

UNLAWFUL DRUG DISPOSAL AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: _____

LONG TITLE

General Description:

This bill, subject to an exception, makes it unlawful to dispose of drugs in certain locations.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ makes it an infraction to dispose of a drug in a drain, sewage system, the waters of this state, or a landfill;
- ▶ provides a civil penalty for violating the preceding paragraph;
- ▶ creates a restricted account to educate citizens on the requirements of this bill and the lawful methods of disposing of drugs; 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:



28 [19-5-125](#), Utah Code Annotated 1953

29

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

31 Section 1. Section [19-5-115](#) is amended to read:

32 **[19-5-115. Violations -- Penalties -- Civil actions by director -- Ordinances and](#)**
33 **[rules of political subdivisions.](#)**

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

36 (1) As used in this section:

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

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

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

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

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

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

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

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

55 (ii) violates Section [19-5-113](#);

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

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

59 chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

89 (ii) knows at that time that the person is placing another person in imminent danger of

90 death or serious bodily injury.

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

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

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

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

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

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

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

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

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

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

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

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

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

120 (8) (a) The attorney general is the legal advisor for the board and the director and shall

121 defend them in all actions or proceedings brought against them.

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

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

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

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

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

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

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

140 (i) define qualifying environmental enforcement activities; and

141 (ii) define qualifying extraordinary expenses.

142 (12) (a) A person who violates Subsection 19-5-125(2) is guilty of an infraction.

143 (b) In addition to a penalty imposed under Subsection (12)(a), the department may
144 impose a civil fine against a person who violates Subsection 19-5-125(2) in an amount that:

145 (i) reflects the damage caused by the violation; and

146 (ii) does not exceed \$10,000.

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

148 **19-5-125. Unlawful disposal of drugs -- Penalties.**

149 (1) As used in this section:

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

151 (A) a substance recognized in the official United States Pharmacopoeia, official

152 Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any
153 supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment, or
154 prevention of disease in humans or animals;

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

157 (C) a substance, other than food, intended to affect the structure or any function of the
158 body of humans or other animals; or

159 (D) a substance intended for use as a component of any substance described in
160 Subsections (1)(a)(i)(A), (B), or (C).

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

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

163 (2) Except as provided in Subsection (3), it is unlawful for a person to dispose of a
164 drug in a drain, sewage system, the waters of this state, or a landfill.

165 (3) A person may dispose of an unused drug in a landfill if, before disposal, the drug is
166 rendered non-retrievable.

167 (4) (a) There is created a restricted account within the General Fund known as the
168 "Drug Free Water Quality Restricted Account."

169 (b) The restricted account shall consist of:

170 (i) money appropriated by the Legislature;

171 (ii) grants from the federal government; and

172 (iii) grants or donations from a person.

173 (c) The department shall use money from the restricted account to educate citizens on
174 the requirements of Subsections (2) and (3) and the lawful methods of disposing of drugs.

175 (5) This section does not apply to the discharge of water from a wastewater treatment
176 plant.