

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **26-38-2**, as last amended by Chapter 196, Laws of Utah 1997

35 **26-38-3**, as enacted by Chapter 281, Laws of Utah 1994

36 **26-38-8**, as enacted by Chapter 281, Laws of Utah 1994

37 **63-55b-126**, as last amended by Chapter 90, Laws of Utah 2004

38 REPEALS:

39 **26-38-5**, as enacted by Chapter 281, Laws of Utah 1994



41 *Be it enacted by the Legislature of the state of Utah:*

42 Section 1. Section **26-38-2** is amended to read:

43 **26-38-2. Definitions.**

44 As used in this chapter:

45 (1) "Place of public access" means any enclosed indoor place of business, commerce,
46 banking, financial service, or other service-related activity, whether publicly or privately owned
47 and whether operated for profit or not, to which persons not employed at the place of public
48 access have general and regular access or which the public uses, including:

- 49 (a) buildings, offices, shops, elevators, or restrooms;
- 50 (b) means of transportation or common carrier waiting rooms;
- 51 (c) restaurants, cafes, or cafeterias;
- 52 (d) taverns as defined in Section 32A-1-105, or cabarets;
- 53 (e) shopping malls, retail stores, grocery stores, or arcades;
- 54 (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical
55 sites, auditoriums, or arenas;
- 56 (g) barber shops, hair salons, or laundromats;
- 57 (h) sports or fitness facilities;

58 (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and
59 breakfast" lodging facilities, and other similar lodging facilities, including the lobbies,
60 hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any
61 of these;

62 (j) (i) any child care facility or program subject to licensure or certification under this
63 title, including those operated in private homes, when any child cared for under that license is
64 present; and

65 (ii) any child care, other than child care as defined in Section 26-39-102, that is not
66 subject to licensure or certification under this title, when any child cared for by the provider,
67 other than the child of the provider, is present;

68 (k) public or private elementary or secondary school buildings and educational
69 facilities or the property on which those facilities are located[, ~~but adults may smoke in~~
70 ~~designated smoking areas in private schools or educational facilities or on the grounds of~~
71 ~~private schools or facilities during nonschool hours; and~~];

72 (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or
73 religious organization when used solely by the organization members or their guests or
74 families;

75 (m) any facility rented or leased for private functions from which the general public is
76 excluded and arrangements for the function are under the control of the function sponsor;

77 (n) any workplace that is not a place of public access or a publicly owned building or
78 office but has one or more employees who are not owner-operators of the business; and

79 ~~[(†)]~~ (o) any area where the proprietor or manager of the area has posted a conspicuous
80 sign stating "no smoking", "thank you for not smoking", or similar statement.

81 ~~[(2) "Private club" means a]~~ (p) any private club licensed under Title 32A, Chapter 5,
82 Private Club Liquor Licenses.

83 ~~[(3)]~~ (2) "Publicly owned building or office" means any enclosed indoor place or
84 portion of a place owned, leased, or rented by any state, county, or municipal government, or
85 by any agency supported by appropriation of, or by contracts or grants from, funds derived

86 from the collection of federal, state, county, or municipal taxes.

87 [~~(4)~~] (3) "Smoking" means the possession of any lighted tobacco product in any form.

88 Section 2. Section **26-38-3** is amended to read:

89 **26-38-3. Restriction on smoking in public places and in specified places --**

90 **Exceptions.**

91 (1) [~~Smoking~~] Except as provided in Subsection (2), smoking is prohibited in all
92 enclosed indoor places of public access and publicly owned buildings and offices[~~, except~~
93 ~~under Subsection (2)].~~

94 (2) Subsection (1) does not apply to:

95 [~~(a) (i) any building owned, rented, leased, or otherwise operated by a social, fraternal,~~
96 ~~or religious organization when used solely by the organization members or their guests or~~
97 ~~families; or]~~

98 [~~(ii) any facility rented or leased for private functions from which the general public is~~
99 ~~excluded and arrangements for the function are under the control of the function sponsor;]~~

100 [~~(b) workplace smoking areas as provided in Section 26-38-5;]~~

101 [~~(c) (a) areas not commonly open to the public of owner-operated businesses having~~
102 ~~no employees other than the owner-operator;~~

103 [~~(d) (b) guest rooms in hotels, motels, "bed and breakfast" lodging facilities, and other~~
104 ~~similar lodging facilities, but smoking is prohibited under Subsection (1) in the common areas~~
105 ~~of these facilities, including dining areas and lobby areas;~~

106 [~~(e) (c) before January 1, 2009, taverns, as defined in Section 32A-1-105, that are~~
107 ~~licensed on or before May 15, 2006;~~

108 [~~(f) private clubs; and]~~

109 (d) (i) before January 1, 2007, class A, B, and C private clubs, as defined in Section
110 32A-5-101;

111 (ii) before January 1, 2009, class D private clubs, as defined in Section 32A-5-101, that
112 are licensed on or before May 15, 2006; and

113 [~~(g) (e) separate enclosed smoking areas:~~

114 (i) located in the passenger terminals of an international airport located in the city of
115 the first class;

116 (ii) vented directly to the outdoors; and

117 (iii) certified, by a heating, ventilation, and air conditioning engineer licensed by the
118 state, to prevent the drift of any smoke to any nonsmoking area of the terminal.

119 Section 3. Section **26-38-8** is amended to read:

120 **26-38-8. Penalties.**

121 (1) A first violation of Section 26-38-3[;] or 26-38-4[, ~~or 26-38-5~~] is subject to a civil
122 penalty of not more than \$100.

123 (2) Any second or subsequent violation of Section 26-38-3[;] or 26-38-4[, ~~or 26-38-5~~]
124 is subject to a civil penalty of not less than \$100 and not more than \$500.

125 Section 4. Section **63-55b-126** is amended to read:

126 **63-55b-126. Repeal dates -- Title 26.**

127 (1) Section 26-38-4 is repealed January 1, 2009.

128 (2) Title 26, Chapter 46, "Utah Health Care Workforce Financial Assistance Program,"
129 is repealed July 1, 2007.

130 Section 5. **Repealer.**

131 This bill repeals:

132 Section **26-38-5, Nonpublic workplaces -- Smoking restrictions.**