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SENATE BILL 318

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Cisco McSorley

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

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1 this section; and

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

5 (1) means any electronic oral device, whether
6 composed of a heating element and battery or an electronic
7 circuit, that provides a vapor of nicotine or any other
8 substances the use or inhalation of which simulates smoking;
9 and

10 (2) includes any such device, or any part
11 thereof, whether manufactured, distributed, marketed or sold as
12 an e-cigarette, e-cigar, e-pipe or any other product, name or
13 descriptor; but

14 (3) does not include any product regulated as
15 a drug or device by the United States food and drug
16 administration under the Federal Food, Drug, and Cosmetic Act;

17 [~~E.~~] F. "employer" means an individual, a
18 partnership, a corporation or the state or a political
19 subdivision of the state that employs the services of one or
20 more individuals;

21 [~~F.~~] G. "enclosed" means any interior space
22 predominantly or totally bounded on all sides and above by
23 physical barriers, regardless of whether such barriers consist
24 of or include uncovered openings, screened or otherwise
25 partially covered openings or open or closed windows;

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1 ~~[G.]~~ H. "indoor public place" means the enclosed
2 area within any governmental or nongovernmental place to which
3 the public is invited or in which the public is permitted
4 regardless of whether work or public business, meetings or
5 hearings occur at any given time;

6 ~~[H.]~~ I. "indoor workplace" means any enclosed place
7 where one or more persons engage in work, including lobbies,
8 reception areas, offices, conference and meeting rooms,
9 employee cafeterias and lunchrooms, break rooms and employee
10 lounges, classrooms, auditoriums, hallways, stairways, waiting
11 areas, elevators and restrooms and includes all indoor
12 workplaces and enclosed parts regardless of whether work occurs
13 at any given time;

14 ~~[I.]~~ J. "private club" means an organization,
15 whether incorporated or not, that is the owner, lessee or
16 occupant of a building or portion thereof used exclusively for
17 the organization's purposes at all times, that is operated
18 solely for recreational, fraternal, social, patriotic,
19 political, benevolent or athletic purposes, but not for
20 pecuniary gain, and that only sells alcoholic beverages
21 incidental to its operation. The organization shall have
22 bylaws or a constitution to govern its activities and shall
23 have been granted an exemption as a club under the provisions
24 of Section 501 of the Internal Revenue Code of 1986, as
25 amended;

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1 ~~[J-]~~ K. "restaurant" means a coffee shop,
2 cafeteria, private or public school cafeteria or eating
3 establishment and any other eating establishment that gives or
4 offers for sale food to the public, patrons or employees,
5 including kitchens and catering facilities in which food is
6 prepared on the premises for serving elsewhere or a bar area
7 within or attached to the premises;

8 ~~[K-]~~ L. "retail tobacco store" means a retail store
9 used primarily for the sale of tobacco products, e-cigarettes
10 and accessories and in which the sale of other products is
11 merely incidental, including smoke shops, vape shops, cigar
12 shops or hookah lounges, and does not include establishments
13 that offer for sale alcoholic beverages for consumption by
14 patrons on the premises;

15 ~~[L-]~~ M. "secondhand smoke" means smoke emitted from
16 lighted, smoldering or burning tobacco or from an e-cigarette
17 when the smoker is not inhaling, smoke emitted at the
18 mouthpiece during puff drawing and smoke exhaled by the smoker;

19 ~~[M-]~~ N. "smokefree area" means any building or
20 other enclosed space where smoking is prohibited;

21 ~~[N-]~~ O. "smoking" means inhaling, exhaling,
22 burning, carrying or holding any lighted tobacco product,
23 including all types of cigarettes, cigars and pipes and any
24 other lighted tobacco product or an e-cigarette; and

25 ~~[O-]~~ P. "smoking-permitted area" means any building

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1 or other enclosed space where smoking may be permitted;
2 provided that secondhand smoke does not infiltrate any area
3 where smoking is prohibited pursuant to the Dee Johnson Clean
4 Indoor Air Act."

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

7 "24-16-12. SMOKING-PERMITTED AREAS.--Notwithstanding any
8 other provision of the Dee Johnson Clean Indoor Air Act,
9 smoking-permitted areas include the following:

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

14 B. a retail tobacco store;

15 C. a cigar bar;

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

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

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

7 G. designated outdoor smoking areas;

8 H. private clubs;

9 I. a limousine under private hire;

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

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

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

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

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

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

8 (3) ~~[cigarette]~~ tobacco or e-cigarette smoke
9 does not infiltrate other smoke-free work environments as
10 provided for in the Dee Johnson Clean Indoor Air Act; and

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

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

16 "24-16-13. PROHIBITION OF SMOKING NEAR ENTRANCES, WINDOWS
17 AND VENTILATION SYSTEMS.--Smoking is prohibited near entrances,
18 windows and ventilation systems of all workplaces and public
19 places where smoking is prohibited by the Dee Johnson Clean
20 Indoor Air Act. An individual who owns, manages, operates or
21 otherwise controls the use of any premises subject to the
22 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 or e-cigarette smoke and to
4 ensure that tobacco or e-cigarette smoke does not enter the
5 building or facility through entrances, windows, ventilation
6 systems or any other means."

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