

LEGISLATIVE HISTORY CHECKLIST

NJSA: 26:3D-23 to 26:3D-31

(Smoking--places of employment)

LAWS OF: 1985

CHAPTER: 184

Bill No: A546

Sponsor(s): Herman and Pelly

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: Law, Public Safety and Defense

Amended during passage: Yes Assembly Committee Substitute (OCR) enacted. Amendments during passage denoted by asterisks. Substituted for S2487 (not attached since identical to A546)

Date of Passage: Assembly: December 13, 1984

Senate: March 7, 1985

Date of Approval: June 12, 1985

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: Yes

974.90 New Jersey. Legislature. General Assembly. Judiciary Committee.
H434 Public hearing, held 9-25-84, Trenton, 1984.
1984d

(OVER)

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See newspaper clipping file, "NJ--Smoking--1984 and 1985"
in New Jersey Reference Department.

[OFFICIAL COPY REPRINT]
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 546

STATE OF NEW JERSEY

ADOPTED NOVEMBER 19, 1984

By Assemblyman HERMAN

AN ACT controlling smoking in places of employment and
supplementing Title 26 of the Revised Statutes.

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

1 1. The Legislature finds and declares that the resolution of the
2 conflict between the right of the smoker to smoke and the right
3 of the nonsmoker to breathe clear air involves a determination
4 of when and where, rather than whether, a smoker may legally
5 smoke. It is not the public policy of this State to deny anyone the
6 right to smoke. However, the Legislature finds that in those places
7 of employment affected by this act the right of the nonsmoker to
8 breathe clean air should supersede the right of the smoker to smoke.
9 In addition to the deleterious effects upon smokers, tobacco smoke
10 is (1) at least an annoyance and a nuisance to a substantial per-
11 centage of the nonsmoking public, and (2) a substantial health
12 hazard to a smaller segment of the nonsmoking public. The purpose
13 of this act, therefore, is to control smoking in places of employment,
14 except in designated areas.

1 2. As used in this act:

2 a. "Employer" means the proprietor, regardless of whether the
3 person is the owner or lessee of the place of employment, or the
4 proprietor's authorized agent, who ultimately controls, governs or
5 directs the activities and conduct in the place of employment. The
6 term "employer" means a corporation as well as an individual.

7 b. "Place of employment" means a structurally enclosed location
8 or portion thereof which is not usually frequented by the public
9 at which 50 or more individuals perform any type of service or
10 labor for consideration of payment under any type of employment.

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted January 28, 1985.

11 relationship with or for a private corporation, partnership or
12 individual.

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

1 3. Every employer shall establish written rules governing smok-
2 ing in that portion within a building for which the employer is
3 responsible. The rules shall contain a written policy and procedure
4 to protect the health, welfare and comfort of employees from
5 the detrimental effects of tobacco smoke, which policy shall include
6 designated nonsmoking areas but may include designated smoking
7 areas, unless otherwise prohibited by municipal ordinance under
8 authority of R. S. 40:48-1 and R. S. 40:48-2 or other statute or
9 regulation adopted pursuant to law for purposes of protecting life
10 and property from fire. Each employer, in establishing these no
11 smoking or limited smoking areas, may provide a phaseout period
12 not to exceed one year. Nothing in this act shall prevent any rule,
13 policy or procedure concerning smoking, which is not contrary to
14 the provisions of this act, from being established by the employer
15 or negotiated as a term or condition of any agreement or contract
16 of employment. Employees shall be provided with a copy of the
17 written rules upon request.

1 4. a. The State or any agency or political subdivision thereof
2 may suggest guidelines for rules governing smoking in places of
3 employment which may be adopted by employers, but in no case
4 shall they be mandatory.

5 b. The provisions of this act shall supersede any other statute,
6 municipal ordinance, and rule or regulation adopted pursuant to
7 law concerning smoking in places of employment except where
8 smoking is prohibited by municipal ordinance under authority of
9 R. S. 40:48-1 and R. S. 40:48-2 or other statute or regulation
10 adopted pursuant to law for purposes of protecting life and prop-
11 erty from fire.

1 5. Every area in a place of employment where smoking is pro-
2 hibited or specifically permitted shall be so designated by the
3 employer with a sign indicating *["Smoking Permitted"]* **smok-*
4 *ing permitted** or *["Smoking Prohibited"]* **smoking prohibited**
5 or the appropriate *["Smoking Permitted"]* **smoking permitted**
6 or *["Smoking Prohibited"]* **smoking prohibited** international
7 symbol. Every sign shall be located so as to be clearly visible to
8 employees and shall contain letters or a symbol which contrast in
9 color with the sign.

1 6. a. (1) Where the State Department of Health has reason to
2 suspect that any employer is or may be in violation of the pro-

3 visions of this act; the department shall first give written notice
4 to the employer. That written notice shall contain a statement by
5 the department of the alleged violation as well as the department's
6 recommendations to the employer as to how the employer could
7 conform to the provisions of the act; these recommendations may
8 be in the form of a series of alternative proposals and compliances.

9 (2) All written notices forwarded by the department pursuant
10 to this act shall be sent by certified mail or registered mail, return
11 receipt requested.

12 (3) Upon receipt of the written notice, the employer may request
13 that conferences be held with the department at the employer's
14 place of business or another place mutually agreed to. This con-
15 ference shall allow the employer full opportunity to avail the
16 employer of the information and expertise of the department to
17 facilitate the employer's obligation to comply with the provisions
18 of this act.

19 b. The Superior Court has jurisdiction over proceedings to en-
20 force compliance with the provisions of this act. The process shall
21 be in the nature of a complaint and summons and shall issue only
22 at the suit of the Commissioner of Health of the State of New
23 Jersey as plaintiff. No suit shall be commenced by the commissioner
24 prior to 90 days from the day the commissioner forwards the
25 written notice as provided in subsection a. of this section.

1 7. No employer or any agent thereof shall be subject to any
2 action in any court by any party other than by the commissioner
3 for failure to meet the provisions of this act. This action by the
4 commissioner shall be limited to a response to the failure of the
5 employer to comply with section 3 or section 5 of this act. No em-
6 ployer or any agent thereof who **[is in compliance with the pro-*
7 *visions of this act]* *has adopted a written policy and procedure*
8 *for designated nonsmoking areas** shall be subject to any action in
9 any court by any party for personal injury resulting from the in-
10 haling of or exposure to second-hand tobacco smoke, except for an
11 action instituted by an employee pursuant to Title 24 of the Revised
12 Statutes.

1 8. Upon request, the department shall be required to provide
2 consultation services to employers seeking to comply with the
3 provisions of this act. These consultation services may be in the
4 form of providing suggested written policies or written rules which
5 the employer may implement, or both, as well as staff consultation.

1 9. The Judiciary Committee of the General Assembly and the
2 Law, Public Safety and Defense Committee of the Senate, or
3 their respective successors, are constituted a joint committee for

4 the purposes of monitoring the effectiveness of the implementation
5 of this act. The commissioner shall, 18 months from the effective
6 date of this act, report to the joint committee, an evaluation of the
7 effectiveness of this act and the committee shall, upon receiving
8 the report, issue as it may deem necessary and proper, recom-
9 mendations for administrative or legislative changes affecting
10 the implementation of this act.

1 10. This act shall take effect on the first day of the ninth month
2 after enactment except that section 9 shall take effect immediately.

7 date of this act, report to the joint committee, an evaluation of the
 8 effectiveness of this act and the committee shall, upon receiving
 9 such report, issue as it may deem necessary and proper, recom-
 10 mendations for administrative or legislative changes affecting the
 11 implementation of this act.

1 9. This act shall take effect on the 180th day after enactment.

STATEMENT

The purpose of this bill, as well as its companion bills is to protect and preserve in a reasonable manner the health and comfort of the people in this State by establishing areas that are free from the toxic and annoying effects of tobacco smoke. As a result of hearings held on smoking, it is clear that there is overwhelming scientific evidence that tobacco smoke is detrimental to nonsmokers' health, welfare, and comfort, especially to those who have allergies or cardiovascular or respiratory diseases. The regulation of smoking in certain confined places, i.e., determining when and where, rather than whether, a smoker may legally smoke is, therefore, necessary for the public health. This bill is even more important in our industrial State where tobacco smoke acts to exacerbate the effects of our existing air quality.

Specifically, this bill requires employers to balance the health and comfort of nonsmoker employees with the right of employees who desire to smoke by establishing respective areas for each. Several employers have adopted this policy and either prohibit smoking in their facilities or control it by limiting smoking to certain areas. The provisions of the bill do not mandate private businesses to adopt a particular policy, but only set broad parameters. This bill would permit further restrictions not contrary to the bill to be adopted by the employer or to be negotiated as a term or condition of employment.

A person smoking in violation of this act would be subject to a fine not to exceed \$100.00. Failure to establish nonsmoking areas and to post such areas after being notified of noncompliance by the Department of Health or local board of health may result in a fine not to exceed \$25.00 for the first offense, not to exceed \$100.00 for the second, and not to exceed \$200.00 for each additional offense.

Fines shall be collected by the Department of Health or local board of health. No suit may be brought to enforce this act except by the Department of Health or local boards of health. The Commissioner of Health shall report back to a joint committee of the General Assembly Judiciary, Law, Public Safety and Defense Committee and the Senate Law, Public Safety and Defense Committee in 2 years as to the effectiveness of this act.

A 546(1985)

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 546

STATE OF NEW JERSEY

DATED: NOVEMBER 19, 1984

The purpose of this bill, in its substitute form, as well as its companion bills is to protect and preserve in a reasonable manner the health and comfort of the people in this State by establishing areas that are free from the toxic and annoying effects of tobacco smoke. As a result of hearings held on smoking, it is clear that there is overwhelming scientific evidence that tobacco smoke is detrimental to nonsmokers' health, welfare, and comfort, especially to those who have allergies or cardiovascular or respiratory diseases. The regulation of smoking in certain confined places, i.e., determining when and where, rather than whether, a smoker may legally smoke is, therefore, necessary for the public health. This bill is even more important in our industrial State where tobacco smoke acts to exacerbate the effects of our existing air quality.

Specifically, this bill requires employers to balance the health and comfort of nonsmoker employees with the right of employees who desire to smoke by establishing respective areas for each. Several employers have adopted this policy and either prohibit smoking in their facilities or control it by limiting smoking to certain areas. The provisions of the bill do not mandate private businesses to adopt a particular policy, but only set broad parameters in the form of written rules governing smoking. This bill would permit further restrictions not contrary to the bill to be adopted by the employer or to be negotiated as a term or condition of employment. The bill gives employers a year to phase in compliance with its smoking policies.

Under the bill, the Department of Health has the right to sue employers for noncompliance. But the department's primary role is to serve as an advisor to businesses in formulating smoking rules that are fair for each place of employment. Before the department could file suit, it would be required to suggest alternative methods of compliance in writing, and offer its consultative services to the employer. This represents a cooperative effort by the State, employers and employees to protect people's health in the workplace.

No employer will be subject to any court action by any party other than the Commissioner of Health for failure to comply with the pro-

visions of the bill. Further, no employer who is in compliance with these provisions will be subject to any court action by any party for personal injury resulting from the inhaling of or exposure to second-hand tobacco smoke, except for an action instituted by an employee pursuant to Title 34 of the New Jersey Statutes. The Commissioner of Health shall report back to a joint committee of the General Assembly Judiciary Committee and the Senate Law, Public Safety and Defense Committee in 18 months as to the effectiveness of this act.

SENATE LAW, PUBLIC SAFETY AND DEFENSE
COMMITTEE

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 546

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 28, 1985

The Assembly Committee Substitute for Assembly Bill No. 546, as amended by the Senate Law, Public Safety and Defense Committee, requires employers to establish written policies governing smoking for their employees.

The bill defines which employers and places of employment are covered by its provisions. It also enumerates the requirements that must be met by employers in order to comply with the law, including the establishment of written rules governing smoking; permits the State or any of its political subdivisions to suggest guidelines for these rules; specifies the procedures to be followed by the State Department of Health in attempting to bring an employer into compliance with the law; and requires an evaluation of the law's effectiveness.

Employers are required to formulate written rules governing smoking at the places of employment that are under their control. The rules must include designated areas in which smoking is prohibited and may include areas in which smoking is permitted. Restrictions on smoking that are more stringent than those contained in the bill are permitted to be established by an employer or to be negotiated as a term or condition of employment. Employers are permitted to phase in compliance with their smoking regulations over a one-year period.

Every area in a place of employment where smoking is specifically prohibited or permitted will be so designated by the employer with a sign that is clearly visible to employees.

The State or a political subdivision of the State can suggest non-mandatory guidelines for rules governing smoking in places of employment. Provisions of the bills supersede any other statute, ordinance, or regulation except municipal ordinances prohibiting smoking in order to protect life and property from fire.

The Department of Health can sue employers for failure to establish a written policy on smoking and for failure to post signs. But before filing suit, the department must notify the employer in writing of the alleged violation and make written recommendations for alternative

methods of compliance. The employer may request to hold conferences with the department in order to facilitate compliance with the law. The department's primary role is to advise businesses on formulating smoking rules that are fair for each place of employment. The department cannot file suit until 90 days after the commissioner has forwarded written notice of noncompliance to the employer.

The Superior Court has jurisdiction over proceedings to enforce compliance with the law.

No employer will be subject to any court action by any party other than the Commissioner of Health for failure to comply with the provisions of the bill. Further, no employer who has adopted a written policy and procedure for designated nonsmoking areas will be subject to court action by any party for personal injury resulting from the inhalation of or exposure to secondhand tobacco smoke, except for an action instituted by an employee pursuant to Title 34 of the New Jersey Statutes, Labor and Workmen's Compensation. The Commissioner of Health will report back to a joint committee of the General Assembly Judiciary Committee and the Senate Law, Public Safety and Defense Committee on the bill's effectiveness 18 months after it takes effect.

The committee amended the bill to clarify that the signs posted in places of employment need not state any particular wording as long as they indicate that smoking is permitted and prohibited in the appropriate areas. The committee also amended the bill to clarify that if an employer or his agent has adopted a written policy and procedure for designated nonsmoking areas, he is not subject to court action for personal injury resulting from inhalation of or exposure to second-hand tobacco smoke, except for an action instituted by an employee pursuant to Title 34 of the Revised Statutes, Labor and Workmen's Compensation. Amendments were adopted by the committee to correct printing errors in the bill.

As amended, the bill is identical to Senate Bill No. 2487, with Senate committee amendments.

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OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001
Contact: CARL GOLDEN
609-292-8956

TRENTON, N.J. 08625
Release: WED., JUNE 12, 1985

Governor Thomas H. Kean today signed four bills regulating smoking in offices, restaurants, factories, public transportation and workplaces.

The bills, A-546, A-547, A-639 and A-864, all were sponsored by Assemblyman Martin Herman, D-Gloucester.

A-546 requires all employers with 50 or more employees to adopt written policies concerning smoking and to designate nonsmoking areas. It is estimated that 9,000 employers in New Jersey fall into this category. This law is effective March 1, 1986.

A-547 requires all restaurants to post signs stating whether the establishment provides a nonsmoking area for customers. This law is effective in December.

A-639 requires retail food and marketing stores of 4,000 square feet or more to establish the stores as nonsmoking areas and to post signs indicating the prohibition. The law is effective in December.

A-864 prohibits smoking in buses or other public conveyances, except for group charter buses, specially marked railroad smoking cars, limousines, and when the driver is the sole occupant of the vehicle. This law is effective in 30 days.

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OFFICE OF
NEW JERSEY STATE LAWYER

JUN 21 1985

185 W. State Street
Trenton, N. J.

Smoking Bills Signed

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June 12, 1985

The prohibition on smoking in the workplace is to be enforced by the State Department of Health, which is empowered to enter the courts to seek an injunction to force compliance.

Violation of the smoking ban in restaurants would subject the person to a \$25 fine. Restaurants which fail to comply will be subject to legal action by the State Department of Health or the local Board of Health.

Violators of the smoking ban on buses or public conveyances would be subject to a \$200 fine and 30 days in jail.

Violators of the smoking ban in retail food stores would be subject to a \$25 fine. Stores which fail to post the nonsmoking sign would be subject to a fine of \$25 as well.

In signing the bills, the Governor said he felt the regulations "were reasonable and would not impose a hardship on those who choose to smoke, while, at the same time, offering protection to nonsmokers."

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