

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**
Tuesday, September 13, 2011 – 2:00 p.m. – Room C445 State Capitol

Members Present:

Sen. Howard A. Stephenson, Senate Chair
Rep. Curtis Oda, House Chair
Sen. Gene Davis
Sen. Mark B. Madsen
Sen. Benjamin M. McAdams
Pres. Michael G. Waddoups
Rep. Neal B. Hendrickson
Rep. Carol Spackman Moss
Rep. Merlynn T. Newbold

Members Absent:

Speaker Rebecca D. Lockhart

Staff Present:

Mr. Arthur L. Hunsaker, Policy Analyst
Ms. Susan Creager Allred, Associate General Counsel
Ms. Tracey Fredman, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Stephenson called the meeting to order at 2:17 p.m.

MOTION: Sen. Davis moved to approve the minutes of the June 28, 2011 meeting. The motion passed unanimously.

2. R392-510 Utah Indoor Clean Air Act

Mr. W. David Patton, Executive Director, Utah Department of Health (UDOH), distributed and presented "Amended Rule R392-510 Regarding the Utah Indoor Clean Air Act," and said that smoking a hookah pipe indoors is prohibited under the Utah Indoor Clean Air Act because a hookah contains tobacco.

Mr. Gary Edwards, Executive Director, Salt Lake Valley Health Department, spoke in support of the clarifications made in the rule regarding the use of heated tobacco products in items such as a hookah pipe.

Mr. Doug Springmeyer, Assistant Attorney General, distributed and addressed a letter of opinion dated September 9, 2011, in which he stated that UDOH has authority to regulate the use of tobacco in hookah bars under the Utah Indoor Clean Air Act.

Mr. Craig Dietrich, Toxicologist, Environmental Epidemiology Program, UDOH, presented data which compared tobacco and second-hand smoke from a hookah with cigarettes. He concluded that the hazards of smoking the hookah are equivalent to those of smoking cigarettes. Mr. Dietrich pointed out that there are review articles which attempt to invalidate the data collected in regard to the contents of hookah tobacco smoke, and he distributed and commented on "Findings Regarding Kamal Chaouachi."

Ms. Cathy Dupont, Associate General Counsel, Office of Legislative Research and General Counsel, commented on her opinion letter, dated September 7, 2011, which was mailed to committee members prior to the meeting. Ms. Dupont noted that the hookah heats a substance, rather than lighting it. She observed that it would be reasonable for the Committee to determine that the plain meaning and common usage of the word "lighted," as referred to in Utah Code Section 26-38-2, does not include the heating of a substance.

Mr. Nathan Porter, Owner, Huka Bar and Grill, distributed "Evidence to be Submitted to the Courts by The Huka Bar & Grill, LLC for an Injunction on the Modification to the Utah Indoor Clean Air Act (UICAA) Set Forth by the Utah State Department of Health," and presented "The Environmental Risks of Second-hand Hookah Smoke." Mr. Porter said there is a lack of credible scientific evidence to support the view that second-hand smoke from a hookah is harmful to human health. He also discussed the distinction between heated and ignited tobacco products.

Mr. Ryan Hancey, attorney with the law firm of Kesler & Rust, and representing Huka Bar and Grill, maintained that the plain language of the statute does not include heated tobacco products such as shisha, which is used in hookah. He said the harmful chemicals emitted by the hookah come from the charcoal used to heat the shisha, but because the statute does not address charcoal, he believes the rule goes beyond statutory intent. Mr. Hancey also discussed particular aspects of the procedures required by the Utah Administrative Rulemaking Act which he believes were violated by UDOH.

Dr. Jennifer Brinton, Utah Chapter of the American Academy of Pediatrics, commented that it seems the hookah does fall under the Utah Indoor Clean Air Act.

Representative Brian Doughty spoke to the issue.

MOTION: Sen. Davis moved that the Committee write a letter requesting the Department of Health to repeal the rule and keep it from taking effect until the Legislature meets to address clarification of the statute in the next general session.

Mr. Springmeyer stated that the rule went into effect on Monday, September 12, 2011, but was not currently being enforced due to the hearing in progress. He said the Department could repeal the rule at the Committee's request.

SUBSTITUTE MOTION: Pres. Waddoups moved that the Committee write a letter requesting that the Department of Health and local Departments of Health throughout the state not enforce the amendments to R392-510 Utah Indoor Clean Air Act until the Legislature clarifies the statute. The motion passed unanimously. Sen. McAdams was absent for vote.

3. License Plate Scanning: Length of Data Storage

This agenda item was not discussed.

4. Rules Governing Veterans' Affairs

This agenda item was not discussed.

5. Committee Business

The next meeting was scheduled for 9:00 a.m. on Thursday, October 6, 2011.

6. Adjourn

MOTION: Sen. Davis moved to adjourn the meeting. The motion passed unanimously. Pres. Waddoups and Rep. Newbold were absent for the vote.

Chair Stephenson adjourned the meeting at 4:47 p.m.