SENATE, No. 3053

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED NOVEMBER 23, 2009

Sponsored by:
Senator ROBERT M. GORDON
District 38 (Bergen)
Senator JOSEPH F. VITALE
District 19 (Middlesex)

Co-Sponsored by:
Senator Codey

SYNOPSIS

Prohibits use of electronic smoking devices in indoor public places and workplaces.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 12/8/2009)

AN ACT concerning the use of electronic smoking devices in indoor public places and workplaces and amending P.L.2005, c.383.

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

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

2. The Legislature finds and declares that: **[**tobacco**]**

a. Tobacco is the leading cause of preventable disease and death in the State and the nation**[**, and tobacco**]**;

b. Tobacco smoke constitutes a substantial health hazard to the nonsmoking majority of the public; **[**the**]**

c. Electronic smoking devices have not been approved as to safety and efficacy by the federal Food and Drug Administration, and their use may pose a health risk to persons exposed to their smoke or vapor because of a known irritant contained therein and other substances that may, upon evaluation by that agency, be identified as potentially toxic to those inhaling the smoke or vapor;

d. 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**]**

e. Therefore, subject to certain specified exceptions, it is clearly in the public interest to prohibit the smoking of tobacco products and the use of electronic smoking devices in all enclosed indoor places of public access and workplaces.

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

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

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

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.

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 is not backstreamed into the nonsmoking areas.

"Electronic smoking device" means an electronic device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo, or pipe.

"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, or the inhaling or exhaling of smoke or vapor from an electronic smoking device.

"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.

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

3. This act shall take effect on the 180th day after enactment, but the Commissioner of Health and Senior Services may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

STATEMENT

This bill extends the provisions of the "New Jersey Smoke Free Air Act," P.L.2005, c.383 (C.26:3D-55 et seq.), which generally prohibits the smoking of a cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked in indoor public places and workplaces, to apply to the use of electronic smoking devices, commonly known as e-cigarettes, in the same places.

The bill defines "electronic smoking device" to mean an electronic device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo, or pipe.

Under this bill, the penalties that currently apply to a person who smokes tobacco in an indoor public place or workplace would apply to a person who uses an e-cigarette in violation of this bill (a fine of not less than $250 for the first offense, $500 for the second offense and $1,000 for each subsequent offense).

The bill takes effect on the 180th day after enactment, but authorizes the Commissioner of Health and Senior Services to take anticipatory administrative action in advance as necessary for its implementation.

It should be noted that:

- An e-cigarette is operated by a battery that warms liquid nicotine and propylene glycol from a replaceable plastic cartridge when a person inhales the device. Propylene glycol is a liquid that vaporizes when a person exhales and produces a mist that is nearly identical in appearance to tobacco smoke.
- Propylene glycol is used in antifreeze; and, according to a 2009 statement by Health Canada, the Canadian federal government agency with regulatory jurisdiction over health issues, "the inhalation of propylene glycol is a known irritant."
- Health Canada issued a public advisory to not purchase or use e-cigarettes "as these products may pose health risks and have not

been fully evaluated for safety, quality and efficacy by Health Canada" and ordered persons importing, advertising, or selling these products in Canada to cease doing so.

- The federal Food and Drug Administration (FDA) has refused entry to shipments of e-cigarettes coming into this country on the grounds that these are unapproved drug device products; however, enough of these devices have made their way into this country that they are sold online and in some shopping mall kiosks.
- The World Health Organization issued a statement in 2008 that it does not consider e-cigarettes “to be a legitimate therapy for smokers trying to quit.”
- These devices have not been submitted to the FDA for evaluation or approval, and New Jersey’s own Senator Frank Lautenberg has requested that the FDA take e-cigarettes off the market until they are proven safe for public use.