

SB0064S01 compared with SB0064

~~{deleted text}~~ shows text that was in SB0064 but was deleted in SB0064S01.

inserted text shows text that was not in SB0064 but was inserted into SB0064S01.

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Senator Luz Robles proposes the following substitute bill:

AIR QUALITY RULES AND PENALTIES

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Robles

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the rulemaking authority of the Division of Air Quality ~~{and}~~ modifies regulations regarding the incineration of medical waste, and extends the statute of limitations for violations of the Environmental Quality Code.

Highlighted Provisions:

This bill:

- ▶ ~~{authorizes}~~ repeals provisions prohibiting the Air Quality Board ~~{within the Division of Air Quality to make}~~ from making rules that are more stringent than federal regulations ~~{under certain circumstances}~~;
- ▶ increases civil penalties against a person who violates the Air Conservation Act;
- ▶ beginning January 1, 2015, prohibits the incineration of medical waste within a five-mile radius of a residential area;

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- ▶ states that the statute of limitations for a violation of the Environmental Quality Code is five years; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{19-2-106, as renumbered and amended by Laws of Utah 1991, Chapter 112~~

~~———}19-2-115, as last amended by Laws of Utah 2012, Chapter 360~~

~~19-6-122, as renumbered and amended by Laws of Utah 1991, Chapter 112~~

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

ENACTS:

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

REPEALS:

~~19-2-106, as renumbered and amended by Laws of Utah 1991, Chapter 112~~

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

Section 1. Section ~~{19-2-106}~~19-2-115 is amended to read:

~~{———}19-2-106. **Rulemaking authority and procedure.**~~

~~———(1) Except as provided in Subsection (2), no rule which the board makes for the purpose of administering a program under the federal Clean Air Act may be more stringent than the corresponding federal regulations which address the same circumstances. In making rules, the board may incorporate by reference corresponding federal regulations:~~

~~———(2) (a) The board may make rules more stringent than corresponding federal regulations for the purpose described in Subsection (1), only if it makes a written finding [after public comment and hearing and based on evidence in the record,] that corresponding federal regulations are not adequate to protect public health and the environment of the state. Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the~~

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~~board's conclusion:~~

~~(b) The findings described in Subsection (2)(a) may include reports or studies conducted by scholars, health care professionals, or other sources if the board determines the report or study is a credible source.~~

~~Section 2. Section 19-2-115 is amended to read:~~

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

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

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

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

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

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

- (a) an applicable standard or limitation;
- (b) a permit condition; or
- (c) a fee or filing requirement.

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

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

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

(5) Any fine or penalty assessed under Subsections (2) or (3) is in lieu of any penalty

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under Section 19-2-109.1.

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

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

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

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

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

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

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

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

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

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

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

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person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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activities.

(c) The department shall regulate reimbursements by making rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

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

Section ~~19-6-122~~2. Section **19-6-122** is amended to read:

19-6-122. Facilities to meet local zoning requirements -- Restriction on incineration of medical waste.

(1) Notwithstanding any provisions of this part, persons seeking to operate a commercial hazardous waste disposal facility or site shall meet all local zoning requirements before beginning operations.

(2) Beginning on January 1, 2015, incineration of medical waste is prohibited within a five-mile radius of a residential area.

Section ~~78B-2-302~~3. Section **78B-2-302** is amended to read:

78B-2-302. Within one year.

An action may be brought within one year:

- (1) for liability created by the statutes of a foreign state;
- (2) upon a statute for a penalty or forfeiture where the action is given to an individual, or to an individual and the state, except when the statute imposing it prescribes a different limitation;
- (3) except as provided in Section 78B-2-307.5, upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to the state;
- (4) for libel, slander, false imprisonment, or seduction;
- (5) against a sheriff or other officer for the escape of a prisoner arrested or imprisoned upon either civil or criminal process;
- (6) against a municipal corporation for damages or injuries to property caused by a mob or riot;
- (7) except as otherwise expressly provided by statute, against a county legislative body or a county executive to challenge a decision of the county legislative body or county executive, respectively; or
- (8) on a claim for relief or a cause of action under Title 63L, Chapter 5, Utah Religious

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Land Use Act.

Section ~~{5}~~4. Section **78B-2-307.5** is enacted to read:

78B-2-307.5. Within five years.

An action may be brought within five years upon a statute in Title 19, Environmental Quality Code, for a forfeiture or penalty to the state.

†

Legislative Review Note

~~as of 2-10-14 2:59 PM~~

~~Office of Legislative Research and General Counsel~~ **Section 5. Repealer.**

This bill repeals:

Section 19-2-106, Rulemaking authority and procedure.