

1 HOUSE BILL 256

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO PUBLIC HEALTH; AMENDING THE DEE JOHNSON CLEAN  
12 INDOOR AIR ACT TO INCLUDE E-CIGARETTES; REMOVING CERTAIN  
13 DEFINITIONS; RESTRICTING SMOKING-PERMITTED AREAS.  
14

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

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

18 "24-16-3. DEFINITIONS.--As used in the Dee Johnson Clean  
19 Indoor Air Act:

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

25 ~~[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                   ~~G.]~~ B. "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 C. "e-cigarette" means a product containing or  
6 delivering nicotine or another substance intended for human  
7 consumption that can be used by a person in any manner for the  
8 purpose of inhaling vapor or aerosol from the product,  
9 including a device, whether manufactured, distributed, marketed  
10 or sold as an e-cigarette, e-cigar, e-pipe, e-hookah or vape  
11 pen or under another product name or descriptor;

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

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

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

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

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

20           ~~J. "restaurant" means a coffee shop, cafeteria,~~  
21 ~~private or public school cafeteria or eating establishment and~~  
22 ~~any other eating establishment that gives or offers for sale~~  
23 ~~food to the public, patrons or employees, including kitchens~~  
24 ~~and catering facilities in which food is prepared on the~~  
25 ~~premises for serving elsewhere or a bar area within or attached~~

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1 ~~to the premises;~~

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

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

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

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

16 (b) any other lighted or heated tobacco  
17 or plant product intended for inhalation, including marijuana,  
18 whether natural or synthetic; or

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

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

23 ~~[N.] J. "smoking" means:~~

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

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

3                   (b) any other lighted or heated tobacco  
4 or plant product [including all types of cigarettes, cigars and  
5 pipes and any other lighted tobacco product] intended for  
6 inhalation, including marijuana, whether natural or synthetic;  
7 or

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

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

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

17                   "24-16-12. SMOKING-PERMITTED AREAS.--Notwithstanding any  
18 other provision of the Dee Johnson Clean Indoor Air Act,  
19 smoking-permitted areas include the following:

20                   A. a private residence, [~~except during hours of~~  
21 ~~business operation while it is being~~] unless it is used  
22 commercially to provide child care, adult care or health care  
23 or any combination of those activities;

24                   [~~B. a retail tobacco store;~~

25                   [~~C. a cigar bar;~~

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1           ~~D.]~~ B. the facilities of a tobacco manufacturing  
2 company licensed by the United States to manufacture tobacco  
3 products that are operated by the company in its own name and  
4 that are used exclusively by the company in its business of  
5 manufacturing, marketing or distributing its tobacco products;  
6 provided that secondhand smoke does not infiltrate other indoor  
7 workplaces or other indoor public places where smoking is  
8 otherwise prohibited under the Dee Johnson Clean Indoor Air  
9 Act;

10           ~~[E. a state-licensed gaming facility, casino or~~  
11 ~~bingo parlor;~~

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

18           ~~G. designated outdoor smoking areas;~~

19           ~~H. private clubs;~~

20           ~~I. a limousine under private hire;~~

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

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.] D.~~ a site that is being used in connection with  
9 the 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.]"~~

25 SECTION 3. Section 24-16-13 NMSA 1978 (being Laws 2007,

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1 Chapter 20, Section 5) is amended to read:

2 "24-16-13. PROHIBITION OF SMOKING NEAR ENTRANCES, WINDOWS  
3 AND VENTILATION SYSTEMS.--Smoking is prohibited near entrances,  
4 windows and ventilation systems of all workplaces and public  
5 places where smoking is prohibited by the Dee Johnson Clean  
6 Indoor Air Act. An individual who owns, manages, operates or  
7 otherwise controls the use of [~~any~~] a premises subject to the  
8 provisions of the Dee Johnson Clean Indoor Air Act shall  
9 establish a smokefree area that extends a reasonable distance  
10 from any entrances, windows and ventilation systems to any  
11 enclosed areas where smoking is prohibited. The reasonable  
12 distance shall be a distance sufficient to ensure that persons  
13 entering or leaving the building or facility shall not be  
14 subjected to breathing [~~tobacco~~] secondhand smoke and to ensure  
15 that [~~tobacco~~] secondhand smoke does not enter the building or  
16 facility through entrances, windows, ventilation systems or any  
17 other means."