in nonsmoking areas and any person smoking in any area of
37 the restaurant more than three years after the effective date of
38 P.L. , c. (now pending before the Legislature as this bill), that he
39 may be in violation of the law and to please cease smoking or relocate
40 to a smoking area, if it exists.

41 b. The State Department of Health or the local board of health or
42 any board, body or officers exercising the functions of the local board
43 of health according to law, upon written complaint and having reason
44 to suspect that any restaurant is or may be in violation of the
45 provisions of this act shall, by written notification, advise the owner,
46 manager or person in charge of the restaurant accordingly and order

1 appropriate action to be taken. A local health agency shall, during the
2 course of sanitary inspections, monitor compliance with this act and
3 by written notification advise the owner, manager or person in charge
4 of any violation and order appropriate action to be taken. [Thereupon
5 any person] Any restaurant receiving [such] a notice [who] which
6 knowingly fails or refuses to comply with the order is subject to a fine
7 not to exceed[~~\$25.00~~] \$100 for a first offense, \$200 for a second
8 offense and \$500 for a third or subsequent offense.

9 The inability of the owner, manager or person in charge to exercise
10 control of the premises during an absence shall constitute a defense to
11 a prosecution under this act, provided that the respondent submits a
12 sworn affidavit by certified mail and any other proof that he could not
13 exercise actual control during that time.

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

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

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

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

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

1 [this act] P.L.1985, c.185 (C.26:3E-7 et seq.). Nothing herein shall
2 be construed to restrict a local board of health or a specially trained
3 municipal law enforcement officer from enforcing subsection a. or b.
4 of section 5 of P.L.1985, c.185 (C.26:3E-11).

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

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

9 7. The Judiciary Committee of the General Assembly, and the
10 Law[,]and Public Safety [and Defense] Committee of the Senate, or
11 their respective successors, are constituted a joint committee for the
12 purposes of monitoring and evaluating the effectiveness of the
13 implementation of this act. The Commissioner of Health of the State
14 of New Jersey shall, one, three, and five years from the effective date
15 of this act, report to the joint committee an evaluation of the
16 effectiveness of this act and the committee shall, upon receiving such
17 report, issue, as it may deem necessary and proper, recommendations
18 for administrative or legislative changes affecting the implementation
19 of this act.

20 (cf: P.L.1985, c.185, s.7)

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22 8. This act shall take effect on the first day of the seventh month
23 after enactment.

24 25 26 STATEMENT

27
28 In response to mounting evidence of the dangers of cigarettes to
29 smokers and to those around them, this bill would phase out smoking
30 in restaurants within three years. Recent research has produced
31 medical evidence that secondhand smoke damages the lungs of
32 non-smokers. Although a 1991 Gallup Poll indicated a large majority
33 of respondents either preferred separate smoking areas or a total ban
34 on smoking when they dine out, restaurants in New Jersey are not
35 presently required to offer patrons a non-smoking section.

36 The bill requires that 60% of the seating capacity of a restaurant
37 seating 40 or more persons be set aside for nonsmokers within a year
38 of the bill's effective date. Eighty percent of such seating must be set
39 aside for nonsmokers in these establishments within two years. By the
40 end of the third year, no smoking would be permitted in any
41 restaurant, regardless of seating capacity. Taverns are excluded from
42 the bill as are restaurant premises used for privately sponsored social
43 affairs or premises which are outdoors. A tavern is defined by the bill
44 as an indoor area primarily devoted to the on-premises sale and service
45 of alcoholic beverages where the service of food generates less than
46 40% of its annual gross sales.

1 During and after the phaseout period, restaurants would be required
2 to post signs advising patrons of the applicable smoking policy.

3 A local health agency would be required, during the course of
4 sanitary inspections, to monitor compliance with the posting and other
5 requirements of the law and provide written notice to restaurants of
6 any violation. Local health department and specially trained law
7 enforcement personnel could cite violations as well. The fines for
8 violations by patrons under the law are increased from \$25 to \$50.
9 Local authorities could fine a patron for unlawful smoking only after
10 being contacted by the restaurant or one of its patrons. Violations by
11 restaurants would result in fines of \$100 for a first offense, \$200 for
12 a second offense and \$500 for a third or subsequent offense.

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Requires restaurants to phase out smoking.