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SENATE BILL 212

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Bernadette M. Sanchez

AN ACT

RELATING TO MOTOR VEHICLES; PROHIBITING SMOKING IN A MOTOR
VEHICLE IN WHICH A YOUNG CHILD IS PRESENT; AMENDING SECTIONS OF
THE DEE JOHNSON CLEAN INDOOR AIR ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 24-16-3 NMSA 1978 (being Laws 1985,
Chapter 85, Section 3, as amended) is amended to read:

"24-16-3. DEFINITIONS.--As used in the Dee Johnson Clean
Indoor Air Act:

A. "bar" means an establishment that is devoted to
the selling or serving of alcoholic beverages for consumption
by patrons on the premises and in which the serving of food is
only incidental to the consumption of those beverages,
including taverns, nightclubs, cocktail lounges and cabarets;

B. "cigar bar" means an establishment that:

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1 (1) is a bar as defined in Subsection A of
2 this section; and

3 (2) is engaged in the business of selling
4 cigars for consumption by patrons on the premises and generates
5 ten percent or more of its total annual gross revenue or at
6 least ten thousand dollars (\$10,000) in annual sales from the
7 sale of cigars, not including any sales from vending machines.
8 A cigar bar that fails to generate at least ten percent of its
9 total annual sales from the sale of cigars in the calendar year
10 after December 31, 2006, not including sales from vending
11 machines, shall not be defined as a cigar bar and shall not
12 thereafter be known as such regardless of sales figures. A
13 cigar bar shall agree to provide adequate information to
14 demonstrate to the state's satisfaction compliance with this
15 definition;

16 C. "department" means the department of health;

17 D. "designated outdoor smoking area" means an area
18 where smoking may be permitted, designated by an employer or
19 manager, outside an indoor workplace or indoor public place;
20 provided that the following conditions are maintained:

21 (1) smoking shall not be permitted near any
22 building entrance, including a door, window or ventilation
23 system of any facility where smoking is prohibited under the
24 provisions of the Dee Johnson Clean Indoor Air Act, so as to
25 prevent secondhand smoke from entering the indoor workplace or

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1 indoor public place; and

2 (2) employees or members of the general public
3 are not required to walk through the smoking area to gain
4 entrance to the indoor workplace or indoor public place;

5 E. "employer" means an individual, a partnership, a
6 corporation or the state or a political subdivision of the
7 state that employs the services of one or more individuals;

8 F. "enclosed" means any interior space
9 predominantly or totally bounded on all sides and above by
10 physical barriers, regardless of whether such barriers consist
11 of or include uncovered openings, screened or otherwise
12 partially covered openings or open or closed windows;

13 G. "indoor public place" means the enclosed area
14 within any governmental or nongovernmental place to which the
15 public is invited or in which the public is permitted
16 regardless of whether work or public business, meetings or
17 hearings occur at any given time;

18 H. "indoor workplace" means any enclosed place
19 where one or more persons engage in work, including lobbies,
20 reception areas, offices, conference and meeting rooms,
21 employee cafeterias and lunchrooms, break rooms and employee
22 lounges, classrooms, auditoriums, hallways, stairways, waiting
23 areas, elevators and restrooms and includes all indoor
24 workplaces and enclosed parts regardless of whether work occurs
25 at any given time;

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1 I. "minor" means an individual who has not reached
2 eighteen years of age;

3 ~~[F.]~~ J. "private club" means an organization,
4 whether incorporated or not, that is the owner, lessee or
5 occupant of a building or portion thereof used exclusively for
6 the organization's purposes at all times, that is operated
7 solely for recreational, fraternal, social, patriotic,
8 political, benevolent or athletic purposes, but not for
9 pecuniary gain, and that only sells alcoholic beverages
10 incidental to its operation. The organization shall have
11 bylaws or a constitution to govern its activities and shall
12 have been granted an exemption as a club under the provisions
13 of Section 501 of the Internal Revenue Code of 1986, as
14 amended;

15 ~~[J.]~~ K. "restaurant" means a coffee shop,
16 cafeteria, private or public school cafeteria or eating
17 establishment and any other eating establishment that gives or
18 offers for sale food to the public, patrons or employees,
19 including kitchens and catering facilities in which food is
20 prepared on the premises for serving elsewhere or a bar area
21 within or attached to the premises;

22 ~~[K.]~~ L. "retail tobacco store" means a retail store
23 used primarily for the sale of tobacco products and accessories
24 and in which the sale of other products is merely incidental,
25 including smoke shops, cigar shops or hookah lounges, and does

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1 not include establishments that offer for sale alcoholic
2 beverages for consumption by patrons on the premises;

3 [~~L~~] M. "secondhand smoke" means smoke emitted from
4 lighted, smoldering or burning tobacco when the smoker is not
5 inhaling, smoke emitted at the mouthpiece during puff drawing
6 and smoke exhaled by the smoker;

7 [~~M~~] N. "smoke-free [~~area~~] environment" means any
8 building or other enclosed space where smoking is prohibited;

9 [~~N~~] O. "smoking" means inhaling, exhaling,
10 burning, carrying or holding any lighted tobacco product,
11 including all types of cigarettes, cigars and pipes and any
12 other lighted tobacco product; and

13 [~~O~~] P. "smoking-permitted area" means any building
14 or other enclosed space where smoking may be permitted;
15 provided that secondhand smoke does not infiltrate any area
16 where smoking is prohibited pursuant to the Dee Johnson Clean
17 Indoor Air Act."

18 **SECTION 2.** Section 24-16-4 NMSA 1978 (being Laws 1985,
19 Chapter 85, Section 4, as amended) is amended to read:

20 "24-16-4. SMOKING PROHIBITED.--

21 A. It is unlawful for a person to smoke in any:

22 (1) indoor workplace; [~~or~~]

23 (2) indoor public place;

24 (3) motor vehicle when a minor who is required
25 to be restrained in a rear-facing child safety seat, a forward-

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1 facing child safety seat or a booster seat pursuant to
2 Paragraphs (1) through (3) of Subsection B of Section 66-7-369
3 NMSA 1978 is present in the vehicle, regardless of whether the
4 windows of the motor vehicle are down; or [~~is~~]

5 (4) buses, taxicabs or other means of public
6 transit not specifically exempted pursuant to the Dee Johnson
7 Clean Indoor Air Act.

8 B. No part of the state capitol or capitol north
9 shall be designated as a smoking-permitted area."

10 SECTION 3. Section 24-16-12 NMSA 1978 (being Laws 2007,
11 Chapter 20, Section 4) is amended to read:

12 "24-16-12. SMOKING-PERMITTED AREAS.--Notwithstanding any
13 other provision of the Dee Johnson Clean Indoor Air Act,
14 smoking-permitted areas include the following:

15 A. a private residence, except during hours of
16 business operation while it is being used commercially to
17 provide child care, adult care or health care or any
18 combination of those activities;

19 B. a retail tobacco store;

20 C. a cigar bar;

21 D. the facilities of a tobacco manufacturing
22 company licensed by the United States to manufacture tobacco
23 products that are operated by the company in its own name and
24 that are used exclusively by the company in its business of
25 manufacturing, marketing or distributing its tobacco products;

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1 provided that smoke does not infiltrate other indoor workplaces
2 or other indoor public places where smoking is otherwise
3 prohibited under the Dee Johnson Clean Indoor Air Act;

4 E. a state-licensed gaming facility, casino or
5 bingo parlor;

6 F. an indoor workplace to the extent that tobacco
7 smoking is an integral part of a smoking cessation program that
8 is approved by the department or of medical or scientific
9 research that is conducted in the indoor workplace and in which
10 each room of the indoor workplace in which tobacco smoking is
11 permitted complies with signage requirements;

12 G. designated outdoor smoking areas;

13 H. private clubs;

14 I. a limousine under private hire when a minor who
15 is required to be restrained in a rear-facing child safety
16 seat, a forward-facing child safety seat, a booster seat or a
17 motor vehicle's safety belt pursuant to Paragraphs (1) through
18 (3) of Subsection B of Section 66-7-369 NMSA 1978 is not
19 present in the vehicle, regardless of whether the windows of
20 the motor vehicle are down;

21 J. hotel and motel rooms that are rented to guests
22 and are designated as smoking-permitted rooms; provided that
23 not more than twenty-five percent of rooms rented to guests in
24 a hotel or motel may be so designated;

25 K. enclosed areas within restaurants, bars, hotel

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1 and motel conference or meeting rooms while these places are
2 being used for private functions; provided that none of these
3 areas are open to the general public while the private
4 functions are occurring and provided that smoke does not
5 infiltrate other indoor workplaces or indoor public places
6 where smoking is otherwise prohibited under the Dee Johnson
7 Clean Indoor Air Act;

8 L. a site that is being used in connection with the
9 practice of cultural or ceremonial activities by Native
10 Americans and that is in accordance with the federal American
11 Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a;

12 M. a business of a sole proprietor or a business
13 with fewer than two employees that is not commonly accessible
14 to the public; provided that:

15 (1) the business is not a restaurant or bar;

16 (2) the employer or manager of such business
17 shall provide a smoke-free work environment for each employee
18 requesting a smoke-free work environment; and

19 (3) cigarette smoke does not infiltrate other
20 smoke-free work environments as provided for in the Dee Johnson
21 Clean Indoor Air Act; and

22 N. a theatrical stage or a motion picture or
23 television production set when it is necessary for performers
24 to smoke as part of the production."