

26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **26-38-2**, as last amended by Laws of Utah 2010, Chapter 276

29a **H→ 26-38-7, as enacted by Laws of Utah 1994, Chapter 281 ←H**

30 **63I-1-226**, as last amended by Laws of Utah 2011, Chapter 199

31 ENACTS:

32 **26-38-2.5**, Utah Code Annotated 1953

33 **26-38-2.6**, Utah Code Annotated 1953



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

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

37 **26-38-2. Definitions.**

38 As used in this chapter:

39 (1) "E-cigarette":

40 (a) means any electronic oral device:

41 (i) that provides a vapor of nicotine or other substance; and

42 (ii) which simulates smoking through its use or through inhalation of the device; and

43 (b) includes an oral device that is:

44 (i) composed of a heating element, battery, or electronic circuit; and

45 (ii) marketed, manufactured, distributed, or sold as:

46 (A) an e-cigarette;

47 (B) e-cigar;

48 (C) e-pipe; or

49 (D) any other product name or descriptor, if the function of the product meets the

50 definition of Subsection (1)(a).

51 [H] (2) "Place of public access" means any enclosed indoor place of business,
52 commerce, banking, financial service, or other service-related activity, whether publicly or
53 privately owned and whether operated for profit or not, to which persons not employed at the
54 place of public access have general and regular access or which the public uses, including:

55 (a) buildings, offices, shops, elevators, or restrooms;

56 (b) means of transportation or common carrier waiting rooms;

88 by any agency supported by appropriation of, or by contracts or grants from, funds derived
89 from the collection of federal, state, county, or municipal taxes.

90 ~~[(3)]~~ (4) "Smoking" means:

91 (a) the possession of any lighted or heated tobacco product in any form[-];

92 (b) inhaling, exhaling, burning, or heating a substance containing tobacco or nicotine
93 intended for inhalation through a cigar, cigarette, pipe, or hookah;

94 (c) except as provided in Section 26-38-2.6, using an e-cigarette; or

95 (d) using an oral smoking device intended to circumvent the prohibition of smoking in
96 this chapter.

97 Section 2. Section **26-38-2.5** is enacted to read:

98 **26-38-2.5. Temporary exemption for certain restrictions on heated tobacco.**

99 (1) The definition of "smoking" which prohibits heated tobacco inhaled or exhaled
100 through a hookah does not apply to a place of public access if the place of public access meets
101 the requirements of Subsections (2) and (3).

102 (2) (a) A place of public access shall certify to the department by July 1, 2012, under
103 penalty of perjury, that it meets the requirements of Subsection (3) and should be exempt under
104 this section.

105 (b) The department:

106 (i) shall verify that the place of public access complies with the provisions of
107 Subsection (3) at the time of the certification under Subsection (2)(a);

108 (ii) may ask the local health department with jurisdiction over the place of public
109 access to verify that the place of public access complies with the provisions of Subsection (3);

110 (iii) shall issue a certificate of exemption if the place of public access is found to
111 comply with the provisions of Subsection (3);

112 (iv) may itself, or through the local health department, verify at other times that the
113 place of public access is in compliance with the provisions of Subsection (3); and

114 (v) may in accordance with Section 63J-1-504, impose a fee to recover the cost of
115 certifying the place of public access as exempt under this section and enforce the provisions of
116 this section.

117 (c) A local health department may impose a ~~H~~→ reasonable ←~~H~~ fee to cover the cost of
117a verifying a place of
118 public access complies with the provisions of Subsection (3) at the time of the application

119 under Subsection (2)(a) and during the time of the exemption.

120 (d) Notwithstanding Section 26-38-8, if the department or a local health department
 121 determine that the place of public access has violated any provision of Subsection (3), the
 122 department may impose penalties in accordance with Section 26-23-6.

123 (3) (a) A place of public access must meet the following criteria to claim an exemption
 124 under this section:

125 (i) prior to January 1, 2012:

126 (A) the place of public access had and continues to have a class C or D liquor license;

127 (B) the place of public access sold a mixture of tobacco and other flavors for the
 128 purpose of heating, inhaling and exhaling the tobacco mixture through a hookah pipe in the
 129 place of public access; and

130 (C) the sale of the mixture of tobacco and other flavors for use in a hookah pipe in the
 131 place of public access constituted at least ~~15%~~ 10% ~~of~~ of the establishment's gross
 131a sales; and

132 (ii) during the period of the exemption under this section, the place of public access:

133 (A) shall maintain its class C or D liquor license;

134 (B) shall admit only individuals 21 years of age and older into the place of public
 135 access;

136 (C) shall prominently display signs on the premises and in advertisements that disclose
 137 the dangers of second hand smoke and inhaling tobacco in accordance with administrative rules
 138 adopted by the department;

139 (D) shall require that only tobacco products sold by the place of public access may be
 140 heated, inhaled, and exhaled in the place of public access; and

141 (E) may not sell a product for use in a hookah that contains more than 30% tobacco or
 142 more than .05% nicotine.

143 (4) The department shall adopt administrative rules in accordance with Title 63G,
 144 Chapter 3, Administrative Rulemaking Act, specifying the:

145 (a) written information a facility shall include in a sign posted under Subsection

146 (3)(a)(ii)(D) and in advertisements; and

147 (b) the size and number of signs that shall be posted in a facility.

148 (5) This section sunsets in accordance with Section 63I-1-226.

149 Section 3. Section **26-38-2.6** is enacted to read:

150 26-38-2.6. Restriction on use of e-cigarette in place of public access.151 (1) The prohibition against the use of an e-cigarette in a place of public access does not
152 apply if:153 (a) the use of the e-cigarette occurs in the place of public access that is a retail
154 establishment that sells e-cigarettes and the use is for the purpose of:155 (i) the retailer of an e-cigarette demonstrating to the purchaser of the e-cigarette how to
156 use the e-cigarette; or157 (ii) the customer sampling a product sold by the retailer for use in an e-cigarette; and158 (b) the retailer of e-cigarettes:159 (i) has all required licenses for the possession and sale of e-cigarettes in a place of
160 business;161 (ii) does not permit a person under the age of 19 to enter any part of the premises of the
162 retail establishment in which the e-cigarettes are sold; and163 (iii) the sale of e-cigarettes and substances for use in e-cigarettes constitutes at least
164 75% of the establishment's gross sales.165 (2) This section does not require a county or municipality to issue a license to a person
166 to sell e-cigarettes.167 (3) This section sunsets in accordance with Section 63I-1-226.167a **H→ Section 4. Section 26-38-7 is amended to read:**167b **26-38-7. Enforcement action by proprietors.**167c **(1) An owner or the agent or employee of the owner of a place where smoking is prohibited**
167d **under Subsection 26-38-3(1) who observes a person [in possession of a lighted tobacco product]**
167e **smoking in apparent violation of this chapter shall request the person to [extinguish the tobacco**
167f **product.] stop smoking.**167g **(2) If the person fails to comply, the proprietor or the agent or employee of the proprietor**
167h **shall ask the person to leave the premises. ←H**168 Section **H→ [4] 5 ←H** . Section **63I-1-226** is amended to read:169 **63I-1-226. Repeal dates, Title 26.**170 **(1) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July**
171 **1, 2015.**172 **(2) Section 26-18-12, Expansion of 340B drug pricing programs, is repealed July 1,**
173 **2013.**174 **(3) Section 26-21-23, Licensing of non-Medicaid nursing care facility beds, is repealed**
175 **July 1, 2016.**176 **(4) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2014.**177 **(5) Title 26, Chapter 36a, Hospital Provider Assessment Act, is repealed July 1, 2013.**178 **(6) Section 26-38-2.5 is repealed July 1, 2017.**179 **(7) Section ~~H→ [26-28-1.6] 26-38-2.6 ←H~~ is repealed July 1, 2017.**