

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1653

By: Greenwood

AS INTRODUCED

An Act relating to public safety; enacting the Illegal Drug Laboratories Remediation Act; providing that an arresting law enforcement officer for certain offenses deliver certain notice to an owner or occupier of property; providing that certain notice be mailed to certain persons; requiring certain notice be mailed to appropriate county health department and local fire department; providing for the removal of certain persons from property upon removal of source of certain contamination; providing that certain notice be posted on the contaminated property; providing that only certain persons be allowed on contaminated property; providing for the required language to be included on the notice; requiring owners of contaminated property to retain certain services to provided remediation; providing notice of completion of remediation to certain persons; providing for unrestricted use of property upon proper remediation and notice procedures; requiring county health department to maintain certain records for public inquiry; requiring disclosure procedures to certain persons that may occupy property when contamination remediation is incomplete; providing for civil penalty and fine; providing for certain nonliability of certain persons; requiring certain nonowners to pay restitution to an owner; providing certain criminal penalty; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-450 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Illegal Drug Laboratories Remediation Act."

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-451 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. If a law enforcement officer discovers a laboratory used for the production of a controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act or arrests a person for having on any real property chemicals or equipment used in manufacturing methamphetamine, 3,4-Methylenedioxy methamphetamine, commonly known as "ecstasy" or MDMA or lysergic acid diethylamide (LSD) or a derivative of methamphetamine, 3,4-Methylenedioxy methamphetamine or lysergic acid diethylamide (LSD), the law enforcement officer:

1. At the time of the discovery or arrest, shall deliver a copy of the notice of removal pursuant to subsection B of this section to the owner of the real property if the owner is on the site at the time of delivery, the on-site manager if the manager is on the site at the time of delivery or the on-site drop box if available. In the case of a tenant-owned unit in a mobile home park or recreational vehicle park, the officer shall deliver a copy of the notice of removal to the occupant of the unit if the occupant is on site at the time of delivery and to the on-site park landlord if the park landlord is on site at the time of delivery;

2. Within two (2) business days after the discovery or arrest, shall send the notice of removal by certified mail to the owner of the real property and the owner's on-site manager or, in the case of a space rental mobile home or recreational vehicle park, to the owner of the mobile home or recreational vehicle, if applicable, and to the park landlord. These persons are deemed to receive the notice of removal five (5) days after the notice is mailed. The notice shall be sent to the following:

- a. the owner's address on file with the county assessor.
The county shall waive any fee or charge for the owner's address information,
- b. the county health department, and
- c. the appropriate local fire department;

3. After a law enforcement or other agency removes the gross contamination on the real property, shall order the removal of all persons from the residually contaminated portion of the real property or dwelling unit, if applicable, or, in the case of a mobile home park or recreational vehicle park, from the unit located on the real property; and

4. After the peace officer removes all persons pursuant to paragraph 3 of this subsection, shall affix the notice of removal in a conspicuous place on the real property or, in the case of a space rental mobile home or recreational vehicle park, on the unit located on the real property. The notice of removal shall state that it is unlawful for any person other than the owner, landlord or manager to enter the residually contaminated portion of the property until the owner remediates the residually contaminated portion of the property.

B. The notice of removal shall be in writing and shall contain all of the following:

1. The word "warning" in large bold type at the top and bottom of the notice;

2. A statement that a clandestine drug laboratory was seized or a person was arrested on the real property for having chemicals or equipment used in the manufacturing of methamphetamine, 3,4-Methylenedioxy methamphetamine or lysergic acid diethylamide (LSD) on the real property;

3. The date of the seizure or arrest;

4. The address or location of the real property, including the identification of any dwelling unit, room number, apartment number or vehicle number;

5. The name of the law enforcement agency or other agency that seized the clandestine drug laboratory or made the arrest and the agency's contact telephone number;

6. A statement that hazardous substances, toxic chemicals or other waste products may still be present on the real property or, in the case of a space rental mobile home or recreational vehicle park, in the unit located on the real property;

7. A statement that it is unlawful for any unauthorized person to enter the residually contaminated portion of the real property or, in the case of a space rental mobile home or recreational vehicle park, the unit located on the real property, until the owner, landlord or manager establishes that the portion of the real property noticed as residually contaminated has been remediated by a drug laboratory site remediation firm;

8. A statement that it is a felony to violate this section;

9. A statement that it is a misdemeanor to disturb the notice of removal posted on the real property;

10. A statement that the owner of the real property shall remediate the residually contaminated portion of the property in compliance with subsection C of this section; and

11. A statement that if an owner fails to provide any notice required by this section, the owner is subject to a civil penalty and a buyer, tenant or customer may void a purchase contract, rental agreement or other agreement.

C. The owner of the real property shall remediate the residually contaminated portion of the real property by retaining a registered drug laboratory site remediation firm.

D. A drug laboratory site remediation firm that remediates the residually contaminated portion of any real property pursuant to this section shall comply with any appropriate rules and regulations in regard to health and safety and the best practices and standards for remediation of residual contamination. When remediation is complete, the drug laboratory site remediation firm shall remove the posted notice and shall issue a document stating that the residually contaminated portion of the real property has been remediated.

Within twenty-four (24) hours after the remediation is complete, the drug laboratory site remediation firm shall deliver the document or send the document by certified mail to each person and entity listed in paragraph 2 of subsection A of this section, and the law enforcement agency that issued the notice under subsection A of this section. After the document has been issued, both of the following apply:

1. The owner, landlord or manager of the real property is not required to comply with subsection F of this section; and

2. Any person may use, enter, occupy, rent or sell the real property.

E. The county health department shall maintain and make available on request any documents that are received pursuant to subsection D of this section.

F. The following notice requirements apply until the remediation is complete as provided in subsection D of this section:

1. Within five (5) days after a buyer signs a contract to purchase the real property, the owner shall notify the buyer in writing that methamphetamine, 3,4-Methylenedioxy methamphetamine or lysergic acid diethylamide (LSD) was manufactured on the real property or that an arrest was made pursuant to this section. The buyer shall acknowledge receipt of the notice. A buyer may cancel the real estate purchase contract within five (5) days after receiving the notice. If the owner does not comply with this paragraph, the buyer may cancel the purchase contract;

2. The landlord shall notify a prospective tenant for a dwelling unit that was the subject of the notice in writing that methamphetamine, 3,4-Methylenedioxy methamphetamine or lysergic acid diethylamide (LSD) was manufactured on the real property or that an arrest was made pursuant to this section. The tenant shall acknowledge receipt of the notice before taking possession of the real property or before signing a rental agreement for the real

property. The notice shall be attached to the rental agreement. If the landlord does not comply with this paragraph, the tenant may void the rental agreement;

3. Before a customer occupies a room that was the subject of the notice, the owner or manager shall notify the customer in writing that methamphetamine, 3,4-Methylenedioxy methamphetamine or lysergic acid diethylamide (LSD) was manufactured in the room or that an arrest was made pursuant to this section. If the owner or manager does not comply with this paragraph, the customer may void the agreement;

4. The owner shall notify a buyer or prospective tenant in writing that methamphetamine, 3,4-Methylenedioxy methamphetamine or lysergic acid diethylamide (LSD) was manufactured in the mobile home or recreational vehicle or that an arrest was made pursuant to this section. The buyer shall acknowledge receipt of the notice before taking possession of the mobile home or recreational vehicle. A buyer may cancel the purchase contract within five (5) days after receiving the notice. The tenant shall acknowledge receipt of the notice before taking possession of the mobile home or recreational vehicle or before signing a rental agreement for the mobile home or recreational vehicle. The notice shall be attached to the rental agreement. If the owner does not comply with this paragraph, the tenant may void the rental agreement; and

5. If a mobile home or recreational vehicle in a space rental park contains a clandestine drug laboratory, the landlord, on receipt of a notice pursuant to this section, shall notify the lienholder of record and the owner of record of the unit to remove it from the park within thirty (30) days. If the unit is not removed within thirty (30) days, the landlord may remove or demolish the unit and dispose of it as junk and shall notify the Department of Transportation of the demolition. A landlord that complies with this subsection is not liable for such action.

G. If an owner fails to provide any notice required by this section, the owner is subject to a civil penalty of One Thousand Dollars (\$1,000.00) and is liable for any harm resulting from the failure of the owner to comply with the requirements of this section.

H. A state or local government and a state or local government's employees or authorized representatives are not responsible parties and are not liable for costs or damages incurred as a result of action taken in compliance with this section. This subsection does not preclude liability for costs or damages that result from gross negligence or intentional misconduct by a state or local government. For the purposes of this subsection, "gross negligence" means reckless, willful or wanton misconduct.

I. A person who operates a controlled dangerous substance laboratory and who is not the owner of the real property shall pay restitution to the owner of the real property for all costs that the owner incurred to remediate the property.

J. A person who knowingly violates an order or notice of removal that is issued by a peace officer under this section is guilty of a felony. A person who knowingly disturbs a notice of removal posted on the real property is guilty of a misdemeanor.

SECTION 3. This act shall become effective November 1, 2003.

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