

26:3E-7

LEGISLATIVE HISTORY CHECKLIST

NJSA: 26:3E-7

(Smoking--Restaurants)

LAWS OF: 1985

CHAPTER: 185

Bill No: A547

Sponsor(s): Herman and others

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: Law, Public Safety and Defense

Amended during passage: Yes Amendments during passage denoted by asterisks. Substituted for S639 (not attached since identical to A547).

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.
H434 Judiciary Committee.
1984d Public hearing, held 9-25-84.
Trenton, 1984.

Background: See Legislative history of L. 1985, c. 186.

DO NOT WRITE IN THESE SPACES

185

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6-12-85

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 547

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblymen HERMAN, GILL, MILLER, FLYNN, WEIDEL, PATERNITI, Assemblywoman PERUN, Assemblymen HAY-TAIAN, DORIA, ALBOHN and DEVERIN

AN ACT ***[controlling]*** *concerning* smoking in **[certain]** restaurants 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 of
3 the nonsmoker to breathe clear air involves a determination of
4 when and where, rather than whether, a smoker may legally smoke.
5 It is not the public policy of this State to deny anyone the right to
6 smoke. **[However, the Legislature finds that in those restaurants**
7 **affected by this act the right of the nonsmoker to breathe clean**
8 **air should supersede the right of the smoker to smoke.]** In addition
9 to the deleterious effects upon smokers, tobacco smoke is (1) at
10 least an annoyance and a nuisance to a substantial percentage of
11 the nonsmoking public, and (2) a substantial health hazard to a
12 smaller segment of the nonsmoking public. **[The purpose of this**
13 **act, therefore, is to control smoking in certain restaurants.]**
14 **Therefore, the Legislature finds that it is in the interest of the*
15 *public health to encourage restaurants to establish nonsmoking*
16 *areas.**

1 2. As used in this act:

2 a. "Bar" means an establishment or portion of a restaurant,
3 including any contiguous lounge or common area in which the
4 principal business is the sale of alcoholic beverages for consump-

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.**

5 tion on the premises of such establishment or in such portion of
6 a restaurant.

7 b. "Restaurant" means an establishment in which the principal
8 business is the sale of food for consumption on the premises.

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

1 3. a. ***[**The provisions of this act shall apply to any restaurant
2 that has chosen to maintain a nonsmoking area. Every restaurant
3 with a seating capacity of 50 or more shall, on or before the effec-
4 tive date of this act, notify the State Department of Health as to
5 its decision. Thereafter, any restaurant that does not maintain a
6 nonsmoking area as provided by this act shall post a sign clearly
7 visible to the public at every public entrance to the restaurant in
8 letters not less than one inch in height, contrasting in color, with
9 the sign stating "This restaurant does not maintain a nonsmoking
10 section." Any restaurant that maintains a nonsmoking section
11 shall in the same manner post a sign stating that "This restaurant
12 maintains a nonsmoking section." This requirement shall not apply
13 to any portion of a restaurant or bar while it is being used for a
14 privately sponsored social affair, which is outdoors or which is
15 equipped with electronic air cleaners or air recirculating systems
16 approved by the State Department of Health as adequate in
17 removing smoke or cleaning the air of smoke pollutants pursuant
18 to standards which the department shall adopt.]* **The provisions*
19 *of this act shall apply to all restaurants but shall not apply to any*
20 *bar. A restaurant which provides a nonsmoking section shall post*
21 *a sign no smaller than eight inches by five inches stating that "This*
22 *restaurant offers a nonsmoking area." A restaurant which does*
23 *not provide a nonsmoking section shall in the same manner post*
24 *a sign stating that "This restaurant does not offer a nonsmoking*
25 *area, as permitted by law." A restaurant which is equipped with*
26 *air cleaners or air recirculating systems which meet the standards*
27 *of the model code of the Building Officials and Code Administrators*
28 *International, Inc., known as the "BOCA Basic National Building*
29 *Code 1984," as administered by the State Department of Com-*
30 *munity Affairs shall in the same manner post a sign stating "Ap-*
31 *proved air-cleaning equipment is installed in place of a nonsmoking*
32 *area." This requirement shall not apply to any portion of a res-*
33 *taurant while it is being used for a privately sponsored social*
34 *affair or which is outdoors.**

35 b. The size and location of the nonsmoking area shall be deter-
36 mined by the owner or manager or person in charge in accordance
37 with patron needs.

1 4. a. The State or any agency or political subdivision thereof
 2 may suggest guidelines for establishing nonsmoking areas in
 3 restaurants which may be adopted by the owner, manager or person
 4 in charge but in no case 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 restaurants except where smoking is
 8 prohibited by municipal ordinance under authority of R. S. 40:48-1
 9 and 40:48-2 or by any other statute or regulation adopted pursuant
 10 to law for purposes of protecting life and property from fire.

1 5. a. Any municipal or county health official or other public
 2 servant engaged in executing or enforcing this act shall order any
 3 person smoking in violation of this act to comply with the provisions
 4 of this act. Thereupon any such person who smokes in a restaurant
 5 in violation of this act is subject to a fine not to exceed \$25.00. The
 6 owner, manager or person in charge of the restaurant or any agent
 7 thereof shall only be responsible for providing signs governing
 8 smoking pursuant to section 3 of this act and shall not be responsible
 9 for the enforcement of the provisions of this act.

10 b. The State Department of Health *~~or~~ the local board of health
 11 or such board, body or officers exercising the functions of the local
 12 board of health according to law,~~]~~* upon written complaint and
 13 having reason to suspect that any restaurant is or may be in vio-
 14 lation of the provisions of this act shall, by written notification,
 15 advise the owner, manager or person in charge of the restaurant
 16 accordingly *~~an~~* *and* order appropriate action to be taken.
 17 Thereupon any person receiving such notice who knowingly fails
 18 or refuses to comply with the order is subject to a fine not to exceed
 18A \$25.00.

19 c. Any penalty recovered under the provisions of this act shall
 20 be recovered by and in the name of the Commissioner of Health
 21 of the State of New Jersey or by and in the name of the local board
 22 of health. When the plaintiff is the Commissioner of Health, the
 23 penalty recovered shall be paid by the commissioner into the trea-
 24 sury of the State. When the plaintiff is a local board of health,
 25 the penalty recovered shall be paid by the local board into the
 26 treasury of the municipality where the violation occurred.

27 d. Every municipal court shall have jurisdiction over proceed-
 28 ings to enforce and collect any penalty imposed because of a vio-
 29 lation of any provision of this act, if the violation has occurred
 30 within the territorial jurisdiction of the court. The proceedings
 31 shall be summary and in accordance with "the penalty enforcement
 32 law" (N. J. S. 2A:58-1 et seq.). Process shall be in the nature of

33 a summons or warrant and shall issue only at the suit of the Com-
34 missioner of Health of the State of New Jersey, or the local board
35 of health, as the case may be, as plaintiff.

1 6. No owner, manager or person in charge of the restaurant or
2 any agent thereof who has provided signs governing smoking pur-
3 suant to section 3 of this act shall be subject to any action in any
4 court by any party either under this act or at common law*, *except*
5 *for an action instituted by an employee pursuant to Title 34 of the*
6 *Revised Statutes**, provided that the Commissioner of Health of
7 the State of New Jersey ***[or the local board of health]*** may bring
8 an action against the owner, manager or person in charge of the
9 restaurant or any agent thereof for failure to meet the provisions
10 of this act.

1 7. The Judiciary***[, Law, Public Safety and Defense]*** Committee
2 of the General Assembly, and the Law, Public Safety and Defense
3 Committee of the Senate, or their respective successors, are con-
4 stituted a joint committee for the purposes of monitoring and
5 evaluating the effectiveness of the implementation of this act.
6 The Commissioner of Health of the State of New Jersey shall, one
7 year from the effective date of this act, report to the joint committee,
8 an evaluation of the effectiveness of this act and the committee
9 shall, upon receiving such report, issue as it may deem necessary
10 and proper, recommendation for administrative or legislative
11 changes affecting the implementation of this act.

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

9 shall, upon receiving such report, issue as it may deem necessary
10 and proper, recommendation for administrative or legislative
11 changes affecting the implementation of this act.

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

STATEMENT

This bill requires that restaurants seating 50 or more persons choose whether to maintain a nonsmoking area. Restaurants which would choose to maintain a nonsmoking area would be required to notify the State Department of Health as to their choice. This choice would have to be communicated on or before the effective date of this act, and restaurants which would choose to maintain a nonsmoking area would have to post signs as specified in section 3 which would state "This restaurant maintains a nonsmoking section." Conversely, restaurants which would not choose to maintain a nonsmoking section would be required to post a sign as specified in section 3 which would state "This restaurant does not maintain a nonsmoking section." This requirement would not apply to any portion of a restaurant or bar while it is being used for a privately sponsored social affair, which is outdoors or which is equipped with electronic air cleaners or air recirculating systems approved by the Department of Health as adequate in removing smoke or cleaning the air of smoke pollutants pursuant to standards which the department would adopt.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 547

STATE OF NEW JERSEY

DATED: NOVEMBER 19, 1984

This bill requires that restaurants seating 50 or more persons choose whether to maintain a nonsmoking area. Restaurants which would choose to maintain a nonsmoking area would be required to notify the State Department of Health as to their choice. This choice would have to be communicated on or before the effective date of this act, and restaurants which would choose to maintain a nonsmoking area would have to post signs as specified in the bill which would state "This restaurant maintains a nonsmoking section." Conversely, restaurants which would not choose to maintain a nonsmoking section would be required to post a sign as specified in the bill which would state "This restaurant does not maintain a nonsmoking section." This requirement would not apply to any portion of a restaurant or bar while it is being used for a privately sponsored social affair, which is outdoors or which is equipped with electronic air cleaners or air recirculating systems approved by the Department of Health as adequate in removing smoke or cleaning the air of smoke pollutants pursuant to standards which the department would adopt.

SENATE LAW, PUBLIC SAFETY AND DEFENSE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 547

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 28, 1985

The purpose of Assembly Bill No. 547, as amended by the Senate Law, Public Safety and Defense Committee, is to encourage restaurants to establish nonsmoking sections.

The bill enumerates the requirements that must be met by restaurants in order to comply with the law; specifies the penalties for smoking in violation of the law; outlines the procedures to be followed by the State Department of Health in attempting to bring a restaurant into compliance with the law; allocates the monies recovered as a result of proceedings initiated to enforce the law; and requires an evaluation of the law's effectiveness.

The committee amended the bill to cover all restaurants, rather than only restaurants seating 50 or more persons, and to exclude bars from the bill's requirements. The bill defines a bar as an establishment or a portion of a restaurant in which the principal business is the sale of alcoholic beverages for on-premises consumption.

The committee also amended the bill to require a restaurant that provides a nonsmoking section to post a sign no smaller than eight inches by five inches stating, "This restaurant offers a nonsmoking area;" to require a restaurant that does not provide a nonsmoking section to post a sign in the same manner stating, "This restaurant does not offer a nonsmoking area, as permitted by law;" and to require a restaurant that is equipped with air cleaners or air recirculating systems that meet the standards of the Building Officials and Code Administrators code as administered by the State Department of Community Affairs to post a sign in the same manner stating, "Approved air cleaning equipment is installed in place of a nonsmoking area." The requirement to post signs does not apply to any portion of a restaurant that is outdoors or that is being used for a privately sponsored social affair. Prior to being amended, the bill required restaurants seating 50 or more persons to notify the State Department of Health of whether or not they had established a nonsmoking section; the bill also contained different requirements for the posting of signs.

According to the bill, a person who smokes in violation of the law will be ordered to comply with the law by enforcement officials. If the person continues to smoke in violation of the law, he is subject to a fine not to exceed \$25.00. The owner, manager, or person in charge of a restaurant is not responsible for the enforcement provisions of the act.

The State Department of Health will notify a restaurant in writing if it has reason to suspect that the restaurant is in violation of the law and will order the restaurant to take appropriate action. The committee amended the bill to remove the authority of a local board of health to make this notification. Thereafter, if the restaurant receives another notice and knowingly fails or refuses to comply with the order, it will be subject to a fine of up to \$25.00.

Proceedings to enforce the act will be in accordance with the "penalty enforcement law" (N. J. S. 2A:58-1 et seq.) and will be under the jurisdiction of the municipal court. Monies recovered as the result of proceedings initiated by the Commissioner of Health will be forwarded to the State treasury. Monies recovered as the result of proceedings initiated by a local board of health will be forwarded to the treasury of the municipality in which the violation occurred.

The Commissioner of Health can bring an action against the owner, manager, or person in charge of a restaurant or his agent for failure to meet the provisions of the law. The committee amended the bill to remove the authority of a local board of health to bring a similar action and to permit an employee to institute an action pursuant to Title 34 of the Revised Statutes, Labor and Workmen's Compensation. No other party can bring an action against a restaurant under the provisions of the law or at common law if the restaurant has posted signs governing smoking.

The Assembly Judiciary Committee and the Senate Law, Public Safety and Defense Committee will form a joint committee to monitor and evaluate the effectiveness of the act's implementation. One year from the effective date of the act, the Commissioner of Health will report on the act's effectiveness to the joint committee, which will then issue recommendations, if necessary.

The committee also amended the bill to remove from section 1, which contains the Legislature's policy statement, a sentence stating that the Legislature finds that the right of the nonsmoker to breathe clean air should supersede the right of the smoker to smoke.

By amendment, the committee also removed from section 1 a statement that the purpose of the bill is to control smoking in certain restaurants and replaced it with a statement that the Legislature finds it to be in the interest of the public health to encourage restaurants to establish nonsmoking areas.

As amended, the bill is identical to Senate Bill No. 639, 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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JUN 12 1985

185 W. State Street
Trenton, N. J.

Smoking Bills Signed

Page Two

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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