

26:3D-22 et seq

LEGISLATIVE HISTORY CHECKLIST

NJSA: 26:3D-22 et seq.

(Smoking--retail food stores)

LAWS OF: 1985

CHAPTER: 186

Bill No: A639

Sponsor(s): Herman

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: Law, Public Safety and Defense

Amended during passage: Yes Substituted for S2484 (not attached since identical to A639). Amendments during passage denoted by asterisks.

Date of Passage: Assembly: December 13, 1984

Senate: March 7, 1985

Date of Approval: June 12, 1985

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: Yes

974.90 New Jersey. Legislature. General Assembly.
H434 Judiciary Committee.
1984d Public hearing, held 9-25-84. Trenton, 1984.

(OVER)

Hearings referred to in statements:

974.90 New Jersey. Legislature. General Assembly.
H434 Judiciary, Law, Public Safety and Defense Committee.
1980 Public hearing on A. 1722 through A1729,
held 7-24-80 and 11-12-1980. Trenton, 1980.

See also:

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

974.90 Carlson. Regina
H434 Smoking or health in New Jersey:
1981h a progress report on making nonsmoking
the norm. Trenton, 1981.

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

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

6-12-85

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 639**STATE OF NEW JERSEY**

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblyman HERMAN

AN ACT prohibiting smoking in enclosed retail food and marketing stores and supplementing Title 26 of the Revised Statutes.

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

1 1. The Legislature finds and declares that the resolution of the
2 conflict between the right of the smoker to smoke and the right
3 of the nonsmoker to breathe clear air involves a determination of
4 when and where, rather than whether, a smoker may legally smoke.
5 It is not the public policy of this State to deny anyone the right to
6 smoke. However, the Legislature finds that in those enclosed areas
7 affected by this act the right of the nonsmoker to breathe clean
8 air should supersede the right of the smoker to smoke. In addition
9 to the deleterious effects upon smokers, tobacco smoke is (1) at
10 lease an annoyance and a nuisance to a substantial percentage of
11 the nonsmoking public, and (2) a substantial health hazard to a
12 smaller segment of the nonsmoking public. The purpose of this
13 act, therefore, is to prohibit smoking in enclosed retail food and
14 marketing stores.

1 2. As used in this act:

2 a. "Enclosed retail food and marketing stores" means any
3 establishment where food is sold primarily for off-premises con-
4 sumption and in which the selling area open to the public exceeds
5 ***[2,500]*** *4,000* square feet.

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

1 3. All enclosed retail food and marketing stores shall be areas
2 where smoking is prohibited and shall be so designated by the

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

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted January 28, 1985.

3 owner, manager, proprietor or other person who has control of the
4 store with a sign containing lettering not less than one inch in
5 height stating "Smoking Prohibited" or designated by the "Smoking
6 Prohibited" international symbol. The letters or symbol shall
7 contrast in color with the sign. The sign may also indicate that
8 violators are subject to a fine. Every sign required by this section
9 shall be located so as to be clearly visible to the public.

1 4. a. Any municipal or county health official or other public
2 servant engaged in executing or enforcing this act shall order any
3 person smoking in violation of this act to comply with the pro-
4 visions of this act. Thereupon any such person who smokes in
5 an enclosed retail food and marketing store in violation of this act
6 after the provisions of section 3 of this act are complied with is
7 subject to a fine not to exceed \$25.00. The owner, manager, pro-
8 prietor, or any other person having control of the ***[indoor place]***
9 **enclosed retail food and marketing store** or any agent thereof,
10 shall only be responsible for providing signs governing smoking
11 pursuant to section 3 of this act and shall in no event be responsible
12 for the enforcement of the provisions of this act.

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

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

31 d. Every municipal court shall have jurisdiction over proceedings
32 to enforce and collect any penalty imposed because of a violation
33 of any provision of this act, if the violation has occurred within
34 the territorial jurisdiction of the court. The proceedings shall be
35 summary and in accordance with "the penalty enforcement law"

36 (N. J. S. 2A:58-1 et seq.). Process shall be in the nature of a
37 summons or warrant and shall issue only at the suit of the State
38 Commissioner of Health, or the local board of health, as the case
39 may be, as plaintiff.

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

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

1 7. This act shall take effect on the ***[one hundredth and**
2 **eightieth]*** *180th** day after enactment.

37 summons or warrant and shall issue only at the suit of the State
38 Commissioner of Health, or the local board of health, as the case
39 may be, as plaintiff.

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

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

1 7. This act shall take effect on the one hundredth and eightieth
2 day after enactment.

STATEMENT

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

Scientific testimony offered at hearings held on these bills in 1980 clearly demonstrates 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 bill is even more important in our industrial State where tobacco smoke acts to exacerbate the effects of our existing air quality.

A639(1985)

This bill completely prohibits smoking in enclosed retail food and marketing stores in which the selling area exceeds 2,500 square feet.

Specifically, this bill requires that persons in control of enclosed retail food and marketing stores establish these stores as non-smoking areas and post signs to so indicate.

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

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

The Department of Health or local board of health would collect the fines resulting from any violations. No suit could be brought to enforce this act except by the Department of Health or local boards of health. Finally, this bill contains a section requiring that the Commissioner of Health report to the Senate Law, Public Safety and Defense Committee and the Assembly Judiciary, Law, Public Safety and Defense Committee after one year on the effectiveness of this legislation.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 639

STATE OF NEW JERSEY

DATED: NOVEMBER 19, 1984

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

Scientific testimony offered at hearings held on these bills in 1980 clearly demonstrates 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 bill is even more important in our industrial State where tobacco smoke acts to exacerbate the effects of our existing air quality.

This bill completely prohibits smoking in enclosed retail food and marketing stores in which the selling area exceeds 2,500 square feet.

Specifically, this bill requires that persons in control of enclosed retail food and marketing stores establish these stores as nonsmoking areas and post signs to so indicate.

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

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

The Department of Health or local board of health would collect the fines resulting from any violations. No suit could be brought to enforce this act except by the Department of Health or local boards of health. Finally, this bill contains a section requiring that the Commissioner of Health report to the Senate Law, Public Safety and Defense Committee and the Assembly Judiciary Committee after one year on the effectiveness of this legislation.

SENATE LAW, PUBLIC SAFETY AND DEFENSE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 639
with Senate committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 28, 1985

Assembly Bill No. 639, as amended by the Senate Law, Public Safety and Defense Committee, prohibits smoking in grocery stores.

The bill defines the stores to which the nonsmoking requirement will apply; outlines the requirements that must be met by the person in charge of a grocery store in order to comply with the law; enumerates the penalties for smoking in a grocery store; specifies procedures to be followed by the Department of Health in taking actions against grocery stores that have not complied with the law; describes the distribution of monies recovered as the result of proceedings to enforce the law; and requires an evaluation of the law's effectiveness.

Prior to being amended by the committee, the bill exempted any grocery store with a selling area of 2,500 square feet or less from the nonsmoking requirement. The purpose of this exemption was to exclude convenience stores from the bill, on the grounds that people usually do not spend more than a few minutes in a convenience store at any one time. The committee amended the bill to exempt grocery stores with a selling area of 4,000 square feet or less from the nonsmoking requirement. This amendment was adopted to bring the definition of convenience store in this bill into accord with the definition of convenience store that appears elsewhere in the statutes.

The person in charge of an enclosed retail food and marketing store will post a no-smoking sign in the store in such a manner that it is clearly visible to the public.

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

If the Department of Health or the local board of health has received a written complaint and has reason to suspect that a store has not com-

plied with the act by posting signs, it will so notify the person in charge of the store and order that appropriate action be taken. If the person in charge knowingly fails to comply with the law after receiving the notice, he is subject to a fine of up to \$25.00.

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

The Commissioner of Health or a local board of health can bring an action against the owner, manager, proprietor or other person having control of an enclosed retail food and marketing store or his agent for failure to meet the provisions of the law, but no other party can bring an action against the store under the provisions of the law or at common law.

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

Other amendments adopted by the committee correct technical printing and drafting errors and replace an incorrect reference to the no longer existent Assembly Judiciary, Law, Public Safety and Defense Committee with a reference to the Assembly Judiciary Committee.

As amended, the bill is identical to Senate Bill No. 2484 Sca.



74.901
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OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001
Contact: CARL GOLDEN
609-292-8956

TRENTON, N.J. 08625
Release: WED., JUNE 12, 1985

Governor Thomas H. Kean today signed four bills regulating smoking in offices, restaurants, factories, public transportation and workplaces.

The bills, A-546, A-547, A-639 and A-864, all were sponsored by Assemblyman Martin Herman, D-Gloucester.

A-546 requires all employers with 50 or more employees to adopt written policies concerning smoking and to designate nonsmoking areas. It is estimated that 9,000 employers in New Jersey fall into this category. This law is effective March 1, 1986.

A-547 requires all restaurants to post signs stating whether the establishment provides a nonsmoking area for customers. This law is effective in December.

A-639 requires retail food and marketing stores of 4,000 square feet or more to establish the stores as nonsmoking areas and to post signs indicating the prohibition. The law is effective in December.

A-864 prohibits smoking in buses or other public conveyances, except for group charter buses, specially marked railroad smoking cars, limousines, and when the driver is the sole occupant of the vehicle. This law is effective in 30 days.

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Trenton, N. J.

June 12, 1985

The prohibition on smoking in the workplace is to be enforced by the State Department of Health, which is empowered to enter the courts to seek an injunction to force compliance.

Violation of the smoking ban in restaurants would subject the person to a \$25 fine. Restaurants which fail to comply will be subject to legal action by the State Department of Health or the local Board of Health.

Violators of the smoking ban on buses or public conveyances would be subject to a \$200 fine and 30 days in jail.

Violators of the smoking ban in retail food stores would be subject to a \$25 fine. Stores which fail to post the nonsmoking sign would be subject to a fine of \$25 as well.

In signing the bills, the Governor said he felt the regulations "were reasonable and would not impose a hardship on those who choose to smoke, while, at the same time, offering protection to nonsmokers."

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