

# ASSEMBLY, No. 1080

## STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

**Sponsored by:**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblywoman ANGELICA M. JIMENEZ**

**District 32 (Bergen and Hudson)**

**Co-Sponsored by:**

**Assemblyman DeAngelo**

**SYNOPSIS**

Prohibits smoking at public parks and beaches.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



A1080 VAINIERI HUTTLE, JIMENEZ

2

1 AN ACT concerning smoking at public parks and beaches and  
2 amending the title and body of, and supplementing, P.L.2005,  
3 c.383.

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

7  
8 1. The Title of P.L.2005, c.383 is amended to read as follows  
9 Title.

10 AN ACT concerning smoking in **[indoor]** certain public places and  
11 workplaces and revising parts of statutory law.  
12 (cf: P.L.2005, c.383, Title)

13  
14 2. Section 2 of P.L.2005, c.383 (C.26:3D-56) is amended to  
15 read as follows:

16 2. The Legislature finds and declares that: tobacco is the  
17 leading cause of preventable disease and death in the State and the  
18 nation, and tobacco smoke constitutes a substantial health hazard to  
19 the nonsmoking majority of the public; the separation of smoking  
20 and nonsmoking areas in indoor public places and workplaces does  
21 not eliminate the hazard to nonsmokers if these areas share a  
22 common ventilation system; the prohibition of smoking at public  
23 parks and beaches would better preserve the natural assets of this  
24 State by reducing litter and increasing fire safety in those areas,  
25 while lessening exposure to secondhand tobacco smoke among the  
26 public; and, therefore, subject to certain specified exceptions, it is  
27 clearly in the public interest to prohibit smoking in all enclosed  
28 indoor places of public access and workplaces and at all public  
29 parks and beaches.

30 (cf: P.L.2005, c.383, s.2)

31

32 3. Section 3 of P.L.2005, c.383 (C.26:3D-57) is amended to  
33 read as follows:

34 3. As used in this act:

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

41 "Cigar bar" means any bar, or area within a bar, designated  
42 specifically for the smoking of tobacco products, purchased on the  
43 premises or elsewhere; except that a cigar bar that is in an area  
44 within a bar shall be an area enclosed by solid walls or windows, a  
45 ceiling and a solid door and equipped with a ventilation system

**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 underlined thus is new matter.

1 which is separately exhausted from the nonsmoking areas of the bar  
2 so that air from the smoking area is not recirculated to the  
3 nonsmoking areas and smoke is not backstreamed into the  
4 nonsmoking areas.

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

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

37 "Person having control of an indoor public place or workplace  
38 or a public park or beach" means the owner or operator of a  
39 commercial or other office building or other indoor public place  
40 from whom a workplace or space within the building or indoor  
41 public place is leased, or the person having supervisory authority  
42 over a public park or beach or that person's designee, as applicable.

43 "Public park or beach" means a State park or forest, a county or  
44 municipal park, or a State or municipal beach, but does not include  
45 any parking lot that is adjacent to but outside the public park or  
46 beach.

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

5 "State park or forest" means any State owned or leased land,  
6 water or facility administered by the Department of Environmental  
7 Protection, including, but not limited to, a park, forest, recreational  
8 area, marina, historic site, burial site or natural area, but not  
9 including a wildlife management area or reservoir land.

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

14 "Workplace" means a structurally enclosed location or portion  
15 thereof at which a person performs any type of service or labor.  
16 (cf: P.L.2005, c.383, s.3)

17  
18 4. Section 4 of P.L.2005, c.383 (C.26:3D-58) is amended to  
19 read as follows:

20 4. a. Smoking is prohibited in an indoor public place or  
21 workplace or at a public park or beach, except as otherwise  
22 provided in this act.

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

27 (cf: P.L.2005, c.383, s.4)

28  
29 5. Section 7 of P.L.2005, c.383 (C.26:3D-61) is amended to  
30 read as follows:

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

44 b. The provisions of this section shall not be construed to  
45 prevent a lessee of the workplace, or space within the building or  
46 indoor public place, from enforcing the smoking restrictions

1 imposed by the owner or operator of a commercial or other office  
2 building or other indoor public place.

3 (cf: P.L.2005, c.383, s.7)

4 6. (New section) The Department of Environmental Protection  
5 is directed to provide information and assistance to counties and  
6 municipalities, as determined appropriate by the Commissioner of  
7 Environmental Protection and within the limits of resources  
8 available to the department for this purpose, to support smoke-free  
9 public parks and beaches.

10

11 7. Section 8 of P.L.2005, c.383 (C.26:3D-62) is amended to  
12 read as follows:

13 8. a. The person having control of an indoor public place or  
14 workplace or a public park or beach shall order any person smoking  
15 in violation of this act to comply with the provisions of this act. A  
16 person, after being so ordered, who smokes in violation of this act is  
17 subject to a fine of not less than \$250 for the first offense, \$500 for  
18 the second offense and \$1,000 for each subsequent offense. A  
19 penalty shall be recovered in accordance with the provisions of  
20 subsections c. and d. of this section.

21 b. The Department of Health and Senior Services or the local  
22 board of health or the board, body or officers exercising the  
23 functions of the local board of health according to law, upon written  
24 complaint or having reason to suspect that an indoor public place or  
25 workplace or a public park or beach covered by the provisions of  
26 this act is or may be in violation of the provisions of this act, shall,  
27 by written notification, advise the person having control of the  
28 place accordingly and order appropriate action to be taken. A  
29 person receiving that notice who fails or refuses to comply with the  
30 order is subject to a fine of not less than \$250 for the first offense,  
31 \$500 for the second offense and \$1,000 for each subsequent  
32 offense. In addition to the penalty provided herein, the court may  
33 order immediate compliance with the provisions of this act.

34 c. A penalty recovered under the provisions of this act shall be  
35 recovered by and in the name of the Commissioner of Health and  
36 Senior Services or by and in the name of the local board of health.  
37 When the plaintiff is the Commissioner of Health and Senior  
38 Services, the penalty recovered shall be paid by the commissioner  
39 into the treasury of the State. When the plaintiff is a local board of  
40 health, the penalty recovered shall be paid by the local board into  
41 the treasury of the municipality where the violation occurred.

42 d. A municipal court shall have jurisdiction over proceedings  
43 to enforce and collect any penalty imposed because of a violation of  
44 this act if the violation has occurred within the territorial  
45 jurisdiction of the court. The proceedings shall be summary and in  
46 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,  
47 c.274 (C.2A:58-10 et seq.). Process shall be in the nature of a

1 summons or warrant and shall issue only at the suit of the  
2 Commissioner of Health and Senior Services, or the local board of  
3 health, as the case may be, as plaintiff.

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

8 (cf: P.L.2005, c.383, s.8)

9

10 8. Section 9 of P.L.2005, c.383 (C.26:3D-63) is amended to  
11 read as follows:

12 9. The provisions of this act shall supersede any other statute,  
13 municipal ordinance and rule or regulation adopted pursuant to law  
14 concerning smoking in an indoor public place or workplace or at a  
15 public park or beach, except where smoking is prohibited by  
16 municipal ordinance under authority of R.S.40:48-1 or 40:48-2, or  
17 by any other statute or regulation adopted pursuant to law for  
18 purposes of protecting life and property from fire or protecting  
19 public health, and except for those provisions of a municipal  
20 ordinance which provide restrictions on or prohibitions against  
21 smoking equivalent to, or greater than, those provided under this  
22 act.

23 (cf: P.L.2005, c.383, s.9)

24

25 9. Section 10 of P.L.2005, c.383 (C.26:3D-64) is amended to  
26 read as follows:

27 10. The **【Commissioner】** Commissioners of Health and Senior  
28 Services and Environmental Protection, pursuant to the  
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
30 seq.) and in consultation with each other, shall adopt rules and  
31 regulations to effectuate the purposes of this act.

32 (cf: P.L.2005, c.383, s.10)

33

34 10. This act shall take effect on the 180th day after enactment,  
35 but the Commissioners of Health and Senior Services and  
36 Environmental Protection may take such anticipatory administrative  
37 action in advance thereof as shall be necessary for the  
38 implementation of this act.

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40

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#### STATEMENT

42

43 This bill extends the provisions of the "New Jersey Smoke Free  
44 Air Act," P.L.2005, c.383 (C.26:3D-55 et seq.), which generally  
45 prohibit smoking in indoor public places and workplaces, to apply  
46 to public parks and beaches throughout the State.

47 The bill provides specifically as follows:

- 1 • The smoking prohibition provided for under this bill would apply  
2 to any State park or forest, county or municipal park, or State or  
3 municipal beach, but would not include any parking lot that is  
4 adjacent to but outside the public park or beach.
- 5 • The bill defines “State park or forest” to mean any State owned or  
6 leased land, water or facility administered by the Department of  
7 Environmental Protection, including, but not limited to, a park,  
8 forest, recreational area, marina, historic site, burial site or  
9 natural area, but not including a wildlife management area or  
10 reservoir land.
- 11 • The Department of Environmental Protection is directed to  
12 provide information and assistance to counties and municipalities,  
13 as determined appropriate by the Commissioner of Environmental  
14 Protection and within the limits of resources available to the  
15 department for this purpose, to support smoke-free public parks  
16 and beaches.
- 17 • The penalties that currently apply to a person who smokes in an  
18 indoor public place or workplace, or a person having control of  
19 the place who fails to comply with an order to enforce the  
20 smoking prohibition, in violation of the “New Jersey Smoke Free  
21 Air Act,” would apply to a comparable violation of this bill.  
22 These include a fine of not less than \$250 for the first offense,  
23 \$500 for the second offense and \$1,000 for each subsequent  
24 offense. (As currently provided under the “New Jersey Smoke  
25 Free Air Act,” a penalty recovered through enforcement would be  
26 paid to the State Treasury if the plaintiff is the Commissioner of  
27 Health and Senior Services, and to the treasury of the  
28 municipality in which the violation occurred if the plaintiff is the  
29 local board of health.)
- 30 • The Commissioners of Health and Senior Services and  
31 Environmental Protection, pursuant to the "Administrative  
32 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and in  
33 consultation with each other, are directed to adopt rules and  
34 regulations to effectuate the purposes of this bill.
- 35 • The bill takes effect on the 180th day after enactment, but  
36 authorizes the Commissioners of Health and Senior Services and  
37 Environmental Protection to take anticipatory administrative  
38 action in advance as necessary for its implementation.