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SYNOPSIS
Prohibits smoking at public parks and beaches.

CURRENT VERSION OF TEXT
As amended by the Senate on June 23, 2014.
AN ACT concerning smoking at public parks and beaches and amending the title and body of, and supplementing, P.L.2005, c.383.

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

1. The Title of P.L.2005, c.383 is amended to read as follows:

AN ACT concerning smoking in [indoor] certain public places and workplaces and revising parts of statutory law.

(cf: P.L.2005, c.383, Title)

2. Section 2 of P.L.2005, c.383 (C.26:3D-56) is amended to read as follows:

a. Tobacco is the leading cause of preventable disease and death in the State and the nation;

b. Tobacco smoke constitutes a substantial health hazard to the nonsmoking majority of the public;

c. Electronic smoking devices have not been approved as to safety and efficacy by the federal Food and Drug Administration, and their use may pose a health risk to persons exposed to their smoke or vapor because of a known irritant contained therein and other substances that may, upon evaluation by that agency, be identified as potentially toxic to those inhaling the smoke or vapor;

d. The separation of smoking and nonsmoking areas in indoor public places and workplaces does not eliminate the hazard to nonsmokers if these areas share a common ventilation system;

e. the prohibition of smoking at public parks and beaches would better preserve the natural assets of this State by reducing litter and increasing fire safety in those areas, while lessening exposure to secondhand tobacco smoke among the public; and

Therefore, subject to certain specified exceptions, it is clearly in the public interest to prohibit the smoking of tobacco products and the use of electronic smoking devices in all enclosed indoor places of public access and workplaces and at all public parks and beaches.

(cf: P.L.2009, c.182, s.1)

3. Section 3 of P.L.2005, c.383 (C.26:3D-57) is amended to read as follows:

"Bar" means a business establishment or any portion of a business establishment.

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:

Senate SHH committee amendments adopted May 19, 2014.

Senate floor amendments adopted June 23, 2014.
nonprofit entity, which is devoted to the selling and serving of alcoholic beverages for consumption by the public, guests, patrons or members on the premises and in which the serving of food, if served at all, is only incidental to the sale or consumption of such beverages.

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

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

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

"Indoor public place" means a structurally enclosed place of business, commerce or other service-related activity, whether publicly or privately owned or operated on a for-profit or nonprofit basis, which is generally accessible to the public, including, but not limited to: a commercial or other office building; office or building owned, leased or rented by the State or by a county or municipal government; public and nonpublic elementary or secondary school building; board of education building; theater or concert hall; public library; museum or art gallery; bar; restaurant or other establishment where the principal business is the sale of food for consumption on the premises, including the bar area of the establishment; garage or parking facility; any public conveyance operated on land or water, or in the air, and passenger waiting rooms and platform areas in any stations or terminals thereof; health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.); patient waiting room of the office of a health care provider licensed pursuant to Title 45 of the Revised Statutes; child care center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.); race track facility; facility used for the holding of sporting events; ambulatory recreational facility; shopping mall or retail store; hotel,
motel or other lodging establishment; apartment building lobby or
other public area in an otherwise private building; or a passenger
elevator in a building other than a single-family dwelling.

"Person having control of an indoor public place or workplace or
a public park or beach" means the owner or operator of a
commercial or other office building or other indoor public place
from whom a workplace or space within the building or indoor
public place is leased, or the person having supervisory authority
over a public park or beach or that person’s designee, as applicable.

"Public park or beach” means a State park or forest, a county or
municipal park, or a State or municipal beach, but does not include
any parking lot that is adjacent to but outside the public park or
beach.

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

"State park or forest” means any State owned or leased land,
water or facility administered by the Department of Environmental
Protection, including, but not limited to, a park, forest, recreational
area, marina, historic site, burial site or natural area, but not
including a wildlife management area or reservoir land.

"Tobacco retail establishment” means an establishment in which
at least 51% of retail business is the sale of tobacco products and
accessories, and in which the sale of other products is merely
incidental.

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

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

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

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

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

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

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

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

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

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

d. private homes, private residences and private automobiles;
and
e. the area within the perimeter of:
(1) any casino as defined in section 6 of P.L.1977, c.110
(C.5:12-6) approved by the Casino Control Commission that
contains at least 150 stand-alone slot machines, 10 table games, or
some combination thereof approved by the commission, which
machines and games are available to the public for wagering; [and]

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

f. A golf course; and
g. An area of a municipal or county [park or] beach, not to
exceed [20] 152 percent of the total area of the [park or] beach,
which is designated by the municipality or county by ordinance or
resolution as a smoking area,'
person having control of the indoor public place or workplace or the public park or beach shall post a sign stating "Smoking Permitted" in letters at least one inch in height or marked by the international symbol for "Smoking Permitted" in those areas where smoking is permitted.

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

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

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

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

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

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

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

d. A municipal court shall have jurisdiction over proceedings
to enforce and collect any penalty imposed because of a violation of
this act if the violation has occurred within the territorial
jurisdiction of the court. The proceedings shall be summary and in
accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
c.274 (C.2A:58-10 et seq.). Process shall be in the nature of a
summons or warrant and shall issue only at the suit of the
Commissioner of Health, or the local board of health, as the case
may be, as plaintiff.

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

(18)  

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

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

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

(cf: P.L.2012, c.17, s.332)  

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