AN ACT

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

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;

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;

G. "enclosed" means 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;

H. "indoor public place" means the enclosed area
within 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;

I. "indoor workplace" means 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,
waiting areas, elevators and restrooms and includes all
indoor workplaces and enclosed parts regardless of whether
work occurs at any given time;
J. "private club" means an organization, whether incorporated or not, that is the owner, lessee or occupant of a building or portion thereof 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;

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

L. "secondhand smoke" means:

(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 cannabis,
whether natural or synthetic; or

(2) the aerosol or vapor emitted from

inhaling or exhaling or any other use of an e-cigarette;

M. "smokefree area" means a building or other

enclosed space where smoking is prohibited;

N. "smoking" means:

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

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

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

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

O. "smoking-permitted area" means 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; and

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

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, unless it is used commercially to provide child care, adult care or health care or any combination of those activities;

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

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

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 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. designated outdoor smoking areas;
G. private clubs;

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

I. 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; and

J. 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 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 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 secondhand smoke and to ensure that secondhand smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means."