

HOUSE HEALTH AND GOVERNMENT AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 283

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

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

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1 of tobacco [~~or any other weed or plant~~] is a positive danger  
2 to health [~~and a health hazard to those who are present in~~  
3 ~~enclosed places and that smoking in such areas should be~~  
4 ~~confined to designated smoking areas]~~ and that exposure to  
5 secondhand smoke significantly increases the incidence risk  
6 for heart disease, cancer and respiratory disease in smokers  
7 and nonsmokers alike and puts expectant mothers at increased  
8 risk of giving birth to babies who have low birthweights and  
9 who are more likely to die of sudden infant death syndrome.

10 The legislature further declares its intention to protect the  
11 public health from such hazards in public places and places of  
12 employment [~~without imposing exorbitant costs on persons in~~  
13 ~~management and control of the places subject to]~~ and to  
14 establish minimum standards for the regulation of tobacco  
15 smoke as defined by the Dee Johnson Clean Indoor Air Act. [~~It~~  
16 ~~is not the intent of the legislature to preempt the field of~~  
17 ~~regulation of smoking in public from the enactment of~~  
18 ~~ordinances by local governing bodies which are not~~  
19 ~~inconsistent with the Clean Indoor Air Act.]"~~

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

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

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

1 ~~fifteen persons;~~

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

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

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

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

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

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

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

25 (1) is a bar as defined in Subsection A of

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1 this section except that it does not serve food; and  
2 (2) is engaged in the business of selling  
3 cigars for consumption by patrons on the premises and has  
4 generated ten percent or more of its total annual gross  
5 revenue or at least ten thousand dollars (\$10,000) in annual  
6 sales from the sale of cigars, not including any sales from  
7 vending machines, in the calendar year ending December 31,  
8 2006. In any calendar year after December 31, 2006, a cigar  
9 bar that fails to generate at least ten percent of its total  
10 annual sales from the sale of cigars, not including sales from  
11 vending machines, shall not be defined as a cigar bar and  
12 shall not thereafter be known as such regardless of sales  
13 figures. A cigar bar shall agree to provide adequate  
14 information to demonstrate to the state's satisfaction  
15 compliance with this definition;

16 C. "department" means the department of health;

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

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

1 indoor public place; and

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

5 E. "employer" means an individual, a partnership,  
6 a corporation or the state or a political subdivision of the  
7 state that employs the services of one or more individuals;

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

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

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

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1           I. "private club" means an organization, whether  
2 incorporated or not, that is the owner, lessee or occupant of  
3 a building or portion thereof used exclusively for the  
4 organization's purposes at all times, that is operated solely  
5 for recreational, fraternal, social, patriotic, political,  
6 benevolent or athletic purposes, but not for pecuniary gain,  
7 and that only sells alcoholic beverages incidental to its  
8 operation. The organization shall have bylaws or a  
9 constitution to govern its activities and shall have been  
10 granted an exemption as a club under the provisions of Section  
11 501 of the Internal Revenue Code of 1986, as amended;

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

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

1           L. "secondhand smoke" means smoke emitted from  
 2 lighted, smoldering or burning tobacco when the smoker is not  
 3 inhaling, smoke emitted at the mouthpiece during puff drawing  
 4 and smoke exhaled by the smoker;

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

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

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

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

18           "24-16-4. SMOKING PROHIBITED [~~EXCEPT IN PERMITTED~~  
 19 ~~AREAS~~]. --

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

B. No part of the state capitol or

1 capitol north shall be designated as a smoking-permitted  
2 area. "

3 Section 5. A new section of the Dee Johnson Clean Indoor  
4 Air Act is enacted to read:

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

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

12 B. a retail tobacco store;

13 C. a cigar bar;

14 D. the facilities of a tobacco manufacturing  
15 company licensed by the United States to manufacture tobacco  
16 products that are operated by the company in its own name and  
17 that are used exclusively by the company in its business of  
18 manufacturing, marketing or distributing its tobacco products;  
19 provided that smoke does not infiltrate other indoor  
20 workplaces or other indoor public places where smoking is  
21 otherwise prohibited under the Dee Johnson Clean Indoor Air  
22 Act;

23 E. a state-licensed gaming facility, casino or  
24 bingo parlor;

25 F. an indoor workplace to the extent that tobacco



1 smoking is an integral part of a smoking cessation program  
2 that is approved by the department or of medical or scientific  
3 research that is conducted in the indoor workplace and in  
4 which each room of the indoor workplace in which tobacco  
5 smoking is permitted complies with signage requirements;

6 G. designated outdoor smoking areas;

7 H. private clubs;

8 I. a limousine under private hire;

9 J. hotel and motel rooms that are rented to guests  
10 and are designated as smoking-permitted rooms; provided that  
11 not more than twenty-five percent of rooms rented to guests in  
12 a hotel or motel may be so designated;

13 K. enclosed areas within restaurants, bars, hotel  
14 and motel conference or meeting rooms while these places are  
15 being used for private functions; provided that none of these  
16 areas are open to the general public while the private  
17 functions are occurring and provided that smoke does not  
18 infiltrate other indoor workplaces or indoor public places  
19 where smoking is otherwise prohibited under the Dee Johnson  
20 Clean Indoor Air Act;

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

25 M. a business of a sole proprietor or a business

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1 with fewer than two employees that is not commonly accessible  
2 to the public; provided that:

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

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

7 (3) cigarette smoke does not infiltrate other  
8 smoke-free work environments as provided for in the Dee  
9 Johnson Clean Indoor Air Act; and

10 N. a theatrical stage or a motion picture or  
11 television production set when it is necessary for performers  
12 to smoke as part of the production. "

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

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

1 sufficient to ensure that persons entering or leaving the  
2 building or facility shall not be subjected to breathing  
3 tobacco smoke and to ensure that tobacco smoke does not enter  
4 the building or facility through entrances, windows,  
5 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. --

19 A. To advise persons of the existence of smokefree  
20 areas or smoking-permitted areas, signs shall be posted as  
21 follows:

22 (1) for each indoor workplace or indoor  
23 public place where smoking is prohibited pursuant to the Dee  
24 Johnson Clean Indoor Air Act, a "NO SMOKING" sign shall be  
25 posted where it is clear, conspicuous and easily legible at

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1 each public entrance. Posting of "NO SMOKING" signs is the  
2 responsibility of the owner, operator, manager or other person  
3 having control of the indoor workplace or indoor public place;  
4 and

5 (2) for each indoor workplace or indoor  
6 public place where smoking is permitted pursuant to the Dee  
7 Johnson Clean Indoor Air Act, a "SMOKING PERMITTED" sign shall  
8 be posted where it is clear, conspicuous and easily legible at  
9 each public entrance, unless an owner, operator or manager  
10 chooses to prohibit smoking in all or part of an indoor  
11 workplace or indoor public place where smoking is otherwise  
12 permitted.

13 B. Nothing in the Dee Johnson Clean Indoor Air Act  
14 shall be construed so as to require the posting of signs at a  
15 residence, except during the hours of business operation while  
16 it is being used commercially to provide child care, adult  
17 care or health care or any combination of those activities."

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

20 "[NEW MATERIAL] ENFORCEMENT. --

21 A. The local fire, police or sheriff's department  
22 with appropriate jurisdiction over the location where a  
23 violation of the provisions of the Dee Johnson Clean Indoor  
24 Air Act occurs shall enforce that act by issuance of a  
25 citation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25           "[NEW MATERIAL] EXPLICIT NONPREEMPTION. --Nothing in the

1     Dee Johnson Clean Indoor Air Act shall be construed to preempt  
2     or in any manner preclude specific provisions of a county or  
3     municipal smoking ordinance; provided that the smokefree  
4     provisions of such a county or municipal ordinance are  
5     inclusive of all minimum standards and provisions for  
6     smokefree areas within the Dee Johnson Clean Indoor Air Act. "

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

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

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