[Second Reprint]

SENATE, No. 1926

STATE OF NEW JERSEY

211th LEGISLATURE

INTRODUCED OCTOBER 14, 2004

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SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the Senate on December 8, 2005.

(Sponsorship Updated As Of: 1/10/2006)

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

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

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

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

3. As used in this act:

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

"Cigar bar" means any bar, or area within a bar, designated specifically for the smoking of tobacco products, purchased on the premises or elsewhere; except that a cigar bar that is in an area within a bar shall be an area 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 so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not backstreamed into the nonsmoking areas.

"Cigar lounge" means any establishment, or area within an establishment, designated specifically for the smoking of tobacco products, purchased on the premises or elsewhere; except that a cigar lounge that is in an area within an establishment shall be an area 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 establishment so that air from the 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 <u>thus</u> is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1] Senate SHH committee amendments adopted March 14, 2005.
[2] Senate floor amendments adopted December 8, 2005.

is not backstreamed into the nonsmoking areas.

"Indoor public place" means 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, including, but not limited to: a commercial or other office building; office or building owned, leased or rented by the State or by a county or municipal government; public and nonpublic elementary or secondary school building; board of education building; theater or concert hall; public library; museum or art gallery; bar; restaurant or other establishment where the principal business is the sale of food for consumption on the premises, including the bar area of the establishment; garage or parking facility; any public conveyance operated on land or water, or in the air, and passenger waiting rooms and platform areas in any stations or terminals thereof; health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.); patient waiting room of the office of a health care provider licensed pursuant to Title 45 of the Revised Statutes; child care center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.); race track facility; facility used for the holding of sporting events; ambulatory recreational facility; shopping mall or retail store; hotel, motel or other lodging establishment; apartment building lobby or other public area in an otherwise private building; or a passenger elevator in a building other than a single-family dwelling.

"Person having control of an indoor public place or workplace" means 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.

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

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

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

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

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

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

a. 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. The registration shall remain in effect for one year and shall be renewable only if: (1) in the preceding calendar year, the cigar bar or lounge generated 15% or more if its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, and (2) the cigar bar or cigar lounge has not expanded its size or changed its location since December 31, 2004;

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

c. 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; [2][and][2]

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

e. the area within the perimeter of:

(1) any casino as defined in section 6 of P.L.1977, c.110 (C.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) any casino simulcasting facility approved by the Casino Control Commission pursuant to section 4 of P.L.1992, c.19 (C.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[2].

[1][6. The provisions of this act shall not be construed to apply 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, in which all of the duties with respect to the operation of the organization, including, but not limited to, the preparation of food and beverages, the service of food and beverages, reception and secretarial work, and the security services of the organization are performed by members of the organization who do not receive compensation of any kind from the organization or any other entity for the performance of the duties.][1]

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

rooms.

b. Nothing in this section shall 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.

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

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

[1] **[**9.**]** 8.**[1]** a. The person having control of an indoor public place or workplace shall order any person smoking in violation of this act to comply with the provisions of this act. A person, after being so ordered, who smokes in violation of this act 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. A penalty shall be recovered in accordance with the provisions of subsections c. and d. of this section.

b. The Department of Health and Senior Services or the local board of health or the board, body or officers exercising the functions of the local board of health according to law, upon written complaint or having reason to suspect that an indoor public place or workplace covered by the provisions of this act is or may be in violation of the provisions of this act, shall, by written notification, advise the person having control of the place accordingly and order appropriate action to be taken. A person receiving that notice who fails or refuses to comply with the order 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. In addition to the penalty provided herein, the court may order immediate compliance with the provisions of this act.

c. A penalty recovered under the provisions of this act shall be recovered by and in the name of the Commissioner of Health and Senior Services or by and in the name of the local board of health. When the plaintiff is the Commissioner of Health and Senior Services, the penalty recovered shall be paid by the commissioner into the

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

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

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

[1] **[**10.**]** 9.**[1]** The provisions of this act 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 under authority of R.S.40:48-1 or 40:48-2, 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 this act.

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

[1] **[**12.**]** 11.**[1]** The following are repealed:

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

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

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

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

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

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

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

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

P.L.1998, c.35 (C.**[1]** **[**30:5B-1 et seq.**]** 30:5B-5.3**[1]**).

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