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HOUSE BILL 283

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Al Park

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO HEALTH; CHANGING THE NAME OF THE CLEAN INDOOR ACT TO THE DEE JOHNSON CLEAN INDOOR AIR ACT; LOCATIONS OF TOBACCO SMOKING; PROVIDING PENALTIES.

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

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

"24-16-1. SHORT TITLE.--~~[This act]~~ Chapter 24, Article 16 NMSA 1978 may be cited as the "Dee Johnson Clean Indoor Air Act"."

Section 2. 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

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1 health ~~[and a health hazard to those who are present in~~
2 ~~enclosed places and that smoking in such areas should be~~
3 ~~confined to designated smoking areas]~~ and that exposure to
4 secondhand smoke significantly increases the incidence risk for
5 heart disease, cancer and respiratory disease in smokers and
6 nonsmokers alike and puts expectant mothers at increased risk
7 of giving birth to babies who have low birthweights and who are
8 more likely to die of sudden infant death syndrome. The
9 legislature further declares its intention to protect the
10 public health from such hazards in public places and places of
11 employment ~~[without imposing exorbitant costs on persons in~~
12 ~~management and control of the places subject to]~~ and to
13 establish minimum standards for the regulation of tobacco smoke
14 as defined by the Dee Johnson Clean Indoor Air Act. ~~[It is not~~
15 ~~the intent of the legislature to preempt the field of~~
16 ~~regulation of smoking in public from the enactment of~~
17 ~~ordinances by local governing bodies which are not inconsistent~~
18 ~~with the Clean Indoor Air Act.]"~~

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

21 "24-16-3. DEFINITIONS.--As used in the Dee Johnson Clean
22 Indoor Air Act:

23 [A. ~~"employer" means the state or any political~~
24 ~~subdivision of the state who employs the services of more than~~
25 ~~fifteen persons;~~

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1 ~~B. "place of employment" means any enclosed indoor~~
2 ~~area under the control of a public employer which employees~~
3 ~~normally frequent during the course of employment, including~~
4 ~~but not limited to work areas, employee lounges, conference~~
5 ~~rooms and employee cafeterias;~~

6 ~~C. "public meeting" means any meeting required by~~
7 ~~law to be an open meeting;~~

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

11 ~~E. "smoke" or "smoking" means the carrying or~~
12 ~~holding of a lighted pipe, cigar or cigarette of any kind or~~
13 ~~any other lighted smoking equipment or the lighting or emitting~~
14 ~~or exhaling the smoke of a pipe, cigar or cigarette of any~~
15 ~~kind; and~~

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

18 A. "bar" means an establishment that is devoted to
19 the selling or serving of alcoholic beverages for consumption
20 by patrons on the premises and in which the serving of food is
21 only incidental to the consumption of those beverages,
22 including taverns, nightclubs, cocktail lounges and cabarets;

23 B. "cigar bar" means an establishment that:

24 (1) is a bar as defined in Subsection A of
25 this section except that it does not serve food; and

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1 (2) is engaged in the business of selling
2 cigars for consumption by patrons on the premises and has
3 generated ten percent or more of its total annual gross revenue
4 or at least ten thousand dollars (\$10,000) in annual sales from
5 the sale of cigars, not including any sales from vending
6 machines, in the calendar year ending December 31, 2006. In
7 any calendar year after December 31, 2006, a cigar bar that
8 fails to generate at least ten percent of its total annual
9 sales from the sale of cigars, 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. "employer" means an individual, a partnership, a
5 corporation or the state or a political subdivision of the
6 state that employs the services of one or more individuals;

7 F. "enclosed" means any interior space
8 predominantly or totally bounded on all sides and above by
9 physical barriers, regardless of whether such barriers consist
10 of or include uncovered openings, screened or otherwise
11 partially covered openings or open or closed windows;

12 G. "indoor public place" means the enclosed area
13 within any governmental or nongovernmental place to which the
14 public is invited or in which the public is permitted
15 regardless of whether work or public business, meetings or
16 hearings occur at any given time;

17 H. "indoor workplace" means any enclosed place
18 where one or more persons engage in work, including lobbies,
19 reception areas, offices, conference and meeting rooms,
20 employee cafeterias and lunchrooms, break rooms and employee
21 lounges, classrooms, auditoriums, hallways, stairways, waiting
22 areas, elevators and restrooms and includes all indoor
23 workplaces and enclosed parts regardless of whether work occurs
24 at any given time;

25 I. "private club" means an organization, whether

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1 incorporated or not, that is the owner, lessee or occupant of a
2 building or portion thereof used exclusively for the
3 organization's purposes at all times, that is operated solely
4 for recreational, fraternal, social, patriotic, political,
5 benevolent or athletic purposes, but not for pecuniary gain,
6 and that only sells alcoholic beverages incidental to its
7 operation. The organization shall have bylaws or a
8 constitution to govern its activities and shall have been
9 granted an exemption as a club under the provisions of Section
10 501 of the Internal Revenue Code of 1986, as amended;

11 J. "restaurant" means a coffee shop, cafeteria,
12 private or public school cafeteria or eating establishment and
13 any other eating establishment that gives or offers for sale
14 food to the public, patrons or employees, including kitchens
15 and catering facilities in which food is prepared on the
16 premises for serving elsewhere or a bar area within or attached
17 to the premises;

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

24 L. "secondhand smoke" means smoke emitted from
25 lighted, smoldering or burning tobacco when the smoker is not

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1 inhaling, smoke emitted at the mouthpiece during puff drawing
2 and smoke exhaled by the smoker;

3 M. "smokefree area" means any building or other
4 enclosed space where smoking is prohibited;

5 N. "smoking" means inhaling, exhaling, burning,
6 carrying or holding any lighted tobacco product, including all
7 types of cigarettes, cigars and pipes and any other lighted
8 tobacco product; and

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

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

16 "24-16-4. SMOKING PROHIBITED [~~EXCEPT IN PERMITTED~~
17 ~~AREAS~~].--

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

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

25 Section 5. A new section of the Dee Johnson Clean Indoor

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1 Air Act is enacted to read:

2 "[NEW MATERIAL] SMOKING-PERMITTED AREAS.--Notwithstanding
3 any other provision of the Dee Johnson Clean Indoor Air Act,
4 smoking-permitted areas include the following:

5 A. a private residence, except during hours of
6 business operation while it is being used commercially to
7 provide child care, adult care or health care or any
8 combination of those activities;

9 B. a retail tobacco store;

10 C. a cigar bar;

11 D. a manufacturing facility for tobacco products;

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

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

20 G. designated outdoor smoking areas;

21 H. private clubs;

22 I. a limousine under private hire;

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

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1 a hotel or motel may be so designated;

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

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

14 Section 6. A new section of the Dee Johnson Clean Indoor
15 Air Act is enacted to read:

16 "[NEW MATERIAL] PROHIBITION OF SMOKING NEAR ENTRANCES,
17 WINDOWS AND VENTILATION SYSTEMS.--Smoking is prohibited near
18 entrances, windows and ventilation systems of all workplaces
19 and public places where smoking is prohibited by the Dee
20 Johnson Clean Indoor Air Act. An individual who owns, manages,
21 operates or otherwise controls the use of any premises subject
22 to the provisions of the Dee Johnson Clean Indoor Air Act shall
23 establish a smokefree area that extends a reasonable distance
24 from any entrances, windows and ventilation systems to any
25 enclosed areas where smoking is prohibited. The reasonable

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1 distance shall be a distance sufficient to ensure that persons
2 entering or leaving the building or facility shall not be
3 subjected to breathing tobacco smoke and to ensure that tobacco
4 smoke does not enter the building or facility through
5 entrances, windows, ventilation systems or any other means."

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

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

9 A. Employers shall provide that their places of
10 employment meet the requirements of the Dee Johnson Clean
11 Indoor Air Act.

12 B. An employer shall adopt, implement, post and
13 maintain a written smoking policy pursuant to the Dee Johnson
14 Clean Indoor Air Act."

15 Section 8. A new section of the Dee Johnson Clean Indoor
16 Air Act is enacted to read:

17 "[NEW MATERIAL] POSTED SMOKEFREE AND SMOKING-PERMITTED
18 AREAS.--To advise persons of the existence of smokefree areas
19 or smoking-permitted areas, signs shall be posted as follows:

20 A. for all areas of an indoor workplace or indoor
21 public place where smoking is prohibited pursuant to the Dee
22 Johnson Clean Indoor Air Act, a "NO SMOKING" sign shall be
23 posted where it is clear, conspicuous and easily legible in all
24 areas where smoking is prohibited. Posting of "NO SMOKING"
25 signs is the responsibility of the owner, operator, manager or

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1 other person having control of the indoor workplace or indoor
2 public place, and "NO SMOKING" signs shall also be placed at
3 all outdoor entrances to such areas;

4 B. for smoking-permitted areas pursuant to the Dee
5 Johnson Clean Indoor Air Act, a "SMOKING PERMITTED" sign shall
6 be posted where it is clear, conspicuous and easily legible in
7 all smoking-permitted areas. Posting of "SMOKING PERMITTED"
8 signs is the responsibility of the owner, operator, manager or
9 other person having control of the areas, and "SMOKING
10 PERMITTED" signs shall also be placed at all outdoor entrances
11 to such areas;

12 C. every theater or auditorium owner, manager or
13 operator shall conspicuously post signs in the lobby of the
14 facility stating that smoking is prohibited within the theater
15 or auditorium in accordance with the Dee Johnson Clean Indoor
16 Air Act; and

17 D. every restaurant shall have posted at every
18 public entrance to the restaurant a conspicuous sign clearly
19 stating that smoking is prohibited in accordance with the Dee
20 Johnson Clean Indoor Air Act."

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

23 "[NEW MATERIAL] ENFORCEMENT.--

24 A. The local fire, police or sheriff's department
25 with appropriate jurisdiction over the location where a

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1 violation of the provisions of the Dee Johnson Clean Indoor Air
2 Act occurs shall enforce that act by issuance of a citation.

3 B. A person may register a complaint regarding an
4 alleged violation pursuant to the Dee Johnson Clean Indoor Air
5 Act to initiate enforcement of that act with the department or
6 the local fire, police or sheriff's department.

7 C. The designated enforcement agencies may inspect
8 an establishment for compliance with the Dee Johnson Clean
9 Indoor Air Act."

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

12 "[NEW MATERIAL] VIOLATIONS.--It is unlawful for a person
13 who owns, manages, operates or otherwise controls the use of
14 premises subject to regulation under the Dee Johnson Clean
15 Indoor Air Act to violate its provisions. The owner, manager
16 or operator of premises subject to regulation under the Dee
17 Johnson Clean Indoor Air Act shall not be subject to a penalty
18 if a person on the premises is in violation of the Dee Johnson
19 Clean Indoor Air Act as long as the owner, manager or operator
20 has posted signs, implemented the appropriate policy and
21 informed the person that the person is in violation of the Dee
22 Johnson Clean Indoor Air Act."

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

25 "[NEW MATERIAL] PENALTIES.--A person eighteen years of age
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1 or older who violates a provision of the Dee Johnson Clean
2 Indoor Air Act is subject to:

3 A. a fine not to exceed one hundred dollars (\$100)
4 for the first violation of that act;

5 B. a fine not to exceed two hundred dollars (\$200)
6 for the second violation of that act within any consecutive
7 twelve-month period of the first violation; and

8 C. a fine not to exceed five hundred dollars (\$500)
9 for the third and each subsequent violation of that act within
10 any consecutive twelve-month period of a previous violation."

11 Section 12. A new section of the Dee Johnson Clean Indoor
12 Air Act is enacted to read:

13 "[NEW MATERIAL] NONRETALIATION--NONWAIVER.--

14 A. A person or employer shall not discharge, refuse
15 to hire or in any manner retaliate against an employee,
16 applicant for employment or patron because that employee,
17 applicant or patron exercises any rights afforded by the Dee
18 Johnson Clean Indoor Air Act or reports or attempts to
19 prosecute a violation of that act.

20 B. An employee who works in a setting where an
21 employer allows smoking does not waive or otherwise surrender
22 any legal rights the employee may have against the employer or
23 any other party."

24 Section 13. A new section of the Dee Johnson Clean Indoor
25 Air Act is enacted to read:

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1 "[NEW MATERIAL] EXPLICIT NONPREEMPTION.--Nothing in the
2 Dee Johnson Clean Indoor Air Act shall be construed to preempt
3 or in any manner preclude specific provisions of a county or
4 municipal smoking ordinance; provided that the smokefree
5 provisions of such a county or municipal ordinance are
6 inclusive of all minimum standards and provisions for smokefree
7 areas within the Dee Johnson Clean Indoor Air Act."

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

11 Section 15. SEVERABILITY.--If any part or application of
12 this act is held invalid, the remainder or its application to
13 other situations or persons shall not be affected.