

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 2241

By: Ballenger

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5
6 AS INTRODUCED

7 An Act relating to public health and safety; creating
8 the Clandestine Drug Laboratories Remediation Act;
9 providing short title; stating procedures for law
10 enforcement officers; requiring notice of removal
11 within certain time period; stating requirements for
12 notice; requiring certain warning prior to renting or
13 leasing certain contaminated property; requiring
14 property owners to assess contamination of property;
15 requiring demolition or remediation; providing for
16 promulgation of rules by certain state agencies;
17 requiring county health departments to maintain list
18 of certain properties; stating procedures for various
19 types of properties; stating liability by certain
20 parties; defining term; providing penalties for
21 violations of act; providing for codification; and
22 providing an effective date.
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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

22 This act shall be known and may be cited as the "Clandestine
23 Drug Laboratories Remediation Act".
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1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2-451 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. If a law enforcement officer discovers a laboratory used for
5 the production of methamphetamine or arrests a person for having,
6 within any real property, chemicals or equipment used in
7 manufacturing methamphetamine, the law enforcement officer shall:

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

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

3 a. the owner's address on file with the county assessor.

4 The county shall waive any fee or charge for the
5 owner's address information,

6 b. the county health department, and

7 c. the appropriate local fire department;

8 3. After a law enforcement or other agency removes the gross
9 contamination on the real property, order the removal of all persons
10 from the real property or dwelling unit, or, in the case of a mobile
11 home park or recreational vehicle park, from the unit located on the
12 real property, until the property is determined not to be
13 contaminated, or until the owner remediates the property; and

14 4. After removing all persons pursuant to paragraph 3 of this
15 subsection, affix the notice of removal in a conspicuous place on
16 the real property or, in the case of a space rental mobile home or
17 recreational vehicle park, on the unit located on the real property.
18 The notice of removal shall state that it is unlawful for any person
19 other than the owner, landlord, manager, or employee of a certified
20 clandestine drug laboratory remediation contractor to enter the
21 property or unit until the property is determined not to be
22 contaminated, or until the owner remediates the property.

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

- 1 1. The word "warning" in large bold type at the top and bottom
2 of the notice;
- 3 2. A statement that a clandestine drug laboratory was seized or
4 a person was arrested on the real property for having chemicals or
5 equipment used in the manufacturing of methamphetamine on the real
6 property;
- 7 3. The date of the seizure or arrest;
- 8 4. The address or location of the real property, including the
9 identification of any dwelling unit, room number, apartment number
10 or vehicle number;
- 11 5. The name of the law enforcement agency or other agency that
12 seized the clandestine drug laboratory or made the arrest and the
13 agency's contact telephone number;
- 14 6. A statement that hazardous substances, toxic chemicals or
15 other waste products may still be present on the real property or,
16 in the case of a space rental mobile home or recreational vehicle
17 park, in the unit located on the real property;
- 18 7. A statement that it is unlawful for any unauthorized person
19 to enter the real property or, in the case of a space rental mobile
20 home or recreational vehicle park, the unit located on the real
21 property, until the owner, landlord or manager establishes that the
22 property or unit has been determined not to be contaminated or has
23 been remediated by a certified clandestine drug laboratory
24 remediation contractor;

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

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

4 10. A statement that the owner of the real property shall
5 retain the services of a certified clandestine drug lab remediation
6 contractor to determine contamination and, if necessary, remediate
7 the contaminated property; and

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

11 C. Any real property, dwelling unit within real property, or
12 unit located on real property that is the subject of a notice in
13 writing pursuant to subsection A of this section shall not be rented
14 or leased, without warning to the tenant of the discovery of a
15 laboratory used for the production of methamphetamine on the
16 property, until the owner of the property meets the requirements of
17 subsection D of this section.

18 D. The owner of the real property shall have the level of
19 contamination within the property assessed. If, upon completion of
20 the assessment, it is determined that the level of contamination
21 within the property:

22 1. Does not exceed the standard established by subsection E of
23 this section, the posted notice shall be removed and a document
24 stating that the property has been determined not to be contaminated

1 shall be issued. Within twenty-four (24) hours, the document shall
2 be delivered in person or by certified mail to each person and
3 entity listed in paragraph 2 of subsection A of this section, and to
4 the law enforcement agency that issued the notice under subsection A
5 of this section. After the document has been issued, any person may
6 use, enter, occupy, lease or rent the real property; or

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

9 a. demolish the contaminated property, or

10 b. retain the services of a clandestine drug laboratory
11 remediation contractor to remediate the contaminated
12 property.

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

3 F. The county health department shall maintain and make
4 available to the public upon request a list of properties identified
5 pursuant to paragraph 2 of subsection A of this section, along with
6 any documents concerning the properties that are received pursuant
7 to subsection C or D of this section.

8 G. The following notice requirements apply to any real
9 property, dwelling unit within real property, or unit located on
10 real property that has been the subject of a notice in writing
11 pursuant to subsection A of this section, until the owner of the
12 property meets the requirements of subsection D of this section:

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

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

1 failure of the owner to comply with the requirements of this
2 section.

3 I. If an owner meets the all requirements of this section, the
4 owner shall be immune from any suit for alleged health-based civil
5 actions brought by any future owner, tenant, occupant, or neighbor
6 of the owner's property, in which the alleged cause of injury or
7 loss is the prior existence of a clandestine drug laboratory used to
8 manufacture methamphetamine within the property; provided, however,
9 an owner convicted of an offense associated with the operation or
10 ownership of such lab, the materials used to construct or operate
11 such lab, or the sale, distribution, trafficking, or use of any
12 controlled substances produced by such lab shall have no immunity
13 under this subsection.

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

22 K. A person convicted of an offense associated with the
23 operation or ownership of a clandestine drug laboratory used to
24 manufacture methamphetamine, the materials used to construct or

1 operate such lab, or the sale, distribution, trafficking, or use of
2 any controlled substances produced by such lab, and who is not the
3 owner of the real property in which such lab was operated, shall pay
4 restitution to the owner of the real property for all costs that the
5 owner incurred to assess or remediate the property.

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

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

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