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REPORTS:

HEARINGS:

NEWSPAPER ARTICLES: Yes

"New Jersey bans smoking on beaches and in parks," The Advertiser-News, July 25, 2018

"Who will have to enforce beach smoking ban? With any luck, no one Smoking," South Jersey Times, July 25, 2018

"New Jersey bans smoking on beaches and in parks, butt," Associated Press State Wire: New Jersey, July 20, 2018

"CLEANER BREEZES BLOW AFTER BAN - MURPHY SIGNS BILL TO OUTLAW SMOKING ON NJ BEACHES," The Record, July 21, 2018

"Murphy signs bill banning smoking at public beaches and parks in N.J.," The Star Ledger, July 21, 2018

"Murphy signs bill to ban beach smoking," South Jersey Times, July 21, 2018

"NJ governor to sign bill curbing smoking at beaches, parks," Associated Press State Wire: New Jersey, July 20, 2018

"Murphy signs bill, says 'get butts off beach'" NJBIZ, July 20, 2018

SENATE, No. 2534

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 10, 2018

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District 3 (Cumberland, Gloucester and Salem)

Senator VIN GOPAL

District 11 (Monmouth)

Senator BOB SMITH

District 17 (Middlesex and Somerset)

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District 2 (Atlantic)

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District 37 (Bergen)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

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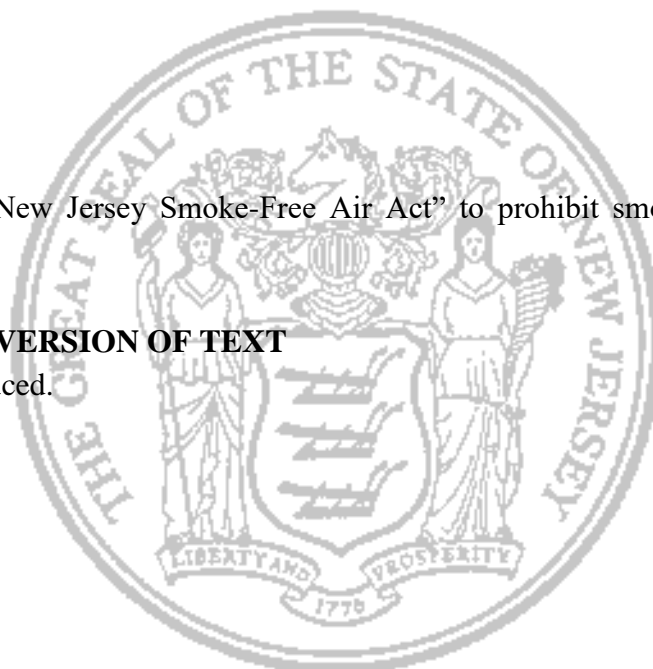
Assemblywomen Murphy, Jimenez, Downey, Assemblymen DeAngelo, Conaway, McKeon, Houghtaling, Armato, Assemblywomen Swain, Lopez, Mosquera and Senator Turner

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.

38

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.

[First Reprint]
SENATE, No. 2534

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MAY 10, 2018

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator VIN GOPAL

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Co-Sponsored by:

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 and parks.

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 7, 2018.



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

1 AN ACT concerning smoking at public beaches ¹and parks¹, and
2 amending and 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 ¹parks and¹ beaches
24 would better preserve and maintain the natural assets of this State
25 by reducing litter and increasing fire safety in those areas, while
26 lessening exposure to secondhand tobacco smoke and providing for
27 a more pleasant ¹park or¹ 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 ¹parks and¹ 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.

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:

¹Assembly floor amendments adopted June 7, 2018.

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

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

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

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

46 "Person having control of an indoor public place or workplace
47 1[or a public beach]¹" means the owner or operator of a
48 commercial or other office building or other indoor public place

1 from whom a workplace or space within the building or indoor
2 public place is leased ¹[, or the person having supervisory authority
3 over a public beach or that person's designee, as applicable]¹ .

4 ¹“Public beach” means a State, county, or municipal beach, but
5 does not include any parking lot that is adjacent to, but outside of,
6 the public beach.] “Person having control of a public park or
7 beach” means the person having supervisory authority over a public
8 park or beach or that person's designee, as applicable.

9 “Public park or beach” means a State park or forest, a county or
10 municipal park, or a State, county, or municipal beach, but does not
11 include any parking lot that is adjacent to, but outside of, the public
12 park or beach.¹

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

18 ¹“State park or forest” means any State owned or leased land,
19 water or facility administered by the Department of Environmental
20 Protection, including, but not limited to, a park, forest, recreational
21 area, marina, historic site, burial site, or natural area, but not
22 including a wildlife management area or reservoir land.¹

23 "Tobacco retail establishment" means an establishment in which
24 at least 51[%] ¹[percent] %¹ of retail business is the sale of
25 tobacco products and accessories, and in which the sale of other
26 products is merely incidental.

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

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

30

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

33 4. a. Smoking is prohibited in an indoor public place or
34 workplace or at a public ¹park or¹ beach, except as otherwise
35 provided in this act.

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

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

41

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

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

45 a. any cigar bar or cigar lounge that, in the calendar year
46 ending December 31, 2004, generated 15[%]¹[percent] %¹ or
47 more of its total annual gross income from the on-site sale of

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

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

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

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

17 e. the area within the perimeter of:

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

23 (2) any casino simulcasting facility approved by the Casino
24 Control Commission pursuant to section 4 of P.L.1992, c.19
25 (C.5:12-194) that contains a simulcast counter and dedicated seating
26 for at least 50 simulcast patrons or a simulcast operation and at least
27 10 table games, which simulcast facilities and games are available
28 to the public for wagering; **[and]**

29 f. research laboratories and other facilities that have been
30 approved by the Department of Health to permit smoking for the
31 purpose of medical research related to the health effects of smoking,
32 in an indoor facility that is separately ventilated for the purpose of
33 medical or scientific research that is conducted under physician
34 supervision and has been approved by an Investigational Review
35 Board (IRB), if the facility is used solely and exclusively for
36 clinical research activities; ¹**[and]**¹

37 g. ¹**[An]** a golf course; and

38 h. an¹ area of a municipal or county beach, not to exceed 15
39 percent of the total area of the beach, which is designated by the
40 municipality or county by ordinance or resolution as a smoking
41 area.

42 (cf: P.L.2017, c.271, s.1)

43

44 ¹**[5.**Section 7 of P.L.2005, c.383 (C.26:3D-61) is amended to
45 read as follows:

46 7. a. The person having control of an indoor public place or
47 workplace or a public beach shall place in every public entrance to

1 the indoor public place or workplace or the public beach a sign,
2 which shall be located so as to be clearly visible to the public and
3 shall contain letters or a symbol which contrast in color with the
4 sign, indicating that smoking is prohibited therein, except in such
5 designated areas as provided pursuant to this act. The sign shall
6 also indicate that violators are subject to a fine. The person having
7 control of the indoor public place or workplace or the public beach
8 shall post a sign stating "Smoking Permitted" in letters at least one
9 inch in height or marked by the international symbol for "Smoking
10 Permitted" in those areas where smoking is permitted.

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

16 (cf: P.L.2005, c.383, s.7)]¹

17

18 ¹[6.] 5.¹ (New section) ¹The Department of Environmental
19 Protection, a municipality, or a county in this State having
20 jurisdiction over a public park or beach on which smoking is
21 prohibited pursuant to this act, P.L. , c. (C.) (pending before the
22 Legislature as this bill), may take measures to educate the public
23 about the prohibitions and penalties herein established, to support
24 smoke-free parks and beaches.¹ The Department of Environmental
25 Protection is directed to provide information and assistance to
26 counties and municipalities, as determined appropriate by the
27 Commissioner of Environmental Protection and within the limits of
28 resources available to the department for this purpose, to support
29 smoke-free public ¹parks and¹ beaches.

30

31 ¹[7.] 6.¹ Section 8 of P.L.2005, c.383 (C.26:3D-62) is amended
32 to read as follows:

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

41 b. The Department of Health or the local board of health or the
42 board, body, or officers exercising the functions of the local board
43 of health according to law, upon written complaint or having reason
44 to suspect that an indoor public place or workplace ¹[or a public
45 beach]¹ covered by the provisions of this act is or may be in
46 violation of the provisions of this act, shall, by written notification,
47 advise the person having control of the place accordingly, and order

1 appropriate action to be taken. A person receiving that notice who
2 fails or refuses to comply with the order is subject to a fine of not
3 less than \$250 for the first offense, \$500 for the second offense, and
4 \$1,000 for each subsequent offense. In addition to the penalty
5 provided herein, the court may order immediate compliance with
6 the provisions of this act.

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

15 d. **[A]** The Superior Court or a municipal court shall have
16 jurisdiction over proceedings to enforce and collect any penalty
17 imposed because of a violation of this act if the violation has
18 occurred within the territorial jurisdiction of the court, except that
19 the Superior Court shall have exclusive jurisdiction over violations
20 that occur in an indoor public place or public ¹park or¹ beach that
21 may be issued against a State or local government entity pursuant to
22 subsection b. of this section. The proceedings shall be summary
23 and in accordance with the "Penalty Enforcement Law of 1999,"
24 P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall be in the nature
25 of a summons **[or warrant]** and shall issue only at the suit of the
26 Commissioner of Health, or the local board of health, as the case
27 may be, as plaintiff.

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

32 ¹f. A penalty may be imposed and recovered for a violation at a
33 public park or beach and, if so imposed and recovered, it shall be
34 done in accordance with the provisions of this section, and shall
35 involve the person having control of a public park or beach, the
36 Department of Health or the local board of health or the board,
37 body, or officers exercising the functions of the local board of
38 health according to law, and the courts, as provided in this section,
39 except that any penalty recovered for a violation at a public park or
40 beach that is recovered by and in the name of the Commissioner of
41 Health or by and in the name of the local board of health shall be
42 paid 50 percent to the Treasury of the State and be dedicated to
43 smoking cessation programs administered by the State Department
44 of Health, and 50 percent shall be paid to the treasury of the
45 municipality where the violation occurred.¹

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

1 **1****[8.]** **7.**¹ Section 9 of P.L.2005, c.383 (C.26:3D-63) is amended
2 to read as follows:

3 9. The provisions of this act shall supersede any other statute,
4 municipal ordinance and rule or regulation adopted pursuant to law
5 concerning smoking in an indoor public place or workplace or at a
6 public ¹park or¹ beach, except where smoking is prohibited by
7 municipal ordinance under authority of R.S.40:48-1 or **1****[R.S.]**¹
8 40:48-2, or by any other statute or regulation adopted pursuant to
9 law for purposes of protecting life and property from fire or
10 protecting public health, and except for those provisions of a
11 municipal ordinance which provide restrictions on or prohibitions
12 against smoking equivalent to, or greater than, those provided under
13 this act.

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

15

16 **1****[9.]** **8.**¹ (New section) The Commissioners of Health and
17 Environmental Protection, pursuant to the "Administrative
18 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and in
19 consultation with each other, shall adopt rules and regulations to
20 effectuate the purposes of this act.

21

22 **1****[10.]** **9.**¹ This act shall take effect on the 180th day after
23 enactment, but the Commissioners of Health and Environmental
24 Protection may take such anticipatory administrative action in
25 advance thereof as shall be necessary for the implementation of this
26 act.

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

SENATE, No. 2534

STATE OF NEW JERSEY

DATED: MAY 10, 2018

The Senate Environment and Energy Committee favorably reports Senate Bill No. 2534.

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

The smoking prohibition provided for under this bill would apply to any State, county, or municipal beach, but would not apply to any parking lot that is adjacent to, but outside of, the public beach; or any area of a municipal or county beach, not exceeding 15 percent of the total area, which is designated by the municipality or county by ordinance or resolution as a smoking area.

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

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

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2534

STATE OF NEW JERSEY

DATED: JUNE 4, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2534.

This bill extends the provisions of the “New Jersey Smoke-Free Air Act,” P.L.2005, c.383 (C.26:3D-55 et seq.), which generally prohibits smoking in indoor public places and workplaces, to apply to public beaches throughout the State.

The smoking prohibition provided for under this bill applies to any State, county, or municipal beach, but does not apply to any parking lot that is adjacent to, but outside of, the public beach; or any area of a municipal or county beach, not exceeding 15 percent of the total area, which is designated by the municipality or county by ordinance or resolution as a smoking area.

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

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

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.

STATEMENT TO
SENATE, No. 2534

with Assembly Floor Amendments
(Proposed by Assemblymen MAZZEO, CALABRESE
and Assemblywoman VAINIERI HUTTLE

ADOPTED: JUNE 7, 2018

These Assembly amendments:

- (1) additionally prohibit smoking in public parks;
- (2) define a “person having control of a public park or beach” as the person having supervisory authority over a public park or beach or that person’s designee, as applicable;
- (3) define a “public park or beach” as a State park or forest, a county or municipal park, or a State, county, or municipal beach, but not including any parking lot that is adjacent to, but outside of, the public park or beach;
- (4) define a “state park or forest” as 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;
- (5) exclude golf courses from the smoking prohibition;
- (6) remove the requirement to establish signs at a public beach indicating whether smoking is allowed or prohibited;
- (7) allow the Department of Environmental Protection, a municipality, or a county in this State having jurisdiction over a public park or beach on which smoking is prohibited under the bill to take measures to educate the public about the prohibitions and penalties established, to support smoke-free parks and beaches;
- (8) allow local enforcement of the smoking prohibition at public parks or beaches; and
- (9) provide that a penalty may be imposed and recovered for a violation at a public park or beach and, if so imposed and recovered, require it to be done in accordance with current law, and involving the person having control of a public park or beach, 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, and the courts, except that any penalty recovered for a violation at a public park or beach that is recovered by and in the name of the Commissioner of Health or by and in the name of the local board of health would be paid 50% to the Treasury of the State and be dedicated to smoking cessation programs administered by the State Department of Health, and 50% would be paid to the treasury of the municipality where the violation occurred.

§5 - C.26:3D-61.1

§8 - Note to

C.26:3D-64

§9 - Note

P.L. 2018, CHAPTER 64, *approved July 20, 2018*

Senate, No. 2534 (*First Reprint*)

1 AN ACT concerning smoking at public beaches ¹and parks¹, and
2 amending and 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 ¹parks and¹ beaches
24 would better preserve and maintain the natural assets of this State
25 by reducing litter and increasing fire safety in those areas, while
26 lessening exposure to secondhand tobacco smoke and providing for
27 a more pleasant ¹park or¹ 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 ¹parks and¹ 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:

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:

¹Assembly floor amendments adopted June 7, 2018.

1 3. As used in this act:

2 "Bar" means a business establishment or any portion of a
3 nonprofit entity, which is devoted to the selling and serving of
4 alcoholic beverages for consumption by the public, guests, patrons
5 or members on the premises and in which the serving of food, if
6 served at all, is only incidental to the sale or consumption of such
7 beverages.

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

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

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

30 "Indoor public place" means a structurally enclosed place of
31 business, commerce or other service-related activity, whether
32 publicly or privately owned or operated on a for-profit or nonprofit
33 basis, which is generally accessible to the public, including, but not
34 limited to: a commercial or other office building; office or building
35 owned, leased or rented by the State or by a county or municipal
36 government; public and nonpublic elementary or secondary school
37 building; board of education building; theater or concert hall; public
38 library; museum or art gallery; bar; restaurant or other
39 establishment where the principal business is the sale of food for
40 consumption on the premises, including the bar area of the
41 establishment; garage or parking facility; any public conveyance
42 operated on land or water, or in the air, and passenger waiting
43 rooms and platform areas in any stations or terminals thereof; health
44 care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et
45 seq.); patient waiting room of the office of a health care provider
46 licensed pursuant to Title 45 of the Revised Statutes; child care
47 center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.);
48 race track facility; facility used for the holding of sporting events;

1 ambulatory recreational facility; shopping mall or retail store; hotel,
2 motel or other lodging establishment; apartment building lobby or
3 other public area in an otherwise private building; or a passenger
4 elevator in a building other than a single-family dwelling.

5 "Person having control of an indoor public place or workplace
6 ~~or a public beach~~" means the owner or operator of a
7 commercial or other office building or other indoor public place
8 from whom a workplace or space within the building or indoor
9 public place is leased ~~or the person having supervisory authority~~
10 over a public beach or that person's designee, as applicable¹ .

11 ¹"Public beach" means a State, county, or municipal beach, but
12 does not include any parking lot that is adjacent to, but outside of,
13 the public beach. "Person having control of a public park or
14 beach" means the person having supervisory authority over a public
15 park or beach or that person's designee, as applicable.

16 "Public park or beach" means a State park or forest, a county or
17 municipal park, or a State, county, or municipal beach, but does not
18 include any parking lot that is adjacent to, but outside of, the public
19 park or beach.¹

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

25 ¹"State park or forest" means any State owned or leased land,
26 water or facility administered by the Department of Environmental
27 Protection, including, but not limited to, a park, forest, recreational
28 area, marina, historic site, burial site, or natural area, but not
29 including a wildlife management area or reservoir land.¹

30 "Tobacco retail establishment" means an establishment in which
31 at least 51~~[%]~~ ¹~~[percent]~~ %¹ of retail business is the sale of
32 tobacco products and accessories, and in which the sale of other
33 products is merely incidental.

34 "Workplace" means a structurally enclosed location or portion
35 thereof at which a person performs any type of service or labor.
36 (cf: P.L.2009, c.182, s.2)

37
38 3. Section 4 of P.L.2005, c.383 (C.26:3D-58) is amended to
39 read as follows:

40 4. a. Smoking is prohibited in an indoor public place or
41 workplace or at a public ¹park or¹ beach, except as otherwise
42 provided in this act.

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

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

- 1 4. Section 5 of P.L.2005, c.383 (C.26:3D-59) is amended to
2 read as follows:
- 3 5. The provisions of this act shall not apply to:
- 4 a. any cigar bar or cigar lounge that, in the calendar year
5 ending December 31, 2004, generated 15~~[%]~~¹~~[percent]~~ %¹ or
6 more of its total annual gross income from the on-site sale of
7 tobacco products and the rental of on-site humidors, not including
8 any sales from vending machines, and is registered with the local
9 board of health in the municipality in which the bar or lounge is
10 located. The registration shall remain in effect for one year and
11 shall be renewable only if: (1) in the preceding calendar year, the
12 cigar bar or lounge generated 15% or more of its total annual gross
13 income from the on-site sale of tobacco products and the rental of
14 on-site humidors, and (2) the cigar bar or cigar lounge has not
15 expanded its size or changed its location since December 31, 2004;
- 16 b. any tobacco retail establishment, or any area the tobacco
17 retail establishment provides for the purposes of smoking;
- 18 c. any tobacco business when the testing of a cigar or pipe
19 tobacco by heating, burning or smoking is a necessary and integral
20 part of the process of making, manufacturing, importing or
21 distributing cigars or pipe tobacco;
- 22 d. private homes, private residences and private automobiles;
- 23 e. the area within the perimeter of:
- 24 (1) any casino as defined in section 6 of P.L.1977, c.110
25 (C.5:12-6) approved by the Casino Control Commission that
26 contains at least 150 stand-alone slot machines, 10 table games, or
27 some combination thereof approved by the commission, which
28 machines and games are available to the public for wagering; and
- 29 (2) any casino simulcasting facility approved by the Casino
30 Control Commission pursuant to section 4 of P.L.1992, c.19
31 (C.5:12-194) that contains a simulcast counter and dedicated seating
32 for at least 50 simulcast patrons or a simulcast operation and at least
33 10 table games, which simulcast facilities and games are available
34 to the public for wagering; ~~and~~
- 35 f. research laboratories and other facilities that have been
36 approved by the Department of Health to permit smoking for the
37 purpose of medical research related to the health effects of smoking,
38 in an indoor facility that is separately ventilated for the purpose of
39 medical or scientific research that is conducted under physician
40 supervision and has been approved by an Investigational Review
41 Board (IRB), if the facility is used solely and exclusively for
42 clinical research activities; ¹~~and~~¹
- 43 g. ¹~~An~~ a golf course; and
- 44 h. an¹ area of a municipal or county beach, not to exceed 15
45 percent of the total area of the beach, which is designated by the

1 municipality or county by ordinance or resolution as a smoking
2 area.

3 (cf: P.L.2017, c.271, s.1)

4

5 ¹Section 7 of P.L.2005, c.383 (C.26:3D-61) is amended to
6 read as follows:

7 7. a. The person having control of an indoor public place or
8 workplace or a public beach shall place in every public entrance to
9 the indoor public place or workplace or the public beach a sign,
10 which shall be located so as to be clearly visible to the public and
11 shall contain letters or a symbol which contrast in color with the
12 sign, indicating that smoking is prohibited therein, except in such
13 designated areas as provided pursuant to this act. The sign shall
14 also indicate that violators are subject to a fine. The person having
15 control of the indoor public place or workplace or the public beach
16 shall post a sign stating "Smoking Permitted" in letters at least one
17 inch in height or marked by the international symbol for "Smoking
18 Permitted" in those areas where smoking is permitted.

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

24 (cf: P.L.2005, c.383, s.7)]¹

25

26 ¹[6.] 5.¹ (New section) ¹The Department of Environmental
27 Protection, a municipality, or a county in this State having
28 jurisdiction over a public park or beach on which smoking is
29 prohibited pursuant to this act, P.L. , c. (C.) (pending before the
30 Legislature as this bill), may take measures to educate the public
31 about the prohibitions and penalties herein established, to support
32 smoke-free parks and beaches.¹ The Department of Environmental
33 Protection is directed to provide information and assistance to
34 counties and municipalities, as determined appropriate by the
35 Commissioner of Environmental Protection and within the limits of
36 resources available to the department for this purpose, to support
37 smoke-free public ¹parks and¹ beaches.

38

39 ¹[7.] 6.¹ Section 8 of P.L.2005, c.383 (C.26:3D-62) is amended
40 to read as follows:

41 8. a. The person having control of an indoor public place or
42 workplace ¹[or a public beach]¹ shall order any person smoking in
43 violation of this act to comply with the provisions of this act. A
44 person, after being so ordered, who smokes in violation of this act is
45 subject to a fine of not less than \$250 for the first offense, \$500 for
46 the second offense and \$1,000 for each subsequent offense. A

1 penalty shall be recovered in accordance with the provisions of
2 subsections c. and d. of this section.

3 b. The Department of Health or the local board of health or the
4 board, body, or officers exercising the functions of the local board
5 of health according to law, upon written complaint or having reason
6 to suspect that an indoor public place or workplace ¹or a public
7 beach¹ covered by the provisions of this act is or may be in
8 violation of the provisions of this act, shall, by written notification,
9 advise the person having control of the place accordingly, and order
10 appropriate action to be taken. A person receiving that notice who
11 fails or refuses to comply with the order is subject to a fine of not
12 less than \$250 for the first offense, \$500 for the second offense, and
13 \$1,000 for each subsequent offense. In addition to the penalty
14 provided herein, the court may order immediate compliance with
15 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
18 and in the name of the local board of health. When the plaintiff is
19 the Commissioner of Health, the penalty recovered shall be paid by
20 the commissioner into the treasury of the State. When the plaintiff
21 is a local board of health, the penalty recovered shall be paid by the
22 local board into the treasury of the municipality where the violation
23 occurred.

24 d. **[A]** The Superior Court or a municipal court shall have
25 jurisdiction over proceedings to enforce and collect any penalty
26 imposed because of a violation of this act if the violation has
27 occurred within the territorial jurisdiction of the court, except that
28 the Superior Court shall have exclusive jurisdiction over violations
29 that occur in an indoor public place or public ¹park or¹ beach that
30 may be issued against a State or local government entity pursuant to
31 subsection b. of this section. The proceedings shall be summary
32 and in accordance with the "Penalty Enforcement Law of 1999,"
33 P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall be in the nature
34 of a summons **[or warrant]** and shall issue only at the suit of the
35 Commissioner of Health, or the local board of health, as the case
36 may be, as plaintiff.

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

41 ¹f. A penalty may be imposed and recovered for a violation at a
42 public park or beach and, if so imposed and recovered, it shall be
43 done in accordance with the provisions of this section, and shall
44 involve the person having control of a public park or beach, the
45 Department of Health or the local board of health or the board,
46 body, or officers exercising the functions of the local board of
47 health according to law, and the courts, as provided in this section,

1 except that any penalty recovered for a violation at a public park or
2 beach that is recovered by and in the name of the Commissioner of
3 Health or by and in the name of the local board of health shall be
4 paid 50 percent to the Treasury of the State and be dedicated to
5 smoking cessation programs administered by the State Department
6 of Health, and 50 percent shall be paid to the treasury of the
7 municipality where the violation occurred.¹

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

9

10 ¹**[8.] 7.**¹ Section 9 of P.L.2005, c.383 (C.26:3D-63) is amended
11 to read as follows:

12 9. 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 an indoor public place or workplace or at a
15 public ¹park or¹ beach, except where smoking is prohibited by
16 municipal ordinance under authority of R.S.40:48-1 or ¹**[R.S.]**¹
17 40:48-2, or by any other statute or regulation adopted pursuant to
18 law for purposes of protecting life and property from fire or
19 protecting public health, and except for those provisions of a
20 municipal ordinance which provide restrictions on or prohibitions
21 against smoking equivalent to, or greater than, those provided under
22 this act.

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

24

25 ¹**[9.] 8.**¹ (New section) The Commissioners of Health and
26 Environmental Protection, pursuant to the "Administrative
27 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and in
28 consultation with each other, shall adopt rules and regulations to
29 effectuate the purposes of this act.

30

31 ¹**[10.] 9.**¹ This act shall take effect on the 180th day after
32 enactment, but the Commissioners of Health and Environmental
33 Protection may take such anticipatory administrative action in
34 advance thereof as shall be necessary for the implementation of this
35 act.

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40 Revises "New Jersey Smoke-Free Air Act" to prohibit smoking
41 at public beaches and parks.

CHAPTER 64
(CORRECTED COPY)

AN ACT concerning smoking at public beaches and parks, and amending and supplementing P.L.2005, c.383.

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

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

C.26:3D-56 Findings, declarations relative to smoking, use of electronic smoking devices in certain public places, workplaces.

2. The Legislature finds and declares that:

- 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 and maintain the natural assets of this State by reducing litter and increasing fire safety in those areas, while lessening exposure to secondhand tobacco smoke and providing for a more pleasant park or beach experience for the public; and

- f. 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.

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

C.26:3D-57 Definitions relative to smoking, use of electronic smoking devices in certain public places, workplaces.

3. As used in this act:

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

"Person having control of a public park or beach" means 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, county, or municipal beach, but does not include any parking lot that is adjacent to, but outside of, 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.

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

C.26:3D-58 Smoking prohibited in certain public places, workplaces.

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.

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

C.26:3D-59 Exceptions.

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 of 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;

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

g. a golf course; and

h. an area of a municipal or county beach, not to exceed 15 percent of the total area of the beach, which is designated by the municipality or county by ordinance or resolution as a smoking area.

C.26:3D-61.1 Prohibitions, penalties for smoking in certain outdoor public places.

5. The Department of Environmental Protection, a municipality, or a county in this State having jurisdiction over a public park or beach on which smoking is prohibited pursuant to this act, P.L.2018, c.64 (C.26:3D-61.1 et al.), may take measures to educate the public about the prohibitions and penalties herein established, to support smoke-free parks and beaches. 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.

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

C.36:3D-62 Violations, fines, penalties; enforcement.

8. a. The person having control of an indoor public place or workplace 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 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. The Superior Court or 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, except that the Superior Court shall have exclusive jurisdiction over violations that occur in an indoor public place or public park or beach that may be issued against a State or local government entity pursuant to subsection b. of this section. 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 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.

f. A penalty may be imposed and recovered for a violation at a public park or beach and, if so imposed and recovered, it shall be done in accordance with the provisions of this section, and shall involve the person having control of a public park or beach, 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, and the courts, as provided in this section, except that any penalty recovered for a violation at a public park or beach that is recovered by and in the name of the Commissioner of Health or by and in the name of the local board of health shall be paid 50 percent to the Treasury of the State and be dedicated to smoking cessation programs administered by the State Department of Health, and 50 percent shall be paid to the treasury of the municipality where the violation occurred.

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

C.26:3D-63 Supersedure of other laws, etc.

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.

8. 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.

9. 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.

Approved July 20, 2018.