

**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: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the rulemaking authority of the Division of Air Quality, 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:

- ▶ repeals provisions prohibiting the Air Quality Board from making rules that are more stringent than federal regulations;
- ▶ 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;
- ▶ 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



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **19-2-115**, as last amended by Laws of Utah 2012, Chapter 360

29 **19-6-122**, as renumbered and amended by Laws of Utah 1991, Chapter 112

30 **78B-2-302**, as last amended by Laws of Utah 2010, Chapter 89

31 ENACTS:

32 **78B-2-307.5**, Utah Code Annotated 1953

33 REPEALS:

34 **19-2-106**, as renumbered and amended by Laws of Utah 1991, Chapter 112



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

37 Section 1. Section **19-2-115** is amended to read:

38 **19-2-115. Violations -- Penalties -- Reimbursement for expenses.**

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

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

44 (b) Subsection (2)(a) also applies to rules made under the authority of Section  
45 **19-2-104**, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act,  
46 Subchapter II - Asbestos Hazard Emergency Response.

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

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

53 (a) an applicable standard or limitation;

54 (b) a permit condition; or

55 (c) a fee or filing requirement.

56 (4) A person is guilty of a third degree felony and is subject to imprisonment under

57 Section 76-3-203 and a fine of not more than [~~\$25,000~~] \$45,000 per day of violation who  
58 knowingly:

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

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

63 (5) Any fine or penalty assessed under Subsections (2) or (3) is in lieu of any penalty  
64 under Section 19-2-109.1.

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

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

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

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

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

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

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

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

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

96 (i) knowingly releases into the ambient air any hazardous air pollutant; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

132 **19-6-122. Facilities to meet local zoning requirements -- Restriction on**  
133 **incineration of medical waste.**

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

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

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

140 **78B-2-302. Within one year.**

141 An action may be brought within one year:

- 142 (1) for liability created by the statutes of a foreign state;
- 143 (2) upon a statute for a penalty or forfeiture where the action is given to an individual,  
144 or to an individual and the state, except when the statute imposing it prescribes a different  
145 limitation;
- 146 (3) except as provided in Section 78B-2-307.5, upon a statute, or upon an undertaking  
147 in a criminal action, for a forfeiture or penalty to the state;
- 148 (4) for libel, slander, false imprisonment, or seduction;
- 149 (5) against a sheriff or other officer for the escape of a prisoner arrested or imprisoned

150 upon either civil or criminal process;

151 (6) against a municipal corporation for damages or injuries to property caused by a  
152 mob or riot;

153 (7) except as otherwise expressly provided by statute, against a county legislative body  
154 or a county executive to challenge a decision of the county legislative body or county  
155 executive, respectively; or

156 (8) on a claim for relief or a cause of action under Title 63L, Chapter 5, Utah Religious  
157 Land Use Act.

158 Section 4. Section **78B-2-307.5** is enacted to read:

159 **78B-2-307.5. Within five years.**

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

162 Section 5. **Repealer.**

163 This bill repeals:

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