

Representative Brian Doughty 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

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends definitions in the Utah Indoor Clean Air Act and exempts certain establishments from 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; and
- ▶ exempts certain establishments from the amended definition of smoking.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

ENACTS:



26 26-38-2.5, Utah Code Annotated 1953

27 26-38-2.6, Utah Code Annotated 1953



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

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

31 **26-38-2. Definitions.**

32 As used in this chapter:

33 (1) "E-cigarette":

34 (a) means any electronic oral device:

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

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

37 (b) includes an oral device that is:

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

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

40 (A) an e-cigarette;

41 (B) e-cigar;

42 (C) e-pipe; or

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

44 definition of Subsection (1)(a).

45 ~~[(1)]~~ (2) "Place of public access" means any enclosed indoor place of business,
46 commerce, banking, financial service, or other service-related activity, whether publicly or
47 privately owned and whether operated for profit or not, to which persons not employed at the
48 place of public 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 32B-1-102, 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;
- 70 (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or
- 71 religious organization when used solely by the organization members or their guests or
- 72 families;
- 73 (m) any facility rented or leased for private functions from which the general public is
- 74 excluded and arrangements for the function are under the control of the function sponsor;
- 75 (n) any workplace that is not a place of public access or a publicly owned building or
- 76 office but has one or more employees who are not owner-operators of the business;
- 77 (o) any area where the proprietor or manager of the area has posted a conspicuous sign
- 78 stating "no smoking", "thank you for not smoking", or similar statement; and
- 79 (p) a holder of a club license, as defined in Section 32B-1-102.
- 80 ~~[(2)]~~ (3) "Publicly owned building or office" means any enclosed indoor place or
- 81 portion of a place owned, leased, or rented by any state, county, or municipal government, or
- 82 by any agency supported by appropriation of, or by contracts or grants from, funds derived
- 83 from the collection of federal, state, county, or municipal taxes.
- 84 ~~[(3)]~~ (4) "Smoking" means:
- 85 (a) the possession of any lighted or heated tobacco product in any form[-];
- 86 (b) inhaling, exhaling, burning, or heating a substance containing tobacco or nicotine
- 87 intended for inhalation through a cigar, cigarette, pipe, or hookah;

88 (c) except as provided in Section 26-38-2.6, using an e-cigarette; or
89 (d) using an oral smoking device intended to circumvent the prohibition of smoking in
90 this chapter.

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

92 **26-38-2.5. Hookah establishment exemption from Indoor Clean Air Act.**

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

96 (2) (a) A place of public access shall certify to the department under penalty of perjury,
97 that it meets the requirements of Subsection (3) and should be exempt from certain provisions
98 of the Utah Indoor Clean Air Act under the provisions of this section.

99 (b) The department:

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

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

104 (iii) shall issue a certificate of exemption from certain provisions of the Utah Indoor
105 Clean Air Act if the place of public access is found to comply with the provisions of
106 Subsection (3);

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

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

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

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

118 (3) A place of public access must meet the following criteria to claim an exemption

119 from certain provision of the Utah Indoor Clean Air Act under this section:

120 (a) the place of public access must have and maintain a class C or D liquor license;

121 (b) the place of public access sells or intends to sell a mixture of tobacco and other
122 flavors for the purpose of heating, inhaling and exhaling the tobacco mixture through a hookah
123 pipe in the place of public access;

124 (c) the sale of the mixture of tobacco and other flavors for use in a hookah pipe in the
125 place of public access constitutes or will constitute at least 10% of the establishment's gross
126 sales;

127 (d) the place of public access shall admit only individuals 21 years of age and older
128 into the place of public access;

129 (e) the place of public access shall prominently display signs on the premises and in
130 advertisements that disclose the dangers of secondhand smoke and inhaling tobacco in
131 accordance with administrative rules adopted by the department;

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

134 (g) the place of public access may not sell a product for use in a hookah that contains
135 more than 30% tobacco or more than .05% nicotine.

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

138 (a) written information a facility shall include in a sign posted under Subsection (3)(e)
139 and in advertisements; and

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

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

142 **26-38-2.6. Restriction on use of e-cigarette in place of public access.**

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

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

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

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

150 (b) the retailer of e-cigarettes:
151 (i) has all required licenses for the possession and sale of e-cigarettes in a place of
152 business;
153 (ii) does not permit a person under the age of 19 to enter any part of the premises of the
154 retail establishment in which the e-cigarettes are sold; and
155 (iii) the sale of e-cigarettes and substances for use in e-cigarettes constitutes at least
156 75% of the establishment's gross sales.
157 (2) This section does not require a county or municipality to issue a license to a person
158 to sell e-cigarettes.