

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1243 Session of
2014INTRODUCED BY RAFFERTY, YAW, KASUNIC, VULAKOVICH, STACK,
BREWSTER, YUDICHAK, SOLOBAY AND SCARNATI, FEBRUARY 28, 2014SENATOR VANCE, PUBLIC HEALTH AND WELFARE, AS AMENDED,
MAY 7, 2014

AN ACT

1 Providing for remediation of real property contaminated by
2 methamphetamine production, for decontamination ~~standards~~ <--
3 GUIDELINES to be developed by Department of Health and for <--
4 restitution; prohibiting certain activity relating to certain
5 property; providing for enforcement; establishing immunity
6 for real estate professionals under certain circumstances;
7 and authorizing fees.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Short title.

11 This act shall be known and may be cited as the
12 Decontamination of Clandestine Lab Sites Act.

13 Section 2. Definitions.

14 The following words and phrases when used in this act shall
15 have the meanings given to them in this section unless the
16 context clearly indicates otherwise:

17 "APPLICABLE AUTHORITY" OR "AUTHORITY." A COUNTY AGENCY OR <--
18 LOCAL HEALTH DEPARTMENT.

19 "Clandestine lab site." Any real property occupied or
20 affected by conditions or chemicals typically associated with

1 the manufacturing of methamphetamine.

2 "Contaminated." In reference to a property, that the
3 property is polluted by precursor substances or waste substances
4 as a result of the use, production, storage or presence of
5 methamphetamine in excess of decontamination ~~standards~~ <--
6 GUIDELINES adopted by the Department of Health under this act. <--

7 "Decontaminated" or "decontamination." In reference to a
8 property, that the property at one time was contaminated, but
9 that the precursor substances and waste substances have been
10 removed and the property satisfies the decontamination ~~standards~~ <--
11 GUIDELINES adopted by the Department of Health under this act. <--

12 "Department." The Department of Health of the Commonwealth.

13 "Emergency response." Removing and collecting evidence,
14 securing the site, removal, remediation and hazardous material
15 assessment or inspection of real property where the relevant
16 offense or offenses took place, regardless of whether these
17 actions are performed by the public entities themselves or by
18 private contractors paid by the public entities or the owner.

19 "Owner." A person, including, but not limited to, a
20 shareholder, partner, operator or other legal entity, that holds
21 a legal or equitable title or interest in real property.

22 "Precursor substance." A hazardous material used to
23 manufacture a controlled substance.

24 "Property." Publicly or privately owned real property,
25 including buildings and other structures, and motor vehicles as
26 defined in 75 Pa.C.S. § 102 (relating to definitions).

27 "Real estate professional." A person licensed ~~by the~~ <--
28 ~~Commonwealth to sell real property~~ UNDER THE ACT OF FEBRUARY 19, <--
29 1980 (P.L.15, NO.9), KNOWN AS THE REAL ESTATE LICENSING AND
30 REGISTRATION ACT.

1 "Remediation." Proper cleanup, treatment or containment of
2 precursor substance or methamphetamine at or in a clandestine
3 lab site, including demolition or disposal of structures or
4 other property when an assessment so indicates.

5 "Removal." The removal from a clandestine lab site of
6 precursor substances or waste chemicals, chemical containers or
7 equipment associated with the manufacture, packaging or storage
8 of illegal drugs.

9 "Waste substance." A hazardous material, chemical or other
10 substance used in, and that remains after, the manufacture of a
11 controlled substance, excluding the controlled substance.

12 ~~Section 3. Decontamination standards to be developed.~~

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13 ~~The department shall develop scientifically based standards~~
14 ~~for the removal of precursor substances and waste substances~~
15 ~~that are present at real property as a result of the use,~~
16 ~~production, storage or presence of methamphetamine on the~~
17 ~~property and shall promulgate regulations relating to such~~
18 ~~standards.~~

19 SECTION 3. DEPARTMENT RESPONSIBILITIES.

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20 (A) SCIENTIFICALLY BASED GUIDELINES.--THE DEPARTMENT SHALL
21 ADOPT SCIENTIFICALLY BASED GUIDELINES FOR THE REMOVAL AND
22 REMEDIATION OF PRECURSOR SUBSTANCES AND WASTE SUBSTANCES
23 AFFECTING PROPERTY AS A RESULT OF THE USE, PRODUCTION, STORAGE
24 OR PRESENCE OF METHAMPHETAMINE ON THE PROPERTY AND SHALL
25 PROMULGATE REGULATIONS RELATING TO SUCH GUIDELINES.

26 (B) LIST OF APPROVED CONTRACTORS.--THE DEPARTMENT MAY
27 ESTABLISH A LIST OF CONTRACTORS THAT HAVE BEEN APPROVED BY THE
28 DEPARTMENT TO REMOVE AND REMEDIATE CONTAMINATION AFFECTING
29 PROPERTIES ACCORDING TO THE ADOPTED GUIDELINES. ANY LIST SHALL
30 BE PUBLISHED ON THE DEPARTMENT'S PUBLICLY ACCESSIBLE INTERNET

1 WEBSITE.

2 Section 4. Restitution.

3 (a) Public entities.--A court may require a person convicted
4 of manufacturing or attempting to manufacture a controlled
5 substance or of an illegal activity involving a precursor
6 substance or waste substance, if the response to the crime
7 involved an emergency response, to pay restitution to all public
8 entities that participated in the response. The restitution
9 ordered may cover the reasonable costs of their participation in
10 the response.

11 (b) Property owner.--In addition to the restitution
12 authorized under subsection (a), a court may require a person
13 convicted of manufacturing or attempting to manufacture a
14 controlled substance or of an illegal activity involving a
15 precursor substance or waste substance to pay restitution to a
16 property owner who incurred removal or remediation costs because
17 of the crime.

18 Section 5. Property-related prohibitions.

19 (a) Notification by law enforcement.--A law enforcement
20 officer who arrests a person at a clandestine lab site shall
21 notify the department, ~~the appropriate county or local health~~ <--
22 ~~department and child protection services~~ AND APPLICABLE <--
23 AUTHORITY of the arrest and the location of the site.

24 (b) Occupation prohibited.--~~A county or local health~~ <--
25 ~~department~~ THE APPLICABLE AUTHORITY shall order that any <--
26 property or portion of a property that has been found to be a
27 clandestine lab site and contaminated by precursor substances
28 and waste substances, be prohibited from being occupied or used
29 until it has been assessed and ~~remediated~~ REMOVAL AND <--
30 REMEDIATION HAS OCCURRED as provided in the department's

~~standards~~ GUIDELINES. The REMOVAL AND remediation shall be accomplished by a contractor who must make the verification required under subsection (d).

(c) Applicability.--Unless otherwise provided, any law addressing the enforcement of public health laws, the removal and abatement of public health nuisances and the remedies available to property owners or occupants shall apply to this section.

(d) Verification.--

(1) Upon the proper removal and remediation of any property used as a clandestine lab site, the contractor shall verify to the property owner and the applicable authority that issued the order under subsection (b) that the work was completed according to the department's ~~standards~~ GUIDELINES.

(2) The contractor shall provide the verification to the property owner and the applicable authority within five days from the completion of the REMOVAL AND remediation.

(3) Upon receipt of the verification, the applicable authority shall vacate its order.

(e) Liability.--

(1) If a contractor issues a verification and ~~the property was not remediated according to the department's standards~~ GUIDELINES WERE NOT FOLLOWED, the contractor shall be liable to the property owner for the additional costs relating to the proper REMOVAL AND remediation of the ~~property~~ CONTAMINATION according to the guidelines and for reasonable attorney fees for collection of costs by the property owner.

(2) An action under this subsection must be commenced within six years from the date on which the verification was

1 issued by the contractor.

2 (f) Motor vehicles.--

3 (1) If the applicable authority determines under
4 subsection (b) that a motor vehicle has been contaminated by
5 precursor substances or waste substances used in the
6 manufacture of methamphetamine or any part of the
7 manufacturing process, or the by-products or degradates of
8 manufacturing methamphetamine, and if the authority is able
9 to obtain the certificate of title for the motor vehicle, the
10 authority shall notify the Department of Transportation and
11 shall forward the certificate of title to the Department of
12 Transportation.

13 (2) The authority shall notify the Department of
14 Transportation when the authority vacates its order under
15 subsection (d).

16 (g) Record.--Recording shall be as follows:

17 (1) The applicable authority issuing an order under
18 subsection (b) shall record with the county recorder of the
19 county where the clandestine lab SITE is located an affidavit <--
20 containing the name of the owner, a legal description of the
21 property where the clandestine lab SITE was located and a map <--
22 drawn from available information showing the boundary of the
23 property and the location of the contaminated area on the
24 property that is prohibited from being occupied or used that
25 discloses to any potential transferee all of the following:

26 (i) That the property, or portion of the property,
27 was ~~the site of~~ a clandestine lab SITE. <--

28 (ii) The location, condition and circumstances of
29 the clandestine lab to the full extent known or
30 reasonably ascertainable.

(iii) That the use of the property or some portion of it may be restricted as provided under subsection (b).

(2) If an inaccurate drawing or description is recorded as provided by paragraph (1), the authority, on request of the owner or another interested person, shall record a supplemental affidavit with a corrected drawing or description.

(3) If the authority vacates its order under subsection ~~(e)~~ (B), the authority shall record an affidavit that contains the recording information of the affidavit FILED UNDER THIS SUBSECTION and states that the order is vacated.

~~(4) Upon filing the affidavit vacating the order, the affidavit and the affidavit filed under this subsection, together with the information set forth in the affidavits, shall cease to constitute either actual or constructive notice.~~

~~(h) Proper removal and remediation.~~

~~(1) If proper removal and remediation have occurred on the property, an interested party may record an affidavit indicating the occurrence. Upon recording the affidavit under this subsection, the affidavit and the affidavit filed under subsection (g), together with the information contained in the affidavits, shall cease to constitute either actual or constructive notice.~~

~~(2) Failure to record an affidavit under this section shall not affect or prevent any transfer of ownership of the property.~~

~~(i) Disclosure. The county recorder shall record all~~

(H) DISCLOSURE.--THE APPLICABLE AUTHORITY SHALL ENSURE ALL affidavits presented under subsection (g) ~~or (h)~~ ARE RECORDED in

1 a manner that ensures their disclosure in the ordinary course of
2 a title search of the subject property.

3 ~~(j)~~ (I) Maintenance.--Each ~~county health administrator~~ <--
4 APPLICABLE AUTHORITY shall maintain information related to <--
5 property within the ~~administrator's~~ APPLICABLE AUTHORITY'S <--
6 jurisdiction that is currently or was previously subject to an
7 order issued under subsection (b). The information maintained
8 must include the name of the owner, the location of the
9 property, the extent of the contamination, the status of the
10 removal and remediation work on the property and whether the
11 order has been vacated. The ~~administrator~~ APPLICABLE AUTHORITY <--
12 shall make the information available to the public either upon
13 request or by other means.

14 ~~(k)~~ (J) Disclosure.--Before signing an agreement to sell or <--
15 transfer real property, the seller or transferor must disclose
16 in writing to the buyer or transferee if, to the seller's or
17 transferor's knowledge, methamphetamine production has occurred
18 on the property. If methamphetamine production has occurred on
19 the property, the disclosure shall include a statement to the
20 buyer or transferee informing the buyer or transferee of any of
21 the following:

22 (1) Whether an order has been issued on the property as
23 described under subsection (b).

24 (2) Whether any orders issued against the property under
25 subsection (b) have been vacated under subsection (i).

26 (3) If there was no order issued against the property
27 and the seller or transferor is aware that methamphetamine
28 production has occurred on the property, the status of
29 removal and remediation on the property.

30 ~~(l)~~ (K) Liability.--Unless the buyer or transferee and <--

1 seller or transferor agree to the contrary in writing, a seller
2 or transferor who fails to disclose, to the best of the seller's
3 or transferor's knowledge, prior to the transfer of the property
4 any of the facts required, and who knew or had reason to know of
5 methamphetamine production on the property, is liable to the
6 buyer or transferee for all of the following:

7 (1) Costs relating to THE REMOVAL AND remediation of ~~the~~ <--
8 ~~property~~ CONTAMINATION according to the department's <--
9 ~~standards~~ GUIDELINES. <--

10 (2) Reasonable attorney fees for collection of costs
11 from the seller or transferor. An action under this paragraph
12 must be commenced within six years after the date on which
13 the buyer or transferee closed the purchase or transfer of
14 the ~~real~~ property where the methamphetamine production <--
15 occurred.

16 ~~(m) Preemption. This section shall preempt any local~~ <--
17 ~~ordinances relating to the sale or transfer of real property~~
18 ~~designated as a clandestine lab site.~~

19 Section 6. Enforcement.

20 (a) Right of action.--~~Any person~~ A PROPERTY OWNER ENTITLED <--
21 TO RESTITUTION UNDER SECTION 4 may file a civil action to
22 enforce compliance with the provisions of this act.

23 (b) Relief.--A court may issue an injunction or such other
24 relief as necessary to enforce the provisions of this act.

25 (c) Court costs and attorney fees.--A court may award a
26 prevailing party in a civil action initiated under subsection
27 (a) court costs and reasonable attorney fees.

28 Section 7. Immunity for real estate professionals.

29 A real estate professional shall be immune from liability
30 under this act for the failure of an owner or lessor of real

1 property to comply with the provisions of this act, unless the
2 real estate professional is also the owner or lessor of the real
3 property or had actual knowledge of the failure to disclose.

4 ~~Section 8. Fees.~~

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5 ~~The department may establish and impose a fee on an owner or~~
6 ~~lessor of real property for any of the following:~~

7 ~~(1) A certificate issued by the department that the~~
8 ~~property has been decontaminated.~~

9 ~~(2) Monitoring to determine whether the property has~~
10 ~~been decontaminated.~~

11 ~~(3) Any other related service provided by the department~~
12 ~~under this act.~~

13 Section 9 8. Limitation on APPLICABLE authority.

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14 The ~~department~~ APPLICABLE AUTHORITY may not prohibit an owner <--
15 or lessor of ~~real~~ property from decontaminating the property IN <--
16 ACCORDANCE WITH DEPARTMENT GUIDELINES.

17 Section 10 9. Effective date.

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18 This act shall take effect in 60 days.