

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

Senate Sponsor: Michael G. Waddoups

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;
- ▶ phases in 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 of the definition of smoking in on July 1, 2017.

Money Appropriated in this Bill:

None

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

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

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

34

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 [(+)] (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;

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

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

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

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

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

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

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

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

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

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

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

(b) The department:

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

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

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

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

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

(c) A local health department may impose a ~~H~~→ reasonable ←~~H~~ fee to cover the cost of verifying a place of

public access complies with the provisions of Subsection (3) at the time of the application

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

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

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

(i) prior to January 1, 2012:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) the retailer of e-cigarettes:

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

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

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

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

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

Ĥ→ Section 4. Section 26-38-7 is amended to read:**26-38-7. Enforcement action by proprietors.**

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

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

Section ~~Ĥ→~~ [4] ~~5~~ ~~←Ĥ~~ . Section 63I-1-226 is amended to read:

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

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

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

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

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

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

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

(7) Section ~~Ĥ→~~ [26-28-1.6] 26-38-2.6 ~~←Ĥ~~ is repealed July 1, 2017.