

26:3D-7 to 26:3D-14

LEGISLATIVE HISTORY CHECKLIST

NJSA 26:3D-7 to 26:3D-14 (Smoking - health-care facilities)

LAWS 1981 CHAPTER 319

Bill No. A1725

Sponsor(s) Herman

Date Introduced June 9, 1980

Committee: Assembly Judiciary, Law, Public Safety and Defense

Senate Law, Public Safety and Defense

Amended during passage Yes ~~XXX~~

Substituted for S3116 (not attached since identical to A1725). Amendments during passage denoted by asterisks.

Date of Passage: Assembly Feb. 19, 1981

Senate May 4, 1981

Date of approval Dec. 3, 1981

Following statements are attached if available:

Sponsor statement	Yes	No
Committee Statement: Assembly	Yes	No
Senate	Yes	No
Fiscal Note	Yes	No
Veto Message	Yes	No
Message on signing	Yes	No

Following were printed:

Reports	Yes	No
Hearings	Yes	No

974.90 New Jersey. Legislature. Assembly Committee on Judiciary Law, Public
H434 Safety and Defense.
1980 Public hearing, held 7-24-80. Trenton, 1980.

(over)

6/22/81

Public hearings held on regulations on smoking in public places, held during previous Legislative session:

974.90 New Jersey. Public Health Council.
H434 In the matter of the public hearing on regulation of smoking in
1978g certain public places held 12-11-78. Trenton, 1978.

Reports:

974.90 Goldmann, Sidney.
H434 In the matter of the public hearing on the regulation of smoking in
1979b certain public places: hearer's report and recommendation. Public
Health Council. Trenton, 1979.

974.90 New Jersey. Legislature. Assembly. Legislative Oversight Committee.
H434 Review of NJAC, 8:15-1.1 through 8:15-1.4. Public Health
1978d Council. Trenton, 1978.

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 1725

STATE OF NEW JERSEY

INTRODUCED JUNE 9, 1980

By Assemblymen HERMAN and WEIDEL

Referred to Committee on Judiciary, Law, Public Safety
and Defense

AN ACT controlling smoking in health care facilities and in the
waiting rooms of offices of persons licensed to practice the healing
arts ***[and supplementing chapter 33 of Title 2C of the New
Jersey Statutes]***.

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

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

1 2. As used in this act:

2 a. "Health care facility" means those facilities or institutions
3 described in section 2 of P. L. 1971, c. 136 (C. 26:2H-2).

4 b. "Persons licensed to practice the healing arts" means those
5 persons licensed to practice medicine and surgery pursuant to R. S.
6 45:9-1 et seq., **except any person specializing in psychotherapy,**

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

7 dentistry pursuant to R. S. 45:6-1 et seq., ***[psychology pursuant**
 8 **to P. L. 1966, c. 282 (C. 45:14B-1 et seq.),]*** or chiropractic pur-
 9 suant to article 3 of Title 45 of the Revised Statutes (C. 45:9-41.1
 9A et seq.).

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

1 3. a. Smoking is prohibited in all health care facilities, except it
 2 may be permitted in the following areas unless otherwise prohibited
 3 by municipal ordinance under authority of R. S. 40:48-1 and
 4 40:48-2 or by any **other** statute or regulation adopted pursuant
 5 to ***this act or any other*** **[statute]** **law** for purposes of pro-
 5A tecting life and property from fire:

6 (1) private rooms or rooms where all patients consent upon ad-
 7 mission to permit smoking;

8 (2) at least one waiting room or lobby if there is more than
 9 one waiting room or lobby in a health care facility. Smoking may
 10 be permitted in a waiting room or lobby if it is the only waiting
 11 room or lobby in a facility, as long as an adequate section, as
 12 determined by the person who has control of the health care facility,
 13 is provided therein for nonsmokers;

14 (3) a cafeteria or other dining area with an occupied capacity
 15 of 50 or more persons, provided that an adequate section, as de-
 16 termined by the person who has control of the health care facility,
 17 is provided therein for nonsmokers; and

18 (4) totally enclosed offices used only by employees unless other-
 19 wise prohibited by the health care facility.

20 b. Smoking is prohibited in the waiting rooms of the offices of
 21 all persons licensed to practice the healing arts; if there is more
 22 than one waiting room in an office, at least one may be designated
 23 a smoking area unless otherwise prohibited by municipal ordinance
 24 under authority of R. S. 40:48-1 and 40:48-2.

25 ***c. The Commissioner of the Department of Health is authorized*
 26 *to adopt rules and regulations in accordance with the "Administra-*
 27 *tive Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), regu-*
 28 *lating the smoking and carrying of lighted tobacco in health care*
 29 *facilities.***

1 4. a. The State or any agency or political subdivision thereof may
 2 suggest guidelines for establishing nonsmoking areas in health care
 3 facilities and the offices of persons licensed to practice the healing
 4 arts which may be adopted by the persons who have control thereof
 5 but in no case shall they be mandatory.

6 b. The provisions of this act shall supersede any other statute,
 7 municipal ordinance, and rule or regulation adopted pursuant to law

8 concerning smoking in health care facilities or the offices of persons
 9 licensed to practice the healing arts except where smoking is pro-
 10 hibited by municipal ordinance under authority of R. S. 40:48-1 and
 11 40:48-2 or by any *other* statute or regulation adopted pursuant
 12 to **[statute]** *law* for purposes of protecting life and property
 13 from fire.

1 5. *a.* A sign indicating that smoking is prohibited in the health
 2 care facility except in **[those permitted]** *designated* areas shall
 3 be posted by **[the]** *any* person *or his agent* who has control
 4 of the facility at each public entrance to the facility. Each permitted
 5 smoking area shall be posted as such by a sign, except in private
 6 rooms and rooms where all patients consent to permit smoking.
 7 *Except for the entrance signs, the signs required by this subsection*
 8 *shall consist of letters at least 2 inches in height, contrasting in*
 9 *color with the sign and shall state either "Smoking Permitted" or*
 10 *"Smoking Prohibited: Violators Subject to Fine." Every sign*
 11 *shall be located so as to be clearly visible to the public.**

12 *b.* A sign indicating that smoking is prohibited or permitted
 13 in the waiting room of an office of any person licensed to practice
 14 the healing arts shall be posted by the person who has control of
 14A the office at each public entrance to the office. The signs required
 15 by this **[section]** *subsection* shall consist of letters at least
 16 **[3]** *2* inches in height contrasting *in color* with the sign and
 17 shall state either "Smoking Permitted" or "Smoking Prohibited:
 18 Violator Subject to **[Arrest and]** *Fine*". Every sign shall be
 19 located so as to be clearly visible to the public.

1 **[6. a.** Any person who smokes in a health care facility or in the
 2 waiting room of an office of a person licensed to practice the healing
 3 arts in violation of the provisions of this act is a petty disorderly
 4 person. Notwithstanding the provisions of N. J. S. 2C:43-3 the
 5 maximum fine which may be imposed for smoking in a health care
 6 facility or the waiting room of an office of a person licensed to
 7 practice the healing arts in violation of this act is \$200.00.

8 b. A police officer or other public servant engaged in executing
 9 or enforcing the law may order the person who has control of a
 10 health care facility or the waiting room of an office of a person
 11 licensed to practice the healing arts to comply with section 5. If the
 12 person knowingly fails or refuses to comply with an order, he is
 13 a petty disorderly person. Notwithstanding the provisions of N. J. S.
 14 2C:43-3, the maximum fine which may be imposed for a violation
 15 of section 5 is \$100.00. In addition to the penalty provided herein,
 16 the court may order immediate compliance with section 5.]*

1 *6. a. *The owner, manager, proprietor or any other person having*
2 *control of the health care facility or waiting room of an office of a*
3 *person licensed to practice the healing arts or any agent thereof*
4 *may order any person smoking in violation of this act to comply*
5 *with the provisions of this act. Thereupon any such person who*
6 *smokes in such facility or room in violation of this act is subject to a*
7 *fine not to exceed \$100.00.*

8 *b. The State Department of Health or the local board of health*
9 *or such board, body or officers exercising the functions of the local*
10 *board of health according to law, upon written complaint and*
11 *having reason to suspect that any health care facility or the*
12 *waiting room of an office of a person licensed to practice the healing*
13 *arts is or may be in violation of the provisions of this act shall, by*
14 *written notification, advise the owner, administrator or other person*
15 *having control of such facility or office accordingly and order*
16 *appropriate action to be taken. Thereupon any person receiving*
17 *such notice who knowingly fails or refuses to comply with the order*
18 *is subjekt to a fine not to exceed \$25.00 for the first offense and not*
19 *to exceed \$100.00 for the second offense and not to exceed \$200.00*
20 *for each offense thereafter. In addition to the penalty provided*
21 *herein, the court may order immediate compliance with the pro-*
22 *visions of this act.*

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

29 *d. Every municipal court shall have jurisdiction over proceedings*
30 *to enforce and collect any penalty imposed because of a violation*
31 *of any provision of this act if the violation has occurred within the*
32 *territorial jurisdiction of the court. The proceedings shall be sum-*
33 *mary and in accordance with the Penalty Enforcement Law (N. J. S.*
34 *2A:58-1 et seq.). Process shall be in the nature of a summons or*
35 *warrant and shall issue only at the suit of the Commissioner of*
36 *Health of the State of New Jersey, or the local board of health,*
37 *as the case may be, as plaintiff.*

1 7. *No owner, manager, proprietor or other person or agent*
2 *thereof having control of the health care facility or waiting room*
3 *of an office of a person licensed to practice the healing arts shall be*

4 *subject to any action in any court by any party other than by the*
5 *Commissioner of Health of the State of New Jersey or the local*
6 *board of health for failure to meet the provisions of this act.*

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

1 ***[7]* *9.*** This act shall take effect 180 days after enactment.

6 consent to permit smoking. A sign indicating that smoking is pro-
 7 hibited or permitted in the waiting room of an office of any person
 8 licensed to practice the healing arts shall be posted by the person
 9 who has control of the office at each public entrance to the office.
 10 The signs required by this section shall consist of letters at least
 11 3 inches in height contrasting with the sign and shall state either
 12 "Smoking Permitted" or "Smoking Prohibited: Violators Subject to
 13 Arrest and Fine". Every sign shall be located so as to be clearly
 14 visible to the public.

1 6. a. Any person who smokes in a health care facility or in the
 2 waiting room of an office of a person licensed to practice the healing
 3 arts in violation of the provisions of this act is a petty disorderly
 4 person. Notwithstanding the provisions of N. J. S. 2C:43-3 the
 5 maximum fine which may be imposed for smoking in a health care
 6 facility or the waiting room of an office of a person licensed to
 7 practice the healing arts in violation of this act is \$200.00.

8 b. A police officer or other public servant engaged in executing
 9 or enforcing the law may order the person who has control of a
 10 health care facility or the waiting room of an office of a person
 11 licensed to practice the healing arts to comply with section 5. If the
 12 person knowingly fails or refuses to comply with an order, he is
 13 a petty disorderly person. Notwithstanding the provisions of N. J. S.
 14 2C:43-3, the maximum fine which may be imposed for a violation
 15 of section 5 is \$100.00. In addition to the penalty provided herein,
 16 the court may order immediate compliance with section 5.

1 7. This act shall take effect 180 days after enactment.

STATEMENT

Tobacco smoke can be an annoyance and a nuisance to a substantial percentage of the nonsmoking public, which now approximates 75% of the population of the United States. There is also substantial scientific evidence that tobacco smoke is also detrimental to nonsmokers' health, welfare, and comfort, especially to those who have allergies or cardiovascular or respiratory diseases. The regulation of smoking in certain confined places, i.e., determining when and where, rather than whether, a smoker may legally smoke is, therefore, necessary for the public health. It is the purpose of this legislation, as well as companion legislation, to protect and preserve in a reasonable manner the health and comfort of the people in this State by creating in certain indoor places that are visited by the general public; government buildings; schools; health care facilities; the waiting rooms of persons licensed to practice the healing

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arts; polling places; places of employment; elevators and restaurants, areas that are free from the toxic and nuisance effects of tobacco smoke.

This bill controls smoking in health care facilities and in the waiting rooms of offices of persons licensed to practice the healing arts. There is no place where the need to protect a nonsmoker from the unwelcome annoyance and health hazard of tobacco is more important than in these places. A person usually enters such areas because of a health problem, which may be aggravated by tobacco smoke.

Anyone who smokes in a nonsmoking area is a petty disorderly person, subject to a maximum fine of \$200.00. Any person required to post signs under this act who knowingly fails or refuses to comply is a petty disorderly person, subject to a maximum fine of \$100.00. The court may also order immediate compliance with the posting provision.

This bill also clarifies the intent of N. J. S. 2C:33-13 and is necessary in view of the Attorney General's opinion that the regulations of the Public Health Council concerning smoking are superseded by N. J. S. 2C:33-13. Health care facilities were covered in the regulations. The provisions of this bill supersede any other statute, municipal ordinance, or rule or regulation adopted pursuant to law concerning smoking in health care facilities and the waiting rooms of persons licensed to practice the healing arts except where smoking is prohibited therein by municipal ordinance under authority of R. S. 40:48-1 and 40:48-2 or by any statute or regulation adopted pursuant to statute for purposes of protecting life and property from fire.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY
AND DEFENSE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1725

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 18, 1980

The purpose of this bill, as amended, as well as its companion legislation, is to protect and preserve in a reasonable manner the health and comfort of the people in this State by establishing areas that are free from the toxic and annoying effects of tobacco smoke. The committee amendments follow the intent of this legislation in signifying a social policy without providing complex or onerous administrative or enforcement procedures.

As a result of the committee's hearings held on smoking, it is clear that there is overwhelming scientific evidence that tobacco smoke is detrimental to nonsmokers' health, welfare, and comfort, especially to those who have allergies or cardiovascular or respiratory diseases. The regulation of smoking in certain confined places, i.e., determining when and where, rather than whether, a smoker may legally smoke is, therefore, necessary for the public health. This legislation is even more important in our industrial State where tobacco smoke acts to exacerbate the effects of our existing air quality.

Specifically, this bill regulates smoking in health care facilities and doctors' waiting rooms. There is no place where the need to protect a nonsmoker from the annoyance and health hazard is more important than in these areas. Many health problems become aggravated by tobacco smoke. The exception for psychotherapy and psychology offices were provided by the committee on the basis of the nature of the medical treatment and potential psychological needs of the patients visiting these offices.

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

The committee amendments also provide for collection of any penalties by the Department of Health or local board of health. The amendments contain a provision that no suit may be brought to enforce this act except by the Department of Health or local boards of health. Finally, the amendments add a section requiring that the Commissioner of Health shall report back to the committee in 2 years as to the effectiveness of this act.

SENATE LAW, PUBLIC SAFETY AND DEFENSE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1725

[OFFICIAL COPY REPRINT]
with Senate committee amendments

STATE OF NEW JERSEY

DATED: MARCH 23, 1981.

This bill regulates smoking in health care facilities and doctors' waiting rooms. There is no place where the need to protect a non-smoker from the annoyance and health hazard is more important than in these areas. Many health problems become aggravated by tobacco smoke. The exception for psychotherapy and psychology offices were provided by the committee on the basis of the nature of the medical treatment and potential psychological needs of the patients visiting these offices.

This bill is part of a package of bills intended to protect the health and comfort of the people of this State. It establishes specific areas free of smoke without establishing onerous or complex administrative or enforcement procedures. Strong scientific evidence has established the detrimental health effects of tobacco smoke to nonsmokers.

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

The bill also provides for collection of any penalties by the Department of Health or local board of health and contains a provision that no suit may be brought to enforce this act except by the Department of Health or local boards of health. Finally, the Commissioner of Health shall report back to the joint committee created by this bill in 2 years as to the effectiveness of the act.

The Senate Law, Public Safety and Defense Committee was included by amendment as one of two committees forming a joint committee.