

# **Utah Indoor Clean Air Act Statute and Rule**

**Utah Department of Health  
September 2009**

**The TRUTH**

## **Introduction**

In 1994 the Utah State Legislature passed the current Utah Indoor Clean Air Act, Utah which went into effect January 1, 1995. Subsequent amendments have been made to the Act in 2006 and 2007. A rule for the Utah Indoor Clean Air Act has also been developed and was revised October 31, 2007. Owners, agents, or operators of places that fall under the auspices of the Act are required to meet requirements of both the Utah Indoor Clean Air Act statute and the rule.

This publication is designed to give readers information about both the statute and rule in one publication. This information is provided for educational purposes only and is not meant to replace more formal/appropriate sources, e.g. – The Utah Code, for legal or other similar uses.

While care has been taken to reproduce the statute and rule in their entirety, the Tobacco Prevention and Control Program, the Utah Department of Health, and individual employees are not responsible for any omissions or errors.

For more specific information go to the Tobacco Prevention and Control Program web site: [www.tobaccofreeutah.org](http://www.tobaccofreeutah.org) or to call your local health department.

Assistance is also available from the following sources:

### **Mailing Address:**

Attn: SH  
Tobacco Prevention and Control Program  
Utah Department of Health  
PO Box 142106  
Salt Lake City, UT 84114-2106

### **Telephone Contacts:**

**1-877-220-3466 or**

(801)-538-6260 or (801)-538-6754

### **Fax:**

(801) 538-9303, Attention SH

### **Internet:**

<http://www.tobaccofreeutah.org/>

## \*Utah Indoor Clean Air Act Statute

### Sections

<b>26-38-1.</b>	<b>Title</b>
<b>26-38-2.</b>	<b>Definitions</b>
<b>26-38-3.</b>	<b>Restrictions on smoking in public places and in specified places– Exceptions</b>
<b>26-38-3.5</b>	<b>Smoking ban exemption for Native American ceremony</b>
<b>26-38-4.</b>	<b>Adjoining private clubs and public places– Grandfather provisions</b>
<b>26-38-6</b>	<b>Local ordinances</b>
<b>26-38-7.</b>	<b>Enforcement action by proprietors</b>
<b>26-38-8.</b>	<b>Penalties</b>
<b>26-38-9.</b>	<b>Enforcement of chapter</b>

### **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 as defined in Section **32A-1-105**, 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 rest rooms 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; and
  - (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.
  - (p) a club licensed under Title 32A, Chapter 5, Club Licenses.
- (2) "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) "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) Except as provided in Subsection (2), smoking is prohibited in all enclosed indoor places of public access and publicly owned building and offices.
- (2) Subsection (1) does not apply to:
  - (a) areas not commonly open to the public of owner-operated businesses having no employees other than the owner-operator;
  - (b) 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;
  - (c) separate enclosed smoking areas
    - (i) located in the passenger terminals of an international airport located in the city of the first class; vented directly to the outdoors; and
    - (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.

**26-38-6. Local ordinances.**

- (1) This chapter supersedes any ordinance enacted by the governing body of a political subdivision that restricts smoking in a place of public access defined in Section 26-38-2 and that is not essentially identical to the provisions of this chapter
- (2) This chapter does not supersede an ordinance enacted by the governing body of a political subdivision that restricts smoking in outdoor places of public access which are owned or operated by:
  - (a) a political subdivision as defined in Section 17B-2-101;
  - (b) a state institution of higher education; or
  - (c) a state institution of public education

**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 Subsections 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 or 26-38-4 is subject to a civil penalty of not more than \$100
- (2) Any second or subsequent violation of Section 26-38-3 or 26-38-4 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.

## **\*Utah Indoor Clean Air Act Rule**

### **R392-510. Utah Indoor Clean Air Act.**

- R392-510-1. Authority.**
- R392-510-2. Definitions.**
- R392-510-3. Responsibility for Compliance.**
- R392-510-4. Proprietor Right to Prohibit Smoking.**
- R392-510-5. Smoking Prohibited Entirely in Places of Public Access and Publicly Owned Buildings and Offices.**
- R392-510-6. Requirements for Smoking Permitted Areas.**
- R392-510-7. HVAC System Documentation.**
- R392-510-8. Operation and Maintenance of HVAC Systems.**
- R392-510-9. Protection of Air Used for Ventilation.**
- R392-510-10. Educational and Cultural Activities Not Exempted.**
- R392-510-11. Private Dwellings Which Are Places of Employment.**
- R392-510-12. Signs and Public Announcements.**
- R392-510-14. Discrimination.**

#### **R392-510-1. Authority.**

- (1) This rule is authorized by Sections 26-1-30(2), 26-15-12, and Title 26 Chapter 38.
- (2) This rule does not preempt other restrictions on smoking that are otherwise allowed by law.

#### **R392-510-2. Definitions.**

The definitions in Section 26-38-2 apply to this rule in addition to the following:

- (1) "Agent" means the person to whom a building owner has delegated the maintenance and care of the building.
- (2) "Area" means a three dimensional space.
- (3) "Building" means an entire free standing structure enclosed by exterior walls.
- (4) "Building owner" means the person(s) who has an ownership interest in any public or private building.
- (5) "Employer" means any individual, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons.
- (6) "Enclosed" means space between a floor and ceiling which is designed to be surrounded on all sides at any time by solid walls, screens, windows or similar structures (exclusive of doors and passageways) which extend from the floor to the ceiling.
- (7) "Executive Director" means the Executive Director of the Utah Department of Health or his designee.
- (8) "Facility" means any part of a building, or an entire building.
- (9) "HVAC system" means the collective components of a heating, ventilation and air conditioning system.
- (10) "Local Health Officer" means the director of the jurisdictional local health department as defined in Title 26A, Chapter 1, or his designee.
- (11) "Nonsmoker" means a person who has not smoked a tobacco product in the preceding 30 days.

- (12) "Operator" means a person who leases a place from a building owner or controls, operates or supervises a place.
- (13) "Place" means any "place of public access", or "publicly owned building or office", as defined in Title 26, Chapter 38.
- (14) "Workplace" means any enclosed space, including a vehicle, in which one or more individuals perform any type of service or labor for consideration of payment under any type of employment relationship. This includes such places wherein individuals gratuitously perform services for which individuals are ordinarily paid.

**R392-510-3. Responsibility for Compliance.**

Where this rule imposes a duty on a building owner, agent, or operator, each is independently responsible to assure compliance and each may be held liable for noncompliance.

**R392-510-4. Proprietor Right to Prohibit Smoking.**

- (1) The owner, agent or operator of a place may prohibit smoking anywhere on the premises.
- (2) The owner, agent or operator of a place may also prohibit smoking anywhere outdoors on the premises.

**R392-510-5. Smoking Prohibited Entirely in Places of Public Access and Publicly Owned Buildings and Offices.**

Places listed in Section 26-38-2(1)(a) through (p) are places of public access and smoking is prohibited in them except as provided for in Section 26-38-3(2).

**R392-510-6. Requirements for Smoking Permitted Areas.**

- (1) Any enclosed area where smoking is permitted must be designed and operated to prevent exposure of persons outside the area to tobacco smoke generated in the area.
- (2) If a lodging facility permits smoking as provided in Section 26-38-3(2)(b) in designated smoking-allowed guest rooms, or if a nursing home, assisted living facility, small health care facility, or hospital with a certified swing-bed program permits smoking as provided in Section 26-38-3(2)(b) in designated smoking-allowed private residential sleeping rooms, the facility's air handling system or systems must not allow air from any smoking-allowed area to mix with air in or to be used in:
  - (a) any part of the facility defined as a place of public access in Section 26-38-2(1);
  - (b) another room designated as a non-smoking room; or
  - (c) common areas of the facility, including dining areas, lobby areas and hallways.
  - (d) If an operator of a lodging facility chooses to modify the status of a room from a smoking to a non- smoking room, then the operator shall perform a full deep cleaning of the room. The deep cleaning shall include cleaning of carpets, bedding, drapes, walls, and any other object in the room which absorbs smoking particles or smoking fumes.
- (3) A Class B and Class D private club licensed under Title 32A, Chapter 5, Private Club Liquor Licenses, operating and sharing air space with an adjoining place of public access as of January 1, 1995 does not have to meet the requirements of Subsection R392-510-6(1) if the adjoining place of public access is in operation or construction footers were completed by January 1, 1995. This exemption is only effective before January 1, 2009, at which time smoking is prohibited in Class B and Class D private clubs.
- (4) Smoking may be permitted in vehicles that are workplaces when not occupied by nonsmokers.

**R392-510-7. HVAC System Documentation.**

- (1) If a building has a smoking-permitted area under Section 26-38-3(2), the building owner must obtain and keep on file a signed statement from an air balancing firm certified by the Associated Air Balance Council or the National Environmental Balancing Bureau, or an industrial hygienist certified by the American Board of Industrial Hygiene that the smoking permitted area meets the requirements of Subsections R392-510-6(1). If a building's HVAC System is altered in any way, the building owner must obtain new certification on the system.
- (2) The building owner must provide the information required in Subsection R392-510-7(1) within three working days upon request from the operator, executive director or local health officer.
- (3) The operator must provide the information required in Subsection R392-510-7(1) within five working days upon the request of the executive director or local health officer.
- (4) The building owner must provide the HVAC operation specifications and maintenance guidelines to the HVAC operation and maintenance personnel or contractor. The maintenance guidelines must include the manufacturer's recommended procedures and time lines for maintenance of HVAC system components. If the manufacturer's recommended procedures for operation and maintenance of the HVAC system are not available, the building owner must obtain and use guidelines developed by a mechanical engineer licensed by the State of Utah who has expertise in the design and evaluation of HVAC systems or by a mechanical contractor licensed by the State of Utah who has expertise in the repair and maintenance of HVAC systems.
- (5) The building owner must maintain HVAC inspection and maintenance records or logs for the three previous years and must make them available to the operator, executive director or local health officer within three working days of a request.
- (6) The operator must make the record or logs required in Subsection R392-510-7(5) available to the executive director or local health officer within five working days of a request.
- (7) The records or logs required in Subsection R392-510-7(5) must include:
  - (a) The specific maintenance and repair action taken, and reasons for actions taken;
  - (b) The name and affiliation of the individual performing the work; and
  - (c) The date of the inspection or maintenance activity.

**R392-510-8. Operation and Maintenance of HVAC Systems.**

- (1) The building owner, agent, or operator of a place where smoking is permitted under Section 26-38-3(2) shall identify a person responsible for the operation and maintenance of the HVAC system.
- (2) The building owner, agent, or operator of a place where smoking is permitted under Section 26-38-3(2) must maintain and operate the HVAC system to meet the requirements of Subsections R392-510-6.
- (3) The building owner, agent, or operator of a place where smoking is permitted under Section 26-38-3(2) must cause the HVAC system components to be inspected, adjusted, cleaned, and calibrated according to the manufacturer's recommendations, or replaced as specified in the maintenance guidelines required in Subsection R392-510-7(4). The building owner, agent, or operator's experience with the HVAC system may establish that more frequent maintenance activities are required.
- (4) Visual or olfactory observation is sufficient to determine whether a smoking-permitted area meets the requirements of Section R392-510-6.

**R392-510-9. Protection of Air Used for Ventilation.**

- (1) Smoking is not permitted within 25 feet of any entrance-way, exit, open window, or air intake of a building where smoking is prohibited.
- (2) Ashtrays may be placed near entrances only if they have durable and easily readable signage indicating that the ashtray is provided for convenience only and the area around it is not a smoking area. The sign shall include a reference to the 25 foot prohibition.
- (3) An employer shall establish a policy to prohibit employee smoking within 25 feet of any entrance-way, exit, open window, or air intake of a building where smoking is prohibited.

**R392-510-10. Educational and Cultural Activities Not Exempted.**

- (1) Educational facilities, as used in the Utah Indoor Clean Air Act, means any facility used for instruction of people, including preschools, elementary and middle schools, junior and senior high schools.
- (2) Smoking is prohibited in facilities used by, vocational schools, colleges and universities, and any other facility or educational institution operated by a commercial enterprise or nonprofit entity, including hotel, motel, and convention center rooms, for the purpose of providing academic classroom instruction, trade, craft, computer or other technical or professional training, or instruction in dancing, artistic, musical or other cultural skills as well as all areas supportive of instruction including classrooms, lounges, lecture halls, study areas and libraries

**R392-510-11. Private Dwellings Which Are Places of Employment.**

- (1) A private dwelling is subject to these rules while an individual who does not reside in the dwelling is engaged to perform services in the dwelling on a regular basis is present. This includes situations where an individual performs services such as, but not limited to:
  - (a) domestic services;
  - (b) secretarial services for a home-based business; or
  - (c) bookkeeping services for a home-based business.
- (2) In a private dwelling in which a business or service is operated and into which the public enters for purposes related to the business or service smoking is prohibited in the business or service area during hours when the dwelling is open to the public.
- (3) A private dwelling in which an individual is employed on a nonregular basis only is not subject to these rules. This includes situations where individuals perform services such as:
  - (a) Baby-sitting services;
  - (b) Trade services for the owner of the dwelling or individuals residing in the dwelling such as those services performed by plumbers, electricians and remodelers;
  - (c) Emergency medical services;
  - (d) Home health services; and
  - (e) Part-time housekeeping services.

**R392-510-12. Signs and Public Announcements.**

Signs required in this section must be easily readable and must not be obscured in any way. The words "No Smoking" must be not less than 1.5 inches in height. If the international "No Smoking" symbol is used alone, it must be at least 4 inches in diameter.

- (1) In a place where smoking is prohibited entirely, the building owner, agent, or operator must conspicuously post a sign using the words, "No smoking is permitted in this establishment" or a similar statement, which shall also include the international no-smoking symbol, on all entrances or in a position clearly visible on entry into the place.

- (2) In a place where smoking is partially allowed, the building owner, agent, or operator must conspicuously post a sign using the words, "No smoking is permitted except in designated areas" or a similar statement, which shall also include the international no-smoking symbol, on all entrances or in a position clearly visible on entry into the place.
- (3) In a place where smoking is allowed in its entirety, the building owner, agent, or operator must conspicuously post a sign using the words, "This establishment is a smoking area in its entirety" or similar statement.
- (4) The building owner, agent, or operator must post a sign at all smoking-permitted areas provided for under Section 26-38-3(2)(a), (b), and (c). The sign must have the words, "smoking permitted" or similar wording and include the international smoking symbol.
- (5) The building owner, agent, or operator must post a sign inside the exit of all smoking-permitted areas, if the exit leads to a smoking-prohibited area. The sign must have the words, "smoking not permitted beyond this point" or similar wording and include the international no-smoking symbol.
- (6) In public lodging facilities that designate guest rooms as smoking allowed, the building owner, agent, or operator must conspicuously post a permanent sign on the smoking-allowed guest room door and meet the requirements of R392-510-6(1) and (2).
- (7) In nursing homes, assisted living facilities, small health care facilities and hospitals with a certified swing-bed program that designate private residential sleeping rooms as "smoking allowed," the building owner, agent, or operator must conspicuously post a permanent sign on the door and meet the requirements of R392-510-6(1) and (2).
- (8) The building owner, agent, or operator of an airport terminal, bus station, train station, or similar place must provide announcements on a public address system as often as necessary but not less than four times per hour during the hours that the place is open to the public, as follows:
  - (a) If smoking is not permitted, the announcements shall convey that the Utah Indoor Clean Air Act prohibits smoking in the place.
  - (b) If smoking is partially permitted, the announcements shall convey that the Utah Indoor Clean Air Act requires smokers to smoke only in those areas specifically designated for smoking.
- (9) The building owner, agent, or operator of a sports arena, convention center, special events center, concert hall or other similar place must provide announcements on a public address system prior to the beginning of any event, at intermissions, at the conclusion of the event and any other break in the program or event, as follows:
  - (a) If smoking is not permitted, the announcements shall convey that the Utah Indoor Clean Air Act prohibits smoking in the place.
  - (b) If smoking is partially permitted, the announcements shall convey that the Utah Indoor Clean Air Act requires smokers to smoke only in those areas specifically designated for smoking.
- (10) The building owner, agent, or operator of a large place, such as an airport, university, hotel or motel, or sports arena may, in writing, request the assistance of the local health officer to establish an effective signage and public announcements plan. The local health officer may cause the plan to be modified at any time to protect nonsmokers from being exposed to tobacco smoke.
- (11) Buildings that are places of worship operated by a religious organization are not required to post signs.

**R392-510-14. Discrimination.**

An employer may not discriminate or take any adverse action against an employee or applicant because that person has sought enforcement of the provisions of Title 26, Chapter 38, Rule R392-510, the smoking policy of the workplace or otherwise protests the smoking of others.