

HOUSE STATE GOVERNMENT, ELECTIONS AND INDIAN AFFAIRS
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 256

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

AN ACT

RELATING TO PUBLIC HEALTH; AMENDING THE DEE JOHNSON CLEAN
INDOOR AIR ACT TO INCLUDE E-CIGARETTES; REMOVING A DEFINITION;
RESTRICTING SMOKING-PERMITTED AREAS.

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 (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

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

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

1 ~~premises for serving elsewhere or a bar area within or attached~~
2 ~~to the premises;]~~

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

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

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

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

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

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

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

25 N. "smoking" means:

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

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

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

10 (2) any use of an e-cigarette that creates an
11 aerosol or vapor; [~~and~~]

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

17 P. "standalone building" means a building whose
18 heating, air conditioning and ventilation system services only
19 that building."

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

22 "24-16-12. SMOKING-PERMITTED AREAS.--Notwithstanding any
23 other provision of the Dee Johnson Clean Indoor Air Act,
24 smoking-permitted areas include the following:

25 A. a private residence, [~~except during hours of~~

1 ~~business operation while it is being]~~ unless it is used
2 commercially to provide child care, adult care or health care
3 or any combination of those activities;

4 B. a retail tobacco store; provided that, for a
5 retail tobacco store established on or after the effective date
6 of this 2019 act, the store shall be located in a standalone
7 building;

8 C. a cigar bar; provided that, for a cigar bar
9 established on or after the effective date of this 2019 act,
10 the bar shall be located in a standalone building;

11 D. the facilities of a tobacco manufacturing
12 company licensed by the United States to manufacture tobacco
13 products that are operated by the company in its own name and
14 that are used exclusively by the company in its business of
15 manufacturing, marketing or distributing its tobacco products;
16 provided that secondhand smoke does not infiltrate other indoor
17 workplaces or other indoor public places where smoking is
18 otherwise prohibited under the Dee Johnson Clean Indoor Air
19 Act;

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

22 [~~F. an indoor workplace to the extent that tobacco~~
23 ~~smoking is an integral part of a smoking cessation program that~~
24 ~~is approved by the department or of medical or scientific~~
25 ~~research that is conducted in the indoor workplace and in which~~

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1 ~~each room of the indoor workplace in which tobacco smoking is~~
2 ~~permitted complies with signage requirements;~~

3 ~~G.]~~ F. designated outdoor smoking areas;

4 ~~[H.]~~ G. private clubs;

5 ~~[I. a limousine under private hire;~~

6 ~~J.]~~ H. hotel and motel rooms that are rented to
7 guests and are designated as smoking-permitted rooms; provided
8 that not more than ~~[twenty-five]~~ ten percent of rooms rented to
9 guests in a hotel or motel may be so designated;

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

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

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

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

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

4 ~~(3) cigarette smoke does not infiltrate other~~
 5 ~~smoke-free work environments as provided for in the Dee Johnson~~
 6 ~~Clean Indoor Air Act; and~~

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

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

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

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1 facility through entrances, windows, ventilation systems or any
2 other means."

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underscored material = new
~~[bracketed material] = delete~~