

**Senator Daniel W. Thatcher** proposes the following substitute bill:

**DRUG DISPOSAL AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel W. Thatcher**

House Sponsor: Eric K. Hutchings

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**LONG TITLE**

**General Description:**

This bill, subject to certain exceptions, prohibits the disposal of drugs in certain locations.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ subject to certain exceptions, prohibits the disposal of a drug in a drain, sewage system, the waters of this state, or a landfill; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**19-5-115**, as last amended by Laws of Utah 2013, Chapter 237

ENACTS:

**19-5-125**, Utah Code Annotated 1953



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

Section 1. Section 19-5-115 is amended to read:

**19-5-115. Violations -- Penalties -- Civil actions by director -- Ordinances and rules of political subdivisions.**

~~[(1) The terms "knowingly," "willfully," and "criminal negligence" are as defined in Section 76-2-103.]~~

(1) As used in this section:

(a) "Criminal negligence" means the same as that term is defined in Section 76-2-103.

(b) "Knowingly" means the same as that term is defined in Section 76-2-103.

(c) "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.

(d) "Serious bodily injury" means bodily injury that 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.

(e) "Wilfully" means the same as that term is defined in Section 76-2-103.

(2) Any person who violates this chapter, or any permit, rule, or order adopted under ~~[it]~~ this chapter, upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not to exceed \$10,000 per day of violation.

(3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine not exceeding \$25,000 per day who, with criminal negligence:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under ~~[it]~~ this chapter.

57 (b) A person is guilty of a third degree felony and is subject to imprisonment under  
58 Section 76-3-203 and a fine not to exceed \$50,000 per day of violation who knowingly:

59 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any  
60 condition or limitation included in a permit issued under Subsection 19-5-107(3);

61 (ii) violates Section 19-5-113;

62 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned  
63 treatment works; or

64 (iv) manages sewage sludge in violation of this chapter or rules adopted under [it] this  
65 chapter.

66 (4) A person is guilty of a third degree felony and subject to imprisonment under  
67 Section 76-3-203 and shall be punished by a fine not exceeding \$10,000 per day of violation if  
68 that person knowingly:

69 (a) makes a false material statement, representation, or certification in any application,  
70 record, report, plan, or other document filed or required to be maintained under this chapter, or  
71 by any permit, rule, or order issued under [it] this chapter; or

72 (b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or  
73 method required to be maintained under this chapter.

74 [~~(5) (a) As used in this section:~~]

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

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

82 [~~(b)~~] (5) (a) A person is guilty of a second degree felony and, upon conviction, is  
83 subject to imprisonment under Section 76-3-203 and a fine of not more than \$250,000 if that  
84 person:

85 (i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

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

88           ~~[(e)]~~ (b) If a person is an organization, ~~[it]~~ the person shall, upon conviction of  
89 violating Subsection (5)~~[(b)]~~(a), be subject to a fine of not more than \$1,000,000.

90           ~~[(d)]~~ (c) (i) A defendant who is an individual is considered to have acted knowingly if:

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

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

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

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

100           ~~[(e)]~~ (d) (i) It is an affirmative defense to prosecution under this Subsection (5) that the  
101 conduct charged was consented to by the person endangered and that the danger and conduct  
102 charged were reasonably foreseeable hazards of:

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

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

107           (ii) The defendant has the burden of proof to establish any affirmative defense under  
108 this Subsection (5)~~[(e)]~~(d) and shall prove that defense by a preponderance of the evidence.

109           (6) For purposes of Subsections ~~[19-5-115]~~ (3) through (5), a single operational upset  
110 that leads to simultaneous violations of more than one pollutant parameter shall be treated as a  
111 single violation.

112           (7) (a) The director may begin a civil action for appropriate relief, including a  
113 permanent or temporary injunction, for any violation or threatened violation for which it is  
114 authorized to issue a compliance order under Section ~~19-5-111~~.

115           (b) Actions shall be brought in the district court where the violation or threatened  
116 violation occurs.

117           (8) (a) The attorney general is the legal advisor for the board and the director and shall  
118 defend them in all actions or proceedings brought against them.

119 (b) The county attorney or district attorney, as appropriate under Section 17-18a-202 or  
120 17-18a-203, in the county in which a cause of action arises, shall bring any action, civil or  
121 criminal, requested by the director, to abate a condition that exists in violation of, or to  
122 prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the  
123 board or the director issued under this chapter.

124 (c) The director may initiate any action under this section and be represented by the  
125 attorney general.

126 (9) If any person fails to comply with a cease and desist order that is not subject to a  
127 stay pending administrative or judicial review, the director may initiate an action for and be  
128 entitled to injunctive relief to prevent any further or continued violation of the order.

129 (10) Any political subdivision of the state may enact and enforce ordinances or rules  
130 for the implementation of this chapter that are not inconsistent with this chapter.

131 (11) (a) Except as provided in Subsection (11)(b), all penalties assessed and collected  
132 under the authority of this section shall be deposited in the General Fund.

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

136 (c) The department shall regulate reimbursements by making rules that:

137 (i) define qualifying environmental enforcement activities; and

138 (ii) define qualifying extraordinary expenses.

139 Section 2. Section 19-5-125 is enacted to read:

140 **19-5-125. Disposal of drugs.**

141 (1) As used in this section:

142 (a) (i) "Drug" means:

143 (A) a substance recognized in the official United States Pharmacopoeia, official  
144 Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any  
145 supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment, or  
146 prevention of disease in humans or animals;

147 (B) a substance that is required by any applicable federal or state law or rule to be  
148 dispensed by prescription only or is restricted to administration by practitioners only;

149 (C) a substance, other than food, intended to affect the structure or any function of the

150 body of humans or other animals; or

151 (D) a substance intended for use as a component of any substance described in

152 Subsections (1)(a)(i)(A), (B), or (C).

153 (ii) "Drug" does not include a dietary supplement.

154 (b) "Non-retrievable" means the same as that term is defined in 21 C.F.R. 1300.05.

155 (2) Except as provided in Subsections (3) or (4), a person may not dispose of a drug in

156 a drain, sewage system, the waters of this state, or a landfill.

157 (3) (a) A person may dispose of an unused drug in a landfill if:

158 (i) before ~~the~~ or during disposal, the drug is rendered non-retrievable; and

159 (ii) the disposal does not violate state or federal law relating to surface water or

160 groundwater.

161 (b) The following entities may dispose of a drug in accordance with federal regulations

162 of the Drug Enforcement Administration and the Environmental Protection Agency:

163 (i) a health care facility, as defined in Section [75-2a-103](#);

164 (ii) a health care clinic owned by a hospital; or

165 (iii) a pharmacy, as defined in Section [58-17b-102](#).

166 (4) This section does not apply to the discharge of water from a wastewater treatment

167 plant.