

**Representative Bradley G. Last** proposes the following substitute bill:

**AMENDMENT TO DEFINITION OF SMOKING IN UTAH**

**INDOOR CLEAN AIR ACT**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Bradley G. Last**

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ amends the definition of smoking to include e-cigarettes and heated tobacco products;
- ▶ defines e-cigarette;
- ▶ limits the application of the amended definition of smoking as it relates to the use of e-cigarettes in a retail establishment that sells e-cigarettes;
- ▶ phases in the application of the definition of smoking as it applies to certain places of public access that allow hookah smoke; and
- ▶ sunsets the phase-in of the application to hookah pipes in 2017.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



26 AMENDS:

27 **26-38-2**, as last amended by Laws of Utah 2010, Chapter 276

28 **63I-1-226**, as last amended by Laws of Utah 2011, Chapter 199

29 ENACTS:

30 **26-38-2.5**, Utah Code Annotated 1953

31 **26-38-2.6**, Utah Code Annotated 1953



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

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

35 **26-38-2. Definitions.**

36 As used in this chapter:

37 (1) "E-cigarette":

38 (a) means any electronic oral device:

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

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

41 (b) includes an oral device that is:

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

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

44 (A) an e-cigarette;

45 (B) e-cigar;

46 (C) e-pipe; or

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

48 definition of Subsection (1)(a).

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

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

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

55 (c) restaurants, cafes, or cafeterias;

56 (d) taverns as defined in Section 32B-1-102, or cabarets;

- 57 (e) shopping malls, retail stores, grocery stores, or arcades;
- 58 (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical
- 59 sites, auditoriums, or arenas;
- 60 (g) barber shops, hair salons, or laundromats;
- 61 (h) sports or fitness facilities;
- 62 (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and
- 63 breakfast" lodging facilities, and other similar lodging facilities, including the lobbies,
- 64 hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any
- 65 of these;
- 66 (j) (i) any child care facility or program subject to licensure or certification under this
- 67 title, including those operated in private homes, when any child cared for under that license is
- 68 present; and
- 69 (ii) any child care, other than child care as defined in Section 26-39-102, that is not
- 70 subject to licensure or certification under this title, when any child cared for by the provider,
- 71 other than the child of the provider, is present;
- 72 (k) public or private elementary or secondary school buildings and educational
- 73 facilities or the property on which those facilities are located;
- 74 (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or
- 75 religious organization when used solely by the organization members or their guests or
- 76 families;
- 77 (m) any facility rented or leased for private functions from which the general public is
- 78 excluded and arrangements for the function are under the control of the function sponsor;
- 79 (n) any workplace that is not a place of public access or a publicly owned building or
- 80 office but has one or more employees who are not owner-operators of the business;
- 81 (o) any area where the proprietor or manager of the area has posted a conspicuous sign
- 82 stating "no smoking", "thank you for not smoking", or similar statement; and
- 83 (p) a holder of a club license, as defined in Section 32B-1-102.
- 84 ~~[(2)]~~ (3) "Publicly owned building or office" means any enclosed indoor place or
- 85 portion of a place owned, leased, or rented by any state, county, or municipal government, or
- 86 by any agency supported by appropriation of, or by contracts or grants from, funds derived
- 87 from the collection of federal, state, county, or municipal taxes.

88 ~~[(3)]~~ (4) "Smoking" means:  
89 (a) the possession of any lighted or heated tobacco product in any form[-];  
90 (b) inhaling, exhaling, burning, or heating a substance containing tobacco or nicotine  
91 intended for inhalation through a cigar, cigarette, pipe, or hookah;  
92 (c) except as provided in Section 26-38-2.6, using an e-cigarette; or  
93 (d) using an oral smoking device intended to circumvent the prohibition of smoking in  
94 this chapter.

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

96 **26-38-2.5. Temporary exemption for certain restrictions on heated tobacco.**

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

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

103 (b) The department:

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

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

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

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

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

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

118 (d) Notwithstanding Section 26-38-8, if the department or a local health department

119 determine that the place of public access has violated any provision of Subsection (3), the  
120 department may impose penalties in accordance with Section 26-23-6.

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

123 (i) prior to January 1, 2012:

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

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

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

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

131 (A) shall maintain its class D liquor license;

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

134 (C) shall maintain a record for each person who enters the place of public access  
135 indicating that the person acknowledges that tobacco is used in the establishment and  
136 acknowledges the dangers of second hand smoke and tobacco use with hookahs in accordance  
137 with administrative rules adopted by the department;

138 (D) shall prominently display signs on the premises that disclose the dangers of second  
139 hand smoke and inhaling tobacco through a hookah in accordance with administrative rules  
140 adopted by the department;

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

143 (F) may not sell a product for use in a hookah that contains more than 20% tobacco.

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:

147 (i) supply to a customer under Subsection (3)(a)(ii)(C); and

148 (ii) include in a sign posted under Subsection (3)(a)(ii)(D); and

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

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

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

152 **26-38-2.6. Restriction on use of e-cigarette in place of public access.**

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

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

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

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

160 (b) the retailer of e-cigarettes:

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

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

165 (iii) the sale of e-cigarettes and substances for use in e-cigarettes constitutes at least  
166 75% of the establishment's gross sales.

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

169 Section 4. Section **63I-1-226** is amended to read:

170 **63I-1-226. Repeal dates, Title 26.**

171 (1) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July  
172 1, 2015.

173 (2) Section 26-18-12, Expansion of 340B drug pricing programs, is repealed July 1,  
174 2013.

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

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

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

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