

26:3D-38 to 26:3D-45

LEGISLATIVE HISTORY CHECKLIST

NJSA: 26:3D-38 to 26:3D-45

(Smoking--in public  
buildings--control)

LAWS OF: 1985

CHAPTER: 318

Bill No: A640

Sponsor(s): Herman

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: Law, Public Safety and Defense

Amended during passage: Yes Substituted for S2485 (not attached  
since identical to A640)

Date of Passage: Assembly: December 13, 1984

Senate: June 17, 1985

Date of Approval: August 28, 1985

Following statements are attached if available:

Sponsor statement: Yes (Below) Attached: Senate  
amendments, adopted 5-  
13-85 and Senate  
amendments, adopted 5-2-  
85 (with statement).

Committee statement: Assembly Yes  
Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: Yes

Sponsor's Statement:

(OVER)

This bill would authorize the regulation of smoking in certain indoor places.

974.90 New Jersey. Legislature. General assembly. Judiciary Committee.  
H434 Public hearing on A. 546. . . A.640, held 9-25-84. Trenton N.J., 1984.  
1984d

For background see legislative history of L. 1985, c. 186.

8-28-85

[OFFICIAL COPY REPRINT]  
**ASSEMBLY, No. 640**

**STATE OF NEW JERSEY**

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblyman HERMAN

AN ACT controlling smoking in certain indoor public places 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 clean air involves a determination of when  
 4 and where, rather than whether a smoker may legally smoke. It is  
 5 not the public policy of this State to deny anyone the right to smoke.  
 6 However, the Legislature finds that in those enclosed areas affected  
 7 by this act the right of the nonsmoker to breathe clean air should  
 8 supersede the right of the smoker to smoke. In addition to the  
 9 deleterious effects upon smokers, tobacco smoke is (1) at least an  
 10 annoyance and a nuisance to a substantial percentage of the non-  
 11 smoking public, and (2) a substantial health hazard to a smaller  
 12 segment of the nonsmoking public. The purpose of this act, there-  
 13 fore, is to control smoking in certain indoor public places.

1 2. As used in this act:

2 a. "Indoor public place" means a structurally enclosed area  
 3 generally accessible to the public in **\*\*[department stores, retail**  
 4 **stores, banks and savings and loan establishments,]\*\*** theatres,  
 5 gymnasiums, libraries, museums, concert halls, auditoriums, or  
 6 other similar facilities which are neither owned or leased by a gov-  
 7 ernmental entity or qualify as a health care facility or the waiting  
 8 room of a person licensed to practice the healing arts. Race track  
 9 facilities, casinos licensed under the "Casino Control Act," P. L.

**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.

\*\*—Senate amendments adopted May 2, 1985.

\*\*\*—Senate amendments adopted May 13, 1985.

10 1977, c. 110 (C:5:12-1 et seq.), facilities used for the holding of box-  
 11 ing and wrestling exhibitions or performances, football, baseball,  
 12 and other sporting event facilities, bowling alleys, dance halls, ice  
 13 and roller skating rinks and other establishments providing ambu-  
 14 latory recreation are excluded from this definition.

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

1 3. a. The owner, manager, proprietor, or other person who has  
 2 control of an indoor public place\*\*[, other than a department store,  
 3 \*hotel corridor or lobby,\* retail store, nonenclosed retail areas  
 4 within the public portion of a shopping center or mall, bank or  
 5 savings and loan establishment shall, and the owner, manager,  
 6 proprietor, or other person who has control of a department store,  
 7 \*hotel corridor or lobby,\* retail store, nonenclosed retail area  
 7A within the public portion of a shopping center or mall, bank  
 8 or savings and loan establishment may,]\*\*\* \*\*shall\*\* establish non-  
 9 smoking areas in those places for which he is responsible. In estab-  
 10 lishing nonsmoking areas, the owner, manager, proprietor, or other  
 11 person in charge shall provide areas for nonsmokers to \*\*\*[enter,  
 12 pass through or]\*\*\* use to conduct business or participate in activi-  
 13 ties free from the annoyance and health hazard of smoke.

14 b. Smoking is prohibited in pharmacies, drug stores, or areas  
 15 registered with the board of pharmacy of the State of New Jersey  
 16 and to which permits have been issued for the dispensing of pre-  
 17 scription drugs, and in any areas where \*\*\*[optical supplies, medi-  
 18 cal supplies, dental supplies and]\*\*\* hearing aids are sold at retail.

19 c. Smoking areas for employees may be permitted in any indoor  
 20 public place covered under this act as long as they are separate  
 21 areas and not generally accessible to the public except where smok-  
 22 ing is prohibited by municipal ordinance under authority of R. S.  
 23 40:48-1 and R. S. 40:48-2 for the purposes of protecting life and  
 24 property from fire.

1 4. a. The State or any agency or political subdivision thereof  
 2 may suggest guidelines for establishing nonsmoking areas in indoor  
 3 public places which may be followed by the owner, manager, pro-  
 4 prietor or other person in charge of an indoor public place but in  
 5 no case shall the guidelines be mandatory.

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

1 5. Every area in an indoor public place where smoking is pro-  
2 hibited or specifically permitted shall be so designated by the owner,  
3 manager, proprietor or other person who has control of the indoor  
4 public place with a sign containing lettering not less than one inch  
5 in height stating "Smoking Permitted" or "Smoking Prohibited"  
6 or designated by the appropriate "Smoking Permitted" or "Smok-  
7 ing Prohibited" international symbol. The letters or symbol shall  
8 contrast in color with the sign. The sign may also indicate that  
9 violators are subject to a fine. Every sign required by this sub-  
10 section shall be located so as to be clearly visible to the public.

1 6. 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 provi-  
4 sions of this act. Thereupon any such person who smokes in an  
5 indoor public place in violation of this act after the provisions of  
6 section 5 are complied with is subject to a fine not to exceed \$25.00.  
7 The owner, manager, proprietor, or any other person having con-  
8 trol of the indoor place or any agent thereof, shall only be responsi-  
9 ble for providing signs governing smoking pursuant to section 5  
10 of this act and shall in no event be responsible for the enforcement  
11 of the provisions of this act.

12 b. The Department of Health or the local board of health or such  
13 board, body or officers exercising the functions of the local board of  
14 health according to law, upon written complaint and having reasons  
15 to suspect that any indoor public place is or may be in violation of  
16 the provisions of this act shall, by written notification, advise the  
17 owner, manager, proprietor or other person having control of the  
18 indoor public place accordingly and order appropriate action to be  
19 taken. Thereupon any person receiving such notice who knowingly  
20 fails or refuses to comply with the order is subject to a fine not to  
21 exceed \$25.00.

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

30 d. Every municipal court shall have jurisdiction over proceed-  
31 ings to enforce and collect any penalty imposed because of a viola-  
32 tion of any provision of this act, if the violation has occurred

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33 within the territorial jurisdiction of the court. The proceedings  
34 shall be summary and in accordance with "the penalty enforcement  
35 law" (N. J. S. 2A:58-1 et seq.). Process shall be in the nature of a  
36 summons or warrant and shall issue only at the suit of the State  
37 Commissioner of Health of the State of New Jersey, or the local  
38 board of health, as the case may be, as plaintiff.

1 7. No owner, manager, proprietor or other person having control  
2 of the indoor public place or any agent thereof shall be subject to  
3 any action in any court by any party either under this act or at  
4 common law, provided that the Commissioner of Health of the  
5 State of New Jersey or the local board of health may bring an  
6 action against the owner, manager, proprietor or other person  
7 having control of the indoor public place or any agent thereof for  
8 failure to meet the provisions of this act.

1 8. The Judiciary\***[** Law, Public Safety and Defense**]**\* Com-  
2 mittee of the General Assembly, and the Law, Public Safety and  
3 Defense Committee of the Senate, or their respective successors, are  
4 constituted a joint committee for the purposes of monitoring and  
5 evaluating the effectiveness of the implementation of this act. The  
6 Commissioner of Health of the State of New Jersey shall, one year  
7 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, recommendations for administrative or legislative  
11 changes affecting the implementation of this act.

1 9. This act shall take effect on the one hundred eightieth day  
2 after enactment.

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34 shall be summary and in accordance with "the penalty enforcement  
35 law" (N. J. S. 2A:58-1 et seq.). Process shall be in the nature of a  
36 summons or warrant and shall issue only at the suit of the State  
37 Commissioner of Health of the State of New Jersey, or the local  
38 board of health, as the case may be, as plaintiff.

1 7. No owner, manager, proprietor or other person having control  
2 of the indoor public place or any agent thereof shall be subject to  
3 any action in any court by any party either under this act or at  
4 common law, provided that the Commissioner of Health of the  
5 State of New Jersey or the local board of health may bring an  
6 action against the owner, manager, proprietor or other person  
7 having control of the indoor public place or any agent thereof for  
8 failure to meet the provisions of this act.

1 8. The Judiciary, Law, Public Safety and Defense Committee of  
2 the General Assembly, and the Law, Public Safety and Defense  
3 Committee of the Senate, or their respective successors, are consti-  
4 tuted a joint committee for the purposes of monitoring and evaluat-  
5 ing the effectiveness of the implementation of this act. The Com-  
6 missioner of Health of the State of New Jersey shall, one year  
7 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, recommendations for administrative or legislative  
11 changes affecting the implementation of this act.

1 9. This act shall take effect on the one hundred eightieth day  
2 after enactment.

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#### STATEMENT

This bill would authorize the regulation of smoking in certain indoor public places.

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ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 640**

**STATE OF NEW JERSEY**

DATED: NOVEMBER 19, 1984

This bill would authorize the regulation of smoking in certain indoor public places such as department stores, theatres, and museums. Excluded from the bill are casinos licensed under the Casino Control Act, race track facilities, facilities used for the holding of boxing and wrestling performances, and other sporting event facilities.

The bill allows the owner, manager or person having control of these places to establish nonsmoking areas in those places for which he is responsible. Every area where smoking is prohibited or specifically permitted must be so designated with an appropriate sign by the owner or person having control of the place.

Smoking would be completely prohibited in pharmacies, drug stores, and areas where optical supplies, medical supplies, dental supplies and hearing aids are sold at retail.

Any person smoking in an indoor public place in violation of this act is subject to a fine not to exceed \$25.00. The owner or person having control of the places will only be responsible for providing the appropriate signs pursuant to this bill and will not be responsible for enforcement of the bill's provisions.

Under the bill, the Commissioner of Health or the local board of health may bring an action against the owner or person having control of the indoor public place for failure to meet the provisions of this bill. However, those persons shall not be subject to any other action in court by any party other than the commissioner or local board of health.



SENATE LAW, PUBLIC SAFETY AND DEFENSE  
COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 640**  
with Senate committee amendments

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**STATE OF NEW JERSEY**

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DATED: JANUARY 28, 1985

Assembly Bill No. 640, as amended by the Senate Law, Public Safety and Defense Committee regulates smoking in indoor public places.

The bill defines "indoor public place;" specifies the different requirements that must be met by various types of indoor public places in order to comply with the law; enumerates the penalties for smoking in violation of the law; outlines the procedure to be followed by the State Department of Health in attempting to bring an indoor public place into compliance with the law; describes the distribution of monies recovered as a result of proceedings to enforce the law; and requires an evaluation of the law's effectiveness.

"Indoor public place" is defined by the bill as a structurally enclosed area generally accessible to the public in a facility that is neither owned nor leased by a governmental entity. Excluded are health care facilities, waiting rooms of persons licensed to practice the healing arts, licensed casinos, facilities used for boxing and wrestling exhibitions or performances, facilities used for sporting events, bowling alleys, dance halls, ice and roller skating rinks, and other facilities that provide ambulatory recreation.

The owner, manager, proprietor or other person who has control of a department store, a retail store, a nonenclosed retail area within the public portion of a shopping mall, or a bank or savings and loan establishment *may* establish nonsmoking areas in those places. The committee amended the bill to add hotel corridors and lobbies to the list of facilities whose owners or proprietors are not required but are permitted voluntarily to establish nonsmoking areas in those places. The owner, manager, proprietor or person in charge of any other facility that meets the definition of an indoor public place is *required* to establish nonsmoking areas in those places. The person establishing the nonsmoking areas must provide areas free from smoke for nonsmokers to enter, pass through, or use to conduct business or participate in activities.

The bill prohibits smoking in pharmacies, drug stores, and areas registered with the board of pharmacy to which permits have been issued for the dispensing of prescription drugs. The bill also prohibits smoking in areas where optical supplies, medical supplies, dental supplies and hearing aids are sold at retail, but in so doing, the bill does not supersede the provisions of Assembly Bill No. 639 and Senate Bill No. 2484, which exempts convenience stores from the no-smoking requirement.

Smoking areas for employees are permitted in indoor public places as long as they are separate areas not accessible to the public.

The State or an agency or political subdivision of the State is authorized to suggest nonmandatory guidelines for establishing non-smoking areas in indoor public places. The provisions of the act supersede any other statute, ordinance, or regulation except municipal ordinances established under authority of R. S. 40:48-1 and R. S. 40:48-2 for purposes of protecting life and property from fire.

The person in charge of an indoor public place in which smoking is prohibited is required to post a no-smoking sign in such a manner that it is clearly visible to the public.

A person who smokes in violation of the act will be ordered to comply with the law by enforcement officials. If the person smokes after being ordered to comply, he is subject to a fine of up to \$25.00. The person in charge of the indoor public place is responsible only for posting no-smoking signs, not for enforcing the no-smoking requirement.

The State Department of Health or local board of health will notify the person in charge of an indoor public place in writing if it has reason to suspect that the indoor public place is in violation of the law, and it will then order that appropriate action be taken. Thereafter, if the person in charge receives another notice and knowingly fails or refuses to comply with the order, he 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 or a local board of health can bring an action against the owner, manager, proprietor, or other person in charge of an indoor public place or his agent for failure to meet the provisions of the law, but no other party can bring an action against him under the provisions of the law or at common law.

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 amended the bill to remove an incorrect reference to the no longer existent Assembly Judiciary, Law, Public Safety and Defense Committee and to replace it with a reference to the Assembly Judiciary Committee.

As amended, the bill is identical to Senate Bill No. 2485 Sca.

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# OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

Contact: CARL GOLDEN  
292-8956

TRENTON, N.J. 08625

Release: WED., AUGUST 28, 1985

Governor Thomas H. Kean today signed legislation requiring non-smoking areas to be provided indoor public places, such as theaters, gymnasiums, libraries, museums, concert halls and auditoriums.

The legislation, A-640, sponsored by Assemblyman Martin Herman, D-Gloucester, is the fifth signed by the Governor in a package of six bills aimed at prohibiting or controlling smoking in public places. The remaining bill was subjected to a conditional veto today.

The legislation signed by the Governor requires that non-smoking areas be defined and identified in public facilities and provides for a fine of \$25 for violators of the rule or for owners who fail to post the appropriate signs.

Facilities exempt from the law are rack tracks, casinos, boxing, wrestling, football and baseball sporting events, bowling alleys, dance halls, ice and roller skating rinks and other ambulatory recreational facilities.

The law becomes effective in six months.

Kean also signed S-1945, sponsored by Senator Raymond Lesniak, D-Union, to create a Pinelands Development Credit Bank which would be empowered to purchase development credits allocated by the Pinelands Commission under its Comprehensive Management Plan.

- more -

ADU.

MAY 13 1985

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Senate Amendments  
(Proposed by Senator Lynch)  
to

Second Senate Reprint  
Assembly Bill No. 640 (Typed Copy)  
Sponsored by Assemblyman Herman

Amend:

Page	Sec.	Line	
2	3	11-12	Omit "enter, pass through or"
2	3	17-18	Omit "optical supplies, medical supplies, dental supplies and"

STATEMENT

These amendments will clarify the intent of this bill, which is to accommodate nonsmokers as well as smokers in certain public places, and will make it workable and enforceable.

The first amendment recognizes that in some theaters and similar facilities, it would be impossible to permit smoking in any part of a lobby if the facility had to provide for nonsmokers to "enter and pass through" without encountering smokers. Any theater can easily divide its lobby into nonsmoking and smoking sections to conform with the basic intent of this bill, but the location of entrances and exits from some lobbies would make it impossible to designate a smoking area if the "enter and pass through" requirement remained in the bill.

The second amendment makes the bill consistent with the sponsor's intent to eliminate, in general, retail stores from its scope. The ban on smoking in pharmacies would remain, but the amendment would eliminate the ban on smoking in areas of stores,

ADOPTED  
MAY 13 1985

Assembly Bill No. 640 Senate  
sponsored by Assemblyman Lerman

Amend:

Page	Sec.	Line	
1	2	3-4	Omit "department stores, retail stores, banks and savings and loan establishments,"
2	3	2-7A	On line 2 omit ", other than a department store," and omit lines 3 to 7A in entirety
2	3	8	Omit "or savings and loan establishment may," insert "shall"

STATEMENT

These amendments remove department stores, retail stores, banks, and savings and loan establishments from the coverage of this bill which controls smoking in certain indoor public places.

ADOPTED

MAY 2 1985

Senate a to

Assembly Bill No. 640 Senate sponsored by Assemblyman Herman

Amend:

Page	Sec.	Line	
1	2	3-4	Omit "department stores, retail stores, banks and savings and loan establishments,"
2	3	2-7A	On line 2 omit ", other than a department store, and omit lines 3 to 7A in entirety
2	3	8	Omit "or savings and loan establishment may," insert "shall"

STATEMENT

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ADOPTI

MAY 2