

SB 2241

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THE STATE SENATE
Monday, February 22, 2010

Senate Bill No. 2241

As Amended

SENATE BILL NO. 2241 - By: Ballenger of the Senate and Rousselot of the House.

[public health and safety - creating Clandestine Drug Laboratories Remediation Act - codification - 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 "Clandestine 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 methamphetamine or arrests a person for having, within any real property, chemicals or equipment used in manufacturing methamphetamine, the law enforcement officer shall:

1. At the time of the discovery or arrest, deliver a copy of the notice of removal pursuant to subsection B of this section to

1 the owner of the real property if the owner is on the site at the
2 time of delivery, the on-site manager if the manager is on the site
3 at the time of delivery or the on-site drop box if available. In
4 the case of a tenant-owned unit in a mobile home park or
5 recreational vehicle park, the officer shall deliver a copy of the
6 notice of removal to the occupant of the unit if the occupant is on
7 site at the time of delivery and to the on-site park landlord if the
8 park landlord is on site at the time of delivery;

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

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

22 3. After a law enforcement or other agency removes the gross
23 contamination on the real property, order the removal of all persons

1 from the real property or dwelling unit, or, in the case of a mobile
2 home park or recreational vehicle park, from the unit located on the
3 real property, until the property is determined not to be
4 contaminated, or until the owner remediates the property; and

5 4. After removing all persons pursuant to paragraph 3 of this
6 subsection, affix the notice of removal in a conspicuous place on
7 the real property or, in the case of a space rental mobile home or
8 recreational vehicle park, on the unit located on the real property.
9 The notice of removal shall state that it is unlawful for any person
10 other than the owner, landlord, manager, or employee of a certified
11 clandestine drug laboratory remediation contractor to enter the
12 property or unit until the property is determined not to be
13 contaminated, or until the owner remediates the property.

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

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

18 2. A statement that a clandestine drug laboratory was seized or
19 a person was arrested on the real property for having chemicals or
20 equipment used in the manufacturing of methamphetamine on the real
21 property;

22 3. The date of the seizure or arrest;

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

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

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

11 7. A statement that it is unlawful for any unauthorized person
12 to enter the real property or, in the case of a space rental mobile
13 home or recreational vehicle park, the unit located on the real
14 property, until the owner, landlord or manager establishes that the
15 property or unit has been determined not to be contaminated or has
16 been remediated by a certified clandestine drug laboratory
17 remediation contractor;

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

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

21 10. A statement that the owner of the real property shall
22 retain the services of a certified clandestine drug lab remediation

1 contractor to determine contamination and, if necessary, remediate
2 the contaminated property; and

3 11. A statement that if an owner fails to provide any notice
4 required by this section, the owner is subject to a civil penalty
5 and a buyer may void a purchase contract.

6 C. The owner of the real property shall have the level of
7 contamination within the property assessed. If, upon completion of
8 the assessment, it is determined that the level of contamination
9 within the property:

10 1. Does not exceed the standard established by subsection E of
11 this section, the posted notice shall be removed and a document
12 stating that the property has been determined not to be contaminated
13 shall be issued. Within twenty-four (24) hours, the document shall
14 be delivered in person or by certified mail to each person and
15 entity listed in paragraph 2 of subsection A of this section, and to
16 the law enforcement agency that issued the notice under subsection A
17 of this section. After the document has been issued, any person may
18 use, enter, occupy, lease or rent the real property; or

19 2. Does exceed the standard established by subsection E of this
20 section, the owner of the real property shall either:

21 a. demolish the contaminated property, or

1 b. retain the services of a clandestine drug laboratory
2 remediation contractor to remediate the contaminated
3 property.

4 D. The presence of methamphetamine in excess of one-tenth of
5 one microgram (0.1 mcg) per one hundred square centimeters (100 cm²)
6 of surface materials within any property used for the manufacture of
7 methamphetamine shall constitute contamination requiring
8 remediation, unless a different standard is adopted by rule by the
9 Department of Environmental Quality. The Department may promulgate
10 rules to establish the number and location of surface material
11 samples to be collected based on the circumstances of the
12 contamination and acceptable testing methods. Rules promulgated by
13 the Department under this subsection shall be developed in
14 consultation with the Oklahoma State Bureau of Narcotics and
15 Dangerous Drugs Control, the Oklahoma State Bureau of Investigation,
16 and the State Department of Health.

17 E. The county health department shall maintain and make
18 available to the public upon request a list of properties identified
19 pursuant to paragraph 2 of subsection A of this section, along with
20 any documents concerning the properties that are received pursuant
21 to subsection C or D of this section.

22 F. The following notice requirements apply to any real
23 property, dwelling unit within real property, or unit located on

1 real property that has been the subject of a notice in writing
2 pursuant to subsection A of this section, until the owner of the
3 property meets the requirements of subsection D of this section:

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

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

18 **H.** If an owner meets the all requirements of this section, the
19 owner shall be immune from any suit for alleged health-based civil
20 actions brought by any future owner, tenant, occupant, or neighbor
21 of the owner's property, in which the alleged cause of injury or
22 loss is the prior existence of a clandestine drug laboratory used to
23 manufacture methamphetamine within the property; provided, however,

1 an owner convicted of an offense associated with the operation or
2 ownership of such lab, the materials used to construct or operate
3 such lab, or the sale, distribution, trafficking, or use of any
4 controlled substances produced by such lab shall have no immunity
5 under this subsection.

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

14 **J.** A person convicted of an offense associated with the
15 operation or ownership of a clandestine drug laboratory used to
16 manufacture methamphetamine, the materials used to construct or
17 operate such lab, or the sale, distribution, trafficking, or use of
18 any controlled substances produced by such lab, and who is not the
19 owner of the real property in which such lab was operated, shall pay
20 restitution to the owner of the real property for all costs that the
21 owner incurred to assess or remediate the property.

22 **K.** A person who knowingly violates an order or notice of
23 removal that is issued by a peace officer under this section is

1 guilty of a felony. A person who knowingly disturbs a notice of
2 removal posted on the real property is guilty of a misdemeanor.

3 SECTION 3. This act shall become effective November 1, 2010.

4 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-16-10 - DO
5 PASS, As Amended and Coauthored.