

SENATE BILL 338

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Linda M. Lopez

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE
AND THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC HEALTH; AMENDING THE DEE JOHNSON CLEAN
INDOOR AIR ACT TO INCLUDE E-CIGARETTES HHC→; **EXPANDING THE
SCOPE OF THE DEFINITIONS OF "SECONDHAND SMOKE" AND
"SMOKING"**←HHC.

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:

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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 this section; and

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

C. "department" means the department of health;

D. "designated outdoor smoking area" means an area where smoking may be permitted, designated by an employer or manager, outside an indoor workplace or indoor public place;

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provided that the following conditions are maintained:

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

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

SPAC→~~E. "e-cigarette" means a product containing or delivering nicotine or another substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product, including a device, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe, e-hookah or vape pen or under another product name or descriptor;~~←SPAC

SPAC→E. "e-cigarette":

(1) means any electronic oral device, whether composed of a heating element and battery or an electronic circuit, that provides a vapor of nicotine or any other substances the use or inhalation of which simulates smoking; and

(2) includes any such device, or any part thereof, whether manufactured, distributed, marketed or sold as

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an e-cigarette, e-cigar, e-pipe or any other product, name or descriptor; but

(3) does not include any product regulated as a drug or device for medical purposes by the United States food and drug administration under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301 et seq.; ←SPAC

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

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

[G-] H. "indoor public place" means the enclosed area within [~~any~~] a governmental or nongovernmental place to which the public is invited or in which the public is permitted regardless of whether work or public business, meetings or hearings occur at any given time;

[H-] I. "indoor workplace" means [~~any~~] an enclosed place where one or more persons engage in work, including lobbies, reception areas, offices, conference and meeting rooms, employee cafeterias and lunchrooms, break rooms and employee lounges, classrooms, auditoriums, hallways, stairways,

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waiting areas, elevators and restrooms and includes all indoor workplaces and enclosed parts regardless of whether work occurs at any given time;

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

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

[K.] L. "retail tobacco store" means a retail store used primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental,

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including smoke shops, cigar shops, e-cigarette shops or hookah lounges, and does not include establishments that offer for sale alcoholic beverages for consumption by patrons on the premises;

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

(1) smoke emitted from inhaling from, exhaling from, burning, carrying or holding:

(a) a lighted or heated cigar, cigarette, hookah or pipe; or

(b) any other lighted or heated tobacco or plant product intended for inhalation, including HHHC→**marijuana** **cannabis**←HHHC, whether natural or synthetic; or

(2) the aerosol or vapor emitted from inhaling or exhaling or any other use of an e-cigarette;

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

[N.] O. "smoking" means:

(1) inhaling from, exhaling from, burning, carrying or holding [~~any~~]:

(a) a lighted or heated cigar, cigarette, hookah or pipe; or

(b) any other lighted or heated tobacco

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or plant product [including all types of cigarettes, cigars and pipes and any other lighted tobacco product] intended for inhalation, including HHHC→marijuana cannabis←HHHC, whether natural or synthetic; or

(2) any use of an e-cigarette that creates an aerosol or vapor; and

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

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

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

- A. a private residence, except during hours of business operation while it is being used commercially to provide child care, adult care or health care or any combination of those activities;
- B. a retail tobacco store;
- C. a cigar bar;
- D. the facilities of a tobacco manufacturing company licensed by the United States to manufacture tobacco products that are operated by the company in its own name and

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that are used exclusively by the company in its business of manufacturing, marketing or distributing its tobacco products; provided that secondhand smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited under the Dee Johnson Clean Indoor Air Act;

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

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

G. designated outdoor smoking areas;

H. private clubs;

I. a limousine under private hire;

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

K. enclosed areas within restaurants, bars, hotel and motel conference or meeting rooms while these places are being used for private functions; provided that none of these areas are open to the general public while the private

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functions are occurring and provided that secondhand smoke does not infiltrate other indoor workplaces or indoor public places where smoking is otherwise prohibited under the Dee Johnson Clean Indoor Air Act;

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

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

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

(2) the employer or manager of such business shall provide a [~~smoke-free~~] smokefree work environment for each employee requesting a [~~smoke-free~~] smokefree work environment; and

(3) [~~cigarette~~] secondhand smoke does not infiltrate other [~~smoke-free~~] smokefree work environments as provided for in the Dee Johnson Clean Indoor Air Act; and

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

SECTION 3. Section 24-16-13 NMSA 1978 (being Laws 2007, Chapter 20, Section 5) is amended to read:

"24-16-13. PROHIBITION OF SMOKING NEAR ENTRANCES, WINDOWS

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AND VENTILATION SYSTEMS.--Smoking is prohibited near entrances, windows and ventilation systems of all workplaces and public places where smoking is prohibited by the Dee Johnson Clean Indoor Air Act. An individual who owns, manages, operates or otherwise controls the use of [~~any~~] a premises subject to the provisions of the Dee Johnson Clean Indoor Air Act shall establish a smokefree area that extends a reasonable distance from any entrances, windows and ventilation systems to any enclosed areas where smoking is prohibited. The reasonable distance shall be a distance sufficient to ensure that persons entering or leaving the building or facility shall not be subjected to breathing [~~tobacco~~] secondhand smoke and to ensure that [~~tobacco~~] secondhand smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means."