

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **26-38-2**, as last amended by Chapter 196, Laws of Utah 1997

33 **26-38-3**, as enacted by Chapter 281, Laws of Utah 1994

34 REPEALS:

35 **26-38-4**, as enacted by Chapter 281, Laws of Utah 1994

36 **26-38-5**, as enacted by Chapter 281, Laws of Utah 1994



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

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

40 **26-38-2. Definitions.**

41 As used in this chapter:

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

- 46 (a) buildings, offices, shops, elevators, or restrooms;
- 47 (b) means of transportation or common carrier waiting rooms;
- 48 (c) restaurants, cafes, or cafeterias;
- 49 (d) taverns as defined in Section 32A-1-105, or cabarets;
- 50 (e) shopping malls, retail stores, grocery stores, or arcades;
- 51 (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical
52 sites, auditoriums, or arenas;
- 53 (g) barber shops, hair salons, or laundromats;
- 54 (h) sports or fitness facilities;
- 55 (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and
56 breakfast" lodging facilities, and other similar lodging facilities, including the lobbies,
57 hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any
58 of these;

59 (j) any child care facility subject to licensure under this title, including those operated
60 in private homes, when any child cared for under that license is present;

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

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

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

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

72 ~~[(t)]~~ (o) any area where the proprietor or manager of the area has posted a conspicuous
73 sign stating "no smoking", "thank you for not smoking", or similar statement[-]; and

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

76 ~~[(3)]~~ (2) "Publicly owned building or office" means any enclosed indoor place or
77 portion of a place owned, leased, or rented by any state, county, or municipal government, or
78 by any agency supported by appropriation of, or by contracts or grants from, funds derived
79 from the collection of federal, state, county, or municipal taxes.

80 ~~[(4)]~~ (3) "Smoking" means the possession of any lighted tobacco product in any form.

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

82 **26-38-3. Restriction on smoking in public places and in specified places --**

83 **Exceptions.**

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

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

88 ~~[(a) (i) any building owned, rented, leased, or otherwise operated by a social, fraternal,~~
89 ~~or religious organization when used solely by the organization members or their guests or~~

90 families; or]

91 [(ii) any facility rented or leased for private functions from which the general public is

92 excluded and arrangements for the function are under the control of the function sponsor;]

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

94 [(e)] (a) areas not commonly open to the public of owner-operated businesses having

95 no employees other than the owner-operator;

96 [(d)] (b) guest rooms in hotels, motels, "bed and breakfast" lodging facilities, and other

97 similar lodging facilities, but smoking is prohibited under Subsection (1) in the common areas

98 of these facilities, including dining areas and lobby areas; and

99 [(e) taverns, as defined in Section 32A-1-105;]

100 [(f) private clubs; and]

101 [(g)] (c) separate enclosed smoking areas:

102 (i) located in the passenger terminals of an international airport located in the city of

103 the first class;

104 (ii) vented directly to the outdoors; and

105 (iii) certified, by a heating, ventilation, and air conditioning engineer licensed by the

106 state, to prevent the drift of any smoke to any nonsmoking area of the terminal.

107 Section 3. **Repealer.**

108 This bill repeals:

109 Section **26-38-4, Adjoining private clubs and public places -- Grandfather**

110 **provisions.**

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

Legislative Review Note
as of 9-27-05 1:49 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-21-05 6:59 AM

The Health and Human Services Interim Committee recommended this bill.

AMENDED NOTE

State Impact

While it is estimated that the implementation of the provisions of this bill can be absorbed within existing state resources, this bill may also impact local health departments. Local health departments are responsible for the enforcement of the Indoor Clean Air Act.

Individual and Business Impact

The provisions of this bill could impact some private businesses and owners of facilities used for public purposes. The fiscal impact could not be determined.

Office of the Legislative Fiscal Analyst