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AN ACT

RELATING TO PUBLIC HEALTH; AMENDING THE DEE JOHNSON CLEAN
INDOOR AIR ACT TO INCLUDE E-CIGARETTES; EXPANDING THE SCOPE
OF THE DEFINITIONS OF "SECONDHAND SMOKE" AND "SMOKING";
REMOVING A DEFINITION; RESTRICTING SMOKING-PERMITTED AREAS.

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

1 least ten percent of its total annual sales from the sale of
2 cigars in the calendar year after December 31, 2006, not
3 including sales from vending machines, shall not be defined
4 as a cigar bar and shall not thereafter be known as such
5 regardless of sales figures. A cigar bar shall agree to
6 provide adequate information to demonstrate to the state's
7 satisfaction compliance with this definition;

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

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

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

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

22 E. "e-cigarette" means a product containing or
23 delivering nicotine or another substance intended for human
24 consumption that can be used by a person in any manner for
25 the purpose of inhaling vapor or aerosol from the product,

1 including a device, whether manufactured, distributed,
2 marketed or sold as an e-cigarette, e-cigar, e-pipe, e-hookah
3 or vape pen or under another product name or descriptor;

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

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

13 H. "indoor public place" means the enclosed area
14 within a 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 I. "indoor workplace" means an 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,
23 waiting areas, elevators and restrooms and includes all
24 indoor workplaces and enclosed parts regardless of whether
25 work occurs at any given time;

1 J. "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
11 Section 501 of the Internal Revenue Code of 1986, as amended;

12 K. "retail tobacco store" means a retail store,
13 used primarily for the sale of tobacco products, including
14 e-cigarettes, and accessories and in which the sale of other
15 products is merely incidental, including smoke shops, cigar
16 shops or hookah lounges, and does not include establishments
17 that offer for sale alcoholic beverages for consumption by
18 patrons on the premises;

19 L. "secondhand smoke" means:

20 (1) smoke emitted from inhaling from,
21 exhaling from, burning, carrying or holding:

22 (a) a lighted or heated cigar,
23 cigarette, hookah or pipe; or

24 (b) any other lighted or heated tobacco
25 or plant product intended for inhalation, including cannabis,

1 whether natural or synthetic; or

2 (2) the aerosol or vapor emitted from
3 inhaling or exhaling or any other use of an e-cigarette;

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

6 N. "smoking" means:

7 (1) inhaling from, exhaling from, burning,
8 carrying or holding:

9 (a) a lighted or heated cigar,
10 cigarette, hookah or pipe; or

11 (b) any other lighted or heated tobacco
12 or plant product intended for inhalation, including cannabis,
13 whether natural or synthetic; or

14 (2) any use of an e-cigarette that creates
15 an aerosol or vapor;

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

21 P. "standalone building" means a building whose
22 heating, air conditioning and ventilation system services
23 only that building."

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

1 "24-16-12. SMOKING-PERMITTED AREAS.--Notwithstanding
2 any other provision of the Dee Johnson Clean Indoor Air Act,
3 smoking-permitted areas include the following:

4 A. a private residence, unless it is used
5 commercially to provide child care, adult care or health care
6 or any combination of those activities;

7 B. a retail tobacco store; provided that, for a
8 retail tobacco store established on or after the effective
9 date of this 2019 act, the store shall be located in a
10 standalone building;

11 C. a cigar bar; provided that, for a cigar bar
12 established on or after the effective date of this 2019 act,
13 the bar shall be located in a standalone building;

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
19 products; provided that secondhand smoke does not infiltrate
20 other indoor workplaces or other indoor public places where
21 smoking is otherwise prohibited under the Dee Johnson Clean
22 Indoor Air Act;

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

25 F. designated outdoor smoking areas;

1 G. private clubs;

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

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

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

15 "24-16-13. 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 a premises
21 subject to the provisions of the Dee Johnson Clean Indoor Air
22 Act shall establish a smokefree area that extends a reasonable
23 distance from any entrances, windows and ventilation systems
24 to any enclosed areas where smoking is prohibited. The
25 reasonable distance shall be a distance sufficient to ensure

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

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