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SENATE BILL 289

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO PUBLIC HEALTH; ADDING THE SMOKING OF E-CIGARETTES  
TO 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:

(1) is a bar as defined in Subsection A of

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1 this section; and

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

15 C. "e-cigarette" means any electronic oral device,  
16 whether composed of a heating element and battery or an  
17 electronic circuit, that provides a vapor of nicotine or any  
18 other substances the use or inhalation of which simulates  
19 smoking, but does not include any product regulated as a drug  
20 or device by the United States food and drug administration  
21 under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.  
22 Section 301 et seq.;

23 [~~G-~~] D. "department" means the department of  
24 health;

25 [~~D-~~] E. "designated outdoor smoking area" means an

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1 area where smoking may be permitted, designated by an employer  
2 or manager, outside an indoor workplace or indoor public place;  
3 provided that the following conditions are maintained:

4 (1) smoking shall not be permitted near any  
5 building entrance, including a door, window or ventilation  
6 system of any facility where smoking is prohibited under the  
7 provisions of the Dee Johnson Clean Indoor Air Act, so as to  
8 prevent secondhand smoke from entering the indoor workplace or  
9 indoor public place; and

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

13 [~~E.~~] F. "employer" means an individual, a  
14 partnership, a corporation or the state or a political  
15 subdivision of the state that employs the services of one or  
16 more individuals;

17 [~~F.~~] G. "enclosed" means any interior space  
18 predominantly or totally bounded on all sides and above by  
19 physical barriers, regardless of whether such barriers consist  
20 of or include uncovered openings, screened or otherwise  
21 partially covered openings or open or closed windows;

22 [~~G.~~] H. "indoor public place" means the enclosed  
23 area within any governmental or nongovernmental place to which  
24 the public is invited or in which the public is permitted  
25 regardless of whether work or public business, meetings or

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1 hearings occur at any given time;

2           ~~[H.]~~ I. "indoor workplace" means any enclosed place  
3 where one or more persons engage in work, including lobbies,  
4 reception areas, offices, conference and meeting rooms,  
5 employee cafeterias and lunchrooms, break rooms and employee  
6 lounges, classrooms, auditoriums, hallways, stairways, waiting  
7 areas, elevators and restrooms and includes all indoor  
8 workplaces and enclosed parts regardless of whether work occurs  
9 at any given time;

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

22           ~~[J.]~~ K. "restaurant" means a coffee shop,  
23 cafeteria, private or public school cafeteria or eating  
24 establishment and any other eating establishment that gives or  
25 offers for sale food to the public, patrons or employees,

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1 including kitchens and catering facilities in which food is  
2 prepared on the premises for serving elsewhere or a bar area  
3 within or attached to the premises;

4 [K.] L. "retail [~~tobacco~~] store" means a retail  
5 store used primarily for the sale of tobacco products or e-  
6 cigarettes and accessories and in which the sale of other  
7 products is merely incidental, including smoke shops, cigar  
8 shops or hookah lounges, and does not include establishments  
9 that offer for sale alcoholic beverages for consumption by  
10 patrons on the premises;

11 [L.] M. "secondhand smoke" means smoke emitted from  
12 lighted, smoldering or burning tobacco when the smoker is not  
13 inhaling, smoke emitted at the mouthpiece during puff drawing  
14 and smoke exhaled by the smoker;

15 [M.] N. "smokefree area" means any building or  
16 other enclosed space where smoking is prohibited;

17 [~~N.~~ "~~smoking~~" means ~~inhaling, exhaling, burning,~~  
18 ~~carrying or holding any lighted tobacco product, including all~~  
19 ~~types of cigarettes, cigars and pipes and any other lighted~~  
20 ~~tobacco product; and]~~

21 O. "smoking" means the inhaling, exhaling, burning,  
22 carrying or holding of:

23 (1) a lighted tobacco product, including all  
24 types of cigarettes, cigars and pipes and any other tobacco  
25 product; or

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1                                   (2) an e-cigarette; and  
2                    [Θ-] P. "smoking-permitted area" means any building  
3 or other enclosed space where smoking may be permitted;  
4 provided that secondhand smoke does not infiltrate any area  
5 where smoking is prohibited pursuant to the Dee Johnson Clean  
6 Indoor Air Act."

7            SECTION 2. Section 24-16-12 NMSA 1978 (being Laws 2007,  
8 Chapter 20, Section 4) is amended to read:

9            "24-16-12. SMOKING-PERMITTED AREAS.--Notwithstanding any  
10 other provision of the Dee Johnson Clean Indoor Air Act,  
11 smoking-permitted areas include the following:

- 12                    A. a private residence, except during hours of  
13 business operation while it is being used commercially to  
14 provide child care, adult care or health care or any  
15 combination of those activities;
- 16                    B. a retail [~~tobacco~~] store;
- 17                    C. a cigar bar;
- 18                    D. the facilities of a tobacco manufacturing  
19 company licensed by the United States to manufacture tobacco  
20 products that are operated by the company in its own name and  
21 that are used exclusively by the company in its business of  
22 manufacturing, marketing or distributing its tobacco products;  
23 provided that smoke does not infiltrate other indoor workplaces  
24 or other indoor public places where smoking is otherwise  
25 prohibited under the Dee Johnson Clean Indoor Air Act;

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1           E. a state-licensed gaming facility, casino or  
2 bingo parlor;

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

9           G. designated outdoor smoking areas;

10          H. private clubs;

11          I. a limousine under private hire;

12          J. hotel and motel rooms that are rented to guests  
13 and are designated as smoking-permitted rooms; provided that  
14 not more than twenty-five percent of rooms rented to guests in  
15 a hotel or motel may be so designated;

16          K. enclosed areas within restaurants, bars and  
17 hotel and motel conference or meeting rooms while these places  
18 are being used for private functions; provided that none of  
19 these areas are open to the general public while the private  
20 functions are occurring and provided that smoke does not  
21 infiltrate other indoor workplaces or indoor public places  
22 where smoking is otherwise prohibited under the Dee Johnson  
23 Clean Indoor Air Act;

24          L. a site that is being used in connection with the  
25 practice of cultural or ceremonial activities by Native

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1 Americans and that is in accordance with the federal American  
2 Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a;

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

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

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

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

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

16 SECTION 3. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is January 1, 2017.