

1 **Ethylene Oxide Litigation Amendments**

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: Jordan D. Teuscher

3 **LONG TITLE**

4 **General Description:**

5 This bill creates a civil cause of action for ethylene oxide exposure.

6 **Highlighted Provisions:**

7 This bill:

- 8 ▶ creates an exclusive, civil cause of action for ethylene oxide exposure;
- 9 ▶ provides immunity from suit to individuals or businesses in the healthcare industry in
- 10 relation to the use of ethylene oxide, with limited exceptions;
- 11 ▶ provides requirements and procedures for claims and pleadings;
- 12 ▶ provides that the enacted chapter is the exclusive remedy for ethylene oxide exposure
- 13 actions;
- 14 ▶ provides transitional language;
- 15 ▶ provides that the enacted chapter supercedes other personal injury or related laws; and
- 16 ▶ provides that the enacted chapter does not affect workers' compensation claims or
- 17 programs.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 ENACTS:

24 **78B-3-1201**, Utah Code Annotated 1953

25 **78B-3-1202**, Utah Code Annotated 1953

26 **78B-3-1203**, Utah Code Annotated 1953

27 **78B-3-1204**, Utah Code Annotated 1953

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

30 Section 1. Section **78B-3-1201** is enacted to read:

31 **CHAPTER 12. ETHYLENE OXIDE EXPOSURE AMENDMENTS**32 **78B-3-1201 . Definitions.**33 As used in this part:34 (1)(a) "Healthcare industry" means the economic sector composed of entities,
35 organizations, services, individuals, and professionals involved in providing medical
36 care and support to individuals, including maintaining and improving public health,
37 diagnosing and treating diseases, and promoting the well-being of individuals.38 (b) "Healthcare industry" includes the manufacturing, sales and distribution,
39 sterilization, storage, and transportation of medical devices.40 (2) "State law" includes:41 (a) statutes;42 (b) regulations;43 (c) rules; and44 (d) standards that are enacted, promulgated, or established under common law.45 Section 2. Section **78B-3-1202** is enacted to read:46 **78B-3-1202 . Requirements for liability for exposure to ethylene oxide --**47 **Limitation on liability.**48 Notwithstanding any other provision of law, and except as otherwise provided in this
49 part, no person engaged in business in the healthcare industry shall be liable in any ethylene
50 oxide exposure action unless the plaintiff can prove by clear and convincing evidence that:51 (1) in engaging in the business, the person was not in substantial compliance and was not
52 making reasonable efforts in light of all the circumstances to be in substantial
53 compliance with the applicable United States government laws, regulations, or standards
54 related to ethylene oxide in effect at the time of the actual, alleged, feared, or potential
55 exposure to ethylene oxide;56 (2) the person engaged in gross negligence or willful misconduct that caused an actual
57 exposure to ethylene oxide; and58 (3) the actual exposure to ethylene oxide was the direct and proximate cause of the personal
59 injury of the plaintiff.60 Section 3. Section **78B-3-1203** is enacted to read:61 **78B-3-1203 . Claim procedures -- Pleading requirements.**62 In any ethylene oxide-related action:63 (1) the complaint shall:64 (a) plead each element of the plaintiff's claim with particularity; and

- 65 (b) plead each alleged act or omission constituting gross negligence or willful
66 misconduct that resulted in personal injury, harm, damage, breach, or tort with
67 particularity;
- 68 (2) if monetary damages are requested, a plaintiff shall file with the complaint a statement
69 of specific information as to the nature and amount of each element of damages and the
70 factual basis for the damages calculation; and
- 71 (3) if a claim is asserted on which the plaintiff may prevail only on proof that the defendant
72 acted with a particular state of mind, a plaintiff shall file with the complaint, with
73 respect to each element of that claim, a statement of the facts giving rise to a strong
74 inference that the defendant acted with the required state of mind.

75 Section 4. Section **78B-3-1204** is enacted to read:

76 **78B-3-1204 . Application and preemption -- Exclusive cause of action --**

77 **Transition clause -- Preemption of other law -- Workers' compensation applicability not**
78 **affected.**

- 79 (1) This part creates an exclusive cause of action for ethylene oxide exposure actions.
- 80 (2) A plaintiff may prevail in an ethylene oxide exposure action only in accordance with the
81 requirements of this part.
- 82 (3) The provisions of this part apply to:
- 83 (a) any cause of action that is an ethylene oxide exposure action filed before May 7,
84 2025, and that is pending as of that date; and
- 85 (b) any ethylene oxide exposure action filed on or after May 7, 2025.
- 86 (4) This part preempts and supersedes any state law that is related to recovery for personal
87 injuries caused by actual, alleged, feared, or potential exposure to ethylene oxide.
- 88 (5) Nothing in this part shall be construed to affect the applicability of any state law
89 providing for a workers' compensation scheme or program, or to preempt or supersede
90 an exclusive remedy or defense under such scheme or program.

91 Section 5. **Effective Date.**

92 This bill takes effect on May 7, 2025.