

Utah

Indoor Clean Air Act

26-38-1. Title.

This chapter is known as the "Utah Indoor Clean Air Act."

26-38-2. Definitions.

As used in this chapter:

- (1) "Place of public access" means any enclosed indoor place of business, commerce, banking, financial service, or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which persons not employed at the place of public access have general and regular access or which the public uses, including:
 - (a) buildings, offices, shops, elevators, or restrooms;
 - (b) means of transportation or common carrier waiting rooms;
 - (c) restaurants, cafes, or cafeterias;
 - (d) taverns 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) any child care facility subject to licensure under this title, including those operated in private homes, when any child cared for under that license is present;
 - (k) public or private elementary or secondary school buildings and educational facilities or the property on which those facilities are located, but adults may smoke in designated smoking areas in private schools or educational facilities or on the grounds of private schools or facilities during nonschool hours; and
 - (l) 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.
- (2) "Private club" means a private club licensed under Title 32A, Chapter 5, Private Club Liquor Licenses.
- (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.
- (4) "Smoking" means the possession of any lighted tobacco product in any form.

26-38-3. Restriction on smoking in public places and in specified places -- Exceptions.

- (1) Smoking is prohibited in all enclosed indoor places of public access and publicly owned buildings and offices, except under Subsection (2).
- (2) Subsection (1) does not apply to:
 - (a) (i) 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; or (ii) 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;
 - (b) workplace smoking areas as provided in Section 26-38-5;
 - (c) areas not commonly open to the public of owner-operated businesses having no employees other than the owner-operator;
 - (d) guest rooms in hotels, motels, "bed and breakfast" lodging facilities, and other similar lodging facilities, but smoking is prohibited under Subsection (1) in the common areas of these facilities, including dining areas and lobby areas;
 - (e) taverns, as defined in Section 32A-1-105;
 - (f) private clubs; and
 - (g) separate enclosed smoking areas:
 - (i) located in the passenger terminals of an international airport located in the city of the first class;
 - (ii) vented directly to the outdoors; and
 - (iii) certified, by a heating, ventilation, and air conditioning engineer licensed by the state, to prevent the drift of any smoke to any nonsmoking area of the terminal.

26-38-3.5. Smoking ban exemption for Native American ceremony.

- (1) A person is exempt from the restrictions of Section 26-38-3 if the person:
 - (a) is a member of an American Indian tribe whose members are recognized as eligible for the special programs and services provided by the United States to American Indians who are members of those tribes;
 - (b) is an American Indian who actively practices an American Indian religion, the origin and interpretation of which is from a traditional American Indian culture;
 - (c) is smoking tobacco using the traditional pipe of an American Indian tribal religious ceremony, of which tribe the person is a member, and is smoking the pipe as part of that ceremony; and
 - (d) the ceremony is conducted by a pipe carrier, Indian spiritual person, or medicine person recognized by the tribe of which the person is a member and the Indian community.
- (2) This section takes precedence over Section 26-38-3.
- (3) A religious ceremony using a traditional pipe under this section is subject to any applicable state or local law, except as provided in this section.

26-38-4. Adjoining private clubs and public places -- Grandfather provisions.

- (1) (a) If a private club and an adjoining place of public access as described under Subsection (b) share air space or ventilation on January 1, 1995, smoking is prohibited in the place of public access, but smoking is allowed in the private club under Section 26-38-3.

- (b) Subsection (1)(a) applies to any place of public access that:
 - (i) on January 1, 1995, is in operation or regarding which actual physical construction has begun; and
 - (ii) adjoins or will adjoin when completed a private club that on January 1, 1995 is licensed under Title 32A, Chapter 5, Private Club Liquor Licenses, and is in operation.
- (2) If a place of public access is not in operation or actual physical construction of the place has not begun on January 1, 1995, the place of public access may not adjoin a private club that allows smoking unless the place of public access:
 - (a) is separated from the adjoining private club by a continuous physical barrier;
 - (b) does not share air space with the private club; and
 - (c) has ventilation completely separate from that of the private club.

26-38-5. Nonpublic workplaces -- Smoking restrictions.

- (1) (a) An employer who operates a workplace that is not a place of public access or a publicly owned building or office shall establish or negotiate through the collective bargaining process a written smoking policy before February 1, 1995, or within 30 days after becoming an employer subject to this section.
- (b) If the employer employs fewer than ten full-time employees on a regular basis, the policy need not be in writing.
- (2) The policy shall:
 - (a) prohibit smoking in the workplace;
 - (b) restrict smoking to designated enclosed smoking areas; or
 - (c) permit smoking in designated unenclosed smoking areas if the layout of the workplace prevents smoke in the work areas of all nonsmoking employees in the workplace, and 3/4 of the employees in the workplace agree.
- (3) If the local health department determines the smoking areas designated under Subsection (2)(b) or (c) do not effectively prevent smoke in the work areas of nonsmoking employees, the local health department shall require that the employer prohibit smoking in the workplace through a hearing procedure under Section 26-38-9.

26-38-6. Local ordinances.

This chapter supersedes any ordinance enacted by the governing body of a political subdivision that restricts smoking and that is not essentially identical to the provisions of this chapter.

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 in apparent violation of this chapter shall request the person to extinguish the tobacco product.
- (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.

26-38-8. Penalties.

- (1) A first violation of Section 26-38-3, 26-38-4, or 26-38-5 is subject to a civil penalty of not more than \$100.
- (2) Any second or subsequent violation of Section 26-38-3, 26-38-4, or 26-38-5 is subject to a civil penalty of not less than \$100 and not more than \$500.

26-38-9. Enforcement of chapter.

- (1) The state Department of Health and local health departments shall:
 - (a) enforce this chapter and shall coordinate their efforts to promote the most effective enforcement of this chapter; and
 - (b) impose the penalties under Subsection 26-38-8 in accordance with this section.
- (2) When enforcing this chapter, the state Department of Health and the local health departments shall notify persons of alleged violations of this chapter, conduct hearings, and impose penalties in accordance with Title 63, Chapter 46b, Administrative Procedures Act.
- (3) Civil penalties collected under this section by:
 - (a) a local health department shall be paid to the treasurer of the county in which the violation was committed; and
 - (b) the state Department of Health shall be deposited in the General Fund.