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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
this section; and

(2) is engaged in the business of selling
cigars for consumption by patrons on the premises and
generates ten percent or more of its total annual gross
revenue or at least ten thousand dollars (\$10,000) in annual
sales from the sale of cigars, not including any sales from
vending machines. A cigar bar that fails to generate at
least ten percent of its total annual sales from the sale of
cigars in the calendar year after December 31, 2006, not

1 including sales from vending machines, shall not be defined
2 as a cigar bar and shall not thereafter be known as such
3 regardless of sales figures. A cigar bar shall agree to
4 provide adequate information to demonstrate to the state's
5 satisfaction compliance with this definition;

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

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

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

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

20 E. "e-cigarette" means any product containing or
21 delivering nicotine or any other substance intended for human
22 consumption that can be used by a person in any manner for
23 the purpose of inhaling vapor or aerosol from the product,
24 including any device, whether manufactured, distributed,
25 marketed or sold as an e-cigarette, e-cigar, e-pipe, e-hookah

1 or vape pen or under any other product name or descriptor;

2 F. "employer" means an individual, a partnership,
3 a corporation or the state or a political subdivision of the
4 state that employs the services of one or more individuals;

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

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

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

24 J. "private club" means an organization, whether
25 incorporated or not, that is the owner, lessee or occupant of

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

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

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

24 M. "secondhand smoke" means smoke emitted from
25 inhaling, exhaling, burning or carrying any lighted or heated

1 cigar, cigarette or pipe or any other lighted or heated
2 tobacco or plant product intended for inhalation, including
3 hookahs and marijuana, whether natural or synthetic, in any
4 manner or in any form, and the aerosol or vapor emitted from
5 inhaling or exhaling or any use of an e-cigarette, in any
6 manner or in any form;

7 N. "smokefree area" means any building or other
8 enclosed space where smoking is prohibited;

9 O. "smoking" means inhaling, exhaling, burning or
10 carrying any lighted or heated tobacco or plant product
11 intended for inhalation, including hookahs and marijuana,
12 whether natural or synthetic, in any manner or in any form,
13 or the use of an e-cigarette which creates an aerosol or
14 vapor, in any manner or in any form; and

15 P. "smoking-permitted area" means any building or
16 other enclosed space where smoking may be permitted; provided
17 that secondhand smoke does not infiltrate any area where
18 smoking is prohibited pursuant to the Dee Johnson Clean
19 Indoor Air Act."

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

22 "24-16-12. SMOKING-PERMITTED AREAS.--Notwithstanding
23 any other provision of the Dee Johnson Clean Indoor Air Act,
24 smoking-permitted areas include the following:

25 A. a private residence, except during hours of

1 business operation while it is being used commercially to
2 provide child care, adult care or health care or any
3 combination of those activities;

4 B. a retail tobacco store;

5 C. a cigar bar;

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

15 E. a state-licensed gaming facility, casino or
16 bingo parlor;

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

23 G. designated outdoor smoking areas;

24 H. private clubs;

25 I. a limousine under private hire;

1 J. hotel and motel rooms that are rented to guests
2 and are designated as smoking-permitted rooms; provided that
3 not more than twenty-five percent of rooms rented to guests
4 in a hotel or motel may be so designated;

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

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

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

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

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

24 (3) secondhand smoke does not infiltrate
25 other smoke-free work environments as provided for in the

1 Dee Johnson Clean Indoor Air Act; and

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

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

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

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