

28 knowingly violates any of the following under this chapter:

29 (a) an applicable standard or limitation;

30 (b) a permit condition; or

31 (c) a fee or filing requirement.

32 (4) A person is guilty of a third degree felony and is subject to imprisonment under
33 Section 76-3-203 and a fine of not more than \$25,000 per day of violation who knowingly:

34 (a) makes any false material statement, representation, or certification, in any notice or
35 report required by permit; or

36 (b) renders inaccurate any monitoring device or method required to be maintained by
37 this chapter or applicable rules made under this chapter.

38 (5) Any fine or penalty assessed under Subsections (2) or (3) is in lieu of any penalty
39 under Section 19-2-109.1.

40 (6) ~~[Any]~~ A person who willfully violates Section 19-2-120 is guilty of a class A
41 misdemeanor.

42 (7) ~~[Any]~~ A person who knowingly violates any requirement of an applicable
43 implementation plan adopted by the board, more than 30 days after having been notified in
44 writing by the executive secretary that ~~[he]~~ the person is violating the requirement, ~~[or]~~
45 knowingly violates an order issued under [Section] Subsection 19-2-110(1)(a), or knowingly
46 handles or disposes of asbestos in violation of a rule made under this chapter is guilty of a third
47 degree felony and subject to imprisonment under Section 76-3-203 and a fine of not more than
48 \$25,000 per day of violation in the case of the first offense, and not more than \$50,000 per day
49 of violation in the case of subsequent offenses.

50 (8) (a) As used in this section:

51 (i) "Hazardous air pollutant" means any hazardous air pollutant listed ~~[pursuant to]~~
52 under 42 USC 7412 or any extremely hazardous substance listed ~~[pursuant to]~~ under 42 USC
53 11002(a)(2).

54 (ii) "Organization" means a legal entity, other than a government, established or
55 organized for any purpose, and includes a corporation, company, association, firm, partnership,
56 joint stock company, foundation, institution, trust, society, union, or any other association of
57 persons.

58 (iii) "Serious bodily injury" means bodily injury which involves a substantial risk of

59 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
60 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

61 (b) (i) A person is guilty of a class A misdemeanor and subject to imprisonment under
62 Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person with
63 criminal negligence:

64 (A) releases into the ambient air any hazardous air pollutant; and

65 (B) places another person in imminent danger of death or serious bodily injury.

66 (ii) As used in this Subsection (8)(b), "person" does not include an employee who is
67 carrying out [~~his~~] the employee's normal activities and who is not a part of senior management
68 personnel or a corporate officer.

69 (c) A person is guilty of a second degree felony and is subject to imprisonment under
70 Section 76-3-203 and a fine of not more than \$50,000 per day of violation if that person:

71 (i) knowingly releases into the ambient air any hazardous air pollutant; and

72 (ii) knows at the time that he is placing another person in imminent danger of death or
73 serious bodily injury.

74 (d) If a person is an organization, it shall, upon conviction of violating Subsection
75 (8)(c), be subject to a fine of not more than \$1,000,000.

76 (e) (i) A defendant who is an individual is considered to have acted knowingly under
77 Subsections (8)(c) and (d), if:

78 (A) the defendant's conduct placed another person in imminent danger of death or
79 serious bodily injury; and

80 (B) the defendant was aware of or believed that there was an imminent danger of death
81 or serious bodily injury to another person.

82 (ii) Knowledge possessed by a person other than the defendant may not be attributed to
83 the defendant.

84 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual
85 knowledge, including evidence that the defendant took affirmative steps to be shielded from
86 receiving relevant information.

87 (f) (i) It is an affirmative defense to prosecution under this Subsection (8) that the
88 conduct charged was freely consented to by the person endangered and that the danger and
89 conduct charged were reasonably foreseeable hazards of:

90 (A) an occupation, a business, a profession; or
91 (B) medical treatment or medical or scientific experimentation conducted by
92 professionally approved methods and the other person was aware of the risks involved prior to
93 giving consent.

94 (ii) The defendant has the burden of proof to establish any affirmative defense under
95 this Subsection (8)(f) and must prove that defense by a preponderance of the evidence.

96 (9) (a) Except as provided in Subsection (9)(b), and unless prohibited by federal law,
97 all penalties assessed and collected under the authority of this section shall be deposited in the
98 General Fund.

99 (b) The department may reimburse itself and local governments from monies collected
100 from civil penalties for extraordinary expenses incurred in environmental enforcement
101 activities.

102 (c) The department shall regulate reimbursements by making rules in accordance with
103 Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that:

- 104 (i) define qualifying environmental enforcement activities; and
105 (ii) define qualifying extraordinary expenses.

Legislative Review Note
as of 10-30-02 2:13 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0182

Air Conservation Act Amendments

23-Jan-03

10:10 AM

AMENDED NOTE

State Impact

Any fiscal impact required to enact provisions of this bill can be handled within existing budgets. Provisions of the bill makes it easier to prosecute violators through state courts rather than the current prosecution in federal courts. During the past five years four Utah cases have been handled in federal courts with \$345,000 in fines imposed. No court cases are pending at this time, however investigations are ongoing. If judgement is obtained in state courts penalties may be collected by the state. It is unknown at this time how many cases will be tried or how many fines will be collected for state revenues.

Individual and Business Impact

If an individual or business is found in violation of this act they are subject to be fined.

Office of the Legislative Fiscal Analyst