

26:3D-46 to 26:3D-54

LEGISLATIVE HISTORY CHECKLIST

**NJSA:** 26:3D-46 to 26:3D-54 (Smoking in government buildings)

**LAWS OF:** 1985 **CHAPTER:** 381

**BILL NO:** A548

**Sponsor(s):** Herman and others

**Date Introduced:** Pre-filed

**Committee: Assembly:** Judiciary

**Senate:** Law, Public Safety and Defense

**Amended during passage:** Yes according to Governor's recommendations Assembly Committee Substitute 2nd (OCR) enacted. Amendments denoted by asterisks. Substituted for S2488 (not attached since identical to A548).

**Date of Passage: Assembly:** December 13, 1984 Re-enacted 9-9-84

**Senate:** June 17, 1985 Re-enacted 12-9-85

**Date of Approval:** December 18, 1985

**Following statements are attached if available:**

**Sponsor statement:** Yes Attached: Senate amendments, adopted 5-2-85 (with statement)

**Committee statement: Assembly** Yes

**Senate** Yes

**Fiscal Note:** No

**Veto Message:** Yes

**Message on Signing:** No

**Following were printed:**

**Reports:** No

**Hearings:** Yes

(OVER)

974.90 New Jersey. Legislature. Assembly. Judiciary Committee.  
H434 Public hearing on Assembly bills 564, 547, 548, 639, 640, 864,  
1984d held 9-25-84. Trenton, 1984.

Background: See legislative history of L. 1985 c. 186

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

See also newspaper clipping--attached.

"Sponsor: no-smoking laws 'self enforcing'," 2-24-86 Trenton Times.

381  
12-18-85

[SECOND OFFICIAL COPY REPRINT]  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 548**

**STATE OF NEW JERSEY**

ADOPTED NOVEMBER 19, 1984

By Assemblyman HERMAN

AN ACT controlling smoking in government buildings 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  
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 government  
7 buildings affected by this act the right of the nonsmoker to breathe  
8 clean air should supersede the right of the smoker to smoke. In  
9 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 pur-  
13 pose of this act, therefore, is to protect the interest of nonsmokers  
14 in government buildings and allow smokers the right to smoke in  
15 designated areas in government buildings.

1 2. As used in this act:

2 a. "Government building" means a building or portion of a  
3 building owned or leased by a government entity, exclusive of  
4 school, college, university and professional training buildings and  
5 health care facilities. Facilities owned or leased by a government  
6 entity and used for the holding of sports events, such as football,  
7 baseball, basketball and horse racing, or providing ambulatory  
8 recreation, such as ice and roller skating are excluded from this  
9 definition.

**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.

\*\*\*—Assembly amendments adopted in accordance with Governor's recommendations August 28, 1985.

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

12 c. "Supervisor" means the person who ultimately controls,  
13 governs or directs the activities and conduct of employees.

1 3. a. (1) Except for areas occupied by the Legislature, its com-  
2 mittees and personnel, the supervisor of each unit of government  
3 located in a government building shall establish written rules  
4 governing smoking in the building or that portion of the building  
5 for which the supervisor is responsible, except where smoking is  
6 prohibited by municipal ordinance under authority of R. S. 40:48-1  
7 and R. S. 40:48-2 or any other statute or regulation adopted pur-  
8 suant to law for purposes of protecting life and property from fire  
9 or in subsection b. of this section. The rules shall contain a written  
10 policy and procedure to protect the health, welfare and comfort of  
11 employees from the detrimental effects of tobacco smoke which  
12 policy shall include designated nonsmoking areas but may include  
13 designated smoking areas. Nothing in this act shall prevent any  
14 rule, regulation or procedure, which is not contrary to the pro-  
15 visions of this act, from being established by an employer or  
16 negotiated as a term or condition of any agreement or contract of  
17 employment. Employees shall be provided with a copy of the  
18 written rules upon request.

19 (2) Where the supervisor\***[**, as part of the established written  
20 rules,**]**\* provides as part of \***[those]**\* *\*the\** written rules a method  
21 of discipline for public employees who smoke in violation of this  
22 act, no such written rules shall be adopted unless:

23 (a) The supervisor shall first give written notice to all em-  
24 ployees under the supervisor's supervision of the proposed  
25 rules;

26 (b) The employee or the employee's duly elected represen-  
27 tative shall first have the right to be heard concerning those  
28 proposed rules;

29 (3) No written rule shall be adopted until 30 days after the  
30 delivery of the written notice to the employee;

31 (4) Any written rule thereafter adopted may not provide for  
32 any disciplinary action involving suspension or termination for  
33 six months following the effective date of this act.

34 (5) The Senate and General Assembly separately shall adopt  
35 rules governing smoking in their respective chambers, committee  
36 rooms and other areas occupied by their personnel, and shall adopt  
37 joint rules governing smoking in those areas occupied by the  
38 committees and personnel of both Houses.

39 b. Smoking is prohibited in the following government buildings:

40 (1) A room, chamber, place of meeting or public assembly while  
41 a public meeting held under the auspices of a governmental entity  
42 and to which the public is invited, solicited or legally entitled to  
43 attend is in progress.

44 (2) \*\*\***Those areas**\*\*\* *\*\*\*In offices\*\*\** open to the general  
45 public including, but not limited to: tax offices, vital records offices,  
46 motor vehicles offices and unemployment insurance offices.

47 (3) Libraries, indoor theatres, museums, lecture or concert halls,  
48 gymnasiums, or other similar facilities open to the public, except  
49 that smoking may be permitted therein on special occasions by  
50 persons seated at tables provided for the purpose of consuming  
51 food or beverages served or provided on the premises, in areas  
52 adjacent to these facilities within the same building where the  
53 words "Smoking Permitted" are posted, and in such areas when  
54 in use for private functions or under specified private lease.

55 c. In restaurants in government buildings with an occupied  
56 capacity of 50 or more persons a nonsmoking area shall be desig-  
57 nated and posted prohibiting smoking therein. The size and loca-  
58 tion of the nonsmoking area shall be determined by the person in  
59 charge in accordance with patron needs, provided the entire estab-  
60 lishment is not designated "Smoking Permitted." Where feasible  
61 the section designated "Smoking Permitted" shall be one contigu-  
62 ous area.

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

1 5. All places affected by this act shall be identified by the signs  
2 posted by the supervisors thereof with letters at least one inch in  
3 height stating "Smoking Permitted" or "Smoking Prohibited" or  
4 designated by the appropriate "Smoking Permitted" or "Smoking  
5 Prohibited" international symbol. The letters or symbol shall con-  
6 trast in color with the sign. The sign may also indicate that vio-  
7 lators are subject to a fine and that a person who smokes in a non-  
8 smoking area may be denied the services of the governmental de-  
9 partment, division or agency. Every sign required by this section  
10 shall be located so as to be clearly visible to the public and em-  
11 ployees.

1 6. a. (1) Any municipal or county health official engaged in  
2 executing or enforcing this act may order any person smoking in  
3 violation of this act to comply with the provisions of this act. There-  
4 upon any member of the public who smokes in a government build-  
5 ing in violation of this act is subject to a fine not to exceed \$25.00.  
6 The supervisor or any agent thereof shall in no event be respon-  
7 sible for executing or enforcing this act against any member of  
8 the public.

9 (2) The supervisor shall have the right to withhold the services  
10 of the supervisor's department, division or agency to any member  
11 of the public who smokes in any public area in which smoking is  
11A prohibited\*\*, *provided that the supervisor shall first inform that*  
11B *person of this right. Services shall not be denied if the member of*  
11C *the public complies with the rules governing smoking after receiv-*  
11D *ing this notice, and the supervisor shall so inform that person\*\*.*

12 \*\**(3) Any person waiting for services in a government building*  
12A *who leaves the building to smoke shall, upon reentering the build-*  
12B *ing, have the right to regain his position in the order of persons*  
12C *receiving those services.\*\**

13 b. (1) Where the Department of Health has reason to suspect  
14 that any supervisor is or may be in violation of the provisions of  
15 this act, the department shall first give written notice to the super-  
16 visor. That written notice shall contain a statement by the depart-  
17 ment of the alleged violation as well as the department's recom-  
18 mendations to the supervisor as to how the supervisor's building  
19 or part thereof could conform to the provisions of this act: these  
20 recommendations may be in the form of a series of alternative  
21 proposals for compliance.

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

25 (3) Upon receipt of the written notice, the supervisor may re-  
26 quest of the department conferences with the department to be  
27 held at the supervisor's place of business or such other place mu-  
28 tually agreed by the department and the supervisor, which con-  
29 ference shall be utilized to afford the supervisor full opportunity  
30 to avail himself of the information and expertise of the department  
31 in furtherance of the supervisor's obligation to effect compliance  
32 with the provisions of this act.

33 c. (1) Any penalty recovered under the provisions of this act  
34 shall be recovered by and in the name of the Commissioner of Health  
35 of the State of New Jersey or by and in the name of the local board

36 of health. When the plaintiff is the commissioner, the penalty  
37 recovered shall be paid by the commissioner into the treasury of  
38 the State. When the plaintiff is a local board of health, the penalty  
39 recovered shall be paid by the local board into the treasury of the  
40 municipality where the violation occurred.

41 (2) Any action instituted under the provisions of this act to  
42 effect compliance with section 3 of this act shall be in the name of  
43 the commissioner.

44 d. Every municipal court has jurisdiction over proceedings to  
45 enforce and collect any penalty imposed because of a violation  
46 of any provision of this act, if the violation has occurred within  
47 the territorial jurisdiction of the court. The proceedings shall be  
48 summary and in accordance with "the penalty enforcement law"  
49 (N. J. S. 2A:58-1 et seq.). Process shall be in the nature of a  
50 summons or warrant and shall issue only at the suit of the com-  
51 missioner, or the local board of health, as the case may be, as  
52 plaintiff. However, an action by the commissioner \***[in com-**  
53 **pliance]**\* *to require a supervisor or his agent to comply*\* with  
54 section 3 of this act shall only be instituted in the Superior Court of  
55 New Jersey. That process shall be in the nature of a complaint and  
56 summons. No suit shall be commenced by the commissioner prior to  
57 90 days from the day the commissioner forwards the written notice  
58 provided in subsection b. of section 6 of this act.

1 7. No supervisor or any agent thereof who has established rules  
2 governing smoking pursuant to section 3 of this act shall be subject  
3 to any action in any court by any party either under this act or  
4 at common law, provided that the commissioner may bring an action  
5 against the supervisor or agent thereof for failure to meet the pro-  
6 visions of this act. This action by the commissioner shall be limited  
7 to a response to the failure of the supervisor or the supervisor's  
8 agent to comply with section 3 or section 5 of this act.

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  
4 the form of providing suggested written policies and/or written  
5 rules which the employer may implement as well as staff consul-  
6 tation.

1 9. The Judiciary Committee of the General Assembly and the  
2 Law, Public Safety and Defense Committee of the Senate, or their  
3 respective successors, are constituted a joint committee for the  
4 purposes of monitoring and evaluating the effectiveness of the  
5 implementation of this act. The commissioner shall, 18 months

6 from the effective date of this act, report to the joint committee, an  
7 evaluation of the effectiveness of his act and the committee shall,  
8 upon receiving the report, issue as it may deem necessary and  
9 proper, recommendations for administrative or legislative changes  
10 affecting 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.

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ASSEMBLY, No. 548

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblymen HERMAN, PELLY, GILL, MILLER, SCHWARTZ,  
FLYNN, WEIDEL, PATERNITI, Assemblywoman PERUN,  
Assemblymen HAYTAIAN, DORIA, ALBOHN and DEVERIN

AN ACT controlling smoking in government buildings and supple-  
menting 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  
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 government  
7 buildings affected by this act the right of the nonsmoker to breathe  
8 clean air should supersede the right of the smoker to smoke. In  
9 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 pur-  
13 pose of this act, therefore, is to protect the interest of nonsmokers  
14 in government buildings and allow smokers the right to smoke in  
15 designated areas in government buildings.

1 2. As used in this act:

2 a. "Government building" means a building or portion of a  
3 building owned or leased by a government entity, exclusive of  
4 school, college, university and professional training buildings and  
5 health care facilities. Facilities owned or leased by a government

6 entity and used for the holding of sports events, such as football,  
7 baseball, basketball and horse racing, or providing ambulatory  
8 recreation, such as ice and roller skating are excluded from this  
9 definition.

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

12 c. "Supervisor" means the person who ultimately controls,  
13 governs or directs the activities and conduct of employees.

1 3. a. (1) Except for areas occupied by the Legislature, its com-  
2 mittees and personnel, the supervisor of each unit of government  
3 located in a government building shall establish written rules  
4 governing smoking in the building or that portion of the building  
5 for which he is responsible, except where smoking is prohibited  
6 by municipal ordinance under authority of R. S. 40:48-1 and R. S.  
7 40:48-2 or any other statute or regulation adopted pursuant to  
8 law for purposes of protecting life and property from fire or in  
9 subsection b. of this section. The rules shall contain a written  
10 policy and procedure to protect the health, welfare and comfort of  
11 employees from the detrimental effects of tobacco smoke which  
12 policy shall include designated nonsmoking areas but may include  
13 designated smoking areas. Nothing in this act shall prevent any  
14 rule, regulation or procedure, which is not contrary to the pro-  
15 visions of this act, from being established by an employer or  
16 negotiated as a term or condition of any agreement or contract of  
17 employment. Employees shall be provided with a copy of the  
18 written rules upon request.

19 (2) The Senate and General Assembly separately shall adopt  
20 rules governing smoking in their respective chambers, committee  
21 rooms and other areas occupied by their personnel, and shall adopt  
22 joint rules governing smoking in those areas occupied by the  
23 committees and personnel of both Houses.

24 b. Smoking is prohibited in the following government buildings:

25 (1) A room, chamber, place of meeting or public assembly while  
26 a public meeting held under the auspices of a governmental entity  
27 and to which the public is invited, solicited or legally entitled to  
28 attend is in progress.

29 (2) Those areas open to the general public including, but not  
30 limited to: tax offices, vital records offices, motor vehicles offices  
31 and unemployment insurance offices.

32 (3) Libraries, indoor theatres, museums, lecture or concert halls,  
33 gymnasiums, or other similar facilities open to the public, except  
34 that smoking may be permitted therein on special occasions by

35 persons seated at tables provided for the purpose of consuming  
36 food or beverages served or provided on the premises, in areas  
37 adjacent to these facilities within the same building where the  
38 words "Smoking Permitted" are posted, and in such areas when  
39 in use for private functions or under specified private lease.

40 c. In restaurants in government buildings with an occupied  
41 capacity of 50 or more persons a nonsmoking area shall be desig-  
42 nated and posted prohibiting smoking therein. The size and loca-  
43 tion of the nonsmoking area shall be determined by the person in  
44 charge in accordance with patron needs, provided the entire estab-  
45 lishment is not designated "Smoking Permitted." Where feasible  
46 the section designated "Smoking Permitted" shall be one contigu-  
47 ous area.

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

1 5. All places affected by this act shall be identified by the signs  
2 posted by the supervisors thereof with letters at least one inch in  
3 height stating "Smoking Permitted" or "Smoking Prohibited" or  
4 designated by the appropriate "Smoking Permitted" or "Smoking  
5 Prohibited" international symbol. The letters or symbol shall con-  
6 trast in color with the sign. The sign may also indicate that vio-  
7 lators are subject to a fine. Every sign required by this section  
8 shall be located so as to be clearly visible to the public and em-  
9 ployees.

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 pro-  
4 visions of this act. Thereupon any such person who smokes in a  
5 government building in violation of this act is subject to a fine not  
6 to exceed \$25.00. The supervisor or any agent thereof shall only  
7 be responsible for establishing rules governing smoking pursuant  
8 to section 3 of this act and shall in no event be responsible for the  
9 enforcement of such rules.

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, having reason to suspect that any  
13 government building is or may be in violation of the provisions of

14 this act shall by written notification, advise the supervisor thereof  
15 accordingly and other appropriate action to be taken. Thereupon,  
16 any person receiving such notice who knowingly fails or refuses  
17 to comply with the order is subject to a fine not to exceed \$25.00.

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

26 d. Every municipal court shall have jurisdiction over proceedings  
27 to enforce and collect any penalty imposed because of a violation  
28 of any provision of this act, if the violation has occurred within  
29 the territorial jurisdiction of the court. The proceedings shall be  
30 summary and in accordance with "the penalty enforcement law"  
31 (N. J. S. 2A:58-1 et seq.). Process shall be in the nature of a  
32 summons or warrant and shall issue only at the suit of the Com-  
33 missioner of Health of the State of New Jersey, or the local board  
34 of health, as the case may be, as plaintiff.

1 7. No supervisor or any agent thereof *who has established rules*  
2 *governing smoking pursuant to section 3 of this act* shall be subject  
3 to 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 supervisor or any agent thereof* for failure to  
7 meet the provisions of this act.

1 8. 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. The  
6 Commissioner of Health of the State of New Jersey shall, *one*  
7 *year* from the effective date of this act, report to the joint com-  
8 mittee, an evaluation of the effectiveness of this act and the com-  
9 mittee shall, upon receiving such report, issue as it may deem  
10 necessary and proper, recommendations for administrative or  
11 legislative changes affecting the implementation of this act.

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

## STATEMENT

This bill controls smoking in government buildings. Government employees who are nonsmokers should be accorded protection from the annoyance and health hazard of tobacco smoke. It is left to their supervisors to balance the rights of smokers with the rights of nonsmokers to breathe clean air. Exempted from this bill are certain government owned or leased facilities used for sporting events or providing ambulatory recreation. Smoking is totally prohibited in those areas of government buildings open to the public and which the public must enter or is invited, solicited or legally entitled to enter.

The bill provides that county and municipal health officials would be required to order a person not complying with the law to stop smoking and comply with the provisions of the law.

Additionally, it provides that a person smoking in violation of this act would be subject to a fine not to exceed \$25.00. Failure to establish nonsmoking areas when required and to post such areas after being notified of noncompliance by the Department of Health or local board of health would possibly result in a fine not to exceed \$25.00.

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ASSEMBLY JUDICIARY COMMITTEE  
STATEMENT TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 548**

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**STATE OF NEW JERSEY**

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DATED: NOVEMBER 19, 1984

This bill, in its substitute form, controls smoking in government buildings. Government employees who are nonsmokers should be accorded protection from the annoyance and health hazard of tobacco smoke. It is left to their supervisors to balance the rights of smokers with the rights of nonsmokers to breathe clean air. Exempted from this bill are certain government owned or leased facilities used for sporting events or providing ambulatory recreation. Smoking is totally prohibited in those areas of government buildings open to the public and which the public must enter or is invited, solicited or legally entitled to enter.

This bill directs the supervisor of each unit of government located in a government building to establish written rules governing smoking in the building or that portion of the building for which he is responsible, except where smoking is prohibited by municipal ordinance or another statute or regulation. These rules must contain a written policy and procedure which shall include designated nonsmoking areas but may include designated smoking areas.

Where those rules would provide for a method of discipline for public employees who smoke in violation of the act, written notice of the proposed rules must be given to the employees along with an opportunity to be heard on the proposals before they may be adopted. No rule may be adopted until 30 days after this notice.

The bill provides that county and municipal health officials would be required to order a person not complying with the law to stop smoking and comply with the provisions of the law. Additionally, it provides that a member of the public smoking in violation of this act would be subject to a fine not to exceed \$25.00. But supervisors would not be responsible for enforcement. However, the supervisor may withhold government services from any member of the public who smokes in a public area in which smoking is prohibited.

Under the bill, where the Department of Health has reason to suspect the supervisor may be in violation of the provisions of this bill, the department must give written notice to the employer containing a

statement of the alleged violation and recommendation as to how the provisions of the bill may be complied with. Thereafter, the supervisor could request a conference with the department to avail himself of the expertise of the department in furtherance of the supervisor's obligation to effect this compliance.

No supervisor who has established rules governing smoking would be subject to any court action by any party, except the Commissioner of Health may bring an action to effect compliance.

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SENATE LAW, PUBLIC SAFETY AND DEFENSE  
COMMITTEE

STATEMENT TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 548**

with Senate committee amendments

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**STATE OF NEW JERSEY**

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DATED: JANUARY 28, 1985

The Assembly Committee Substitute for Assembly Bill No. 548, as amended by the Senate Law, Public Safety and Defense Committee, regulates smoking in government buildings.

The bill defines "government buildings;" requires the supervisors of governmental employees who work in government buildings to establish written rules on smoking for their employees; prohibits smoking in areas of government buildings that are open to the public; enumerates the penalties for smoking in a government building; specifies procedures to be followed by the Department of Health in attempting to bring a supervisor of governmental employees into compliance with the law; describes the distribution of monies recovered as the result of proceedings to enforce the law; and requires an evaluation of the law's effectiveness.

For the purposes of the bill, a government building is a building or portion of a building owned or leased by a government entity. Excluded from the definition are schools, colleges, universities, professional training facilities, health care facilities, and facilities used for sporting events or for ambulatory recreation (such as roller skating rinks).

The supervisor of each governmental unit is required to establish written rules on smoking in the portion of the government building for which the supervisor is responsible. If the rules contain a method of disciplining public employees who smoke in violation of the rules, the employees must receive written notice of the rules, the employees must be given a right to be heard on the rules, and 30 days must pass before the rules can be adopted.

Smoking is prohibited in rooms in which public meetings are held by a governmental entity, in areas of government buildings open to the general public (such as tax offices and unemployment offices), and, except in certain circumstances, in libraries, indoor theaters, museums, lecture or concert halls, and gymnasiums.



Restaurants that seat 50 or more persons and are located in government buildings must establish nonsmoking areas and post appropriate signs.

County and municipal health officials will order any member of the public who smokes in violation of the law to stop smoking. Anyone who continues to smoke is subject to a fine of not more than \$25.00. Supervisors of governmental agencies are not responsible for enforcement but they have the authority to withhold governmental services under their jurisdiction from a member of the public who violates the law.

If the Department of Health has reason to suspect that a supervisor is in violation of the law, it will send a notice to the supervisor by certified or registered mail. The notice will state the alleged violation and recommend ways in which the supervisor can comply with the law. The supervisor can request to have a conference with the Department of Health to bring about compliance with the law.

Proceedings to enforce that portion of the law dealing with members of the public will be under the jurisdiction of the municipal court and will be in accordance with the "penalty enforcement law," (N. J. S. 2A:58-1 et seq.). 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.

An action by the Commissioner of Health to require a supervisor to comply with section 3 of the laws will be instituted in the Superior Court no sooner than 90 days after the commissioner forwards a written notice to the supervisor.

If a supervisor has established written rules governing smoking, he will not be subject to an action in court by any party except for the Commissioner of Health, who can bring an action to effect compliance.

The Department of Health will provide consultative services to supervisors attempting to comply with the 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. Eighteen months 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 correct technical drafting and printing errors.

As amended the bill is identical to Senate Bill No. 2488, with Senate committee amendments.

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MAY 2 1985

Amendments  
proposed by Senator Contillo (5/2/85)

to  
Assembly Committee on  
for Assembly Bill No. 548 Senate Reprint  
sponsored by Assemblyman Herman

Amend:

Page	Sec.	Line
4	6	12
4	6	After 12

After "prohibited" insert ", provided that the supervisor shall first inform that person of this right. Services shall not be denied if the member of the public complies with the rules governing smoking after receiving this notice, and the supervisor shall so inform that person"

Insert:  
 "(3) Any person waiting for services in a government building who leaves the building to smoke shall, upon reentering the building, have the right to regain his position in the order of persons receiving those services."

STATEMENT

This bill provides that a member of the public smoking in an area of a government building in which smoking is prohibited may have services withheld. These amendments direct the supervisor of that area to inform the person of this right, and of the fact that services will not be denied if the person complies after receiving this notice.

Another amendment provides that a person waiting for government services who leaves the building to smoke will not lose his place in the line for the services.

ADOPTED

MAY 2 1985

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

August 28, 1985

ACS for  
ASSEMBLY BILL NO. 548 (OCR)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I herewith return Assembly Committee Substitute for Assembly Bill No. 548 (OCR) with my recommendations for reconsideration.

This bill is designed to protect the interest of a nonsmoker by prohibiting smoking in designated areas of government buildings.

The bill applies to all buildings or portions thereof owned or leased by a government entity and specifically excludes all schools, colleges, universities, professional training buildings, health care facilities and facilities owned or leased by the government and used for sporting events or recreational purposes.

Supervisors within each unit of government are required to establish written rules governing smoking and must designate areas where smoking is prohibited.

Smoking would be prohibited in: rooms, chambers, places of meeting or public assemblies while a public meeting is being held in a government building to which the public is invited, solicited or legally entitled to enter; those areas open to the public, including tax offices, vital record offices, motor vehicle offices and unemployment insurance offices; libraries, indoor theaters, museums, lecture or concert halls, gymnasiums except where "smoking permitted" signs are posted or if food or beverage is being consumed or if for a private function; and in restaurants located in government buildings with a seating capacity of 50 or more persons, a nonsmoking area shall be designated.

While I fully support the enactment of legislation controlling smoking in certain designated areas, as is evidenced by my signature of four previous bills on June 12, 1984 regulating smoking in certain facilities such as the workplace, restaurants, retail food and marketing stores and buses and public conveyances, I am concerned that certain provisions contained in this particular bill are overly broad and ambiguous and therefore susceptible to unfair and inconsistent enforcement.

Specifically, this bill prohibits smoking in "those areas open to the general public including, but not limited to: tax offices, vital records offices, motor vehicle offices and unemployment insurance offices." This

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language is vague and ambiguous since it is unclear whether this phrase includes corridors, stairways and other public places in a government building or whether it is limited to offices only. In order to assure that the scope of the prohibition is clear, I recommend that Section 3b(2) of this bill be amended to prohibit smoking "in offices open to the general public..." By confining prohibited smoking areas to public offices, the enforcement of this bill will be consistent and fair.

Accordingly, I herewith return Assembly Committee Substitute for Assembly Bill No. 548 (OCR) and recommend that it be amended as follows:

Page 3, Section 3b(2), Line 44: Delete "Those areas" and insert  
"In offices"

Respectfully,

/s/ Thomas H. Kean  
GOVERNOR

[seal]

Attest:

/s/ W. Cary Edwards  
Chief Counsel