

SECOND HAND SMOKE AMENDMENTS

1997 GENERAL SESSION

STATE OF UTAH

Sponsor: Lane Beattie

AN ACT RELATING TO HEALTH; CLARIFYING THAT DRIFTING TOBACCO SMOKE IS A NUISANCE UNDER SPECIFIED CIRCUMSTANCES; PROVIDING THAT RESIDENTIAL UNIT RENTAL AND PURCHASE AGREEMENTS MAY PROHIBIT GENERATION OF TOBACCO SMOKE; AND PROVIDING LEGISLATIVE INTENT.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

57-8-16, as enacted by Chapter 111, Laws of Utah 1963

57-22-5, as enacted by Chapter 314, Laws of Utah 1990

78-38-1, as last amended by Chapter 69, Laws of Utah 1996

ENACTS:

78-35-.5, Utah Code Annotated 1953

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

Section 1. Section **57-8-16** is amended to read:

57-8-16. Contents of bylaws.

The bylaws may provide for the following:

- (1) the establishment of a management committee, the number of persons constituting the committee and the method of selecting the members of the committee; the powers and duties of the management committee; and whether or not the management committee may engage the services of a manager;
- (2) the method of calling meetings of the unit owners; what percentage of the unit owners shall constitute a quorum, and be authorized to transact business;
- (3) the maintenance, repair, and replacement of the common areas and facilities and payment therefore;
- (4) the manner of collecting from the unit owners their share of the common expenses;

- (5) the designation and removal of personnel necessary for the maintenance, repair, and replacement of the common areas and facilities;
- (6) the method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities;
- (7) (a) restrictions on and requirements respecting the use and maintenance of the units and the use of the common areas and facilities as are designed to prevent unreasonable interference with the use of their respective units and of the common areas and facilities by the several unit owners; and
(b) restrictions regarding the use of the units may include other prohibitions on, or allowance of, smoking tobacco products;
- (8) the percentage of votes required to amend the bylaws; and
- (9) other provisions as may be considered necessary for the administration of the property consistent with this act.

Section 2. Section **57-22-5** is amended to read:

57-22-5. Renter's duties – Cleanliness and sanitation – Compliance with written agreement – Destruction of property, interference with peaceful enjoyment prohibited.

- (1) Each renter shall:
 - (a) comply with the rules of the board of health having jurisdiction in the area in which the residential rental unit is located which materially affect physical health and safety;
 - (b) maintain the premises occupied in a clean and safe condition and shall not unreasonably burden any common area;
 - (c) dispose of all garbage and other waste in a clean and safe manner;
 - (d) maintain all plumbing fixtures in as sanitary a condition as the fixtures permit;
 - (e) use all electrical, plumbing, sanitary, heating, and other facilities and appliances in a reasonable manner;
 - (f) occupy the residential rental unit in the manner for which it was designed, but the renter may not increase the number of occupants above that specified in the rental agreement without written permission of the owner;
 - (g) be current on all payments required by the rental agreement; and
 - (h) comply with all appropriate requirements of the rental agreement between the owner and the renter. Which may include either a prohibition on, or the allowance of, smoking tobacco products within the residential rental unit, or on the premises, or both.
- (2) No renter may:

- (a) intentionally or negligently destroy, deface, damage, impair, or remove any part of the residential rental unit or knowingly permit any person to do so;
- (b) interfere with the peaceful enjoyment of the residential rental unit of another renter; or
- (c) unreasonably deny access to, refuse entry to, or withhold consent to enter the residential rental unit to the owner, agent, or manager for the purpose of making repairs to the unit.

Section 3. Section **78-38-.5** is enacted to read:

78-38-.5. Legislative intent.

(1) The Legislature finds:

(a) the federal Environmental Protection Agency (EPA) has determined that environmental tobacco smoke is a Group A carcinogen, in the same category as other cancer-causing chemicals such as asbestos;

(b) the EPA has determined that there is no acceptable level of exposure to Class A carcinogens; and

(c) the EPA has determined that exposure to environmental tobacco smoke also causes an increase in respiratory diseases and disorders among exposed persons.

(2) The Legislature finds that environmental tobacco smoke generated in a rental or condominium unit may drift into other units, exposing the occupants of those units to tobacco smoke, and that standard construction practices are not effective in preventing this drift of tobacco smoke.

(3) The Legislature further finds that persons who desire to not be exposed to drifting environmental tobacco smoke should be able to determine in advance of entering into a rental, lease, or purchase agreement whether the subject unit may be exposed to environmental tobacco smoke.

Section 4. Section 78-38-1 is amended to read:

78-38-1. Nuisance defined – Right of action for – Judgment.

(1) A nuisance is anything which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. A nuisance may be the subject of an action.

(2) A nuisance may include the following:

- (a) drug houses and drug dealing as provided in Section 78-38-9;
- (b) gambling as provided in Title 76, Chapter 10, Part 11;
- (c) criminal activity committed in concert with two or more persons as provided in Section 76-3-203.1;
- (d) party houses which frequently create conditions defined in Subsection (1); and

- (e) prostitution as provided in Title 76, Chapter 10, Part 13.
- (3) A nuisance under this section includes tobacco smoke that drifts into any residential unit a person rents, leases, or owns, from another residential or commercial unit and this smoke;
 - (a) drifts in more than once in each of two or more consecutive seven-day periods; and
 - (b) creates any of the conditions under Subsection (1)
- (4) Subsection (3) does not apply to:
 - (a) residential rental units available for temporary rental, such as for vacations, or available for only 30 or fewer days at a time; or
 - (b) hotel or motel rooms
- (5) Subsection (3) does not apply to any unit that is part of a timeshare project, as defined in Section 57-19-2, or subject to a timeshare interest as defined in Section 57-19-2.
- (6) An action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.
- (7) Upon judgment, the nuisance may be enjoined or abated, and damages may be recovered.
- (8) There is no cause of action for a nuisance under Subsection (3) if the rental, lease, restrictive covenant, or purchase agreement for the unit states in writing that:
 - (a) smoking is allowed in other units, either residential or commercial, and that tobacco smoke from those units may drift into the unit that is subject of the agreement; and
 - (b) by his signature the renter, lessee, or buyer acknowledges he has been informed that tobacco smoke may drift into the unit he is renting, leasing, or purchasing, and he waives any right to a cause of action for a nuisance under Subsection (3).
- (9) A cause of action for a nuisance under Subsection (3) may be brought against:
 - (a) the individual generating the tobacco smoke;
 - (b) the renter or lessee who permits or fails to control the generation of tobacco smoke, in violation of the terms of his rental or lease agreement, on the premises he rents or leases; or
 - (c) the landlord, but only if:
 - (i) the terms of the renter's or lessee's contract provide the unit will not be subject to the nuisance of drifting tobacco smoke;
 - (ii) the complaining renter or lessee has provided to the landlord a statement in writing indicating that tobacco smoke is creating a nuisance in the renter's or lessee's unit; and

(iii) the landlord knowingly allows the continuation of a nuisance under Subsection (3) after receipt of written notice under Subsection (c)(ii), and in violation of the terms of the rental or lease agreement under Subsection (c)(i).