

1 **AMENDMENT TO DEFINITION OF SMOKING IN UTAH**

2 **INDOOR CLEAN AIR ACT**

3 2012 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Bradley G. Last**

6 Senate Sponsor: Michael G. Waddoups

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends definitions in the Utah Indoor Clean Air Act and phases in the
11 application of the amended definitions.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends the definition of smoking to include e-cigarettes and heated tobacco
15 products;
- 16 ▶ defines e-cigarette;
- 17 ▶ phases in the application of the amended definition of smoking as it applies to the
18 use of e-cigarettes in a retail establishment that sells e-cigarettes;
- 19 ▶ phases in the application of the definition of smoking as it applies to certain places
20 of public access that allow the use of a hookah; and
- 21 ▶ sunsets the phase in of the application of the amended definition of smoking on July
22 1, 2017.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

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

30 26-38-7, as enacted by Laws of Utah 1994, Chapter 281

31 63I-1-226, as last amended by Laws of Utah 2011, Chapter 199

32 ENACTS:

33 26-38-2.5, Utah Code Annotated 1953

34 26-38-2.6, Utah Code Annotated 1953



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

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

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

39 As used in this chapter:

40 (1) "E-cigarette":

41 (a) means any electronic oral device:

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

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

44 (b) includes an oral device that is:

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

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

47 (A) an e-cigarette;

48 (B) e-cigar;

49 (C) e-pipe; or

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

51 definition of Subsection (1)(a).

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

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

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

- 58 (c) restaurants, cafes, or cafeterias;
- 59 (d) taverns as defined in Section 32B-1-102, or cabarets;
- 60 (e) shopping malls, retail stores, grocery stores, or arcades;
- 61 (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical
62 sites, auditoriums, or arenas;
- 63 (g) barber shops, hair salons, or laundromats;
- 64 (h) sports or fitness facilities;
- 65 (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and
66 breakfast" lodging facilities, and other similar lodging facilities, including the lobbies,
67 hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any
68 of these;
- 69 (j) (i) any child care facility or program subject to licensure or certification under this
70 title, including those operated in private homes, when any child cared for under that license is
71 present; and
- 72 (ii) any child care, other than child care as defined in Section 26-39-102, that is not
73 subject to licensure or certification under this title, when any child cared for by the provider,
74 other than the child of the provider, is present;
- 75 (k) public or private elementary or secondary school buildings and educational
76 facilities or the property on which those facilities are located;
- 77 (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or
78 religious organization when used solely by the organization members or their guests or
79 families;
- 80 (m) any facility rented or leased for private functions from which the general public is
81 excluded and arrangements for the function are under the control of the function sponsor;
- 82 (n) any workplace that is not a place of public access or a publicly owned building or
83 office but has one or more employees who are not owner-operators of the business;
- 84 (o) any area where the proprietor or manager of the area has posted a conspicuous sign
85 stating "no smoking", "thank you for not smoking", or similar statement; and

86 (p) a holder of a club license, as defined in Section 32B-1-102.

87 [~~(2)~~] (3) "Publicly owned building or office" means any enclosed indoor place or
88 portion of a place owned, leased, or rented by any state, county, or municipal government, or
89 by any agency supported by appropriation of, or by contracts or grants from, funds derived
90 from the collection of federal, state, county, or municipal taxes.

91 [~~(3)~~] (4) "Smoking" means:

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

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

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

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

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

99 **26-38-2.5. Temporary exemption for certain restrictions on heated tobacco.**

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

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

106 (b) The department:

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

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

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

113 (iv) may itself, or through the local health department, verify at other times that the

114 place of public access is in compliance with the provisions of Subsection (3); and
115 (v) may in accordance with Section 63J-1-504, impose a fee to recover the cost of
116 certifying the place of public access as exempt under this section and enforce the provisions of
117 this section.

118 (c) A local health department may impose a reasonable fee to cover the cost of
119 verifying a place of public access complies with the provisions of Subsection (3) at the time of
120 the application under Subsection (2)(a) and during the time of the exemption.

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

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

126 (i) prior to January 1, 2012:
127 (A) the place of public access had and continues to have a class C or D liquor license;
128 (B) the place of public access sold a mixture of tobacco and other flavors for the
129 purpose of heating, inhaling and exhaling the tobacco mixture through a hookah pipe in the
130 place of public access; and

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

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

134 (A) shall maintain its class C or D liquor license;
135 (B) shall admit only individuals 21 years of age and older into the place of public
136 access;

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

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

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

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

146 (a) written information a facility shall include in a sign posted under Subsection
147 (3)(a)(ii)(C) and in advertisements; and

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

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

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

151 **26-38-2.6. Temporary exemption for certain restrictions on the use of e-cigarettes.**

152 (1) The prohibition against the use of an e-cigarette in a place of public access does not
153 apply if:

154 (a) the use of the e-cigarette occurs in the place of public access that is a retail
155 establishment that sells e-cigarettes and the use is for the purpose of:

156 (i) the retailer of an e-cigarette demonstrating to the purchaser of the e-cigarette how to
157 use the e-cigarette; or

158 (ii) the customer sampling a product sold by the retailer for use in an e-cigarette; and

159 (b) the retailer of e-cigarettes:

160 (i) has all required licenses for the possession and sale of e-cigarettes in a place of
161 business;

162 (ii) does not permit a person under the age of 19 to enter any part of the premises of the
163 retail establishment in which the e-cigarettes are sold; and

164 (iii) the sale of e-cigarettes and substances for use in e-cigarettes constitutes at least
165 75% of the establishment's gross sales.

166 (2) This section does not require a county or municipality to issue a license to a person
167 to sell e-cigarettes.

168 (3) This section sunsets in accordance with Section 63I-1-226.

169 Section 4. Section **26-38-7** is amended to read:

170 **26-38-7. Enforcement action by proprietors.**

171 (1) An owner or the agent or employee of the owner of a place where smoking is
172 prohibited under Subsection 26-38-3(1) who observes a person [~~in possession of a lighted~~
173 ~~tobacco product~~] smoking in apparent violation of this chapter shall request the person to
174 [~~extinguish the tobacco product~~] stop smoking.

175 (2) If the person fails to comply, the proprietor or the agent or employee of the
176 proprietor shall ask the person to leave the premises.

177 Section 5. Section **63I-1-226** is amended to read:

178 **63I-1-226. Repeal dates, Title 26.**

179 (1) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July
180 1, 2015.

181 (2) Section 26-18-12, Expansion of 340B drug pricing programs, is repealed July 1,
182 2013.

183 (3) Section 26-21-23, Licensing of non-Medicaid nursing care facility beds, is repealed
184 July 1, 2016.

185 (4) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2014.

186 (5) Title 26, Chapter 36a, Hospital Provider Assessment Act, is repealed July 1, 2013.

187 (6) Section 26-38-2.5 is repealed July 1, 2017.

188 (7) Section 26-28-2.6 is repealed July 1, 2017.