

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 318

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

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

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 any product containing or
5 delivering nicotine or any other 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 any device, whether manufactured, distributed,
9 marketed or sold as an e-cigarette, e-cigar, e-pipe, e-hookah
10 or vape pen or under any other 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 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] all space
20 between a floor and a ceiling that is bounded on at least two
21 sides by walls, doorways or windows, whether open or closed,
22 including any retractable divider, garage door or other
23 physical barrier, whether temporary or permanent or containing
24 openings of any kind;~~

25 [~~G.~~] H. "indoor public place" means the enclosed

1 area within any governmental or nongovernmental place to which
2 the public is invited or in which the public is permitted
3 regardless of whether work or public business, meetings or
4 hearings occur at any given time;

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

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

25 ~~[J.]~~ K. "restaurant" means a coffee shop,

1 cafeteria, private or public school cafeteria or eating
2 establishment and any other eating establishment that gives or
3 offers for sale food to the public, patrons or employees,
4 including kitchens and catering facilities in which food is
5 prepared on the premises for serving elsewhere or a bar area
6 within or attached to the premises;

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

13 [L.] M. "secondhand smoke" means smoke emitted from
14 ~~[lighted, smoldering or burning tobacco when the smoker is not~~
15 ~~inhaling, smoke emitted at the mouthpiece during puff drawing~~
16 ~~and smoke exhaled by the smoker]~~ inhaling, exhaling, burning or
17 carrying any lighted or heated cigar, cigarette or pipe or any
18 other lighted or heated tobacco or plant product intended for
19 inhalation, including hookahs and marijuana, whether natural or
20 synthetic, in any manner or in any form, and the aerosol or
21 vapor emitted from inhaling or exhaling or any use of an e-
22 cigarette, in any manner or in any form;

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

25 [N.] O. "smoking" means inhaling, exhaling, burning

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1 or carrying [or holding] any lighted or heated tobacco or plant
2 product [including all types of cigarettes, cigars and pipes
3 and any other lighted tobacco product] intended for inhalation,
4 including hookahs and marijuana, whether natural or synthetic,
5 in any manner or in any form, or the use of an e-cigarette
6 which creates an aerosol or vapor, in any manner or in any
7 form; and

8 [0-] P. "smoking-permitted area" means any building
9 or other enclosed space where smoking may be permitted;
10 provided that secondhand smoke does not infiltrate any area
11 where smoking is prohibited pursuant to the Dee Johnson Clean
12 Indoor Air Act."

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

15 "24-16-12. SMOKING-PERMITTED AREAS.--Notwithstanding any
16 other provision of the Dee Johnson Clean Indoor Air Act,
17 smoking-permitted areas include the following:

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

22 B. a retail tobacco store;

23 C. a cigar bar;

24 D. the facilities of a tobacco manufacturing
25 company licensed by the United States to manufacture tobacco

1 products that are operated by the company in its own name and
2 that are used exclusively by the company in its business of
3 manufacturing, marketing or distributing its tobacco products;
4 provided that smoke does not infiltrate other indoor workplaces
5 or other indoor public places where smoking is otherwise
6 prohibited under the Dee Johnson Clean Indoor Air Act;

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

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

15 G. designated outdoor smoking areas;

16 H. private clubs;

17 I. a limousine under private hire;

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

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

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

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

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

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

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

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

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

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

24 "24-16-13. PROHIBITION OF SMOKING NEAR ENTRANCES, WINDOWS
25 AND VENTILATION SYSTEMS.--Smoking is prohibited near entrances,

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

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