

Tyler Clancy proposes the following substitute bill:

**Substance Use Treatment and Enforcement Amendments**

2025 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Tyler Clancy**

Senate Sponsor: Brady Brammer

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**LONG TITLE**

**General Description:**

This bill addresses treatment and enforcement issues related to substance use.

**Highlighted Provisions:**

This bill:

- defines terms;

- requires a local substance abuse authority to include in the authority's annual plan a list of available substance use service providers, in a form and format usable by first responders;

- requires a local mental health authority to include in the authority's annual plan a list of available mental health service providers, in a form and format usable by first responders;

- allows and encourages first responders to offer a referral to substance use or mental health services to an individual who experiences an intentional or accidental overdose;

- addresses requirements for syringe exchange programs and information collected relating to syringe exchange programs;

- allows an opioid treatment program to operate a mobile unit to provide medication to treat substance use withdrawal symptoms or an opioid use disorder, and provides certain requirements for operation of a mobile unit;

- grants rulemaking authority to the Department of Health and Human Services regarding the requirements for operating a mobile unit to provide medication to treat substance use withdrawal symptoms or an opioid use disorder;

- amends criminal provisions of the Utah Controlled Substances Act;

- creates the crime of maintenance of a drug-involved premises;

- amends provisions regarding civil nuisance actions, including provisions that relate to a nuisance caused by unlawful actions related to a controlled substance;

- 29       ▸ repeals intent language;
- 30       ▸ adds a coordination clause between this bill and H.B. 355, Critical Infrastructure
- 31 Materials Amendments, to provide that changes made to Section 76B-6-1101 in H.B.
- 32 355 are incorporated into changes this bill makes to that section; and
- 33       ▸ makes technical and conforming changes.

34 **Money Appropriated in this Bill:**

35       None

36 **Other Special Clauses:**

37       This bill provides a coordination clause.

38 **Utah Code Sections Affected:**

39 AMENDS:

- 40       **10-3-703**, as last amended by Laws of Utah 2020, Chapter 89
- 41       **17-43-102**, as last amended by Laws of Utah 2023, Chapter 327
- 42       **17-43-201**, as last amended by Laws of Utah 2023, Chapters 15, 327
- 43       **17-43-301**, as last amended by Laws of Utah 2024, Chapters 240, 299
- 44       **17-53-223**, as last amended by Laws of Utah 2020, Chapter 89
- 45       **26B-7-117**, as last amended by Laws of Utah 2024, Chapter 250
- 46       **58-17b-309.7**, as last amended by Laws of Utah 2024, Chapter 240
- 47       **58-37-8**, as last amended by Laws of Utah 2024, Chapter 105
- 48       **76-10-801**, as enacted by Laws of Utah 1973, Chapter 196
- 49       **76-10-803**, as last amended by Laws of Utah 2019, Chapters 81, 227
- 50       **78B-6-1101**, as last amended by Laws of Utah 2021, Chapter 207
- 51       **78B-6-1102**, as enacted by Laws of Utah 2008, Chapter 3
- 52       **78B-6-1102.5**, as enacted by Laws of Utah 2010, Chapter 99
- 53       **78B-6-1103**, as last amended by Laws of Utah 2011, Chapter 185
- 54       **78B-6-1106**, as enacted by Laws of Utah 2008, Chapter 3
- 55       **78B-6-1107**, as last amended by Laws of Utah 2021, Chapter 207
- 56       **78B-6-1108**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 57       **78B-6-1109**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 58       **78B-6-1110**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 59       **78B-6-1111**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 60       **78B-6-1112**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 61       **78B-6-1113**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 62       **78B-6-1114**, as renumbered and amended by Laws of Utah 2008, Chapter 3

63 ENACTS:

64 **26B-5-121**, Utah Code Annotated 1953

65 **76-10-803.1**, Utah Code Annotated 1953

66 REPEALS:

67 **78B-6-1105**, as renumbered and amended by Laws of Utah 2008, Chapter 3

68 **Utah Code Sections affected by Coordination Clause:**

69 **78B-6-1101**, as last amended by Laws of Utah 2021, Chapter 207

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

72 Section 1. Section **10-3-703** is amended to read:

73 **10-3-703 . Criminal penalties for violation of ordinance -- Civil penalties**

74 **prohibited -- Exceptions.**

75 (1)(a) The governing body of a municipality may impose a criminal penalty for the  
76 violation of any municipal ordinance by a fine not to exceed the maximum class B  
77 misdemeanor fine under Section 76-3-301, by a term of imprisonment up to six  
78 months, or by both the fine and term of imprisonment.

79 (b) Notwithstanding Subsection (1)(a), a municipality may not impose a criminal penalty  
80 greater than an infraction for a violation pertaining to an individual's pet, as defined  
81 in Section 4-12-102, or an individual's use of the individual's residence unless:

82 (i) the violation:

83 (A) is a nuisance as that term is defined in [Subsection 78B-6-1101(1)] Section  
84 78B-6-1101; and

85 (B) threatens the health, safety, or welfare of the individual or an identifiable third  
86 party; or

87 (ii) the municipality has imposed a fine on the individual for a violation that involves  
88 the same residence or pet on three previous occasions within the past 12 months.

89 (c) Subsection (1)(b) does not apply to municipal enforcement of a building code or fire  
90 code ordinance in accordance with Title 15A, State Construction and Fire Codes Act.

91 (2)(a) Except as provided in Subsection (2)(b), the governing body may prescribe a civil  
92 penalty for the violation of any municipal ordinance by a fine not to exceed the  
93 maximum class B misdemeanor fine under Section 76-3-301.

94 (b) A municipality may not impose a civil penalty and adjudication for the violation of a  
95 municipal moving traffic ordinance.

96 (3)(a) Except as provided in Subsection (3)(b) or Section 77-7-18, a municipal officer or

97 official who is not a law enforcement officer described in Section 53-13-103 or a  
 98 special function officer described in Section 53-13-105 may not issue a criminal  
 99 citation for a violation that is punished as a misdemeanor.

100 (b) Notwithstanding Subsection (1) or (3)(a), the following may issue a criminal citation  
 101 for a violation that is punished as a misdemeanor if the violation threatens the health  
 102 and safety of an animal or the public:

103 (i) a fire officer described in Section 53-7-102; or

104 (ii) an animal control officer described in Section 11-46-102.

105 (4) A municipality may not issue more than one infraction within a 14-day time period for a  
 106 violation described in Subsection (1)(b) that is ongoing.

107 Section 2. Section **17-43-102** is amended to read:

108 **17-43-102 . Definitions.**

109 As used in this chapter:

110 (1) "Department" means the Department of Health and Human Services created in Section  
 111 26B-1-201.

112 (2) "Division" means the Division of Integrated Healthcare within the department.

113 (3) "First responder" means:

114 (a) a law enforcement officer, as that term is defined in Section 53-13-103;

115 (b) emergency medical service personnel, as that term is defined in Section 53-2d-101;

116 (c) an emergency medical technician, as that term is defined in Section 53-2e-101;

117 (d) an advanced emergency medical technician, as that term is defined in Section  
 118 53-2e-101;

119 (e) a firefighter, as that term is defined in Section 53B-8c-102;

120 (f) a dispatcher, as that term is defined in Section 53-6-102; or

121 (g) a mobile outreach social worker.

122 Section 3. Section **17-43-201** is amended to read:

123 **17-43-201 . Local substance abuse authorities -- Responsibilities.**

124 (1)(a)(i) In each county operating under a county executive-council form of  
 125 government under Section 17-52a-203, the county legislative body is the local  
 126 substance abuse authority, provided however that any contract for plan services  
 127 shall be administered by the county executive.

128 (ii) In each county operating under a council-manager form of government under  
 129 Section 17-52a-204, the county manager is the local substance abuse authority.

130 (iii) In each county other than a county described in Subsection (1)(a)(i) or (ii), the

- 131 county legislative body is the local substance abuse authority.
- 132 (b) Within legislative appropriations and county matching funds required by this section,  
133 and under the direction of the division, each local substance abuse authority shall:
- 134 (i) develop substance use prevention and treatment services plans;  
135 (ii) provide substance use services to residents of the county; and  
136 (iii) cooperate with efforts of the division to promote integrated programs that  
137 address an individual's substance use, mental health, and physical healthcare  
138 needs, as described in Section 26B-5-102.
- 139 (c) Within legislative appropriations and county matching funds required by this section,  
140 each local substance abuse authority shall cooperate with the efforts of the  
141 department to promote a system of care, as defined in Section 26B-5-101, for minors  
142 with or at risk for complex emotional and behavioral needs, as described in Section [  
143 ~~26B-1-202~~] 26B-5-101.
- 144 (2)(a) By executing an interlocal agreement under Title 11, Chapter 13, Interlocal  
145 Cooperation Act, two or more counties may join to:
- 146 (i) provide substance use prevention and treatment services; or  
147 (ii) create a united local health department that provides substance use treatment  
148 services, mental health services, and local health department services in  
149 accordance with Subsection (3).
- 150 (b) The legislative bodies of counties joining to provide services may establish  
151 acceptable ways of apportioning the cost of substance use services.
- 152 (c) Each agreement for joint substance use services shall:
- 153 (i)(A) designate the treasurer of one of the participating counties or another person  
154 as the treasurer for the combined substance abuse authorities and as the  
155 custodian of money available for the joint services; and  
156 (B) provide that the designated treasurer, or other disbursing officer authorized by  
157 the treasurer, may make payments from the money for the joint services upon  
158 audit of the appropriate auditing officer or officers representing the  
159 participating counties;
- 160 (ii) provide for the appointment of an independent auditor or a county auditor of one  
161 of the participating counties as the designated auditing officer for the combined  
162 substance abuse authorities;
- 163 (iii)(A) provide for the appointment of the county or district attorney of one of the  
164 participating counties as the designated legal officer for the combined

- 165 substance abuse authorities; and
- 166 (B) authorize the designated legal officer to request and receive the assistance of
- 167 the county or district attorneys of the other participating counties in defending
- 168 or prosecuting actions within their counties relating to the combined substance
- 169 abuse authorities; and
- 170 (iv) provide for the adoption of management, clinical, financial, procurement,
- 171 personnel, and administrative policies as already established by one of the
- 172 participating counties or as approved by the legislative body of each participating
- 173 county or interlocal board.
- 174 (d) An agreement for joint substance use services may provide for joint operation of
- 175 services and facilities or for operation of services and facilities under contract by one
- 176 participating local substance abuse authority for other participating local substance
- 177 abuse authorities.
- 178 (3) A county governing body may elect to combine the local substance abuse authority with
- 179 the local mental health authority created in Part 3, Local Mental Health Authorities, and
- 180 the local health department created in Title 26A, Chapter 1, Part 1, Local Health
- 181 Department Act, to create a united local health department under Section 26A-1-105.5.
- 182 A local substance abuse authority that joins a united local health department shall
- 183 comply with this part.
- 184 (4)(a) Each local substance abuse authority is accountable to the department and the
- 185 state with regard to the use of state and federal funds received from those
- 186 departments for substance use services, regardless of whether the services are
- 187 provided by a private contract provider.
- 188 (b) Each local substance abuse authority shall comply, and require compliance by its
- 189 contract provider, with all directives issued by the department regarding the use and
- 190 expenditure of state and federal funds received from those departments for the
- 191 purpose of providing substance use programs and services. The department shall
- 192 ensure that those directives are not duplicative or conflicting, and shall consult and
- 193 coordinate with local substance abuse authorities with regard to programs and
- 194 services.
- 195 (5) Each local substance abuse authority shall:
- 196 (a) review and evaluate substance use prevention and treatment needs and services,
- 197 including substance use needs and services for individuals incarcerated in a county
- 198 jail or other county correctional facility;

- 199 (b) annually prepare and submit to the division a plan approved by the county legislative  
200 body for funding and service delivery that includes:
- 201 (i) provisions for services, either directly by the substance abuse authority or by  
202 contract, for adults, youth, and children, including those incarcerated in a county  
203 jail or other county correctional facility;[-and]
- 204 (ii) primary prevention, targeted prevention, early intervention, and treatment  
205 services; and
- 206 (iii) in a form and format usable by a first responder, an inclusive list of providers of  
207 substance use services available for individuals within the local substance abuse  
208 authority's jurisdiction;
- 209 (c) establish and maintain, either directly or by contract, programs licensed under Title  
210 26B, Chapter 2, Part 1, Human Services Programs and Facilities;
- 211 (d) appoint directly or by contract a full or part time director for substance use programs,  
212 and prescribe the director's duties;
- 213 (e) provide input and comment on new and revised rules established by the division;
- 214 (f) establish and require contract providers to establish administrative, clinical,  
215 procurement, personnel, financial, and management policies regarding substance use  
216 services and facilities, in accordance with the rules of the division, and state and  
217 federal law;
- 218 (g) establish mechanisms allowing for direct citizen input;
- 219 (h) annually contract with the division to provide substance use programs and services in  
220 accordance with the provisions of Title 26B, Chapter 5, Health Care - Substance Use  
221 and Mental Health;
- 222 (i) comply with all applicable state and federal statutes, policies, audit requirements,  
223 contract requirements, and any directives resulting from those audits and contract  
224 requirements;
- 225 (j) promote or establish programs for the prevention of substance use within the  
226 community setting through community-based prevention programs;
- 227 (k) provide funding equal to at least 20% of the state funds that it receives to fund  
228 services described in the plan;
- 229 (l) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal  
230 Cooperation Act, Title 17B, Chapter 1, Part 6, Fiscal Procedures for Special Districts,  
231 and Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal  
232 Organizations, and Other Local Entities Act;

- 233 (m) for persons convicted of driving under the influence in violation of Section  
234 41-6a-502 or 41-6a-517, conduct the following as defined in Section 41-6a-501:
- 235 (i) a screening;
- 236 (ii) an assessment;
- 237 (iii) an educational series; and
- 238 (iv) substance [use] abuse treatment; and
- 239 (n) utilize proceeds of the accounts described in Subsection 26B-5-209(1) to supplement  
240 the cost of providing the services described in Subsection (5)(m).
- 241 (6) Before disbursing any public funds, each local substance abuse authority shall require  
242 that each entity that receives any public funds from the local substance abuse authority  
243 agrees in writing that:
- 244 (a) the entity's financial records and other records relevant to the entity's performance of  
245 the services provided to the local substance abuse authority shall be subject to  
246 examination by:
- 247 (i) the division;
- 248 (ii) the local substance abuse authority director;
- 249 (iii)(A) the county treasurer and county or district attorney; or  
250 (B) if two or more counties jointly provide substance use services under an  
251 agreement under Subsection (2), the designated treasurer and the designated  
252 legal officer;
- 253 (iv) the county legislative body; and
- 254 (v) in a county with a county executive that is separate from the county legislative  
255 body, the county executive;
- 256 (b) the county auditor may examine and audit the entity's financial and other records  
257 relevant to the entity's performance of the services provided to the local substance  
258 abuse authority; and
- 259 (c) the entity will comply with the provisions of Subsection (4)(b).
- 260 (7) A local substance abuse authority may receive property, grants, gifts, supplies,  
261 materials, contributions, and any benefit derived therefrom, for substance abuse services.  
262 If those gifts are conditioned upon their use for a specified service or program, they shall  
263 be so used.
- 264 (8)(a) As used in this section, "public funds" means the same as that term is defined in  
265 Section 17-43-203.
- 266 (b) Public funds received for the provision of services pursuant to the local substance



267 abuse plan may not be used for any other purpose except those authorized in the  
268 contract between the local substance abuse authority and the provider for the  
269 provision of plan services.

270 (9) Subject to the requirements of the federal Substance Abuse Prevention and Treatment  
271 Block Grant, Pub. L. No. 102-321, a local substance abuse authority shall ensure that all  
272 substance use treatment programs that receive public funds:

273 (a) accept and provide priority for admission to a pregnant woman or a pregnant minor;  
274 and

275 (b) if admission of a pregnant woman or a pregnant minor is not possible within 24  
276 hours of the time that a request for admission is made, provide a comprehensive  
277 referral for interim services that:

278 (i) are accessible to the pregnant woman or pregnant minor;

279 (ii) are best suited to provide services to the pregnant woman or pregnant minor;

280 (iii) may include:

281 (A) counseling;

282 (B) case management; or

283 (C) a support group; and

284 (iv) shall include a referral for:

285 (A) prenatal care; and

286 (B) counseling on the effects of alcohol and drug use during pregnancy.

287 (10) If a substance use treatment program described in Subsection (9) is not able to accept  
288 and admit a pregnant woman or pregnant minor under Subsection (9) within 48 hours of  
289 the time that request for admission is made, the local substance abuse authority shall  
290 contact the Division of Integrated Healthcare for assistance in providing services to the  
291 pregnant woman or pregnant minor.

292 Section 4. Section **17-43-301** is amended to read:

293 **17-43-301 . Local mental health authorities -- Responsibilities.**

294 (1) As used in this section:

295 (a) "Assisted outpatient treatment" means the same as that term is defined in Section  
296 26B-5-301.

297 (b) "Crisis worker" means the same as that term is defined in Section 26B-5-610.

298 (c) "Local mental health crisis line" means the same as that term is defined in Section  
299 26B-5-610.

300 (d) "Mental health therapist" means the same as that term is defined in Section 58-60-102.

- 301 (e) "Public funds" means the same as that term is defined in Section 17-43-303.
- 302 (f) "Statewide mental health crisis line" means the same as that term is defined in  
303 Section 26B-5-610.
- 304 (2)(a)(i) In each county operating under a county executive-council form of  
305 government under Section 17-52a-203, the county legislative body is the local  
306 mental health authority, provided however that any contract for plan services shall  
307 be administered by the county executive.
- 308 (ii) In each county operating under a council-manager form of government under  
309 Section 17-52a-204, the county manager is the local mental health authority.
- 310 (iii) In each county other than a county described in Subsection (2)(a)(i) or (ii), the  
311 county legislative body is the local mental health authority.
- 312 (b) Within legislative appropriations and county matching funds required by this section,  
313 under the direction of the division, each local mental health authority shall:
- 314 (i) provide mental health services to individuals within the county; and  
315 (ii) cooperate with efforts of the division to promote integrated programs that address  
316 an individual's substance use, mental health, and physical healthcare needs, as  
317 described in Section 26B-5-102.
- 318 (c) Within legislative appropriations and county matching funds required by this section,  
319 each local mental health authority shall cooperate with the efforts of the department  
320 to promote a system of care, as defined in Section 26B-5-101, for minors with or at  
321 risk for complex emotional and behavioral needs, as described in Section [~~26B-1-202~~  
322 26B-5-101].
- 323 (3)(a) By executing an interlocal agreement under Title 11, Chapter 13, Interlocal  
324 Cooperation Act, two or more counties may join to:
- 325 (i) provide mental health prevention and treatment services; or  
326 (ii) create a united local health department that combines substance use treatment  
327 services, mental health services, and local health department services in  
328 accordance with Subsection (4).
- 329 (b) The legislative bodies of counties joining to provide services may establish  
330 acceptable ways of apportioning the cost of mental health services.
- 331 (c) Each agreement for joint mental health services shall:
- 332 (i)(A) designate the treasurer of one of the participating counties or another person  
333 as the treasurer for the combined mental health authorities and as the custodian  
334 of money available for the joint services; and

- 335 (B) provide that the designated treasurer, or other disbursing officer authorized by  
336 the treasurer, may make payments from the money available for the joint  
337 services upon audit of the appropriate auditing officer or officers representing  
338 the participating counties;
- 339 (ii) provide for the appointment of an independent auditor or a county auditor of one  
340 of the participating counties as the designated auditing officer for the combined  
341 mental health authorities;
- 342 (iii)(A) provide for the appointment of the county or district attorney of one of the  
343 participating counties as the designated legal officer for the combined mental  
344 health authorities; and
- 345 (B) authorize the designated legal officer to request and receive the assistance of  
346 the county or district attorneys of the other participating counties in defending  
347 or prosecuting actions within their counties relating to the combined mental  
348 health authorities; and
- 349 (iv) provide for the adoption of management, clinical, financial, procurement,  
350 personnel, and administrative policies as already established by one of the  
351 participating counties or as approved by the legislative body of each participating  
352 county or interlocal board.
- 353 (d) An agreement for joint mental health services may provide for:
- 354 (i) joint operation of services and facilities or for operation of services and facilities  
355 under contract by one participating local mental health authority for other  
356 participating local mental health authorities; and
- 357 (ii) allocation of appointments of members of the mental health advisory council  
358 between or among participating counties.
- 359 (4) A county governing body may elect to combine the local mental health authority with  
360 the local substance abuse authority created in Part 2, Local Substance Abuse Authorities,  
361 and the local health department created in Title 26A, Chapter 1, Part 1, Local Health  
362 Department Act, to create a united local health department under Section 26A-1-105.5.  
363 A local mental health authority that joins with a united local health department shall  
364 comply with this part.
- 365 (5)(a) Each local mental health authority is accountable to the department and the state  
366 with regard to the use of state and federal funds received from those departments for  
367 mental health services, regardless of whether the services are provided by a private  
368 contract provider.

- 369 (b) Each local mental health authority shall comply, and require compliance by its  
370 contract provider, with all directives issued by the department regarding the use and  
371 expenditure of state and federal funds received from those departments for the  
372 purpose of providing mental health programs and services. The department shall  
373 ensure that those directives are not duplicative or conflicting, and shall consult and  
374 coordinate with local mental health authorities with regard to programs and services.
- 375 (6)(a) Each local mental health authority shall:
- 376 (i) review and evaluate mental health needs and services, including mental health  
377 needs and services for:
    - 378 (A) an individual incarcerated in a county jail or other county correctional facility;  
379 and
    - 380 (B) an individual who is a resident of the county and who is court ordered to  
381 receive assisted outpatient treatment under Section 26B-5-351;
  - 382 (ii) in accordance with [~~Subsection (6)(b)~~] Subsections (6)(b) and (c), annually  
383 prepare and submit to the division a plan approved by the county legislative body  
384 for mental health funding and service delivery, either directly by the local mental  
385 health authority or by contract;
  - 386 (iii) establish and maintain, either directly or by contract, programs licensed under  
387 Title 26B, Chapter 2, Part 1, Human Services Programs and Facilities;
  - 388 (iv) appoint, directly or by contract, a full-time or part-time director for mental health  
389 programs and prescribe the director's duties;
  - 390 (v) provide input and comment on new and revised rules established by the division;
  - 391 (vi) establish and require contract providers to establish administrative, clinical,  
392 personnel, financial, procurement, and management policies regarding mental  
393 health services and facilities, in accordance with the rules of the division, and state  
394 and federal law;
  - 395 (vii) establish mechanisms allowing for direct citizen input;
  - 396 (viii) annually contract with the division to provide mental health programs and  
397 services in accordance with the provisions of Title 26B, Chapter 5, Health Care -  
398 Substance Use and Mental Health;
  - 399 (ix) comply with all applicable state and federal statutes, policies, audit requirements,  
400 contract requirements, and any directives resulting from those audits and contract  
401 requirements;
  - 402 (x) provide funding equal to at least 20% of the state funds that it receives to fund

- 403 services described in the plan;
- 404 (xi) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal  
405 Cooperation Act, Title 17B, Chapter 1, Part 6, Fiscal Procedures for Special  
406 Districts, and Title 51, Chapter 2a, Accounting Reports from Political  
407 Subdivisions, Interlocal Organizations, and Other Local Entities Act; and
- 408 (xii) take and retain physical custody of minors committed to the physical custody of  
409 local mental health authorities by a judicial proceeding under Title 26B, Chapter  
410 5, Part 4, Commitment of Persons Under Age 18.
- 411 (b) Each plan under Subsection (6)(a)(ii) shall include services for adults, youth, and  
412 children, which shall include:
- 413 (i) inpatient care and services;
- 414 (ii) residential care and services;
- 415 (iii) outpatient care and services;
- 416 (iv) 24-hour crisis care and services;
- 417 (v) psychotropic medication management;
- 418 (vi) psychosocial rehabilitation, including vocational training and skills development;
- 419 (vii) case management;
- 420 (viii) community supports, including in-home services, housing, family support  
421 services, and respite services;
- 422 (ix) consultation and education services, including case consultation, collaboration  
423 with other county service agencies, public education, and public information; and
- 424 (x) services to persons incarcerated in a county jail or other county correctional  
425 facility.
- 426 (c) Each plan under Subsection (6)(a)(ii) shall include, in a form and format usable by a  
427 first responder, an inclusive list of providers of mental health services for individuals  
428 within the local mental health authority's jurisdiction.
- 429 (7)(a) If a local mental health authority provides for a local mental health crisis line  
430 under the plan for 24-hour crisis care and services described in Subsection (6)(b)(iv),  
431 the local mental health authority shall:
- 432 (i) collaborate with the statewide mental health crisis line described in Section  
433 26B-5-610;
- 434 (ii) ensure that each individual who answers calls to the local mental health crisis line:  
435 (A) is a mental health therapist or a crisis worker; and  
436 (B) meets the standards of care and practice established by the Division of

- 437 Integrated Healthcare, in accordance with Section 26B-5-610; and
- 438 (iii) ensure that when necessary, based on the local mental health crisis line's
- 439 capacity, calls are immediately routed to the statewide mental health crisis line to
- 440 ensure that when an individual calls the local mental health crisis line, regardless
- 441 of the time, date, or number of individuals trying to simultaneously access the
- 442 local mental health crisis line, a mental health therapist or a crisis worker answers
- 443 the call without the caller first:
- 444 (A) waiting on hold; or
- 445 (B) being screened by an individual other than a mental health therapist or crisis
- 446 worker.
- 447 (b) If a local mental health authority does not provide for a local mental health crisis line
- 448 under the plan for 24-hour crisis care and services described in Subsection (6)(b)(iv),
- 449 the local mental health authority shall use the statewide mental health crisis line as a
- 450 local crisis line resource.
- 451 (8) Before disbursing any public funds, each local mental health authority shall require that
- 452 each entity that receives any public funds from a local mental health authority agrees in
- 453 writing that:
- 454 (a) the entity's financial records and other records relevant to the entity's performance of
- 455 the services provided to the mental health authority shall be subject to examination
- 456 by:
- 457 (i) the division;
- 458 (ii) the local mental health authority director;
- 459 (iii)(A) the county treasurer and county or district attorney; or
- 460 (B) if two or more counties jointly provide mental health services under an
- 461 agreement under Subsection (3), the designated treasurer and the designated
- 462 legal officer;
- 463 (iv) the county legislative body; and
- 464 (v) in a county with a county executive that is separate from the county legislative
- 465 body, the county executive;
- 466 (b) the county auditor may examine and audit the entity's financial and other records
- 467 relevant to the entity's performance of the services provided to the local mental health
- 468 authority; and
- 469 (c) the entity will comply with the provisions of Subsection (5)(b).
- 470 (9) A local mental health authority may receive property, grants, gifts, supplies, materials,

471 contributions, and any benefit derived therefrom, for mental health services. If those  
 472 gifts are conditioned upon their use for a specified service or program, they shall be so  
 473 used.

474 (10) Public funds received for the provision of services pursuant to the local mental health  
 475 plan may not be used for any other purpose except those authorized in the contract  
 476 between the local mental health authority and the provider for the provision of plan  
 477 services.

478 (11) A local mental health authority shall provide assisted outpatient treatment services to a  
 479 resident of the county who has been ordered under Section 26B-5-351 to receive assisted  
 480 outpatient treatment.

481 Section 5. Section **17-53-223** is amended to read:

482 **17-53-223 . Ordinances -- Power to enact -- Penalty for violation.**

483 (1) A county legislative body may:

484 (a) pass all ordinances and rules and make all regulations, not repugnant to law,  
 485 necessary for carrying into effect or discharging the powers and duties conferred by  
 486 this title, and as are necessary and proper to provide for the safety, and preserve the  
 487 health, promote the prosperity, improve the morals, peace, and good order, comfort,  
 488 and convenience of the county and its inhabitants, and for the protection of property  
 489 in the county;

490 (b) enforce obedience to ordinances with fines or penalties as the county legislative body  
 491 considers proper; and

492 (c) pass ordinances to control air pollution.

493 (2)(a) Punishment imposed under Subsection (1)(b) shall be by fine, not to exceed the  
 494 maximum fine for a class B misdemeanor under Section 76-3-301, imprisonment, or  
 495 both fine and imprisonment.

496 (b) Notwithstanding Subsection (2)(a), a county may not impose a criminal penalty  
 497 greater than an infraction for a violation pertaining to an individual's pet, as defined  
 498 in Section 4-12-102, or an individual's use of the individual's residence unless:

499 (i) the violation:

500 (A) is a nuisance as that term is defined in [Subsection 78B-6-1101(1)] Section  
 501 78B-6-1101; and

502 (B) threatens the health, safety, or welfare of the individual or an identifiable third  
 503 party; or

504 (ii) the county has imposed a fine on the individual for a violation that involves the

- 505 same residence or pet on three previous occasions within the past 12 months.
- 506 (c) Subsection (2)(b) does not apply to county enforcement of a building code or fire  
507 code ordinance in accordance with Title 15A, State Construction and Fire Codes Act.
- 508 (d) When a penalty for a violation of an ordinance includes any possibility of  
509 imprisonment, the county legislative body shall include in the ordinance a statement  
510 that the county is required, under Section 78B-22-301, to provide for indigent  
511 defense services, as that term is defined in Section 78B-22-102.
- 512 (e) Notwithstanding any other provision of law, the following may issue a criminal  
513 citation for a violation that is punished as a misdemeanor if the violation threatens the  
514 health and safety of an animal or the public:
- 515 (i) a fire officer described in Section 53-7-102;  
516 (ii) a law enforcement officer described in Section 53-13-103; or  
517 (iii) an animal control officer described in Section 11-46-102.
- 518 (3)(a) Except as specifically authorized by statute, the county legislative body may not  
519 impose a civil penalty for the violation of a county traffic ordinance.
- 520 (b) Subsection (3)(a) does not apply to an ordinance regulating the parking of vehicles  
521 on a highway.
- 522 (4) A county may not issue more than one infraction within a 14-day period for a violation  
523 described in Subsection (2)(b) that is ongoing.
- 524 Section 6. Section **26B-5-121** is enacted to read:
- 525 **26B-5-121 . Voluntary referrals to substance use and mental health services by**  
526 **first responders -- Immunity from liability -- Reporting -- Rulemaking.**
- 527 (1) As used in this section:
- 528 (a) "First responder" means:
- 529 (i) a law enforcement officer, as that term is defined in Section 53-13-103;  
530 (ii) emergency medical service personnel, as that term is defined in Section 53-2d-101;  
531 (iii) an emergency medical technician, as that term is defined in Section 53-2e-101;  
532 (iv) an advanced emergency medical technician, as that term is defined in Section  
533 53-2e-101;  
534 (v) a firefighter, as that term is defined in Section 53B-8c-102; or  
535 (vi) a dispatcher, as that term is defined in Section 53-6-102.
- 536 (b) "Local services list" means a comprehensive list of local substance use or mental  
537 health services, as described in Subsections 17-43-201(5)(b)(iii) and 17-43-301(6)(c).
- 538 (2) As and when appropriate, a first responder is encouraged to offer a referral to substance



539 use or mental health services to an individual who experiences an intentional or  
 540 accidental overdose.  
 541 (3) If an individual expresses interest in substance use or mental health services, a first  
 542 responder may, as appropriate:  
 543 (a) facilitate a real-time connection with an appropriate local service provider;  
 544 (b) contact the statewide 988 crisis line for assistance; or  
 545 (c) if the individual does not wish to speak with a service provider at that time, provide  
 546 the individual with a physical copy of a local services list.

547 (4)(a) This section does not create a duty for a first responder to offer or provide a  
 548 referral to substance use or mental health services.  
 549 (b) A first responder and an employer of a first responder are not liable under this  
 550 section for a first responder's action or failure to act in regards to offering or  
 551 providing a referral to substance use or mental health services as described in this  
 552 section.  
 553 (c) This section does not affect any privilege or immunity from liability, exemption from  
 554 law, ordinance, or rule, or any other benefit that applies to a first responder or an  
 555 employer of a first responder.

556 (5)(a) If a first responder offers a referral to substance use or mental health services as  
 557 described in this section, the first responder's employer shall report annually to the  
 558 division the total number of individuals who accepted a referral from all first  
 559 responders employed by the employer.  
 560 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah  
 561 Administrative Rulemaking Act, specifying how the reports required by Subsection  
 562 (5)(a) shall be submitted.

563 Section 7. Section **26B-7-117** is amended to read:

564 **26B-7-117 . Syringe exchange and education.**

565 (1) As used in this section:  
 566 (a) "Delivery model" means a syringe exchange program model that relies on program  
 567 personnel to travel from place to place or group to group to provide syringe exchange  
 568 services.  
 569 (b) "Venue-based model" means a syringe exchange program model that operates out of  
 570 a movable venue, such as a van, recreational vehicle, or movable shelter, to provide  
 571 syringe exchange services.  
 572 (2) The following may operate a syringe exchange program in the state to prevent the

- 573 transmission of disease~~[-and]~~ , reduce morbidity and mortality, and facilitate access to  
574 treatment and recovery services among individuals who inject drugs, and those  
575 individuals' contacts:
- 576 (a) a government entity, including:
- 577 (i) the department;
- 578 (ii) a local health department; or
- 579 (iii) a local substance abuse authority, as defined in Section 26B-5-101;
- 580 (b) a nongovernment entity, including:
- 581 (i) a nonprofit organization; or
- 582 (ii) a for-profit organization; or
- 583 (c) any other entity that complies with Subsections (2) and ~~[(3)]~~ (5).
- 584 ~~[(2)]~~ (3) An entity operating a syringe exchange program in the state shall:
- 585 (a) facilitate the exchange of an individual's used syringe for one or more new syringes  
586 in sealed sterile packages;
- 587 (b) ensure that a recipient of a new syringe is given verbal and written instruction on:
- 588 (i) methods for preventing the transmission of blood-borne diseases, including  
589 hepatitis C and human immunodeficiency virus; and
- 590 (ii) options for obtaining:
- 591 (A) services for the treatment of a substance use disorder;
- 592 (B) testing for a blood-borne disease; and
- 593 (C) an opiate antagonist, as that term is defined in Section 26B-4-501; and
- 594 (c) report annually to the department the following information about the program's  
595 activities:
- 596 (i) the number of individuals who have exchanged syringes;
- 597 (ii) the number of used syringes exchanged for new syringes;~~[-and]~~
- 598 (iii) the number of new syringes provided in exchange for used syringes~~[-]~~ ;
- 599 (iv) information the program provided to individuals about recovery and treatment  
600 resources; and
- 601 (v) of the individuals who have exchanged syringes, the number of individuals who  
602 received services for the treatment of a substance use disorder within 12 months  
603 of exchanging syringes.
- 604 (4) A person that is licensed by the department to provide residential treatment for a  
605 substance use disorder shall include as part of the person's admissions materials a  
606 question asking whether the individual seeking treatment has ever received services

607 from a syringe exchange program.

608 [~~(3)~~] (5) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah  
 609 Administrative Rulemaking Act, as necessary or advisable to implement the provisions  
 610 of this section, including rules:

611 (a) specifying requirements for:

612 (i) syringe distribution;

613 (ii) data collection; and

614 (iii) the evaluation of an entity operating a syringe exchange program to ensure  
 615 compliance with applicable statutes and rules; and

616 (b) specifying how and when an entity operating a syringe exchange program shall make  
 617 the report required by Subsection [~~(2)(e)~~] (3)(c).

618 (6) An entity operating a syringe exchange program may not facilitate the exchange of  
 619 syringes at a location described in Subsection 58-37-8(4)(a) through a delivery model or  
 620 venue-based model.

621 Section 8. Section **58-17b-309.7** is amended to read:

622 **58-17b-309.7 . Opioid treatment program -- Mobile medication assisted**  
 623 **treatment units.**

624 (1) As used in this section:

625 (a) "Covered provider" means an individual who is licensed to engage in:

626 (i) the practice of advanced practice registered nursing as defined in Section  
 627 58-31b-102;

628 (ii) the practice of registered nursing as defined in Section 58-31b-102; or

629 (iii) practice as a physician assistant as defined in Section 58-70a-102.

630 (b) "Mobile unit" means a mobile unit that provides medication, such as buprenorphine,  
 631 methadone, or naltrexone, to treat substance use withdrawal symptoms or a substance  
 632 use disorder.

633 [~~(b)~~] (c) "Opioid treatment program" means a program or practitioner that is:

634 (i) engaged in dispensing an opiate medication assisted treatment for opioid use  
 635 disorder;

636 (ii) registered under 21 U.S.C. Sec. 823(g)(1);

637 (iii) licensed by the Division of Licensing and Background Checks within the  
 638 Department of Health and Human Services created in Section 26B-2-103; and

639 (iv) certified by the federal Substance Abuse and Mental Health Services  
 640 Administration in accordance with 42 C.F.R. 8.11.

- 641 (2) A covered provider may dispense opiate medication assisted treatment at an opioid  
642 treatment program if the covered provider:
- 643 (a) is operating under the direction of a pharmacist;
- 644 (b) dispenses the opiate medication assisted treatment under the direction of a  
645 pharmacist; and
- 646 (c) acts in accordance with division ~~rule~~ rules made under Subsection ~~(3)~~ (4).
- 647 (3)(a) An opioid treatment program may operate one or more mobile units to serve  
648 individuals without a fixed address and other individuals as appropriate.
- 649 (b) A mobile unit shall operate as an extension of, and under the registration, license,  
650 and certification held by, the opioid treatment program.
- 651 (c) The pharmacist-in-charge who is responsible for directing the operation of the opioid  
652 treatment program shall determine the number of mobile units that may be operated  
653 as an extension of the opioid treatment program.
- 654 (d) A covered provider may dispense prescription medication assisted treatment only:  
655 (i) pursuant to a valid prescription; and  
656 (ii) in compliance with the requirements described in Subsection (2).
- 657 (e) Medication may not be left in a mobile unit during the hours that the mobile unit is  
658 not in operation.
- 659 (f) An opioid treatment program that intends to operate a mobile unit shall notify the  
660 division and board of that intention as soon as possible, but not later than one  
661 business day before the mobile unit begins operating.
- 662 (g) An opioid treatment program that intends to discontinue operation of a mobile unit  
663 shall notify the division and board of that intention as soon as possible, but not later  
664 than one business day before the mobile unit discontinues operating.
- 665 (h) The Department of Health and Human Services may make rules, in accordance with  
666 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this  
667 section, to establish requirements for the operation of a mobile unit.
- 668 ~~(3)~~ (4) The division shall, in consultation with practitioners who work in an opioid  
669 treatment program, make rules in accordance with Title 63G, Chapter 3, Utah  
670 Administrative Rulemaking Act, to establish guidelines under which a covered provider  
671 may dispense opiate medication assisted treatment to a patient in an opioid treatment  
672 program under this section.

673 Section 9. Section **58-37-8** is amended to read:

674 **58-37-8 . Prohibited acts -- Penalties.**

- 675 (1) Prohibited acts A -- Penalties and reporting:
- 676 (a) Except as authorized by this chapter, it is unlawful for a person to knowingly and  
677 intentionally:
- 678 (i) produce, manufacture, or dispense, or to possess with intent to produce,  
679 manufacture, or dispense, a controlled or counterfeit substance;
- 680 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or  
681 arrange to distribute a controlled or counterfeit substance;
- 682 (iii) possess a controlled or counterfeit substance with intent to distribute; or  
683 (iv) engage in a continuing criminal enterprise where:
- 684 (A) the person participates, directs, or engages in conduct that results in a  
685 violation of this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter  
686 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled  
687 Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a  
688 felony; and
- 689 (B) the violation is a part of a continuing series of two or more violations of this  
690 chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation  
691 Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor  
692 Act, or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are  
693 undertaken in concert with five or more persons with respect to whom the  
694 person occupies a position of organizer, supervisor, or any other position of  
695 management.
- 696 (b) A person convicted of violating Subsection (1)(a) with respect to:
- 697 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a  
698 controlled substance analog, or gammahydroxybutyric acid as listed in Schedule  
699 III is guilty of a second degree felony, punishable by imprisonment for not more  
700 than 15 years, and upon a second or subsequent conviction is guilty of a first  
701 degree felony;
- 702 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or  
703 marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree  
704 felony, and upon a second or subsequent conviction is guilty of a second degree  
705 felony; or
- 706 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a  
707 class A misdemeanor and upon a second or subsequent conviction is guilty of a  
708 third degree felony.

- 709 (c)(i) Except as provided in Subsection [~~(1)(e)(ii)~~] (1)(c)(iii), a person who has been  
710 convicted of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to  
711 imprisonment for an indeterminate term as described in Subsection [~~(1)(b)~~]  
712 (1)(c)(ii) and Title 76, Chapter 3, Punishments.
- 713 (ii) The court shall impose an indeterminate prison term for a person who has been  
714 convicted of a violation of Subsection (1)(a)(ii) or (iii) that is a first degree felony  
715 or a second degree felony if the trier of fact finds beyond a reasonable doubt that,  
716 during the commission or furtherance of the violation, the person intentionally or  
717 knowingly:
- 718 (A) used, drew, or exhibited a dangerous weapon, as that term is defined in  
719 Section 76-10-501, that is not a firearm, in an angry, threatening, intimidating,  
720 or coercive manner;
- 721 (B) used a firearm or had a firearm readily accessible for immediate use, as those  
722 terms are defined in Section 76-10-501; or
- 723 (C) distributed a firearm, as that term is defined in Section 76-10-501, or  
724 possessed a firearm with intent to distribute the firearm.
- 725 (iii) Notwithstanding Subsection (1)(c)(ii), a court may suspend the indeterminate  
726 prison term for a person convicted under Subsection (1)(c)(ii) if the court:
- 727 (A) details on the record the reasons why it is in the interests of justice not to  
728 impose the indeterminate prison term;
- 729 (B) makes a finding on the record that the person does not pose a significant  
730 safety risk to the public; and
- 731 (C) orders the person to complete the terms and conditions of supervised  
732 probation provided by the Department of Corrections.
- 733 (d)(i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree  
734 felony punishable by imprisonment for an indeterminate term of not less than:
- 735 (A) seven years and which may be for life; or
- 736 (B) 15 years and which may be for life if the trier of fact determined that the  
737 defendant knew or reasonably should have known that any subordinate under  
738 Subsection (1)(a)(iv)(B) was under 18 years old.
- 739 (ii) Imposition or execution of the sentence may not be suspended, and the person is  
740 not eligible for probation.
- 741 (iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the  
742 offense, was under 18 years old.

- 743 (e) The Administrative Office of the Courts shall report to the Division of Professional  
 744 Licensing the name, case number, date of conviction, and if known, the date of birth  
 745 of each person convicted of violating Subsection (1)(a).
- 746 (2) Prohibited acts B -- Penalties and reporting:
- 747 (a) It is unlawful:
- 748 (i) for a person knowingly and intentionally to possess or use a controlled substance  
 749 analog or a controlled substance, unless it was obtained under a valid prescription  
 750 or order, directly from a practitioner while acting in the course of the person's  
 751 professional practice, or as otherwise authorized by this chapter;
- 752 (ii) for an owner, tenant, licensee, or person in control of a building, room, tenement,  
 753 vehicle, boat, aircraft, or other place to knowingly and intentionally [to permit  
 754 them to be occupied by persons unlawfully possessing, using, or distributing  
 755 controlled substances in any of those locations] permit a person to occupy the  
 756 building, room, tenement, vehicle, boat, aircraft, or other place while the person is  
 757 unlawfully manufacturing, possessing, using, or distributing a controlled  
 758 substance at that location; or
- 759 (iii) for a person knowingly and intentionally to possess an altered or forged  
 760 prescription or written order for a controlled substance.
- 761 (b) A person convicted of violating Subsection (2)(a)(i) with respect to:
- 762 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree  
 763 felony; or
- 764 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is  
 765 guilty of:
- 766 (A) a class A misdemeanor on a first [~~or second~~] conviction[;] ; and  
 767 (B) a third degree felony on a [~~third~~] second or subsequent conviction if each prior  
 768 offense was committed within seven years before the date of the offense upon  
 769 which the current conviction is based[ ~~is guilty of a third degree felony~~].
- 770 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a  
 771 conviction under Subsection (1)(a), that person shall be sentenced to a one degree  
 772 greater penalty than provided in this Subsection (2).
- 773 (d)(i) A person who violates Subsection (2)(a)(i) with respect to all other controlled  
 774 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed  
 775 in Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.
- 776 [(†)] (ii) Upon a third conviction the person is guilty of a class A misdemeanor, if each

- 777 prior offense was committed within seven years before the date of the offense  
778 upon which the current conviction is based.
- 779 [(ii)] (iii) Upon a fourth or subsequent conviction the person is guilty of a third degree  
780 felony if each prior offense was committed within seven years before the date of  
781 the offense upon which the current conviction is based.
- 782 (e) A person convicted of violating Subsection (2)(a)(i) while inside the exterior  
783 boundaries of property occupied by a correctional facility as defined in Section  
784 64-13-1 or a public jail or other place of confinement shall be sentenced to a penalty  
785 one degree greater than provided in Subsection (2)(b), and if the conviction is with  
786 respect to controlled substances as listed in:
- 787 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an  
788 indeterminate term as provided by law, and:
- 789 (A) the court shall additionally sentence the person convicted to a term of one year  
790 to run consecutively and not concurrently; and
- 791 (B) the court may additionally sentence the person convicted for an indeterminate  
792 term not to exceed five years to run consecutively and not concurrently; and
- 793 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an  
794 indeterminate term as provided by law, and the court shall additionally sentence  
795 the person convicted to a term of six months to run consecutively and not  
796 concurrently.
- 797 (f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:
- 798 (i) on a first conviction, guilty of a class B misdemeanor;
- 799 (ii) on a second conviction, guilty of a class A misdemeanor; and
- 800 (iii) on a third or subsequent conviction, guilty of a third degree felony.
- 801 (g) The Administrative Office of the Courts shall report to the Division of Professional  
802 Licensing the name, case number, date of conviction, and if known, the date of birth  
803 of each person convicted of violating Subsection (2)(a).
- 804 (3) Prohibited acts C -- Penalties:
- 805 (a) It is unlawful for a person knowingly and intentionally:
- 806 (i) to use in the course of the manufacture or distribution of a controlled substance a  
807 license number which is fictitious, revoked, suspended, or issued to another  
808 person or, for the purpose of obtaining a controlled substance, to assume the title  
809 of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician,  
810 dentist, veterinarian, or other authorized person;



- 811 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
812 administration of, to obtain a prescription for, to prescribe or dispense to a person  
813 known to be attempting to acquire or obtain possession of, or to procure the  
814 administration of a controlled substance by misrepresentation or failure by the  
815 person to disclose receiving a controlled substance from another source, fraud,  
816 forgery, deception, subterfuge, alteration of a prescription or written order for a  
817 controlled substance, or the use of a false name or address;
- 818 (iii) to make a false or forged prescription or written order for a controlled substance,  
819 or to utter the same, or to alter a prescription or written order issued or written  
820 under the terms of this chapter; or
- 821 (iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed  
822 to print, imprint, or reproduce the trademark, trade name, or other identifying  
823 mark, imprint, or device of another or any likeness of any of the foregoing upon  
824 any drug or container or labeling so as to render a drug a counterfeit controlled  
825 substance.
- 826 (b)(i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A  
827 misdemeanor.
- 828 (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third  
829 degree felony.
- 830 (c) A violation of Subsection (3)(a)(iv) is a third degree felony.
- 831 (4) Prohibited acts D -- Penalties:
- 832 (a) Notwithstanding other provisions of this section, a person not authorized under this  
833 chapter who commits any act that is unlawful under Subsection (1)(a) or Section  
834 58-37b-4 is upon conviction subject to the penalties and classifications under this  
835 Subsection (4) if the trier of fact finds the act is committed:
- 836 (i) in a public or private elementary or secondary school or on the grounds of any of  
837 those schools during the hours of 6 a.m. through 10 p.m.;
- 838 (ii) in a public or private vocational school or postsecondary institution or on the  
839 grounds of any of those schools or institutions during the hours of 6 a.m. through  
840 10 p.m.;
- 841 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or  
842 facility's hours of operation;
- 843 (iv) in a public park, amusement park, arcade, or recreation center when the public or  
844 amusement park, arcade, or recreation center is open to the public;

- 845 (v) in or on the grounds of a house of worship as defined in Section 76-10-501;
- 846 (vi) in or on the grounds of a library when the library is open to the public;
- 847 (vii) within an area that is within 100 feet of any structure, facility, or grounds
- 848 included in Subsections (4)(a)(i) through (vi);
- 849 (viii) in the presence of a person younger than 18 years old, regardless of where the
- 850 act occurs; or
- 851 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or
- 852 distribution of a substance in violation of this section to an inmate or on the
- 853 grounds of a correctional facility as defined in Section 76-8-311.3.
- 854 (b)(i) A person convicted under this Subsection (4) is guilty of a first degree felony
- 855 and shall be imprisoned for a term of not less than five years if the penalty that
- 856 would otherwise have been established but for this Subsection (4) would have
- 857 been a first degree felony.
- 858 (ii) Imposition or execution of the sentence may not be suspended, and the person is
- 859 not eligible for probation.
- 860 (c) If the classification that would otherwise have been established would have been less
- 861 than a first degree felony but for this Subsection (4), a person convicted under this
- 862 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for
- 863 that offense.
- 864 (d)(i) If the violation is of Subsection (4)(a)(ix):
- 865 (A) the person may be sentenced to imprisonment for an indeterminate term as
- 866 provided by law, and the court shall additionally sentence the person convicted
- 867 for a term of one year to run consecutively and not concurrently; and
- 868 (B) the court may additionally sentence the person convicted for an indeterminate
- 869 term not to exceed five years to run consecutively and not concurrently; and
- 870 (ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with
- 871 the mental state required for the commission of an offense, directly or indirectly
- 872 solicits, requests, commands, coerces, encourages, or intentionally aids another
- 873 person to commit a violation of Subsection (4)(a)(ix).
- 874 (e) It is not a defense to a prosecution under this Subsection (4) that:
- 875 (i) the actor mistakenly believed the individual to be 18 years old or older at the time
- 876 of the offense or was unaware of the individual's true age; or
- 877 (ii) the actor mistakenly believed that the location where the act occurred was not as
- 878 described in Subsection (4)(a) or was unaware that the location where the act

- 879 occurred was as described in Subsection (4)(a).
- 880 (5) A violation of this chapter for which no penalty is specified is a class B misdemeanor.
- 881 (6)(a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of  
882 guilty or no contest to a violation or attempted violation of this section or a plea  
883 which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the  
884 equivalent of a conviction, even if the charge has been subsequently reduced or  
885 dismissed in accordance with the plea in abeyance agreement.
- 886 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a  
887 conviction that is:
- 888 (i) from a separate criminal episode than the current charge; and  
889 (ii) from a conviction that is separate from any other conviction used to enhance the  
890 current charge.
- 891 (7) A person may be charged and sentenced for a violation of this section, notwithstanding  
892 a charge and sentence for a violation of any other section of this chapter.
- 893 (8)(a) A penalty imposed for violation of this section is in addition to, and not in lieu of,  
894 a civil or administrative penalty or sanction authorized by law.
- 895 (b) When a violation of this chapter violates a federal law or the law of another state,  
896 conviction or acquittal under federal law or the law of another state for the same act  
897 is a bar to prosecution in this state.
- 898 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a person  
899 or persons produced, manufactured, possessed, distributed, or dispensed a controlled  
900 substance or substances, is prima facie evidence that the person or persons did so with  
901 knowledge of the character of the substance or substances.
- 902 (10) This section does not prohibit a veterinarian, in good faith and in the course of the  
903 veterinarian's professional practice only and not for humans, from prescribing,  
904 dispensing, or administering controlled substances or from causing the substances to be  
905 administered by an assistant or orderly under the veterinarian's direction and supervision.
- 906 (11) Civil or criminal liability may not be imposed under this section on:
- 907 (a) a person registered under this chapter who manufactures, distributes, or possesses an  
908 imitation controlled substance for use as a placebo or investigational new drug by a  
909 registered practitioner in the ordinary course of professional practice or research;
- 910 (b) a law enforcement officer acting in the course and legitimate scope of the officer's  
911 employment;\_or
- 912 (c) a healthcare facility, substance use harm reduction services program, or drug

913 addiction treatment facility that temporarily possesses a controlled or counterfeit  
914 substance to conduct a test or analysis on the controlled or counterfeit substance to  
915 identify or analyze the strength, effectiveness, or purity of the substance for a public  
916 health or safety reason.

917 (12)(a) Civil or criminal liability may not be imposed under this section on any Indian,  
918 as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide  
919 traditional ceremonial purposes in connection with the practice of a traditional Indian  
920 religion as defined in Section 58-37-2.

921 (b) In a prosecution alleging violation of this section regarding peyote as defined in  
922 Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or  
923 transported by an Indian for bona fide traditional ceremonial purposes in connection  
924 with the practice of a traditional Indian religion.

925 (c)(i) The defendant shall provide written notice of intent to claim an affirmative  
926 defense under this Subsection (12) as soon as practicable, but not later than 10  
927 days before trial.

928 (ii) The notice shall include the specific claims of the affirmative defense.

929 (iii) The court may waive the notice requirement in the interest of justice for good  
930 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely  
931 notice.

932 (d) The defendant shall establish the affirmative defense under this Subsection (12) by a  
933 preponderance of the evidence. If the defense is established, it is a complete defense  
934 to the charges.

935 (13)(a) It is an affirmative defense that the person produced, possessed, or administered  
936 a controlled substance listed in Section 58-37-4.2 if the person was:

937 (i) engaged in medical research; and

938 (ii) a holder of a valid license to possess controlled substances under Section 58-37-6.

939 (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a  
940 controlled substance listed in Section 58-37-4.2.

941 (14) It is an affirmative defense that the person possessed, in the person's body, a controlled  
942 substance listed in Section 58-37-4.2 if:

943 (a) the person was the subject of medical research conducted by a holder of a valid  
944 license to possess controlled substances under Section 58-37-6; and

945 (b) the substance was administered to the person by the medical researcher.

946 (15) The application of any increase in penalty under this section to a violation of

- 947 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony.  
948 This Subsection (15) takes precedence over any conflicting provision of this section.  
949 (16)(a) It is an affirmative defense to an allegation of the commission of an offense  
950 listed in Subsection (16)(b) that the person or bystander:
- 951 (i) reasonably believes that the person or another person is experiencing an overdose  
952 event due to the ingestion, injection, inhalation, or other introduction into the  
953 human body of a controlled substance or other substance;
  - 954 (ii) reports, or assists a person who reports, in good faith the overdose event to a  
955 medical provider, an emergency medical service provider as defined in Section  
956 53-2d-101, a law enforcement officer, a 911 emergency call system, or an  
957 emergency dispatch system, or the person is the subject of a report made under  
958 this Subsection (16);
  - 959 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the  
960 actual location of the overdose event that facilitates responding to the person  
961 experiencing the overdose event;
  - 962 (iv) remains at the location of the person experiencing the overdose event until a  
963 responding law enforcement officer or emergency medical service provider  
964 arrives, or remains at the medical care facility where the person experiencing an  
965 overdose event is located until a responding law enforcement officer arrives;
  - 966 (v) cooperates with the responding medical provider, emergency medical service  
967 provider, and law enforcement officer, including providing information regarding  
968 the person experiencing the overdose event and any substances the person may  
969 have injected, inhaled, or otherwise introduced into the person's body; and
  - 970 (vi) is alleged to have committed the offense in the same course of events from which  
971 the reported overdose arose.
- 972 (b) The offenses referred to in Subsection (16)(a) are:
- 973 (i) the possession or use of less than 16 ounces of marijuana;
  - 974 (ii) the possession or use of a scheduled or listed controlled substance other than  
975 marijuana; and
  - 976 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,  
977 Imitation Controlled Substances Act.
- 978 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not  
979 include seeking medical assistance under this section during the course of a law  
980 enforcement agency's execution of a search warrant, execution of an arrest warrant,

981 or other lawful search.

982 (17) If any provision of this chapter, or the application of any provision to any person or  
983 circumstances, is held invalid, the remainder of this chapter shall be given effect without  
984 the invalid provision or application.

985 (18) A legislative body of a political subdivision may not enact an ordinance that is less  
986 restrictive than any provision of this chapter.

987 (19) If a minor who is under 18 years old is found by a court to have violated this section or  
988 Subsection 76-5-102.1(2)(b) or 76-5-207(2)(b), the court may order the minor to  
989 complete:

990 (a) a screening as defined in Section 41-6a-501;

991 (b) an assessment as defined in Section 41-6a-501 if the screening indicates an  
992 assessment to be appropriate; and

993 (c) an educational series as defined in Section 41-6a-501 or substance use disorder  
994 treatment as indicated by an assessment.

995 Section 10. Section **76-10-801** is amended to read:

996 **76-10-801 . Definitions.**

997 [~~(1) A nuisance is any item, thing, manner, condition whatsoever that is dangerous to~~  
998 ~~human life or health or renders soil, air, water, or food impure or unwholesome.] As used  
999 in this part:~~

1000 (1) "Controlled substance" means the same as that term is defined in Section 58-37-2.

1001 (2) "Nuisance" means an item, thing, manner, or condition that:

1002 (a) is dangerous to human life or health; or

1003 (b) renders soil, air, water, or food impure or unwholesome.

1004 [~~(2) Any person, whether as owner, agent, or occupant who creates, aids in creating, or~~  
1005 ~~contributes to a nuisance, or who supports, continues, or retains a nuisance, is guilty of a~~  
1006 ~~class B misdemeanor.]~~

1007 (3)(a) "Supervised drug consumption site" means a facility or premises operated or  
1008 intended to provide an environment for the unlawful use of a controlled substance.

1009 (b) "Supervised drug consumption site" does not include a facility or premises that  
1010 provides or facilitates:

1011 (i) an opioid treatment program, as that term is defined in Section 58-17b-309.7; or

1012 (ii) the use of medication pursuant to a medication assisted treatment plan, as that  
1013 term is defined in Section 64-13-25.1.

1014 Section 11. Section **76-10-803** is amended to read:

- 1015           **76-10-803 . "Public nuisance" defined -- Agricultural operations -- Critical**  
1016 **infrastructure materials operations.**
- 1017 (1) A public nuisance is a crime against the order and economy of the state and consists in  
1018 unlawfully doing any act or omitting to perform any duty, which act or omission:  
1019 (a) annoys, injures, or endangers the comfort, repose, health, or safety of three or more  
1020 persons;  
1021 (b) offends public decency;  
1022 (c) unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for  
1023 passage, any lake, stream, canal, or basin, or any public park, square, street, or  
1024 highway;  
1025 (d) is a nuisance as described in Section 78B-6-1107; or  
1026 (e) in any way renders three or more persons insecure in life or the use of property.
- 1027 (2) An act which affects three or more persons in any of the ways specified in this section is  
1028 still a nuisance regardless of the extent to which the annoyance or damage inflicted on  
1029 individuals is unequal.
- 1030 (3)(a) Activities conducted in the normal and ordinary course of agricultural operations,  
1031 as defined in Section 4-44-102, and conducted in accordance with sound agricultural  
1032 practices are presumed to be reasonable and not constitute a public nuisance under  
1033 Subsection (1).
- 1034 (b) Agricultural operations undertaken in conformity with federal, state, and local laws  
1035 and regulations, including zoning ordinances, are presumed to be operating within  
1036 sound agricultural practices.
- 1037 (4)(a) Activities conducted in the normal and ordinary course of critical infrastructure  
1038 materials operations, as that term is defined in [Subsection 78B-6-1101(8)] Section  
1039 78B-6-1101, and conducted in accordance with sound critical infrastructure materials  
1040 practices are presumed to be reasonable and not constitute a public nuisance under  
1041 Subsection (1).
- 1042 (b) Critical infrastructure materials operations undertaken in conformity with federal,  
1043 state, and local laws and regulations, including zoning ordinances, are presumed to be  
1044 operating within sound critical infrastructure materials operations.
- 1045 Section 12. Section **76-10-803.1** is enacted to read:
- 1046           **76-10-803.1 . Maintenance of a drug-involved premises.**
- 1047 (1) Terms defined in Sections 76-1-101.5 and 76-10-801 apply to this section.
- 1048 (2) An actor commits maintenance of a drug-involved premises if the actor knowingly:

- 1049 (a) opens, leases, rents, uses, or maintains any facility or premises, whether permanently  
 1050 or temporarily, for the purpose of the unlawful manufacturing, distributing, or using  
 1051 any controlled substance;
- 1052 (b)(i) manages or controls any facility or premises, whether permanently or  
 1053 temporarily, as an owner, tenant, lessee, agent, employee, occupant, or mortgagee;  
 1054 and
- 1055 (ii) intentionally rents, leases, profits from, or makes available for use, with or  
 1056 without compensation, the facility or premises for the purpose of unlawfully  
 1057 manufacturing, storing, distributing, or using a controlled substance;
- 1058 (c) operates a supervised drug consumption site; or
- 1059 (d) as an owner, tenant, lessee, agent, employee, occupant, or mortgagee, intentionally  
 1060 opens, rents, leases profits from, maintains, or makes available for use, with or  
 1061 without compensation, any premises for the purpose of operating a supervised drug  
 1062 consumption site.

1063 (3) A violation of Subsection (2) is a second degree felony.

1064 *The following section is affected by a coordination clause at the end of this bill.*

1065 Section 13. Section **78B-6-1101** is amended to read:

1066 **78B-6-1101 . Definitions -- Nuisance -- Agriculture operations.**

- 1067 (1) [~~A nuisance is anything that is injurious to health, indecent, offensive to the senses, or~~  
 1068 ~~an obstruction to the free use of property, so as to interfere with the comfortable~~  
 1069 ~~enjoyment of life or property.] As used in this part:~~
- 1070 (a) "Controlled substance" means the same as that term is defined in Section 58-37-2.
- 1071 (b) "Critical infrastructure materials operations" means the same as that term is defined  
 1072 in Section 10-9a-901.
- 1073 (c) "Manufacturing facility" means a factory, plant, or other facility including its  
 1074 appurtenances, where the form of raw materials, processed materials, commodities,  
 1075 or other physical objects is converted or otherwise changed into other materials,  
 1076 commodities, or physical objects or where such materials, commodities, or physical  
 1077 objects are combined to form a new material, commodity, or physical object.
- 1078 (d) "Nuisance" means anything that is injurious to health, indecent, offensive to the  
 1079 senses, or an obstruction to the free use of property, so as to interfere with the  
 1080 comfortable enjoyment of life or property.
- 1081 (e)(i) "Possession or use" means the joint or individual ownership, control,  
 1082 occupancy, holding, retaining, belonging, maintaining, or the application,



1083 inhalation, swallowing, injection, or consumption, as distinguished from  
1084 distribution, of a controlled substance, and includes individual, joint, or group  
1085 possession or use of a controlled substance.  
1086 (ii) For a person to be a possessor or user of a controlled substance, it is not required  
1087 that the person be shown to have individually possessed, used, or controlled the  
1088 substance, but it is sufficient if it is shown that the person jointly participated with  
1089 one or more persons in the use, possession, or control of a controlled substance  
1090 with knowledge that the activity was occurring, or the controlled substance is  
1091 found in a place or under circumstances indicating that the person had the ability  
1092 and the intent to exercise dominion and control over it.

1093 (2) A nuisance may be the subject of an action.

1094 [~~2~~] (3) A nuisance may include the following:

- 1095 (a) drug houses and drug dealing as provided in Section 78B-6-1107;
- 1096 (b) gambling as provided in Title 76, Chapter 10, Part 11, Gambling;
- 1097 (c) criminal activity committed in concert with three or more persons as provided in  
1098 Section 76-3-203.1;
- 1099 (d) criminal activity committed for the benefit of, at the direction of, or in association  
1100 with any criminal street gang as defined in Section 76-9-802;
- 1101 (e) criminal activity committed to gain recognition, acceptance, membership, or  
1102 increased status with a criminal street gang as defined in Section 76-9-802;
- 1103 (f) party houses that frequently create conditions defined in Subsection [~~(1)~~; and] (1)(d);
- 1104 (g) prostitution as provided in Title 76, Chapter 10, Part 13, Prostitution[~~;~~] ; or
- 1105 (h) the unlawful discharge of a firearm as provided in state or local law.

1106 [~~3~~] (4) A nuisance under this part includes:

1107 (a) tobacco smoke that drifts into a residential unit a person rents, leases, or owns, from  
1108 another residential or commercial unit and the smoke:

1109 [~~(a)~~] (i) drifts in more than once in each of two or more consecutive seven-day  
1110 periods; and

1111 [~~(b)~~] (ii) creates any of the conditions [~~under~~] described in Subsection [~~(1)~~;] (1)(d); or

1112 (b) fumes resulting from the unlawful manufacturing or the unlawful possession or use  
1113 of a controlled substance that drift into a residential unit a person rents, leases, or  
1114 owns, from another residential or commercial unit.

1115 [~~4~~] (5) Subsection [~~3~~] (4)(a) does not apply to:

1116 (a) a residential rental unit available for temporary rental, such as for a vacation, or

1117 available for only 30 or fewer days at a time; or

1118 (b) a hotel or motel room.

1119 ~~[(5)]~~ (6) Subsection ~~[(3)]~~ (4)(a) does not apply to a unit that is part of a timeshare

1120 development, as defined in Section 57-19-2, or subject to a timeshare interest as defined

1121 in Section 57-19-2.

1122 ~~[(6) An action may be brought by a person whose property is injuriously affected, or whose~~

1123 ~~personal enjoyment is lessened by the nuisance.]~~

1124 (7) An action for nuisance against an agricultural operation is governed by Title 4, Chapter

1125 44, Agricultural Operations Nuisances Act.

1126 ~~[(8) "Critical infrastructure materials operations" means the same as that term is defined in~~

1127 ~~Section 10-9a-901.]~~

1128 ~~[(9) "Manufacturing facility" means a factory, plant, or other facility including its~~

1129 ~~appurtenances, where the form of raw materials, processed materials, commodities, or~~

1130 ~~other physical objects is converted or otherwise changed into other materials,~~

1131 ~~commodities, or physical objects or where such materials, commodities, or physical~~

1132 ~~objects are combined to form a new material, commodity, or physical object.]~~

1133 Section 14. Section **78B-6-1102** is amended to read:

1134 **78B-6-1102 . Right of action -- Remedies -- Jurisdiction for enforcement.**

1135 (1) An action for nuisance may be brought before a court with jurisdiction by any person

1136 whose property is injuriously affected, or whose personal enjoyment is lessened by the

1137 nuisance.

1138 (2) Upon judgment, the ~~[nuisance may be enjoined or abated, and damages may be~~

1139 ~~recovered.]~~ court may, in addition to any other relief the court considers just and proper:

1140 (a) award damages;

1141 (b) order the nuisance to be enjoined or abated, which may include:

1142 (i) requiring a defendant to make repairs to the nuisance property or property that is

1143 injuriously affected by the nuisance;

1144 (ii) requiring a defendant to:

1145 (A) install and maintain secure locks on the nuisance property's doors or windows;

1146 (B) provide security personnel or video surveillance monitoring of the nuisance

1147 property; or

1148 (C) install and maintain lighting in and around common areas; or

1149 (iii) abatement by eviction as provided in this part;

1150 (c) grant declaratory relief as described in Part 4, Declaratory Judgments; or

1151 (d) award costs and reasonable attorney fees to the prevailing party as described in  
 1152 Section 76B-6-1114.

1153 (3) A court that issues a judgment or order under this part retains jurisdiction to enforce the  
 1154 judgment or order.

1155 Section 15. Section **78B-6-1102.5** is amended to read:

1156 **78B-6-1102.5 . Violation of order enjoining a nuisance -- Civil penalty.**

1157 A person who knowingly violates any judgment or order abating or [~~otherwise~~]  
 1158 enjoining a nuisance, as that term is defined [~~under~~] in Section 78B-6-1101:

1159 (1) is guilty of a class B misdemeanor[-] ; and

1160 (2) is subject to a civil penalty of \$50 per day for each day that the nuisance continues in  
 1161 violation of the order.

1162 Section 16. Section **78B-6-1103** is amended to read:

1163 **78B-6-1103 . Manufacturing facility in operation over three years -- Limited**  
 1164 **application of restrictions.**

1165 (1)(a) Notwithstanding Sections 76-10-803 and 78B-6-1101, a manufacturing facility[~~or~~  
 1166 operation] may not be considered a nuisance[~~, private or public, by virtue~~] because of  
 1167 any changed circumstance in land uses near the facility [after it] if:

1168 (i) the manufacturing facility has been in operation for more than three years[~~if~~] ; and

1169 (ii) the manufacturing facility[~~or operation~~] was not a nuisance at the time it began  
 1170 operation.

1171 (b) The manufacturing facility may not increase the condition asserted to be a nuisance.

1172 (c) The provisions of this Subsection (1) do not apply if a nuisance results from the  
 1173 negligent or improper operation of a manufacturing facility.

1174 (2) [~~The provisions of Subsection (1) may not affect or defeat~~] Nothing in this section  
 1175 affects the right of [any] a person to recover damages for [any] injuries or damage  
 1176 sustained [because of any pollution of, or change in the condition of,] as a result of the  
 1177 pollution or change in the conditions of the waters of [any] a stream or [the] overflow of  
 1178 the lands of any person.

1179 (3)(a) Any and all ordinances now or in the future adopted by any county or municipal  
 1180 corporation in which a manufacturing facility is located and which makes its  
 1181 operation a nuisance or providing for an abatement as a nuisance in the circumstances  
 1182 set forth in this section are null and void.

1183 (b) The provisions of this Subsection (3) may not apply whenever a nuisance results  
 1184 from the negligent or improper operation of a manufacturing facility.

1185 Section 17. Section **78B-6-1106** is amended to read:

1186 **78B-6-1106 . Rental units -- Tobacco smoke -- Drug fumes.**

1187 (1) There is no cause of action for a nuisance under Subsection [~~78B-6-1101(3)~~]  
1188 78B-6-1101(4)(a) if the rental, lease, restrictive covenant, or purchase agreement for the  
1189 unit states in writing that:

1190 (a) tobacco smoking is allowed in other units, either residential or commercial, and that  
1191 tobacco smoke from those units may drift into the unit that is subject to the  
1192 agreement; and

1193 (b) by signing the agreement the renter, lessee, or buyer acknowledges he has been  
1194 informed that tobacco smoke may drift into the unit he is renting, leasing, or  
1195 purchasing, and he waives any right to a cause of action for a nuisance under  
1196 Subsection [~~78B-6-1101(3)~~] 78B-6-1101(4).

1197 (2) A cause of action for a nuisance under Subsection [~~78B-6-1101(3)~~] 78B-6-1101(4)(a)  
1198 may be brought against:

1199 (a) the individual generating the tobacco smoke;

1200 (b) the renter or lessee who permits or fails to control the generation of tobacco smoke,  
1201 in violation of the terms of the rental or lease agreement, on the premises [~~he~~] the  
1202 renter or lessee rents or leases; or

1203 (c) the landlord, but only if:

1204 (i) the terms of the renter's or lessee's contract provide the unit will not be subject to  
1205 the nuisance of drifting tobacco smoke;

1206 (ii) the complaining renter or lessee has provided to the landlord a statement in  
1207 writing indicating that tobacco smoke is creating a nuisance in the renter's or  
1208 lessee's unit; and

1209 (iii) the landlord knowingly allows the continuation of a nuisance under Subsection [  
1210 ~~78B-6-1101(3)~~] 78B-6-1101(4) after receipt of written notice under Subsection  
1211 (2)(c)(ii), and in violation of the terms of the rental or lease agreement under  
1212 Subsection (2)(c)(i).

1213 (3) A cause of action for nuisance under Subsection 78B-6-1101(4)(b) may be brought  
1214 against:

1215 (a) an individual who generates fumes by the unlawful manufacturing or the unlawful  
1216 possession or use of a controlled substance;

1217 (b) a renter or lessee who permits or fails to control the generation of fumes from the  
1218 unlawful manufacturing or the unlawful possession or use of a controlled substance

- 1219 on the premises the renter or lessee rents or leases; or
- 1220 (c) a landlord, but only if:
- 1221 (i) the complaining renter or lessee has provided to the landlord a statement in
- 1222 writing indicating that fumes from the unlawful manufacturing or the unlawful
- 1223 possession or use of a controlled substance are creating a nuisance in the renter's
- 1224 or lessee's unit; and
- 1225 (ii) the landlord knowingly allows the continuation of a nuisance under Subsection
- 1226 78B-6-1101(4)(b) after receipt of written notice under Subsection (3)(c)(i).
- 1227 Section 18. Section **78B-6-1107** is amended to read:
- 1228 **78B-6-1107 . Nuisance -- Drug houses and drug dealing -- Gambling -- Group**
- 1229 **criminal activity -- Party house -- Prostitution -- Weapons -- Discharge of a firearm --**
- 1230 **Defense.**
- 1231 (1) Every building or place is a nuisance where:
- 1232 (a) the unlawful sale, manufacture, service, storage, distribution, dispensing, ~~[or]~~
- 1233 acquisition, or possession or use occurs of any controlled substance, precursor, or
- 1234 analog ~~[specified]~~ described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 1235 (b) gambling is permitted to be played, conducted, or dealt upon as prohibited in Title
- 1236 76, Chapter 10, Part 11, Gambling, which creates the conditions of a nuisance as that
- 1237 term is defined in Subsection 78B-6-1101(1);
- 1238 (c) criminal activity is committed in concert with three or more persons as ~~[provided]~~
- 1239 described in Section 76-3-203.1;
- 1240 (d) criminal activity is committed for the benefit of, at the direction of, or in association
- 1241 with any criminal street gang as defined in Section 76-9-802;
- 1242 (e) criminal activity is committed to gain recognition, acceptance, membership, or
- 1243 increased status with a criminal street gang as defined in Section 76-9-802;
- 1244 (f) parties occur frequently which create the conditions of a nuisance as that term is
- 1245 defined in Subsection 78B-6-1101(1);
- 1246 (g) prostitution or promotion of prostitution is regularly carried on by one or more
- 1247 persons as ~~[provided]~~ described in Title 76, Chapter 10, Part 13, Prostitution;~~[-and]~~
- 1248 (h) a violation of Title 76, Chapter 10, Part 5, Weapons, occurs on the premises~~[-]~~; and
- 1249 (i) the unlawful discharge of a firearm, as provided in state or local law, occurs on the
- 1250 premises.
- 1251 (2) It is a defense to nuisance under Subsection (1)(a) if the defendant can prove that the
- 1252 defendant is lawfully entitled to the possession or use of a controlled substance.

1253 ~~[(3) Sections 78B-6-1108 through 78B-6-1114 govern only an abatement by eviction of the~~  
 1254 ~~nuisance as defined in Subsection (1).]~~

1255 (3) Evidence of a previous conviction for a crime described in Subsection (1) may not be  
 1256 used in an action for nuisance under this part.

1257 Section 19. Section **78B-6-1108** is amended to read:

1258 **78B-6-1108 . Nuisance -- Abatement by eviction.**

1259 (1) Whenever there is reason to believe that a nuisance under Sections 78B-6-1107 through  
 1260 78B-6-1114 is kept, maintained, or exists in any county, the county attorney of the  
 1261 county, the city attorney of any incorporated city, any citizen or citizens of the state  
 1262 residing in the county, or any ~~[corporation, partnership]~~ person or business doing  
 1263 business in the county, in ~~[his or ]~~their own name or names, may ~~[maintain]~~ bring an  
 1264 action for abatement by eviction in a court ~~[of competent]~~ with jurisdiction~~[ to abate the~~  
 1265 ~~nuisance and obtain an order for the automatic eviction of the tenant].~~

1266 (2) The court may designate a spokesperson ~~[of any]~~ from a group of citizens who would  
 1267 otherwise have the right to maintain an action in their individual names against the  
 1268 defendant under this section.

1269 Section 20. Section **78B-6-1109** is amended to read:

1270 **78B-6-1109 . Abatement by eviction order -- Grounds.**

1271 ~~[An order of abatement by eviction may issue only upon a showing by the applicant]~~ A  
 1272 court shall issue an order of abatement by eviction if the applicant shows, by a preponderance  
 1273 of the evidence, that:

1274 (1) the applicant will suffer irreparable harm unless the order of abatement by eviction  
 1275 issues;

1276 (2) the threatened injury to the applicant outweighs ~~[whatever]~~ any damage the proposed  
 1277 order of abatement by eviction may cause the party ~~[so ordered]~~ to be evicted;

1278 (3) the order of abatement by eviction~~[, if issued,]~~ would not be adverse to the public  
 1279 interest; and

1280 (4) there is a substantial likelihood that:

1281 (a) the applicant will prevail on the merits of the underlying claim~~[,]~~ ; or

1282 (b) the case presents serious issues on the merits which should be the subject of further  
 1283 litigation.

1284 Section 21. Section **78B-6-1110** is amended to read:

1285 **78B-6-1110 . Prior acts or threats of violence -- Protection of applicant or witness.**

1286 At the time of application for abatement of ~~[the]~~ a nuisance by eviction pursuant to

1287 Sections 78B-6-1108 and 78B-6-1109~~[, if proof of the existence of the nuisance depends, in~~  
 1288 ~~whole or in part, upon the affidavits of witnesses who are not peace officers, upon a showing~~  
 1289 ~~of prior threats of violence or acts of violence by any defendant or other person], upon a~~  
 1290 ~~showing of good cause the court may issue~~~~[orders to protect those witnesses, including,] an~~  
 1291 ~~order to protect the applicant or, if proof of the existence of the nuisance depends in whole or~~  
 1292 ~~in part upon the affidavit of a witness who is not a peace officer, the witness, which order may~~  
 1293 ~~include nondisclosure of the name, address, or any other information which may identify [~~  
 1294 ~~those witnesses.] the individual protected by the order.~~

1295 Section 22. Section **78B-6-1111** is amended to read:

1296 **78B-6-1111 . Landlord, owner, or designated agent -- Necessary party --**  
 1297 **Automatic eviction.**

1298 (1) A landlord, owner, or designated agent is a necessary party defendant in a nuisance  
 1299 action under Sections 78B-6-1107 through 78B-6-1114 for entry of an order to abate the  
 1300 nuisance by eviction where the acts complained of are those of ~~[third parties]~~ a third party  
 1301 upon the premises of the landlord, owner, or designated agent.

1302 (2) ~~[In the presence of the applicant, the tenant and the landlord, owner, or designated agent~~  
 1303 ~~at]~~ At the court's hearing on the action to abate the nuisance by eviction, the court shall  
 1304 notify the necessary parties~~[of its finding that] , including the applicant, the tenant, and~~  
 1305 the landlord, owner, or designated agent, if:

1306 (a) the court finds that a nuisance exists as ~~[defined]~~ described in Section 78B-6-1107;  
 1307 and

1308 (b) as a result, the court is issuing an order to evict the tenant subject to compliance with  
 1309 the security requirement in Section 78B-6-1112.

1310 (3) In all cases, including default judgments, the order of abatement by eviction may be  
 1311 issued and enforced immediately.

1312 Section 23. Section **78B-6-1112** is amended to read:

1313 **78B-6-1112 . Security requirement -- Amount not a limitation -- Jurisdiction over**  
 1314 **surety.**

1315 (1)(a) The court shall condition issuance of ~~[the]~~ an order of abatement by eviction on the  
 1316 giving of security by the applicant, in such sum and form as the court determines  
 1317 proper, unless:

1318 (i) ~~[it appears]~~ the court determines that none of the parties will incur or suffer costs,  
 1319 attorney fees, or damage as the result of any wrongful order of abatement by  
 1320 eviction~~[, or]~~ ;

1321 (ii) [unless] the court determines that there exists some [other-]substantial reason for  
 1322 dispensing with the requirement of security[-] ; or

1323 (iii) the applicant has proved, by a preponderance of the evidence, the existence of a  
 1324 nuisance described in Section 78B-6-1107.

1325 (b) [No such security shall] Security described in Subsection (1)(a) may not be required;

1326 (i) of the United States, the [State of Utah] state, or [of-]an officer, agency, or  
 1327 subdivision of [either; nor shall it be required] the United States or the state; or

1328 (ii) when [it is-]prohibited by law.

1329 (2) The amount of security [shall not establish or] may not limit the [amount of costs,  
 1330 including] award of:

1331 (a) reasonable attorney fees or costs incurred in connection with the order of abatement  
 1332 by eviction[-] ; or

1333 (b) damages that may be awarded to a party who is found to have been wrongfully  
 1334 evicted.

1335 (3)(a) A surety upon a bond or undertaking under this section submits to the jurisdiction  
 1336 of the court and irrevocably appoints the clerk of the court as agent upon whom any  
 1337 papers affecting the surety's liability on the bond or undertaking may be served.

1338 (b) The surety's liability may be enforced on motion without the necessity of an  
 1339 independent action.

1340 (c) The motion and such notice of the motion as the court prescribes may be served on  
 1341 the clerk of the court who shall immediately [mail copies to the persons giving the  
 1342 security if their addresses are known] provide a copy to the applicant or other person  
 1343 giving the security by the means established at the time of the application.

1344 (4) [The plaintiff, upon demand,] Upon request, the applicant shall be granted a hearing to  
 1345 be held [prior to the expiration of] no later than three days from the date the defendant is  
 1346 served with notice of the [plaintiff's] applicant's giving of security, as [provided] described  
 1347 in Subsection [78B-6-1112(1)] (1).

1348 Section 24. Section **78B-6-1113** is amended to read:

1349 **78B-6-1113 . Evidence of nuisance.**

1350 [In any action for abatement by eviction instituted pursuant to Sections 78B-6-1107  
 1351 through 78B-6-1114] In an action for nuisance or abatement by eviction, all evidence [  
 1352 otherwise-]authorized by law, including evidence of reputation in a community, is admissible  
 1353 to prove the existence of a nuisance or the elements required for an order of abatement by  
 1354 eviction by a preponderance of the evidence.



1355 Section 25. Section **78B-6-1114** is amended to read:

1356 **78B-6-1114 . Award of costs and attorney fees.**

1357 (1) The court may award costs, including the costs of investigation and discovery, and  
1358 reasonable attorney fees, which are not compensated for pursuant to some other  
1359 provision of law, to the prevailing party in any case in which [~~a governmental agency,  
1360 private citizen or citizens, corporation, partnership, or business seeks to abate the  
1361 nuisance by eviction in or upon any building or place where the nuisance occurs as  
1362 provided in Section 78B-6-1107]~~ a party brings an action to abate a nuisance under this  
1363 part.

1364 (2) The court may award costs, including the costs of investigation and discovery, and  
1365 reasonable attorney fees against a defendant landlord, owner, or designated agent only  
1366 when the court finds that the defendant landlord, owner, or designated agent had actual  
1367 notice of the nuisance action and willfully failed to take reasonable action within a  
1368 reasonable time to abate the nuisance.

1369 Section 26. **Repealer.**

1370 This bill repeals:

1371 Section **78B-6-1105, Tobacco smoke -- Legislative intent.**

1372 Section 27. **Effective Date.**

1373 This bill takes effect on May 7, 2025.

1374 Section 28. **Coordinating H.B. 199 with H.B. 355.**

1375 If H.B. 199, Substance Use Treatment and Enforcement Amendments, and H.B. 355,  
1376 Critical Infrastructure Materials Amendments, both pass and become law, the Legislature  
1377 intends that, on May 7, 2025, the following language replace Subsection 78B-6-1101(1)(b)  
1378 enacted in H.B. 199:

1379 ""Critical infrastructure materials operations" means the same as the term "critical  
1380 infrastructure materials use" is defined in Section 10-9a-901."