

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 354

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO HEALTH; AMENDING, REPEALING AND ENACTING SECTIONS  
OF THE CLEAN INDOOR AIR ACT TO CONTROL LOCATIONS OF TOBACCO  
SMOKING; PROVIDING PENALTIES.

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

Section 1. Section 24-16-2 NMSA 1978 (being Laws 1985,  
Chapter 85, Section 2) is amended to read:

"24-16-2. DECLARATION OF POLICY AND INTENT--PUBLIC  
HEALTH.--The legislature finds and declares that the smoking of  
tobacco [~~or any other weed or plant~~] is a positive danger to  
health [~~and a health hazard to those who are present in  
enclosed places and that smoking in such areas should be  
confined to designated smoking areas~~] and that exposure to  
secondhand smoke significantly increases the incidence risk for  
heart disease, cancer and respiratory disease in smokers and

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1 non-smokers alike, while furthermore increasing the risk for  
2 low-birthweight babies born to women who are exposed to  
3 secondhand smoke. The legislature further declares its  
4 intention to protect the public health from such hazards in  
5 public places and places of employment [~~without imposing~~  
6 ~~exorbitant costs on persons in management and control of the~~  
7 ~~places subject to~~] and establish minimum standards for the  
8 regulation of tobacco smoke as defined by the Clean Indoor Air  
9 Act. [~~It is not the intent of the legislature to preempt the~~  
10 ~~field of regulation of smoking in public from the enactment of~~  
11 ~~ordinances by local governing bodies which are not inconsistent~~  
12 ~~with the Clean Indoor Air Act.]"~~

13 Section 2. Section 24-16-3 NMSA 1978 (being Laws 1985,  
14 Chapter 85, Section 3) is amended to read:

15 "24-16-3. DEFINITIONS.--As used in the Clean Indoor Air  
16 Act:

17 ~~[A. "employer" means the state or any political~~  
18 ~~subdivision of the state who employs the services of more than~~  
19 ~~fifteen persons;~~

20 ~~B. "place of employment" means any enclosed indoor~~  
21 ~~area under the control of a public employer which employees~~  
22 ~~normally frequent during the course of employment, including~~  
23 ~~but not limited to work areas, employee lounges, conference~~  
24 ~~rooms and employee cafeterias;~~

25 ~~G. "public meeting" means any meeting required by~~

1 ~~law to be an open meeting;~~

2 D. ~~"public place" means any enclosed indoor area in~~  
3 ~~a building owned or leased by the state or any of its political~~  
4 ~~subdivisions;~~

5 E. ~~"smoke" or "smoking" means the carrying or~~  
6 ~~holding of a lighted pipe, cigar or cigarette of any kind or~~  
7 ~~any other lighted smoking equipment or the lighting or emitting~~  
8 ~~or exhaling the smoke of a pipe, cigar or cigarette of any~~  
9 ~~kind; and~~

10 F. ~~"smoking-permitted area" means that portion of a~~  
11 ~~public place in which smoking may be permitted.]~~

12 A. "department" means the department of health;

13 B. "designated outdoor smoking area" means any area  
14 where smoking may be permitted, designated by an employer or  
15 manager, outside an enclosed indoor workplace or enclosed  
16 indoor public place, provided that the following conditions are  
17 maintained:

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

24 (2) employees or members of the general public  
25 are not required to walk through the smoking area to gain

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1 entrance to the enclosed indoor workplace or enclosed indoor  
2 public place;

3 C. "designated smoking guest rooms at public  
4 lodging establishments" means the sleeping rooms and directly  
5 associated private areas, such as bathrooms, living rooms and  
6 kitchen areas, if any, rented to guests for their exclusive  
7 transient occupancy in public lodging establishments, including  
8 hotels, motels, resort condominiums, transient apartments,  
9 transient lodging establishments, rooming houses, boarding  
10 houses, resort dwellings, bed and breakfast inns and similar  
11 lodgings and designated by the person having management  
12 authority over such public lodging establishment as rooms in  
13 which smoking may be permitted;

14 D. "employer" means a person, partnership,  
15 corporation or the state or a political subdivision of the  
16 state that employs the services of one or more persons;

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

22 F. "indoor public place" means the enclosed area  
23 within any governmental or non-governmental place to which the  
24 public is invited or in which the public is permitted  
25 regardless of whether work or public business, meetings or

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1 hearings are occurring at any given time;

2 G. "indoor workplace" means any enclosed place  
3 where one or more persons engages in work, including lobbies,  
4 reception areas, offices, conference and meeting rooms,  
5 employee cafeterias and lunchrooms, break rooms and employee  
6 lounges, classrooms, auditoria, hallways, stairways, waiting  
7 areas, elevators and rest rooms and includes all indoor  
8 workplaces and enclosed parts without regard to whether work is  
9 occurring at any given time;

10 H. "private club" means any nonprofit group,  
11 including fraternal organizations and an auxiliary or  
12 subsidiary group organized and operated under the laws of this  
13 state with a membership of not less than fifty members who pay  
14 membership dues at the rate of not less than five dollars  
15 (\$5.00) per year and who, under the constitution and bylaws of  
16 the club, have all voting rights and full membership privileges  
17 and is the owner or lessor of premises used exclusively for  
18 club purposes operated solely for recreation, social,  
19 patriotic, political, benevolent or athletic purposes and has  
20 been granted an exemption by the United States from the payment  
21 of federal income tax as a club under the provisions of Section  
22 501 of the Internal Revenue Code of 1986, as amended;

23 I. "restaurant" means a coffee shop, cafeteria,  
24 private and public school cafeteria or eating establishment and  
25 any other eating establishment that gives or offers for sale

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1 food to the public, patrons or employees, including kitchens  
2 and catering facilities in which food is prepared on the  
3 premises for serving elsewhere;

4 J. "retail tobacco store" means a retail store  
5 utilized primarily for the sale of tobacco products and  
6 accessories and in which the sale of other products is merely  
7 incidental;

8 K. "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 L. "smokefree area" means any building or other  
13 enclosed space where smoking is prohibited;

14 M. "smoking" means inhaling, exhaling, burning,  
15 carrying or holding any lighted tobacco product, including all  
16 types of cigarettes, cigars and pipes and any other lighted  
17 tobacco product;

18 N. "smoking-permitted area" means any building or  
19 other enclosed space where smoking may be permitted provided  
20 that secondhand smoke does not infiltrate any area where  
21 smoking is prohibited pursuant to the Clean Indoor Air Act; and

22 O. "stand-alone bar" means any premises:

23 (1) licensed in accordance with the Liquor  
24 Control Act and in which the premises are devoted, during any  
25 time of operation, predominantly to the sale of alcoholic

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1 beverages that are served for consumption on the licensed  
2 premises;

3 (2) in which the serving of food is merely  
4 incidental to the consumption of alcoholic beverages;

5 (3) in which the premises derives no more than  
6 fifty percent of its gross revenue from the sale of food on the  
7 licensed premises; and

8 (4) in which people under twenty-one years of  
9 age are not permitted in all or part of the premises during all  
10 or part of the hours of operation of the premises, except as  
11 provided by the regulations of the alcohol and gaming division  
12 of the regulation and licensing department."

13 Section 3. Section 24-16-4 NMSA 1978 (being Laws 1985,  
14 Chapter 85, Section 4, as amended) is amended to read:

15 "SMOKING PROHIBITED [~~EXCEPT IN PERMITTED AREAS~~].--

16 A. It is unlawful for a person to smoke in [a  
17 public place or at a public meeting except in smoking-permitted  
18 areas] any enclosed indoor workplace or enclosed indoor public  
19 place or in buses, taxicabs or other means of public transit  
20 not specifically exempted pursuant to the Clean Indoor Air Act.

21 B. No part of the state capitol or capitol north  
22 shall be designated as a smoking-permitted area."

23 Section 4. A new section of the Clean Indoor Air Act is  
24 enacted to read:

25 "[NEW MATERIAL] SMOKING-PERMITTED AREAS.--Notwithstanding

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1 any other provision of the Clean Indoor Air Act, smoking-  
2 permitted areas shall include the following:

3 A. a private residence during hours of business  
4 operation while it is being used commercially to provide child  
5 care, adult care or health care or any combination of the  
6 above;

7 B. a retail tobacco store;

8 C. a facility of a tobacco product manufacturer;

9 D. a stand-alone bar;

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

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

18 G. designated outdoor smoking areas;

19 H. private clubs;

20 I. a limousine under private hire;

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

25 K. enclosed areas within restaurants, hotel and

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

7 Section 5. A new section of the Clean Indoor Air Act is  
8 enacted to read:

9 "[NEW MATERIAL] PROHIBITION OF SMOKING NEAR ENTRANCES,  
10 WINDOWS AND VENTILATION SYSTEMS.--Smoking shall be prohibited  
11 near entrances, windows and ventilation systems of all  
12 worksites and public places where smoking is prohibited by the  
13 Clean Indoor Air Act. An individual who owns, manages,  
14 operates or otherwise controls the use of any premises subject  
15 to the provisions of the Clean Indoor Air Act shall establish a  
16 no-smoking area that extends a reasonable distance from any  
17 entrances, windows and ventilation systems to any enclosed  
18 areas where smoking is prohibited, and the reasonable distance  
19 shall be a distance sufficient to ensure that persons entering  
20 or leaving the building or facility shall not be subjected to  
21 breathing tobacco smoke and to ensure that tobacco smoke does  
22 not enter the building or facility through entrances, windows,  
23 ventilation systems or any other means."

24 Section 6. A new section of the Clean Indoor Air Act is  
25 enacted to read:

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1           "[NEW MATERIAL] RESPONSIBILITIES OF EMPLOYERS.--

2           A. Employers shall provide that their places of  
3 employment meet the requirements of the Clean Indoor Air Act.

4           B. An employer shall adopt, implement, post and  
5 maintain a written smoking policy pursuant to the Clean Indoor  
6 Air Act."

7           Section 7. A new section of the Clean Indoor Air Act is  
8 enacted to read:

9           "[NEW MATERIAL] POSTED SMOKEFREE AREAS.--To advise persons  
10 of the existence of smokefree areas or smoking-permitted areas,  
11 signs shall be posted as follows:

12           A. for all areas of an enclosed indoor workplace or  
13 enclosed indoor public place where smoking is prohibited  
14 pursuant to the Clean Indoor Air Act, a "NO SMOKING" sign shall  
15 be posted where it is clear, conspicuous and easily legible in  
16 all areas where smoking is prohibited, and posting of signs  
17 shall be the responsibility of the owner, operator, manager or  
18 other person having control of such building or other place,  
19 and signs of the appropriate type shall also be placed at all  
20 outdoor entrances to such areas;

21           B. for smoking-permitted areas pursuant to the  
22 Clean Indoor Air Act, a text sign reading "SMOKING PERMITTED"  
23 shall be posted where it is clear, conspicuous and easily  
24 legible in all smoking-permitted areas, and posting of signs  
25 shall be the responsibility of the owner, operator, manager or

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1 other person having control of such building or other place,  
2 and signs of the appropriate type shall also be placed at all  
3 outdoor entrances to such areas;

4 C. every theater owner, manager or operator shall  
5 conspicuously post signs in the lobby stating that smoking is  
6 prohibited within the theater or auditorium; and

7 D. every restaurant shall have posted at every  
8 public entrance a conspicuous sign clearly stating that smoking  
9 is prohibited in accordance with the Clean Indoor Air Act."

10 Section 8. A new section of the Clean Indoor Air Act is  
11 enacted to read:

12 "[NEW MATERIAL] ENFORCEMENT.--

13 A. The local fire or police department with  
14 appropriate jurisdiction over the location where the unlawful  
15 act occurs shall enforce the Clean Indoor Air Act by citation.

16 B. A person may register a complaint pursuant to  
17 the Clean Indoor Air Act to initiate enforcement with the  
18 department or the local fire or police department.

19 C. The designated enforcement agencies may inspect  
20 an establishment for compliance with the Clean Indoor Air Act."

21 Section 9. A new section of the Clean Indoor Air Act is  
22 enacted to read:

23 "[NEW MATERIAL] VIOLATIONS.--It is unlawful for any person  
24 who owns, manages, operates or otherwise controls the use of  
25 any premises subject to regulation under the Clean Indoor Air

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1 Act to violate any of its provisions. The owner, manager or  
2 operator of any premises subject to regulation under the Clean  
3 Indoor Air Act shall not be subject to a penalty if any person  
4 therein is in violation of the Clean Indoor Air Act as long as  
5 the owner, manager or operator has posted signs, implemented  
6 the appropriate policy and informed the individual that he is  
7 in violation of the Clean Indoor Air Act."

8 Section 10. A new section of the Clean Indoor Air Act is  
9 enacted to read:

10 "[NEW MATERIAL] PENALTIES.--Any person over the age of  
11 eighteen who commits an unlawful act under any of the  
12 provisions of the Clean Indoor Air Act shall be subject to:

13 A. a fine in an amount of one hundred dollars  
14 (\$100) for the first violation of the Clean Indoor Air Act  
15 within any consecutive twelve-month period;

16 B. a fine in an amount of two hundred dollars  
17 (\$200) for the second violation of the Clean Indoor Air Act  
18 within any consecutive twelve-month period; and

19 C. a fine of five hundred dollars (\$500) for the  
20 third and each subsequent violation of the Clean Indoor Air Act  
21 within any consecutive twelve-month period."

22 Section 11. A new section of the Clean Indoor Air Act is  
23 enacted to read:

24 "[NEW MATERIAL] NON-RETALIATION.--A person or employer  
25 shall not discharge, refuse to hire or in any manner retaliate

1 against an employee, applicant for employment or customer  
2 because that employee, applicant or customer exercises any  
3 rights afforded by the Clean Indoor Air Act or reports or  
4 attempts to prosecute a violation of that act."

5 Section 12. A new section of the Clean Indoor Air Act is  
6 enacted to read:

7 "[NEW MATERIAL] EXPLICIT NON-PREEMPTION.--Nothing in the  
8 Clean Indoor Air Act shall be construed to preempt or in any  
9 manner preclude specific provisions of a county or municipal  
10 smoking ordinance; provided that the smokefree provisions of  
11 such a county or municipal ordinance are inclusive of all  
12 minimum standards and provisions for smokefree areas within the  
13 Clean Indoor Air Act."

14 Section 13. REPEAL.--Sections 24-16-5 through 24-16-11  
15 NMSA 1978 (being Laws 1985, Chapter 85, Section 5 through 11)  
16 are repealed.