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SENATE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC HEALTH; AMENDING THE DEE JOHNSON CLEAN  
INDOOR AIR ACT TO INCLUDE E-CIGARETTES.

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. "department" means the department of health;

16 D. "designated outdoor smoking area" means an area  
17 where smoking may be permitted, designated by an employer or  
18 manager, outside an indoor workplace or indoor public place;  
19 provided that the following conditions are maintained:

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

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

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

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

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

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

25 [~~H.~~] I. "indoor workplace" means [~~any~~] an enclosed

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

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

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

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1 within or attached to the premises;

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

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

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

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

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

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

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

24 [N-] O. "smoking" means:

25 (1) inhaling from, exhaling from, burning,

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1 carrying or holding [~~any~~]:

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

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

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

11 [~~0-~~] P. "smoking-permitted area" means [~~any~~] a  
12 building or other enclosed space where smoking may be  
13 permitted; provided that secondhand smoke does not infiltrate  
14 any area where smoking is prohibited pursuant to the Dee  
15 Johnson Clean Indoor Air Act."

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

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

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

25 B. a retail tobacco store;

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1 C. a cigar bar;

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

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

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

19 G. designated outdoor smoking areas;

20 H. private clubs;

21 I. a limousine under private hire;

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

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1           K. enclosed areas within restaurants, bars, hotel  
2 and motel conference or meeting rooms while these places are  
3 being used for private functions; provided that none of these  
4 areas are open to the general public while the private  
5 functions are occurring and provided that secondhand smoke  
6 does not infiltrate other indoor workplaces or indoor public  
7 places where smoking is otherwise prohibited under the Dee  
8 Johnson Clean Indoor Air Act;

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

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

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

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

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

24           N. a theatrical stage or a motion picture or  
25 television production set when it is necessary for performers

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1 to smoke as part of the production."

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

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