

# 26:3D-55

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2005           **CHAPTER:** 383  
**NJSA:** 26:3D-55        ("New Jersey Smoke-Free Air Act")  
**BILL NO:** S1926 (Substituted for A3730)  
**SPONSOR(S):** Adler and others  
**DATE INTRODUCED:** October 14, 2004  
**COMMITTEE:**         **ASSEMBLY:** Health and Human Services  
                          **SENATE:** Health, Human Services and Senior Citizens  
**AMENDED DURING PASSAGE:** Yes  
**DATE OF PASSAGE:**         **ASSEMBLY:** January 9, 2006  
                                  **SENATE:** December 15, 2005  
**DATE OF APPROVAL:** January 15, 2006  
**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL](#) (2<sup>nd</sup> reprint enacted)

### S1926

[SPONSOR'S STATEMENT](#): (Begins on page 6 of original bill)         Yes

**COMMITTEE STATEMENT:**                                         **ASSEMBLY:**             Yes

**SENATE:**                 Yes

[FLOOR AMENDMENT STATEMENT:](#)                                         Yes

**LEGISLATIVE FISCAL ESTIMATE:**                                         No

### A3730

[SPONSOR'S STATEMENT](#): (Begins on page 6 of original bill)         Yes

**COMMITTEE STATEMENT:**                                         **ASSEMBLY:**             Yes

**SENATE:**                 No

**FLOOR AMENDMENT STATEMENT:**                                         No

[LEGISLATIVE FISCAL ESTIMATE:](#)                                         Yes

**VETO MESSAGE:**                                                                 No

[GOVERNOR'S PRESS RELEASE ON SIGNING:](#)                                         Yes

### FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government

**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** Yes

"Indoor smoking ban signed into law," 1-16-2006 The Record, p.A3

"Codey signs indoor smoking ban," 1-16-2006 Courier-Post, p.A1

"Codey stubs out indoor public smoking," 1-16-2006 The Times, p.A9

"Lighting up indoors goes up in smoke," 1-16-2006 Asbury Park Press, p.A1

"Before his term tends, Codey clears the air," 1-16-2006 Star Ledger, p.13

"Major battle' over, Codey signs indoor smoking ban," 1-16-2006 Philadelphia Inquirer, p.B1

"Customer may follow smoke out the door," 1-15-2006 New York Times 14NJ, p.6

"Deal them out: Casinos....," 1-16-2006 Philadelphia Inquirer, p.B6

Title 26.  
Chapter  
3D.(Retitled)  
Smoking Prohibition  
in Public Places and  
Workplaces  
§§1-10 - C.26:3D-55  
to 26:3D-64  
§11 - Repealer  
§12 - Note to §§1-11

P.L. 2005, CHAPTER 383, *approved January 15, 2006*  
Senate, No. 1926 (*Second Reprint*)

1 **AN ACT** concerning smoking in indoor public places and workplaces  
2 and revising parts of statutory law.

3

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

6

7 1. This act shall be known and may be cited as the "New Jersey  
8 Smoke-Free Air Act."

9

10 2. The Legislature finds and declares that: tobacco is the leading  
11 cause of preventable disease and death in the State and the nation, and  
12 tobacco smoke constitutes a substantial health hazard to the  
13 nonsmoking majority of the public; the separation of smoking and  
14 nonsmoking areas in indoor public places and workplaces does not  
15 eliminate the hazard to nonsmokers if these areas share a common  
16 ventilation system; and, therefore, subject to certain specified  
17 exceptions, it is clearly in the public interest to prohibit smoking in all  
18 enclosed indoor places of public access and workplaces.

19

20 3. As used in this act:

21 "Bar" means a business establishment or any portion of a nonprofit  
22 entity, which is devoted to the selling and serving of alcoholic  
23 beverages for consumption by the public, guests, patrons or members  
24 on the premises and in which the serving of food, if served at all, is  
25 only incidental to the sale or consumption of such beverages.

26 "Cigar bar" means any bar, or area within a bar, designated  
27 specifically for the smoking of tobacco products, purchased on the  
28 premises or elsewhere; except that a cigar bar that is in an area within  
29 a bar shall be an area enclosed by solid walls or windows, a ceiling and  
30 a solid door and equipped with a ventilation system which is separately  
31 exhausted from the nonsmoking areas of the bar so that air from the  
32 smoking area is not recirculated to the nonsmoking areas and smoke

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Senate SHH committee amendments adopted March 14, 2005.

<sup>2</sup> Senate floor amendments adopted December 8, 2005.

1 is not backstreamed into the nonsmoking areas.

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

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

33 "Person having control of an indoor public place or workplace"  
34 means the owner or operator of a commercial or other office building  
35 or other indoor public place from whom a workplace or space within  
36 the building or indoor public place is leased.

37 "Smoking" means the burning of, inhaling from, exhaling the smoke  
38 from, or the possession of a lighted cigar, cigarette, pipe or any other  
39 matter or substance which contains tobacco or any other matter that  
40 can be smoked.

41 "Tobacco retail establishment" means an establishment in which at  
42 least 51% of retail business is the sale of tobacco products and  
43 accessories, and in which the sale of other products is merely  
44 incidental.

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

1 4. a. Smoking is prohibited in an indoor public place or workplace,  
2 except as otherwise provided in this act.

3 b. Smoking is prohibited in any area of any building of, or on the  
4 grounds of, any public or nonpublic elementary or secondary school,  
5 regardless of whether the area is an indoor public place or is outdoors.

6  
7 5. The provisions of this act shall not apply to:

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

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

21 c. any tobacco business when the testing of a cigar or pipe tobacco  
22 by heating, burning or smoking is a necessary and integral part of the  
23 process of making, manufacturing, importing or distributing cigars or  
24 pipe tobacco; <sup>2</sup>[and]<sup>2</sup>

25 d. <sup>1</sup>[any casino as defined in section 6 of P.L.1977, c.110 (C.5:12-  
26 6), casino simulcasting facility as defined in N.J.A.C.19:55-3.1, and  
27 bar located in a casino or casino simulcasting facility] private homes,  
28 private residences and private automobiles<sup>1 2</sup>; and

29 e. the area within the perimeter of:

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

35 (2) any casino simulcasting facility approved by the Casino Control  
36 Commission pursuant to section 4 of P.L.1992, c.19 (C.5:12-194) that  
37 contains a simulcast counter and dedicated seating for at least 50  
38 simulcast patrons or a simulcast operation and at least 10 table games,  
39 which simulcast facilities and games are available to the public for  
40 wagering<sup>2</sup>.

41  
42 <sup>1</sup>[6. The provisions of this act shall not be construed to apply to  
43 a place or building owned and operated by a social or fraternal  
44 organization when used by the members of the organization and their  
45 guests or families, in which all of the duties with respect to the  
46 operation of the organization, including, but not limited to, the

1 preparation of food and beverages, the service of food and beverages,  
2 reception and secretarial work, and the security services of the  
3 organization are performed by members of the organization who do  
4 not receive compensation of any kind from the organization or any  
5 other entity for the performance of the duties.}]<sup>1</sup>

6  
7 <sup>1</sup>[7.] 6.<sup>1</sup> a. The person having control of a hotel, motel or other  
8 lodging establishment may permit smoking in up to 20% of its guest  
9 rooms.

10 b. Nothing in this section shall be construed to require a hotel,  
11 motel or other lodging establishment to provide a nonsmoking room  
12 to a guest if all the designated nonsmoking rooms are occupied.

13  
14 <sup>1</sup>[8.] 7.<sup>1</sup> a. The person having control of an indoor public place  
15 or workplace shall place in every public entrance to the indoor public  
16 place or workplace a sign, which shall be located so as to be clearly  
17 visible to the public and shall contain letters or a symbol which  
18 contrast in color with the sign, indicating that smoking is prohibited  
19 therein, except in such designated areas as provided pursuant to this  
20 act. The sign shall also indicate that violators are subject to a fine.  
21 The person having control of the indoor public place or workplace  
22 shall post a sign stating "Smoking Permitted" in letters at least one  
23 inch in height or marked by the international symbol for "Smoking  
24 Permitted" in those areas where smoking is permitted.

25 b. The provisions of this section shall not be construed to prevent  
26 a lessee of the workplace, or space within the building or indoor public  
27 place, from enforcing the smoking restrictions imposed by the owner  
28 or operator of a commercial or other office building or other indoor  
29 public place.

30  
31 <sup>1</sup>[9.] 8.<sup>1</sup> a. The person having control of an indoor public place  
32 or workplace shall order any person smoking in violation of this act to  
33 comply with the provisions of this act. A person, after being so  
34 ordered, who smokes in violation of this act is subject to a fine of not  
35 less than \$250 for the first offense, \$500 for the second offense and  
36 \$1,000 for each subsequent offense. A penalty shall be recovered in  
37 accordance with the provisions of subsections c. and d. of this section.

38 b. The Department of Health and Senior Services or the local board  
39 of health or the board, body or officers exercising the functions of the  
40 local board of health according to law, upon written complaint or  
41 having reason to suspect that an indoor public place or workplace  
42 covered by the provisions of this act is or may be in violation of the  
43 provisions of this act, shall, by written notification, advise the person  
44 having control of the place accordingly and order appropriate action  
45 to be taken. A person receiving that notice who fails or refuses to  
46 comply with the order is subject to a fine of not less than \$250 for the

1 first offense, \$500 for the second offense and \$1,000 for each  
2 subsequent offense. In addition to the penalty provided herein, the  
3 court may order immediate compliance with the provisions of this act.

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

12 d. A municipal court shall have jurisdiction over proceedings to  
13 enforce and collect any penalty imposed because of a violation of this  
14 act if the violation has occurred within the territorial jurisdiction of the  
15 court. The proceedings shall be summary and in accordance with the  
16 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et  
17 seq.). Process shall be in the nature of a summons or warrant and shall  
18 issue only at the suit of the Commissioner of Health and Senior  
19 Services, or the local board of health, as the case may be, as plaintiff.

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

24

25 <sup>1</sup>[10.] 9.<sup>1</sup> The provisions of this act shall supersede any other  
26 statute, municipal ordinance and rule or regulation adopted pursuant  
27 to law concerning smoking in an indoor public place or workplace,  
28 except where smoking is prohibited by municipal ordinance under  
29 authority of R.S.40:48-1 or 40:48-2, or by any other statute or  
30 regulation adopted pursuant to law for purposes of protecting life and  
31 property from fire or protecting public health, and except for those  
32 provisions of a municipal ordinance which provide restrictions on or  
33 prohibitions against smoking equivalent to, or greater than, those  
34 provided under this act.

35

36 <sup>1</sup>[11.] 10.<sup>1</sup> The Commissioner of Health and Senior Services,  
37 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
38 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate  
39 the purposes of this act.

40

41 <sup>1</sup>[12.] 11.<sup>1</sup> The following are repealed:

42 P.L.1981, c.318 (C.26:3D-1 et seq.);

43 P.L.1981, c.319 (C.26:3D-7 et seq.);

44 P.L.1981, c.320 (C.26:3D-15 et seq.);

45 P.L.1985, c.184 (C.26:3D-23 et seq.);

46 P.L.1985, c.186 (C.26:3D-32 et seq.);

1 P.L.1985, c.318 (C.26:3D-38 et seq.);  
2 P.L.1985, c.381 (C.26:3D-46 et seq.);  
3 P.L.1985, c.185 (C.26:3E-7 et seq.); and  
4 P.L.1998, c.35 (C.<sup>1</sup>[30:5B-1 et seq.] 30:5B-5.3<sup>1</sup>).

5

6 <sup>1</sup>[13.] 12.<sup>1</sup> This act shall take effect on the 90th day after  
7 enactment<sup>1</sup>[, and section 6 shall expire on the first day of the 25th  
8 month after the effective date]<sup>1</sup>.

9

10

11

12

13 "New Jersey Smoke-Free Air Act"; prohibits smoking in indoor public  
14 places and workplaces.



# SENATE, No. 1926

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED OCTOBER 14, 2004

**Sponsored by:**

**Senator JOHN H. ADLER**

**District 6 (Camden)**

**Senator THOMAS H. KEAN, JR.**

**District 21 (Essex, Morris, Somerset and Union)**

**Co-Sponsored by:**

**Senators Vitale, Karcher, Scutari, Turner, Lesniak and Palaia**

**SYNOPSIS**

"New Jersey Smoke-Free Air Act"; prohibits smoking in indoor public places and workplaces.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/14/2004)**

1 AN ACT concerning smoking in indoor public places and workplaces  
2 and revising parts of statutory law.

3

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

6

7 1. This act shall be known and may be cited as the "New Jersey  
8 Smoke-Free Air Act."

9

10 2. The Legislature finds and declares that: tobacco is the leading  
11 cause of preventable disease and death in the State and the nation, and  
12 tobacco smoke constitutes a substantial health hazard to the  
13 nonsmoking majority of the public; the separation of smoking and  
14 nonsmoking areas in indoor public places and workplaces does not  
15 eliminate the hazard to nonsmokers if these areas share a common  
16 ventilation system; and, therefore, subject to certain specified  
17 exceptions, it is clearly in the public interest to prohibit smoking in all  
18 enclosed indoor places of public access and workplaces.

19

20 3. As used in this act:

21 "Bar" means a business establishment or any portion of a nonprofit  
22 entity, which is devoted to the selling and serving of alcoholic  
23 beverages for consumption by the public, guests, patrons or members  
24 on the premises and in which the serving of food, if served at all, is  
25 only incidental to the sale or consumption of such beverages.

26 "Cigar bar" means any bar, or area within a bar, designated  
27 specifically for the smoking of tobacco products, purchased on the  
28 premises or elsewhere; except that a cigar bar that is in an area within  
29 a bar shall be an area enclosed by solid walls or windows, a ceiling and  
30 a solid door and equipped with a ventilation system which is separately  
31 exhausted from the nonsmoking areas of the bar so that air from the  
32 smoking area is not recirculated to the nonsmoking areas and smoke  
33 is not backstreamed into the nonsmoking areas.

34 "Cigar lounge" means any establishment, or area within an  
35 establishment, designated specifically for the smoking of tobacco  
36 products, purchased on the premises or elsewhere; except that a cigar  
37 lounge that is in an area within an establishment shall be an area  
38 enclosed by solid walls or windows, a ceiling and a solid door and  
39 equipped with a ventilation system which is separately exhausted from  
40 the nonsmoking areas of the establishment so that air from the  
41 smoking area is not recirculated to the nonsmoking areas and smoke  
42 is not backstreamed into the nonsmoking areas.

43 "Indoor public place" means a structurally enclosed place of  
44 business, commerce or other service-related activity, whether publicly  
45 or privately owned or operated on a for-profit or nonprofit basis,  
46 which is generally accessible to the public, including, but not limited

1 to: a commercial or other office building; office or building owned,  
2 leased or rented by the State or by a county or municipal government;  
3 public and nonpublic elementary or secondary school building; board  
4 of education building; theater or concert hall; public library; museum  
5 or art gallery; bar; restaurant or other establishment where the  
6 principal business is the sale of food for consumption on the premises,  
7 including the bar area of the establishment; garage or parking facility;  
8 any public conveyance operated on land or water, or in the air, and  
9 passenger waiting rooms and platform areas in any stations or  
10 terminals thereof; health care facility licensed pursuant to P.L.1971,  
11 c.136 (C.26:2H-1 et seq.); patient waiting room of the office of a  
12 health care provider licensed pursuant to Title 45 of the Revised  
13 Statutes; child care center licensed pursuant to P.L.1983, c.492  
14 (C.30:5B-1 et seq.); race track facility; facility used for the holding of  
15 sporting events; ambulatory recreational facility; shopping mall or  
16 retail store; hotel, motel or other lodging establishment; apartment  
17 building lobby or other public area in an otherwise private building; or  
18 a passenger elevator in a building other than a single-family dwelling.

19 "Person having control of an indoor public place or workplace"  
20 means the owner or operator of a commercial or other office building  
21 or other indoor public place from whom a workplace or space within  
22 the building or indoor public place is leased.

23 "Smoking" means the burning of, inhaling from, exhaling the smoke  
24 from, or the possession of a lighted cigar, cigarette, pipe or any other  
25 matter or substance which contains tobacco or any other matter that  
26 can be smoked.

27 "Tobacco retail establishment" means an establishment in which at  
28 least 51% of retail business is the sale of tobacco products and  
29 accessories, and in which the sale of other products is merely  
30 incidental.

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

33

34 4. a. Smoking is prohibited in an indoor public place or workplace,  
35 except as otherwise provided in this act.

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

39

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

41 a. any cigar bar or cigar lounge that, in the calendar year ending  
42 December 31, 2004, generated 15% or more of its total annual gross  
43 income from the on-site sale of tobacco products and the rental of on-  
44 site humidors, not including any sales from vending machines, and is  
45 registered with the local board of health in the municipality in which  
46 the bar or lounge is located. The registration shall remain in effect for  
47 one year and shall be renewable only if: (1) in the preceding calendar

1 year, the cigar bar or lounge generated 15% or more of its total annual  
2 gross income from the on-site sale of tobacco products and the rental  
3 of on-site humidors, and (2) the cigar bar or cigar lounge has not  
4 expanded its size or changed its location since December 31, 2004;

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

7 c. any tobacco business when the testing of a cigar or pipe tobacco  
8 by heating, burning or smoking is a necessary and integral part of the  
9 process of making, manufacturing, importing or distributing cigars or  
10 pipe tobacco; and

11 d. any casino as defined in section 6 of P.L.1977, c.110 (C.5:12-6),  
12 casino simulcasting facility as defined in N.J.A.C.19:55-3.1, and bar  
13 located in a casino or casino simulcasting facility.

14  
15 6. The provisions of this act shall not be construed to apply to a  
16 place or building owned and operated by a social or fraternal  
17 organization when used by the members of the organization and their  
18 guests or families, in which all of the duties with respect to the  
19 operation of the organization, including, but not limited to, the  
20 preparation of food and beverages, the service of food and beverages,  
21 reception and secretarial work, and the security services of the  
22 organization are performed by members of the organization who do  
23 not receive compensation of any kind from the organization or any  
24 other entity for the performance of the duties.

25  
26 7. a. The person having control of a hotel, motel or other lodging  
27 establishment may permit smoking in up to 20% of its guest rooms.

28 b. Nothing in this section shall be construed to require a hotel,  
29 motel or other lodging establishment to provide a nonsmoking room  
30 to a guest if all the designated nonsmoking rooms are occupied.

31  
32 8. a. The person having control of an indoor public place or  
33 workplace shall place in every public entrance to the indoor public  
34 place or workplace a sign, which shall be located so as to be clearly  
35 visible to the public and shall contain letters or a symbol which  
36 contrast in color with the sign, indicating that smoking is prohibited  
37 therein, except in such designated areas as provided pursuant to this  
38 act. The sign shall also indicate that violators are subject to a fine.  
39 The person having control of the indoor public place or workplace  
40 shall post a sign stating "Smoking Permitted" in letters at least one  
41 inch in height or marked by the international symbol for "Smoking  
42 Permitted" in those areas where smoking is permitted.

43 b. The provisions of this section shall not be construed to prevent  
44 a lessee of the workplace, or space within the building or indoor public  
45 place, from enforcing the smoking restrictions imposed by the owner  
46 or operator of a commercial or other office building or other indoor  
47 public place.

1       9. a. The person having control of an indoor public place or  
2 workplace shall order any person smoking in violation of this act to  
3 comply with the provisions of this act. A person, after being so  
4 ordered, who smokes in violation of this act is subject to a fine of not  
5 less than \$250 for the first offense, \$500 for the second offense and  
6 \$1,000 for each subsequent offense. A penalty shall be recovered in  
7 accordance with the provisions of subsections c. and d. of this section.

8       b. The Department of Health and Senior Services or the local board  
9 of health or the board, body or officers exercising the functions of the  
10 local board of health according to law, upon written complaint or  
11 having reason to suspect that an indoor public place or workplace  
12 covered by the provisions of this act is or may be in violation of the  
13 provisions of this act, shall, by written notification, advise the person  
14 having control of the place accordingly and order appropriate action  
15 to be taken. A person receiving that notice who fails or refuses to  
16 comply with the order is subject to a fine of not less than \$250 for the  
17 first offense, \$500 for the second offense and \$1,000 for each  
18 subsequent offense. In addition to the penalty provided herein, the  
19 court may order immediate compliance with the provisions of this act.

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

28       d. A municipal court shall have jurisdiction over proceedings to  
29 enforce and collect any penalty imposed because of a violation of this  
30 act if the violation has occurred within the territorial jurisdiction of the  
31 court. The proceedings shall be summary and in accordance with the  
32 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et  
33 seq.). Process shall be in the nature of a summons or warrant and shall  
34 issue only at the suit of the Commissioner of Health and Senior  
35 Services, or the local board of health, as the case may be, as plaintiff.

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

40

41       10. The provisions of this act shall supersede any other statute,  
42 municipal ordinance and rule or regulation adopted pursuant to law  
43 concerning smoking in an indoor public place or workplace, except  
44 where smoking is prohibited by municipal ordinance under authority  
45 of R.S.40:48-1 or 40:48-2, or by any other statute or regulation  
46 adopted pursuant to law for purposes of protecting life and property  
47 from fire or protecting public health, and except for those provisions

1 of a municipal ordinance which provide restrictions on or prohibitions  
2 against smoking equivalent to, or greater than, those provided under  
3 this act.

4  
5 11. The Commissioner of Health and Senior Services, pursuant to  
6 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
7 seq.), shall adopt rules and regulations to effectuate the purposes of  
8 this act.

9  
10 12. The following are repealed:

11 P.L.1981, c.318 (C.26:3D-1 et seq.);

12 P.L.1981, c.319 (C.26:3D-7 et seq.);

13 P.L.1981, c.320 (C.26:3D-15 et seq.);

14 P.L.1985, c.184 (C.26:3D-23 et seq.);

15 P.L.1985, c.186 (C.26:3D-32 et seq.);

16 P.L.1985, c.318 (C.26:3D-38 et seq.);

17 P.L.1985, c.381 (C.26:3D-46 et seq.);

18 P.L.1985, c.185 (C.26:3E-7 et seq.); and

19 P.L.1998, c.35 (C.30:5B-1 et seq.).

20  
21 13. This act shall take effect on the 90th day after enactment, and  
22 section 6 shall expire on the first day of the 25th month after the  
23 effective date.

24  
25  
26 STATEMENT

27  
28 This bill, the "New Jersey Smoke-Free Air Act," prohibits smoking  
29 in workplaces and indoor public places throughout the State, except  
30 for certain specifically exempted establishments, and it would prohibit  
31 smoking in any area of any public or nonpublic elementary or  
32 secondary school, whether in the buildings or on the grounds of the  
33 school.

34 Under the bill, "workplace" is defined as a structurally enclosed  
35 location or portion thereof at which one or more persons perform any  
36 type of service or labor. The bill defines "indoor public place" as a  
37 structurally enclosed place of business, commerce or other  
38 service-related activity, whether publicly or privately owned or  
39 operated on a for-profit or nonprofit basis, which is generally  
40 accessible to the public. The definition also provides as examples of  
41 indoor public places the following: commercial office buildings, retail  
42 establishments, government offices, schools, sporting arenas, bars,  
43 restaurants, public libraries, museums, public conveyances, hotels and  
44 motels, child care centers, health care facilities, waiting rooms in  
45 physicians' and other health care providers' offices, recreational  
46 facilities and passenger elevators.

47 The bill would exempt from the restrictions on smoking:

1       1) any cigar bar or cigar lounge that, in the calendar year ending  
2 December 31, 2004, generated 15% or more of its total annual gross  
3 income from the on-site sale of tobacco products and the rental of on-  
4 site humidors, not including any sales from vending machines, and is  
5 registered with the local board of health in the municipality in which  
6 the bar or lounge is located. If a cigar bar or lounge is located in an  
7 area within a bar or other establishment (where smoking is prohibited),  
8 the cigar bar or lounge must be an area that is enclosed by solid walls  
9 or windows, a ceiling and a solid door and equipped with a ventilation  
10 system which is separately exhausted from the nonsmoking areas of  
11 the bar or other establishment so that air from the smoking area is not  
12 recirculated to the nonsmoking areas and smoke is not backstreamed  
13 into the nonsmoking areas;

14       2) any tobacco retail establishment, or any area the tobacco retail  
15 establishment provides for the purposes of smoking;

16       3) any tobacco business when the testing of a cigar or pipe tobacco  
17 by heating, burning or smoking is a necessary and integral part of the  
18 process of making, manufacturing, importing or distributing cigars or  
19 pipe tobacco; and

20       4) any casino as defined in N.J.S.A.5:12-6, casino simulcasting  
21 facility as defined in N.J.A.C.19:55-3.1, and bar located in a casino or  
22 casino simulcasting facility.

23       The bill also provides a two-year exemption from the smoking  
24 prohibitions to a place or building owned and operated by a social or  
25 fraternal organization when used by the members of the organization  
26 and their guests or families, in which all of the duties with respect to  
27 the operation of the organization, including, but not limited to, the  
28 preparation of food and beverages, the service of food and beverages,  
29 reception and secretarial work, and the security services of the  
30 organization are performed by members of the organization who do  
31 not receive compensation of any kind from the organization or any  
32 other entity for the performance of the duties.

33       In addition, the bill provides that a hotel, motel or other lodging  
34 establishment may permit smoking in up to 20% of its guest rooms.  
35 The bill specifies, however, that its provisions shall not be construed  
36 to require a hotel, motel or other lodging establishment to provide a  
37 nonsmoking room to a guest if all the designated nonsmoking rooms  
38 are occupied.

39       The bill provides that its provisions shall supersede any other  
40 statute, municipal ordinance and rule or regulation adopted pursuant  
41 to law concerning smoking in an indoor public place or workplace,  
42 except where smoking is prohibited by municipal ordinance or by any  
43 other statute or regulation adopted pursuant to law for purposes of  
44 protecting life and property from fire or protecting public health, and  
45 except for those provisions of a municipal ordinance which provide  
46 restrictions on or prohibitions against smoking equivalent to, or  
47 greater than, those provided under the bill.

1       The bill provides that the person in control of the indoor public  
2 place or workplace has the authority to enforce the bill and that a  
3 lessee of the workplace or space within the building or indoor public  
4 place may also enforce the smoking restrictions. The owner or  
5 operator of a commercial or other office building or other indoor  
6 public place, from whom a workplace or space within the building or  
7 indoor public place is leased, is the person in control of the building  
8 for the purposes of complying with and enforcing the provisions of the  
9 bill.

10       The bill provides penalties for violations as follows:

11       -- a person who smokes in violation of the bill would be subject to  
12 a fine of not less than \$250 for the first offense, \$500 for the second  
13 offense and \$1,000 for each subsequent offense; and

14       -- a person in control of the indoor public place or workplace who  
15 fails or refuses to comply with an order from the Department of Health  
16 and Senior Services or the local board of health concerning a violation  
17 would be subject to a fine of not less than \$250 for the first offense,  
18 \$500 for the second offense and \$1,000 for each subsequent offense.

19       The penalties provided above shall be the only civil remedy for a  
20 violation of the bill, and there shall be no private right of action against  
21 a party for failure to comply with the provisions of the bill.

22       It is noted that the enforcement of the provisions of this bill should  
23 not result in any expenditures by the State in excess of \$90,000 a year,  
24 since much of the enforcement will be carried out at the local level.  
25 Further, any penalties recovered through enforcement will be paid to  
26 the State treasury, if the plaintiff is the Commissioner of Health and  
27 Senior Services, or the treasury of the municipality where the violation  
28 occurred, if the plaintiff is the local board of health.

29       The bill repeals certain statutes, which would be obviated by the  
30 bill, governing smoking in the following settings:

31       -- passenger elevators (N.J.S.A.26:3D-1 et seq.);

32       -- health care facilities and physicians' offices (N.J.S.A.26:3D-7 et  
33 seq.);

34       -- educational institutions (N.J.S.A.26:3D-15 et seq.);

35       -- places of employment (N.J.S.A.26:3D-23 et seq.);

36       -- food and marketing stores (N.J.S.A.26:3D-32 et seq.);

37       -- indoor public places (N.J.S.A.26:3D-38 et seq.);

38       -- government buildings (N.J.S.A.26:3D-46 et seq.);

39       -- restaurants (N.J.S.A.26:3E-7 et seq.); and

40       -- child care centers (N.J.S.A.30:5B-1 et seq.).

41       Finally, the bill would take effect 90 days after its enactment.



# ASSEMBLY HEALTH AND HUMAN SERVICES COMMITTEE

## STATEMENT TO

[Second Reprint]  
**SENATE, No. 1926**

# STATE OF NEW JERSEY

DATED: JANUARY 5, 2006

The Assembly Health and Human Services Committee reports favorably Senate Bill No. 1926 (2R).

This bill, which is designated as the "New Jersey Smoke-Free Air Act," prohibits smoking in workplaces and indoor public places throughout the State, except for certain specifically exempted establishments, and also prohibits smoking in any area of any public or nonpublic elementary or secondary school, whether in the buildings or on the grounds of the school.

The bill provides specifically as follows:

C The bill defines:

-- "workplace" to mean a structurally enclosed location or portion thereof at which one or more persons perform any type of service or labor; and

-- "indoor public place" to mean a structurally enclosed place of business, commerce or other service-related activity, whether publicly or privately owned or operated on a for-profit or nonprofit basis, which is generally accessible to the public. (This term is explicitly defined to include the following as examples: commercial office buildings, retail establishments, government offices, schools, sporting arenas, bars, restaurants, public libraries, museums, public conveyances, hotels and motels, child care centers, health care facilities, waiting rooms in physicians' and other health care providers' offices, recreational facilities and passenger elevators.)

C The following are exempted from the restrictions on smoking:

-- any cigar bar or cigar lounge that, in the calendar year ending December 31, 2004, generated 15% or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines, and is registered with the local board of health in the municipality in which the bar or lounge is located. If a cigar bar or lounge is located in an area within a bar or other establishment (where smoking is prohibited), the cigar bar or lounge must be an area that is enclosed by solid walls or windows, a ceiling and a solid door and equipped with a ventilation system which is separately exhausted from the nonsmoking areas of the bar or other establishment so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not backstreamed into the nonsmoking areas;

- any tobacco retail establishment, or any area the tobacco retail establishment provides for the purposes of smoking;
  - any tobacco business when the testing of a cigar or pipe tobacco by heating, burning or smoking is a necessary and integral part of the process of making, manufacturing, importing or distributing cigars or pipe tobacco;
  - private homes, private residences and private automobiles (which is intended to include residences such as a rectory or convent located on the grounds of a private school);
  - the area within the perimeter of any casino as defined in N.J.S.A.5:12-6 approved by the Casino Control Commission that contains at least 150 stand-alone slot machines, 10 table games, or some combination thereof approved by the commission, which machines and games are available to the public for wagering; and
  - the area within the perimeter of any casino simulcasting facility approved by the Casino Control Commission pursuant to N.J.S.A.5:12-194 that contains a simulcast counter and dedicated seating for at least 50 simulcast patrons or a simulcast operation and at least 10 table games, which simulcast facilities and games are available to the public for wagering.
- C A hotel, motel or other lodging establishment may permit smoking in up to 20% of its guest rooms; however, its provisions are not to be construed to require a hotel, motel or other lodging establishment to provide a nonsmoking room to a guest if all the designated nonsmoking rooms are occupied.
- C The provisions of the bill are to supersede any other statute, municipal ordinance and rule or regulation adopted pursuant to law concerning smoking in an indoor public place or workplace, except where smoking is prohibited by municipal ordinance or by any other statute or regulation adopted pursuant to law for purposes of protecting life and property from fire or protecting public health, and except for those provisions of a municipal ordinance which provide restrictions on or prohibitions against smoking equivalent to, or greater than, those provided under the bill.
- C The person in control of the indoor public place or workplace has the authority to enforce the bill, and a lessee of the workplace or space within the building or indoor public place may also enforce the smoking restrictions. (The owner or operator of a commercial or other office building or other indoor public place, from whom a workplace or space within the building or indoor public place is leased, is the person in control of the building for the purposes of complying with and enforcing the provisions of the bill.)
- C The bill provides penalties for violations as follows:
- a person who smokes in violation of the bill is subject to a fine of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense; and
  - a person in control of the indoor public place or workplace who fails or refuses to comply with an order from the Department of Health and Senior

Services or the local board of health concerning a violation is subject to a fine of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense.

The above penalties are to be the only civil remedy for a violation of the bill, and there is to be no private right of action against a party for failure to comply with the provisions of the bill. (It is anticipated that the enforcement of the provisions of this bill will in large measure be carried out at the local level and should not result in substantial State expenditures for this purpose. Further, any penalties recovered through enforcement will be paid to the State treasury, if the plaintiff is the Commissioner of Health and Senior Services, or the treasury of the municipality where the violation occurred, if the plaintiff is the local board of health.)

C The bill repeals certain statutes, which are obviated by its provisions, governing smoking in the following settings:

- passenger elevators (N.J.S.A.26:3D-1 et seq.);
- health care facilities and physicians' offices (N.J.S.A.26:3D-7 et seq.);
- educational institutions (N.J.S.A.26:3D-15 et seq.);
- places of employment (N.J.S.A.26:3D-23 et seq.);
- food and marketing stores (N.J.S.A.26:3D-32 et seq.);
- indoor public places (N.J.S.A.26:3D-38 et seq.);
- government buildings (N.J.S.A.26:3D-46 et seq.);
- restaurants (N.J.S.A.26:3E-7 et seq.); and
- child care centers (N.J.S.A.30:5B-5.3).

C Finally, the bill takes effect on the 90th day after its enactment.

This bill is identical to Assembly Bill No. 3730 Aca (Weinberg/Gusciora/Panter), which the committee also reported on this date.

SENATE HEALTH, HUMAN SERVICES AND SENIOR  
CITIZENS COMMITTEE

STATEMENT TO

**SENATE, No. 1926**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MARCH 14, 2005

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 1926.

As amended by committee, this bill, the "New Jersey Smoke-Free Air Act," prohibits smoking in workplaces and indoor public places throughout the State, except for certain specifically exempted establishments, and it would prohibit smoking in any area of any public or nonpublic elementary or secondary school, whether in the buildings or on the grounds of the school.

Under the bill, "workplace" is defined as a structurally enclosed location or portion thereof at which one or more persons perform any type of service or labor. The bill defines "indoor public place" as a structurally enclosed place of business, commerce or other service-related activity, whether publicly or privately owned or operated on a for-profit or nonprofit basis, which is generally accessible to the public. The definition also provides as examples of indoor public places the following: commercial office buildings, retail establishments, government offices, schools, sporting arenas, bars, restaurants, public libraries, museums, public conveyances, hotels and motels, child care centers, health care facilities, waiting rooms in physicians' and other health care providers' offices, recreational facilities and passenger elevators.

The bill would exempt from the restrictions on smoking:

1) any cigar bar or cigar lounge that, in the calendar year ending December 31, 2004, generated 15% or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines, and is registered with the local board of health in the municipality in which the bar or lounge is located. If a cigar bar or lounge is located in an area within a bar or other establishment (where smoking is prohibited), the cigar bar or lounge must be an area that is enclosed by solid walls or windows, a ceiling and a solid door and equipped with a ventilation system which is separately exhausted from the nonsmoking areas of

the bar or other establishment so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not backstreamed into the nonsmoking areas;

2) any tobacco retail establishment, or any area the tobacco retail establishment provides for the purposes of smoking; and

3) any tobacco business when the testing of a cigar or pipe tobacco by heating, burning or smoking is a necessary and integral part of the process of making, manufacturing, importing or distributing cigars or pipe tobacco.

Also, the provisions of the bill would not apply to private homes, private residences and private automobiles. This provision concerning private homes and residences is intended to include residences such as a rectory or convent which is located on the grounds of a private school.

In addition, the bill provides that a hotel, motel or other lodging establishment may permit smoking in up to 20% of its guest rooms. The bill specifies, however, that its provisions shall not be construed to require a hotel, motel or other lodging establishment to provide a nonsmoking room to a guest if all the designated nonsmoking rooms are occupied.

The bill provides that its provisions shall supersede any other statute, municipal ordinance and rule or regulation adopted pursuant to law concerning smoking in an indoor public place or workplace, except where smoking is prohibited by municipal ordinance or by any other statute or regulation adopted pursuant to law for purposes of protecting life and property from fire or protecting public health, and except for those provisions of a municipal ordinance which provide restrictions on or prohibitions against smoking equivalent to, or greater than, those provided under the bill.

The bill provides that the person in control of the indoor public place or workplace has the authority to enforce the bill and that a lessee of the workplace or space within the building or indoor public place may also enforce the smoking restrictions. The owner or operator of a commercial or other office building or other indoor public place, from whom a workplace or space within the building or indoor public place is leased, is the person in control of the building for the purposes of complying with and enforcing the provisions of the bill.

The bill provides penalties for violations as follows:

-- a person who smokes in violation of the bill would be subject to a fine of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense; and

-- a person in control of the indoor public place or workplace who fails or refuses to comply with an order from the Department of Health and Senior Services or the local board of health concerning a violation would be subject to a fine of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense.

The penalties provided above shall be the only civil remedy for a violation of the bill, and there shall be no private right of action against a party for failure to comply with the provisions of the bill.

It is noted that the enforcement of the provisions of this bill should not result in any expenditures by the State in excess of \$90,000 a year, since much of the enforcement will be carried out at the local level. Further, any penalties recovered through enforcement will be paid to the State treasury, if the plaintiff is the Commissioner of Health and Senior Services, or the treasury of the municipality where the violation occurred, if the plaintiff is the local board of health.

The bill repeals certain statutes, which would be obviated by the bill, governing smoking in the following settings:

- passenger elevators (N.J.S.A.26:3D-1 et seq.);
- health care facilities and physicians' offices (N.J.S.A.26:3D-7 et seq.);
- educational institutions (N.J.S.A.26:3D-15 et seq.);
- places of employment (N.J.S.A.26:3D-23 et seq.);
- food and marketing stores (N.J.S.A.26:3D-32 et seq.);
- indoor public places (N.J.S.A.26:3D-38 et seq.);
- government buildings (N.J.S.A.26:3D-46 et seq.);
- restaurants (N.J.S.A.26:3E-7 et seq.); and
- child care centers (N.J.S.A.30:5B-5.3).

Finally, the bill would take effect 90 days after its enactment.

#### COMMITTEE AMENDMENTS:

- Ⓒ Committee amendments delete the exemption from the restrictions on smoking provided in the bill to:
  - (1) casinos, casino simulcasting facilities and bars located in a casino or casino simulcasting facility; and
  - (2) a place or building owned and operated by a social or fraternal organization when used by the members of the organization and their guests or families. The bill originally provided a two-year exemption for these organizations.
- Ⓒ Committee amendments specify that the provisions of the bill shall not apply to private homes, private residences and private automobiles. This provision concerning private homes and residences is intended to include residences such as a rectory or convent which is located on the grounds of a private school.
- Ⓒ Committee amendments also make a technical correction to the citation of the law concerning smoking in child care centers.

# STATEMENT TO

[First Reprint]

## **SENATE, No. 1926**

with Senate Floor Amendments  
(Proposed By Senator ADLER)

ADOPTED: DECEMBER 8, 2005

This amendment would exempt from the provisions of this bill restricting smoking in indoor public places and workplaces the following:

(1) the area within the perimeter of any casino as defined in N.J.S.A.5:12-6 approved by the Casino Control Commission that contains at least 150 stand-alone slot machines, 10 table games, or some combination thereof approved by the commission, which machines and games are available to the public for wagering; and

(2) the area within the perimeter of any casino simulcasting facility approved by the Casino Control Commission pursuant to N.J.S.A.5:12-194 that contains a simulcast counter and dedicated seating for at least 50 simulcast patrons or a simulcast operation and at least 10 table games, which simulcast facilities and games and games are available to the public for wagering.

The purpose of this amendment, in specifying "the area within the perimeter of a casino and simulcasting facility," is to exempt only those areas in a casino and simulcasting facility that are completely surrounded by the applicable wagering area.

# ASSEMBLY, No. 3730

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JANUARY 13, 2005

**Sponsored by:**

**Assemblywoman LORETTA WEINBERG**

**District 37 (Bergen)**

**Assemblyman REED GUSCIORA**

**District 15 (Mercer)**

**Assemblyman MICHAEL PANTER**

**District 12 (Mercer and Monmouth)**

**Assemblyman LOUIS MANZO**

**District 31 (Hudson)**

**Assemblyman ERIC MUNOZ**

**District 21 (Essex, Morris, Somerset and Union)**

**Co-Sponsored by:**

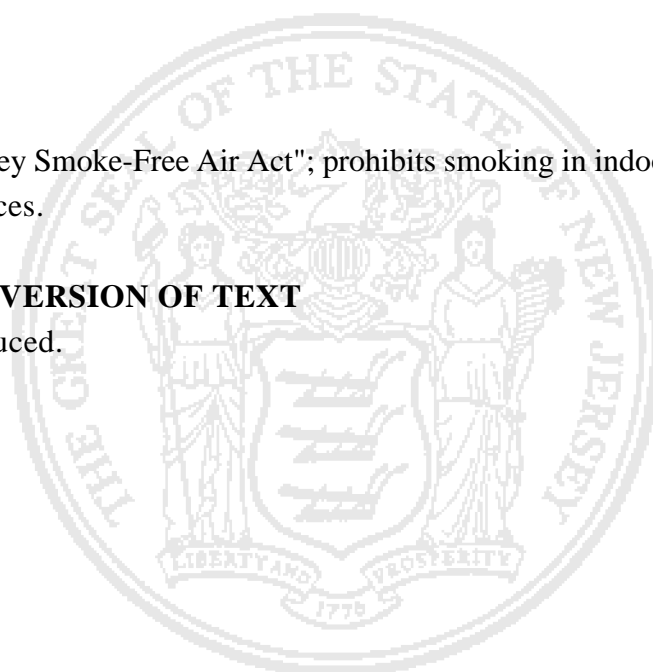
**Assemblymen Morgan, Gordon, Assemblywomen Oliver, Previte,  
Assemblymen Conaway and McKeon**

**SYNOPSIS**

"New Jersey Smoke-Free Air Act"; prohibits smoking in indoor public places and workplaces.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 1/6/2006)**



1 AN ACT concerning smoking in indoor public places and workplaces  
2 and revising parts of statutory law.

3

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

6

7 1. This act shall be known and may be cited as the "New Jersey  
8 Smoke-Free Air Act."

9

10 2. The Legislature finds and declares that: tobacco is the leading  
11 cause of preventable disease and death in the State and the nation, and  
12 tobacco smoke constitutes a substantial health hazard to the  
13 nonsmoking majority of the public; the separation of smoking and  
14 nonsmoking areas in indoor public places and workplaces does not  
15 eliminate the hazard to nonsmokers if these areas share a common  
16 ventilation system; and, therefore, subject to certain specified  
17 exceptions, it is clearly in the public interest to prohibit smoking in all  
18 enclosed indoor places of public access and workplaces.

19

20 3. As used in this act:

21 "Bar" means a business establishment or any portion of a nonprofit  
22 entity, which is devoted to the selling and serving of alcoholic  
23 beverages for consumption by the public, guests, patrons or members  
24 on the premises and in which the serving of food, if served at all, is  
25 only incidental to the sale or consumption of such beverages.

26 "Cigar bar" means any bar, or area within a bar, designated  
27 specifically for the smoking of tobacco products, purchased on the  
28 premises or elsewhere; except that a cigar bar that is in an area within  
29 a bar shall be an area enclosed by solid walls or windows, a ceiling and  
30 a solid door and equipped with a ventilation system which is separately  
31 exhausted from the nonsmoking areas of the bar so that air from the  
32 smoking area is not recirculated to the nonsmoking areas and smoke  
33 is not backstreamed into the nonsmoking areas.

34 "Cigar lounge" means any establishment, or area within an  
35 establishment, designated specifically for the smoking of tobacco  
36 products, purchased on the premises or elsewhere; except that a cigar  
37 lounge that is in an area within an establishment shall be an area  
38 enclosed by solid walls or windows, a ceiling and a solid door and  
39 equipped with a ventilation system which is separately exhausted from  
40 the nonsmoking areas of the establishment so that air from the  
41 smoking area is not recirculated to the nonsmoking areas and smoke  
42 is not backstreamed into the nonsmoking areas.

43 "Indoor public place" means a structurally enclosed place of  
44 business, commerce or other service-related activity, whether publicly  
45 or privately owned or operated on a for-profit or nonprofit basis,  
46 which is generally accessible to the public, including, but not limited

1 to: a commercial or other office building; office or building owned,  
2 leased or rented by the State or by a county or municipal government;  
3 public and nonpublic elementary or secondary school building; board  
4 of education building; theater or concert hall; public library; museum  
5 or art gallery; bar; restaurant or other establishment where the  
6 principal business is the sale of food for consumption on the premises,  
7 including the bar area of the establishment; garage or parking facility;  
8 any public conveyance operated on land or water, or in the air, and  
9 passenger waiting rooms and platform areas in any stations or  
10 terminals thereof; health care facility licensed pursuant to P.L.1971,  
11 c.136 (C.26:2H-1 et seq.); patient waiting room of the office of a  
12 health care provider licensed pursuant to Title 45 of the Revised  
13 Statutes; child care center licensed pursuant to P.L.1983, c.492  
14 (C.30:5B-1 et seq.); race track facility; facility used for the holding of  
15 sporting events; ambulatory recreational facility; shopping mall or  
16 retail store; hotel, motel or other lodging establishment; apartment  
17 building lobby or other public area in an otherwise private building; or  
18 a passenger elevator in a building other than a single-family dwelling.

19 "Person having control of an indoor public place or workplace"  
20 means the owner or operator of a commercial or other office building  
21 or other indoor public place from whom a workplace or space within  
22 the building or indoor public place is leased.

23 "Smoking" means the burning of, inhaling from, exhaling the smoke  
24 from, or the possession of a lighted cigar, cigarette, pipe or any other  
25 matter or substance which contains tobacco or any other matter that  
26 can be smoked.

27 "Tobacco retail establishment" means an establishment in which at  
28 least 51% of retail business is the sale of tobacco products and  
29 accessories, and in which the sale of other products is merely  
30 incidental.

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

33

34 4. a. Smoking is prohibited in an indoor public place or workplace,  
35 except as otherwise provided in this act.

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

39

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

41 a. any cigar bar or cigar lounge that, in the calendar year ending  
42 December 31, 2004, generated 15% or more of its total annual gross  
43 income from the on-site sale of tobacco products and the rental of on-  
44 site humidors, not including any sales from vending machines, and is  
45 registered with the local board of health in the municipality in which  
46 the bar or lounge is located. The registration shall remain in effect for  
47 one year and shall be renewable only if: (1) in the preceding calendar

1 year, the cigar bar or lounge generated 15% or more of its total annual  
2 gross income from the on-site sale of tobacco products and the rental  
3 of on-site humidors, and (2) the cigar bar or cigar lounge has not  
4 expanded its size or changed its location since December 31, 2004;

5 b. any tobacco retail establishment, or any area the tobacco retail  
6 establishment provides for the purposes of smoking; and

7 c. any tobacco business when the testing of a cigar or pipe tobacco  
8 by heating, burning or smoking is a necessary and integral part of the  
9 process of making, manufacturing, importing or distributing cigars or  
10 pipe tobacco,

11

12 6. The provisions of this act shall not be construed to apply to a  
13 place or building owned and operated by a social or fraternal  
14 organization when used by the members of the organization and their  
15 guests or families, in which all of the duties with respect to the  
16 operation of the organization, including, but not limited to, the  
17 preparation of food and beverages, the service of food and beverages,  
18 reception and secretarial work, and the security services of the  
19 organization are performed by members of the organization who do  
20 not receive compensation of any kind from the organization or any  
21 other entity for the performance of the duties.

22

23 7. a. The person having control of a hotel, motel or other lodging  
24 establishment may permit smoking in up to 20% of its guest rooms.

25 b. Nothing in this section shall be construed to require a hotel,  
26 motel or other lodging establishment to provide a nonsmoking room  
27 to a guest if all the designated nonsmoking rooms are occupied.

28

29 8. a. The person having control of an indoor public place or  
30 workplace shall place in every public entrance to the indoor public  
31 place or workplace a sign, which shall be located so as to be clearly  
32 visible to the public and shall contain letters or a symbol which  
33 contrast in color with the sign, indicating that smoking is prohibited  
34 therein, except in such designated areas as provided pursuant to this  
35 act. The sign shall also indicate that violators are subject to a fine.  
36 The person having control of the indoor public place or workplace  
37 shall post a sign stating "Smoking Permitted" in letters at least one  
38 inch in height or marked by the international symbol for "Smoking  
39 Permitted" in those areas where smoking is permitted.

40 b. The provisions of this section shall not be construed to prevent  
41 a lessee of the workplace, or space within the building or indoor public  
42 place, from enforcing the smoking restrictions imposed by the owner  
43 or operator of a commercial or other office building or other indoor  
44 public place.

45

46 9. a. The person having control of an indoor public place or  
47 workplace shall order any person smoking in violation of this act to

1 comply with the provisions of this act. A person, after being so  
2 ordered, who smokes in violation of this act is subject to a fine of not  
3 less than \$250 for the first offense, \$500 for the second offense and  
4 \$1,000 for each subsequent offense. A penalty shall be recovered in  
5 accordance with the provisions of subsections c. and d. of this section.

6 b. The Department of Health and Senior Services or the local board  
7 of health or the board, body or officers exercising the functions of the  
8 local board of health according to law, upon written complaint or  
9 having reason to suspect that an indoor public place or workplace  
10 covered by the provisions of this act is or may be in violation of the  
11 provisions of this act, shall, by written notification, advise the person  
12 having control of the place accordingly and order appropriate action  
13 to be taken. A person receiving that notice who fails or refuses to  
14 comply with the order is subject to a fine of not less than \$250 for the  
15 first offense, \$500 for the second offense and \$1,000 for each  
16 subsequent offense. In addition to the penalty provided herein, the  
17 court may order immediate compliance with the provisions of this act.

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

26 d. A municipal court shall have jurisdiction over proceedings to  
27 enforce and collect any penalty imposed because of a violation of this  
28 act if the violation has occurred within the territorial jurisdiction of the  
29 court. The proceedings shall be summary and in accordance with the  
30 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-  
31 10 et seq.). Process shall be in the nature of a summons or warrant  
32 and shall issue only at the suit of the Commissioner of Health and  
33 Senior Services, or the local board of health, as the case may be, as  
34 plaintiff.

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

39  
40 10. The provisions of this act shall supersede any other statute,  
41 municipal ordinance and rule or regulation adopted pursuant to law  
42 concerning smoking in an indoor public place or workplace, except  
43 where smoking is prohibited by municipal ordinance under authority  
44 of R.S.40:48-1 or 40:48-2, or by any other statute or regulation  
45 adopted pursuant to law for purposes of protecting life and property  
46 from fire or protecting public health, and except for those provisions  
47 of a municipal ordinance which provide restrictions on or prohibitions

1 against smoking equivalent to, or greater than, those provided under  
2 this act.

3  
4 11. The Commissioner of Health and Senior Services, pursuant to  
5 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
6 seq.), shall adopt rules and regulations to effectuate the purposes of  
7 this act.

8  
9 12. The following are repealed:  
10 P.L.1981, c.318 (C.26:3D-1 et seq.);  
11 P.L.1981, c.319 (C.26:3D-7 et seq.);  
12 P.L.1981, c.320 (C.26:3D-15 et seq.);  
13 P.L.1985, c.184 (C.26:3D-23 et seq.);  
14 P.L.1985, c.186 (C.26:3D-32 et seq.);  
15 P.L.1985, c.318 (C.26:3D-38 et seq.);  
16 P.L.1985, c.381 (C.26:3D-46 et seq.);  
17 P.L.1985, c.185 (C.26:3E-7 et seq.); and  
18 P.L.1998, c.35 (C.30:5B-1 et seq.).

19  
20 13. This act shall take effect on the 90th day after enactment, and  
21 section 6 shall expire on the first day of the 25th month after the  
22 effective date.

23  
24  
25 STATEMENT

26  
27 This bill, the "New Jersey Smoke-Free Air Act," prohibits smoking  
28 in workplaces and indoor public places throughout the State, except  
29 for certain specifically exempted establishments, and it would prohibit  
30 smoking in any area of any public or nonpublic elementary or  
31 secondary school, whether in the buildings or on the grounds of the  
32 school.

33 Under the bill, "workplace" is defined as a structurally enclosed  
34 location or portion thereof at which one or more persons perform any  
35 type of service or labor. The bill defines "indoor public place" as a  
36 structurally enclosed place of business, commerce or other  
37 service-related activity, whether publicly or privately owned or  
38 operated on a for-profit or nonprofit basis, which is generally  
39 accessible to the public. The definition also provides as examples of  
40 indoor public places the following: commercial office buildings, retail  
41 establishments, government offices, schools, sporting arenas, bars,  
42 restaurants, public libraries, museums, public conveyances, hotels and  
43 motels, child care centers, health care facilities, waiting rooms in  
44 physicians' and other health care providers' offices, recreational  
45 facilities and passenger elevators.

46 The bill would exempt from the restrictions on smoking:

47 1) any cigar bar or cigar lounge that, in the calendar year ending

1 December 31, 2004, generated 15% or more of its total annual gross  
2 income from the on-site sale of tobacco products and the rental of on-  
3 site humidors, not including any sales from vending machines, and is  
4 registered with the local board of health in the municipality in which  
5 the bar or lounge is located. If a cigar bar or lounge is located in an  
6 area within a bar or other establishment (where smoking is prohibited),  
7 the cigar bar or lounge must be an area that is enclosed by solid walls  
8 or windows, a ceiling and a solid door and equipped with a ventilation  
9 system which is separately exhausted from the nonsmoking areas of  
10 the bar or other establishment so that air from the smoking area is not  
11 recirculated to the nonsmoking areas and smoke is not backstreamed  
12 into the nonsmoking areas;

13 2) any tobacco retail establishment, or any area the tobacco retail  
14 establishment provides for the purposes of smoking; and

15 3) any tobacco business when the testing of a cigar or pipe tobacco  
16 by heating, burning or smoking is a necessary and integral part of the  
17 process of making, manufacturing, importing or distributing cigars or  
18 pipe tobacco.

19 The bill also provides a two-year exemption from the smoking  
20 prohibitions to a place or building owned and operated by a social or  
21 fraternal organization when used by the members of the organization  
22 and their guests or families, in which all of the duties with respect to  
23 the operation of the organization, including, but not limited to, the  
24 preparation of food and beverages, the service of food and beverages,  
25 reception and secretarial work, and the security services of the  
26 organization are performed by members of the organization who do  
27 not receive compensation of any kind from the organization or any  
28 other entity for the performance of the duties.

29 In addition, the bill provides that a hotel, motel or other lodging  
30 establishment may permit smoking in up to 20% of its guest rooms.  
31 The bill specifies, however, that its provisions shall not be construed  
32 to require a hotel, motel or other lodging establishment to provide a  
33 nonsmoking room to a guest if all the designated nonsmoking rooms  
34 are occupied.

35 The bill provides that its provisions shall supersede any other  
36 statute, municipal ordinance and rule or regulation adopted pursuant  
37 to law concerning smoking in an indoor public place or workplace,  
38 except where smoking is prohibited by municipal ordinance or by any  
39 other statute or regulation adopted pursuant to law for purposes of  
40 protecting life and property from fire or protecting public health, and  
41 except for those provisions of a municipal ordinance which provide  
42 restrictions on or prohibitions against smoking equivalent to, or  
43 greater than, those provided under the bill.

44 The bill provides that the person in control of the indoor public  
45 place or workplace has the authority to enforce the bill and that a  
46 lessee of the workplace or space within the building or indoor public  
47 place may also enforce the smoking restrictions. The owner or

1 operator of a commercial or other office building or other indoor  
2 public place, from whom a workplace or space within the building or  
3 indoor public place is leased, is the person in control of the building  
4 for the purposes of complying with and enforcing the provisions of the  
5 bill.

6 The bill provides penalties for violations as follows:

7 -- a person who smokes in violation of the bill would be subject to  
8 a fine of not less than \$250 for the first offense, \$500 for the second  
9 offense and \$1,000 for each subsequent offense; and

10 -- a person in control of the indoor public place or workplace who  
11 fails or refuses to comply with an order from the Department of Health  
12 and Senior Services or the local board of health concerning a violation  
13 would be subject to a fine of not less than \$250 for the first offense,  
14 \$500 for the second offense and \$1,000 for each subsequent offense.

15 The penalties provided above shall be the only civil remedy for a  
16 violation of the bill, and there shall be no private right of action against  
17 a party for failure to comply with the provisions of the bill.

18 It is noted that the enforcement of the provisions of this bill should  
19 not result in any expenditures by the State in excess of \$90,000 a year,  
20 since much of the enforcement will be carried out at the local level.  
21 Further, any penalties recovered through enforcement will be paid to  
22 the State treasury, if the plaintiff is the Commissioner of Health and  
23 Senior Services, or the treasury of the municipality where the violation  
24 occurred, if the plaintiff is the local board of health.

25 The bill repeals certain statutes, which would be obviated by the  
26 bill, governing smoking in the following settings:

27 -- passenger elevators (N.J.S.A.26:3D-1 et seq.);

28 -- health care facilities and physicians' offices (N.J.S.A.26:3D-7 et  
29 seq.);

30 -- educational institutions (N.J.S.A.26:3D-15 et seq.);

31 -- places of employment (N.J.S.A.26:3D-23 et seq.);

32 -- food and marketing stores (N.J.S.A.26:3D-32 et seq.);

33 -- indoor public places (N.J.S.A.26:3D-38 et seq.);

34 -- government buildings (N.J.S.A.26:3D-46 et seq.);

35 -- restaurants (N.J.S.A.26:3E-7 et seq.); and

36 -- child care centers (N.J.S.A.30:5B-1 et seq.).

37 Finally, the bill would take effect 90 days after its enactment.

# ASSEMBLY HEALTH AND HUMAN SERVICES COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 3730**

with committee amendments

## **STATE OF NEW JERSEY**

DATED: JANUARY 5, 2006

The Assembly Health and Human Services Committee reports favorably and with committee amendments Assembly Bill No. 3730.

As amended by the committee, this bill, which is designated as the "New Jersey Smoke-Free Air Act," prohibits smoking in workplaces and indoor public places throughout the State, except for certain specifically exempted establishments, and also prohibits smoking in any area of any public or nonpublic elementary or secondary school, whether in the buildings or on the grounds of the school.

The bill provides specifically as follows:

C The bill defines:

-- "workplace" to mean a structurally enclosed location or portion thereof at which one or more persons perform any type of service or labor; and

-- "indoor public place" to mean a structurally enclosed place of business, commerce or other service-related activity, whether publicly or privately owned or operated on a for-profit or nonprofit basis, which is generally accessible to the public. (This term is explicitly defined to include the following as examples: commercial office buildings, retail establishments, government offices, schools, sporting arenas, bars, restaurants, public libraries, museums, public conveyances, hotels and motels, child care centers, health care facilities, waiting rooms in physicians' and other health care providers' offices, recreational facilities and passenger elevators.)

C The following are exempted from the restrictions on smoking:

-- any cigar bar or cigar lounge that, in the calendar year ending December 31, 2004, generated 15% or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines, and is registered with the local board of health in the municipality in which the bar or lounge is located. If a cigar bar or lounge is located in an area within a bar or other establishment (where smoking is prohibited), the cigar bar or lounge must be an area that is enclosed by solid walls or windows, a ceiling and a solid door and equipped with a ventilation system which is separately exhausted from the nonsmoking areas of



the bar or other establishment so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not backstreamed into the nonsmoking areas;

- any tobacco retail establishment, or any area the tobacco retail establishment provides for the purposes of smoking;

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

- private homes, private residences and private automobiles (which is intended to include residences such as a rectory or convent located on the grounds of a private school);

- the area within the perimeter of any casino as defined in N.J.S.A.5:12-6 approved by the Casino Control Commission that contains at least 150 stand-alone slot machines, 10 table games, or some combination thereof approved by the commission, which machines and games are available to the public for wagering; and

- the area within the perimeter of any casino simulcasting facility approved by the Casino Control Commission pursuant to N.J.S.A.5:12-194 that contains a simulcast counter and dedicated seating for at least 50 simulcast patrons or a simulcast operation and at least 10 table games, which simulcast facilities and games are available to the public for wagering.

C A hotel, motel or other lodging establishment may permit smoking in up to 20% of its guest rooms; however, its provisions are not to be construed to require a hotel, motel or other lodging establishment to provide a nonsmoking room to a guest if all the designated nonsmoking rooms are occupied.

C The provisions of the bill are to supersede any other statute, municipal ordinance and rule or regulation adopted pursuant to law concerning smoking in an indoor public place or workplace, except where smoking is prohibited by municipal ordinance or by any other statute or regulation adopted pursuant to law for purposes of protecting life and property from fire or protecting public health, and except for those provisions of a municipal ordinance which provide restrictions on or prohibitions against smoking equivalent to, or greater than, those provided under the bill.

C The person in control of the indoor public place or workplace has the authority to enforce the bill, and a lessee of the workplace or space within the building or indoor public place may also enforce the smoking restrictions. (The owner or operator of a commercial or other office building or other indoor public place, from whom a workplace or space within the building or indoor public place is leased, is the person in control of the building for the purposes of complying with and enforcing the provisions of the bill.)

C The bill provides penalties for violations as follows:

- a person who smokes in violation of the bill is subject to a fine of not less than \$250 for the first offense, \$500 for the second offense

and \$1,000 for each subsequent offense; and

-- a person in control of the indoor public place or workplace who fails or refuses to comply with an order from the Department of Health and Senior Services or the local board of health concerning a violation is subject to a fine of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense.

The above penalties are to be the only civil remedy for a violation of the bill, and there is to be no private right of action against a party for failure to comply with the provisions of the bill. (It is anticipated that the enforcement of the provisions of this bill will in large measure be carried out at the local level and should not result in substantial State expenditures for this purpose. Further, any penalties recovered through enforcement will be paid to the State treasury, if the plaintiff is the Commissioner of Health and Senior Services, or the treasury of the municipality where the violation occurred, if the plaintiff is the local board of health.)

C The bill repeals certain statutes, which are obviated by its provisions, governing smoking in the following settings:

- passenger elevators (N.J.S.A.26:3D-1 et seq.);
- health care facilities and physicians' offices (N.J.S.A.26:3D-7 et seq.);
- educational institutions (N.J.S.A.26:3D-15 et seq.);
- places of employment (N.J.S.A.26:3D-23 et seq.);
- food and marketing stores (N.J.S.A.26:3D-32 et seq.);
- indoor public places (N.J.S.A.26:3D-38 et seq.);
- government buildings (N.J.S.A.26:3D-46 et seq.);
- restaurants (N.J.S.A.26:3E-7 et seq.); and
- child care centers (N.J.S.A.30:5B-5.3).

C Finally, the bill takes effect on the 90th day after its enactment.

As reported by the committee, this bill is identical to Senate Bill No. 1926 (2R) (Adler/Kean), which the committee also reported on this date.

#### COMMITTEE AMENDMENTS

The committee amendments to the bill:

C exempt the following from the restrictions on smoking:

- private homes, private residences and private automobiles (which is intended to include residences such as a rectory or convent located on the grounds of a private school);
- the area within the perimeter of any casino as defined in N.J.S.A.5:12-6 approved by the Casino Control Commission that contains at least 150 stand-alone slot machines, 10 table games, or some combination thereof approved by the commission, which machines and games are available to the public for wagering; and
- the area within the perimeter of any casino simulcasting facility approved by the Casino Control Commission pursuant to N.J.S.A.5:12-194 that contains a simulcast counter and dedicated seating for at least 50 simulcast patrons or a simulcast operation and

at least 10 table games, which simulcast facilities and games are available to the public for wagering;

- C delete the two-year exemption from the restrictions on smoking provided to a place or building owned and operated by a social or fraternal organization when used by the members of the organization and their guests or families; and
- C make a technical correction to the citation of the law concerning smoking in child care centers (N.J.S.A.30:5B-5.3).

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY, No. 3730**  
**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

DATED: JULY 15, 2005

**SUMMARY**

**Synopsis:** "New Jersey Smoke-Free Air Act"; prohibits smoking in indoor public places and workplaces.

**Type of Impact:** None anticipated, but any impact would affect State General Fund.

**Agencies Affected:** Department of the Treasury.

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Fiscal Year 2006</u></b>	<b><u>Fiscal Year 2007</u></b>	<b><u>Fiscal Year 2008</u></b>
<b>State Cost</b>	No Fiscal Impact Anticipated		

- ! The Office of Legislative Services (OLS) anticipates that the indoor smoking ban would not affect State revenue collections derived from the State's hospitality industry. The agency predicates this assumption on its review of information on indoor smoking bans in operation elsewhere.
- ! The OLS points out that while it expects the smoking ban to have no industry wide economic impact on restaurants and bars, it does not suggest that the ban would not affect the sales of any particular establishment.

**BILL DESCRIPTION**

Assembly Bill No. 3730 of 2005 prohibits smoking in workplaces and indoor public places throughout the State, starting on the 90th day after enactment.

**FISCAL ANALYSIS**

**EXECUTIVE BRANCH**

None received.

**OFFICE OF LEGISLATIVE SERVICES**

The Office of Legislative Services (OLS) anticipates that the indoor smoking ban would not affect State revenue collections derived from the State's hospitality industry. The agency predicates this assumption on its review of information on indoor smoking bans in operation elsewhere.

In their 2004 "Summary of Studies Assessing the Economic Impact of Smoke-Free Policies in the Hospitality Industry", Michelle Scollo and Anita Lal from the VicHealth Center for Tobacco Control in Melbourne, Australia, found that none of the 21 studies reviewed meeting the following criteria indicated an adverse industry wide economic impact of smoking bans in restaurants and bars: a) the findings were based on an objective measure such as taxable sales receipts, b) the data points were several years before and after the introduction of smoke-free policies, c) changes in the economic conditions were appropriately controlled for, and d) appropriate statistical tests were used to control for underlying trends and fluctuations in data. Some studies even discerned a slight industry wide increase in sales following the introduction of a smoking ban. The authors further noted that studies detecting negative economic ramifications "predominantly based their findings on outcomes predicted before introduction of policies, or on subjective impressions or estimates of changes rather than actual, objective, verified or audited data."

Moreover, when the OLS analyzed California's statewide taxable sales by eating and drinking places from 1995 to 2003, as published by the California State Board of Equalization, and food and drink sales by the California food service industry from 1991 through 2004, as reported by the California Restaurant Association, it could not detect that California's statewide smoking ban (introduced January 1, 1998) had changed historic patterns in taxable sales by eating and drinking places.

Lastly, the OLS points out that while it expects the smoking ban to have no economic impact on restaurants and bars as a whole, it does not suggest that the ban would not affect the sales of any particular establishment. The ban's impact on an individual establishment will depend on the composition of its current and potential patrons as well as their responses to the ban.

Section: *Revenue, Finance and Appropriations*

Analyst: *Thomas Koenig*  
*Associate Fiscal Analyst*

Approved: *David J. Rosen*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

PO BOX 004  
TRENTON, NJ 08625

Contact: Kelley Heck  
609-777-2600

RELEASE: January 18, 2006

## **Codey Signs Two Major Bills into Law, Scoring Public Health Triumph for New Jersey**

### **Codey Signs Two Major Bills into Law, Scoring Public Health Triumph for New Jersey *Laws Ban Indoor Smoking, Raise Tobacco Purchasing Age***

(TRENTON) - Governor Richard J. Codey today signed two long-awaited bills into law, achieving a major victory for public health in New Jersey. Codey signed both the New Jersey Smoke-Free Air Act, which bans smoking in most indoor public places, including bars and restaurants, and S2783, which makes New Jersey just the fourth state in the nation to raise the tobacco purchasing age from 18 to 19.

“Today is a historic day for New Jersey. After nearly 10 years of debate, public health has won a major battle in Trenton,” said Codey. “With all of the facts we know today, we need to do whatever we can to protect our workers and patrons from being exposed to the dangers of second-hand smoke. In 10 or 20 years, people will look back and thank us for having the courage to do this now. In the long run, these laws will save lives, plain and simple.”

Codey was joined by some of the bill sponsors, including senators John H. Adler (D-Camden), Joseph F. Vitale (D-Middlesex), Thomas H. Kean, Jr. (R-Essex, Morris, Somerset, Union), and Loretta Weinberg (D-Bergen) and assemblymen John F. McKeon (D-Essex) and Eric Munoz (R-Essex, Morris, Somerset, Union), as well as Department of Health and Senior Services (DHSS) Commissioner Fred M. Jacobs, M.D., J.D., representatives from the American Cancer Society and the American Heart Association and clean air advocates.

Other sponsors of the Smoke Free Air Act include assemblymen Reed Gusciora (D-Mercer), Michael Panter (D-Mercer, Monmouth) and Louis Manzo (D-Hudson). Other sponsors of S1783 include assemblymen Joseph Cryan (D-Union) and Upendra J. Chivukula (D-Middlesex, Somerset).

New Jersey now joins the ranks of ten other progressive states that have implemented similar measures to protect the public's health. The Smoke-Free Air Act requires indoor public places and workplaces, including restaurants and bars, to be smoke free, with the exception of cigar bars or lounges, tobacco retail establishments and the floors of the Atlantic City casinos.

The law, which will go into effect on April 15, 2006, carries penalties of \$250 for a first-offense smoking violation; \$500 for a second offense and \$1,000 for each subsequent offense.

“This is the most important bill I will ever sponsor,” said Adler. “It will save thousands of lives every year.”

“This has been a long time coming and we advocates for the smoking ban, as well as all residents in New Jersey, owe a great deal of gratitude to Governor Codey for getting it done,” said Weinberg.

The bill was prompted by overwhelming statistics that illustrate the dangers of second-hand smoke. It is believed that second-hand smoke causes as many as 65,000 premature deaths in the United States each year, according to the Centers for Disease Control and Prevention. Research also indicates that food service workers have the highest levels of exposure to second-hand smoke of any occupational group in the country.

“This new law is an important step forward in eliminating one of the most significant public health threats that we face today. It will have tremendous long-term health benefits for New Jersey residents, especially those exposed to second-hand smoke in the workplace. It will reduce smoking-relating illnesses and save lives for generations to come,” said Jacobs.

“Today, New Jersey joins the vanguard of states that are protecting citizens from the well-documented dangers of second-hand smoke,” said Gusciora. “Bar and restaurant employees and customers who have made the conscious decision not to smoke have been put at risk simply because of the dangers of secondhand smoke. Hopefully the ban will help smokers realize the negative effects of smoking and be an impetus for them to quit.”

“As legislators, there are a lot of dangers we wish we could eliminate with the push of a button,” said Panter. “This law presents a unique opportunity. Simply by supporting it, we are able to protect our constituents from the indisputable hazards of second-hand smoke.”

“Today, we take the step to protect the thousands of New Jersey employees who are forced every day to work eight to 10 hours in smoking environments,” said Manzo. “One day, I hope that every public building in the state will be smoke-free.”

“New Jersey has taken two great steps forward to a healthier future for all residents,” said McKeon, a co-sponsor of the smoking ban and lead sponsor of the purchasing age increase. “Banning smoking in nearly all public places will protect the health of millions of residents who have unwillingly been forced to breathe dirty air. And by increasing the age at which young adults can purchase cigarettes, we are working to keep future generations smoke-free.”

Codey also signed S2783 into law, which is geared towards keeping tobacco out of the hands of young people and preventing them from developing the dangerous habit of

smoking. The law makes New Jersey just the fourth state in the nation, and the first in the Northeast, to raise the legal age for purchasing tobacco from 18- to 19-years old. This law will also go into effect on April 15, 2006.

“Most first-time smokers are young and feel invincible,” said Codey. “If we can prevent even a few kids from picking up this deadly habit, then our efforts will have been worthwhile.”

According to the American Cancer Society, 90 percent of all smokers begin to smoke before they turn 18 years old. Each day in the United States, approximately 4,000 youths age 12 to 17 try their first cigarette. And, in New Jersey, one third of the state’s high school students currently smoke cigarettes, according to a survey by DHSS.

Cigarette smoking by young people can lead to serious health problems, including cough and phlegm production, decreased physical fitness, an increase in the number and severity of respiratory illnesses, adverse changes in blood cholesterol levels and reduced rates of lung growth and function. If current trends continue, an estimated 6.4 million children today can be expected to die prematurely from a smoking-related illness.

Raising the tobacco purchasing age to 19, will make it illegal for virtually all high school students to purchase cigarettes and less likely that they would share them with younger students. It will also help tobacco vendors enforce the law by making it easier for them to identify younger teenagers trying to buy cigarettes.

“Too many of our kids today are lighting up in high school, and they are letting their actions be guided, not by maturity and wisdom, but by peer pressure,” said Vitale, chairman of the Senate Health, Human Services and Senior Citizens Committee. “By increasing the age at which kids can purchase cigarettes, we will remove much of the temptation from our schools, and hopefully give our kids the clarity of mind to just say no.”

“We must protect our kids against the lifetime of health problems that can be attributed directly to cigarette smoking,” said Chivukula. “Kids who are deterred from smoking are more likely to become healthier adults who do not smoke.”

While all states have laws making it illegal to sell cigarettes to anyone under the age of 18, this new legislation will make New Jersey just the fourth state in the nation, behind Alabama, Alaska and Utah, to raise the age requirement to 19.

For additional information on youth smoking statistics and prevention and cessation programs, visit: <http://www.state.nj.us/health/as/ctcp/index.html> .

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