

AIR QUALITY AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Escamilla

House Sponsor: Rebecca Chavez-Houck

LONG TITLE

General Description:

This bill modifies the penalties for a violation of Title 19, Chapter 2, Air Conservation Act, and extends the statute of limitations for a violation of Title 19, Environmental Quality Code.

Highlighted Provisions:

This bill:

- ▶ increases civil penalties against a person who violates the Air Conservation Act;
- ▶ authorizes the Department of Environmental Quality to use a portion of penalty money for environmental remediation;
- ▶ states that the statute of limitations for a violation of the Environmental Quality Code is five years;
- ▶ authorizes the Department of Environmental Quality to retain a percentage of the money collected from civil penalties to use on environmental programs; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 19-2-115, as last amended by Laws of Utah 2012, Chapter 360

29 78B-2-302, as last amended by Laws of Utah 2010, Chapter 89

30 ENACTS:

31 78B-2-307.5, Utah Code Annotated 1953



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

34 Section 1. Section 19-2-115 is amended to read:

35 **19-2-115. Violations -- Penalties -- Reimbursement for expenses.**

36 (1) As used in this section, the terms "knowingly," "willfully," and "criminal
37 negligence" shall mean as defined in Section 76-2-103.

38 (2) (a) A person who violates this chapter, or any rule, order, or permit issued or made
39 under this chapter is subject in a civil proceeding to a penalty not to exceed [~~\$10,000~~] \$37,000
40 per day for each violation.

41 (b) Subsection (2)(a) also applies to rules made under the authority of Section
42 19-2-104, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act,
43 Subchapter II - Asbestos Hazard Emergency Response.

44 (c) Penalties assessed for violations described in 15 U.S.C.A. 2647, Toxic Substances
45 Control Act, Subchapter II - Asbestos Hazard Emergency Response, may not exceed the
46 amounts specified in that section and shall be used in accordance with that section.

47 (3) A person is guilty of a class A misdemeanor and is subject to imprisonment under
48 Section 76-3-204 and a fine of not more than [~~\$25,000~~] \$45,000 per day of violation if that
49 person knowingly violates any of the following under this chapter:

50 (a) an applicable standard or limitation;

51 (b) a permit condition; or

52 (c) a fee or filing requirement.

53 (4) A person is guilty of a third degree felony and is subject to imprisonment under
54 Section 76-3-203 and a fine of not more than [~~\$25,000~~] \$45,000 per day of violation who
55 knowingly:

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

58 (b) renders inaccurate any monitoring device or method required to be maintained by

59 this chapter or applicable rules made under this chapter.

60 (5) Any fine or penalty assessed under [~~Subsections~~] Subsection (2) or (3) is in lieu of
61 any penalty under Section 19-2-109.1.

62 (6) A person who willfully violates Section 19-2-120 is guilty of a class A
63 misdemeanor.

64 (7) A person who knowingly violates any requirement of an applicable implementation
65 plan adopted by the board, more than 30 days after having been notified in writing by the
66 director that the person is violating the requirement, knowingly violates an order issued under
67 Subsection 19-2-110(1), or knowingly handles or disposes of asbestos in violation of a rule
68 made under this chapter is guilty of a third degree felony and subject to imprisonment under
69 Section 76-3-203 and a fine of not more than [~~\$25,000~~] \$45,000 per day of violation in the case
70 of the first offense, and not more than [~~\$50,000~~] \$75,000 per day of violation in the case of
71 subsequent offenses.

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

73 (i) "Hazardous air pollutant" means any hazardous air pollutant listed under 42 U.S.C.
74 Sec. 7412 or any extremely hazardous substance listed under 42 U.S.C. Sec. 11002(a)(2).

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

79 (iii) "Serious bodily injury" means bodily injury which involves a substantial risk of
80 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
81 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

82 (b) (i) A person is guilty of a class A misdemeanor and subject to imprisonment under
83 Section 76-3-204 and a fine of not more than [~~\$25,000~~] \$45,000 per day of violation if that
84 person with criminal negligence:

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

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

87 (ii) As used in this Subsection (8)(b), "person" does not include an employee who is
88 carrying out the employee's normal activities and who is not a part of senior management
89 personnel or a corporate officer.

90 (c) A person is guilty of a second degree felony and is subject to imprisonment under
91 Section 76-3-203 and a fine of not more than [~~\$50,000~~] \$75,000 per day of violation if that
92 person:

- 93 (i) knowingly releases into the ambient air any hazardous air pollutant; and
- 94 (ii) knows at the time that the person is placing another person in imminent danger of
95 death or serious bodily injury.

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

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

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

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

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

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

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

112 (A) an occupation, a business, a profession; or

113 (B) medical treatment or medical or scientific experimentation conducted by
114 professionally approved methods and the other person was aware of the risks involved prior to
115 giving consent.

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

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

121 (b) The department may reimburse itself and local governments from money collected
 122 from civil penalties for extraordinary expenses incurred in environmental enforcement
 123 activities.

124 (c) The department shall:

125 (i) retain \$→ up to ←\$ 50% of the money collected from a civil penalty, minus the
 125a reimbursement as
 126 described in Subsection (9)(b) \$→ , but no more than \$200,000 total may be retained by the
 126a department per fiscal year ←\$; and

127 (ii) use the money described in Subsection (9)(c)(i) for environmental remediation
 128 efforts and programs described in Title 19, Chapter 2, Part 2, Clean Air Retrofit, Replacement,
 129 and Off-Road Technology Program.

130 [~~☐~~] (d) The department shall regulate reimbursements by making rules in accordance
 131 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

132 (i) define qualifying environmental enforcement activities; and

133 (ii) define qualifying extraordinary expenses.

134 Section 2. Section **78B-2-302** is amended to read:

135 **78B-2-302. Within one year.**

136 An action may be brought within one year:

137 (1) for liability created by the statutes of a foreign state;

138 (2) upon a statute for a penalty or forfeiture where the action is given to an individual,
 139 or to an individual and the state, except when the statute imposing it prescribes a different
 140 limitation;

141 (3) except as provided in Section [78B-2-307.5](#), upon a statute, or upon an undertaking
 142 in a criminal action, for a forfeiture or penalty to the state;

143 (4) for libel, slander, false imprisonment, or seduction;

144 (5) against a sheriff or other officer for the escape of a prisoner arrested or imprisoned
 145 upon either civil or criminal process;

146 (6) against a municipal corporation for damages or injuries to property caused by a
 147 mob or riot;

148 (7) except as otherwise expressly provided by statute, against a county legislative body
 149 or a county executive to challenge a decision of the county legislative body or county
 150 executive, respectively; or

151 (8) on a claim for relief or a cause of action under Title 63L, Chapter 5, Utah Religious

152 Land Use Act.

153 Section 3. Section **78B-2-307.5** is enacted to read:

154 **78B-2-307.5. Within five years.**

155 An action may be brought within five years upon a statute in Title 19, Environmental

156 Quality Code, for a forfeiture or penalty to the state.

Legislative Review Note
as of 2-12-15 3:11 PM

Office of Legislative Research and General Counsel