

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: S3/14/07

A Bill

SENATE BILL 829

5 By: Senator Broadway
6
7

For An Act To Be Entitled

9 AN ACT TO PROTECT PROPERTY OWNERS FROM
10 CONTAMINATION BY MANUFACTURING OF CONTROLLED
11 SUBSTANCES; TO AUTHORIZE THE ARKANSAS DEPARTMENT
12 OF ENVIRONMENTAL QUALITY TO CREATE A PROGRAM FOR
13 REMEDIATION OF CONTAMINATED PROPERTY; TO REQUIRE
14 PUBLIC NOTIFICATION OF CONTAMINATED PROPERTY; AND
15 FOR OTHER PURPOSES.
16

Subtitle

17 AN ACT TO PROTECT PROPERTY OWNERS FROM
18 CONTAMINATION BY MANUFACTURING OF
19 CONTROLLED SUBSTANCES AND TO CREATE A
20 PROGRAM FOR REMEDIATION AND NOTIFICATION
21 OF CONTAMINATED PROPERTY.
22
23
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code Title 8, Chapter 7 is amended to add an
28 additional subchapter to read as follows:

29 8-7-1401. Title.

30 This subchapter shall be known and may be cited as the "Controlled
31 Substances Contaminated Property Cleanup Act".
32

33 8-7-1402. Professional cleanup of properties contaminated through the
34 manufacture of controlled substances.

35 (a) The Arkansas Department of Environmental Quality shall:

36 (1) Establish and administer a certification program to:



1 (A) Certify contractors who choose to undertake the
2 inspection, sampling, remediation, and removal of contaminated materials from
3 property contaminated through the manufacture of controlled substances; and

4 (B) Require as a condition of certification that the
5 contractors demonstrate that they have qualifications required to undertake
6 inspection, sampling, remediation, and removal of contaminated materials from
7 property contaminated through the manufacture of controlled substances;

8 (2) Have established the certification program no later than May
9 1, 2008;

10 (3) By March 1, 2008, establish standards for the remediation of
11 properties contaminated through the manufacture of controlled substances;

12 (4) Make the certification program rules and the remediation
13 standards available to law enforcement officials and the public:

14 (A) On the department's website; and

15 (B) In hard copy upon request to the department; and

16 (5) Annually review and update the remediation standards.

17 (b)(1) The Arkansas Pollution Control and Ecology Commission shall
18 promulgate rules to implement the certification program for contractors in
19 the inspection, sampling, remediation, and removal of contaminated materials
20 from property contaminated through the manufacture of controlled substances.

21 (2) The rules promulgated by the commission under this section
22 shall including without limitation:

23 (A) Application forms for certification;

24 (B) Continuing education requirements;

25 (C) Professional and technical standards for
26 certification;

27 (D) Renewals of certification;

28 (E) Procedures for revocation and other actions that
29 affect the status of certification; and

30 (F) Reasonable fees.

31
32 8-7-1403. Reporting of properties contaminated through the manufacture
33 of controlled substances.

34 (a) If a private property owner finds an abandoned laboratory for the
35 manufacture of controlled substances on his or her property and there has
36 been no active on-site law enforcement involvement, the property owner shall

1 notify local law enforcement for proper removal of contaminated material.

2 (b)(1) If a property owner finds or becomes aware of evidence of a
3 laboratory for the manufacture of controlled substances on his or her
4 property, the property owner shall have the property inspected in accordance
5 with the guidelines established by the Arkansas Department of Environmental
6 Quality under this subchapter by a contractor certified by the department
7 under § 8-7-1402.

8 (2) If the contractor selected by the property owner under
9 subdivision (b)(1) of this section verifies that a laboratory for the
10 manufacture of controlled substances has been on the property, the contractor
11 shall notify the department and the department shall place the property on
12 the contaminated properties list required under § 8-7-1404.

13
14 8-7-1404. Recordkeeping required.

15 (a) By May 1, 2008, the Arkansas Department of Environmental Quality
16 shall maintain records concerning properties contaminated through the
17 manufacture of controlled substances.

18 (b) The department shall:

19 (1) Create a list of properties contaminated through the
20 manufacture of controlled substances;

21 (2) Place a contaminated property on the contaminated properties
22 list;

23 (3) Not determine that a property has been adequately remediated
24 unless:

25 (A)(i) The inspection, sampling, remediation, and removal
26 of contaminated materials is performed by or under the direction and
27 responsible charge of an individual who has obtained a certification under
28 the rules established by the Arkansas Pollution Control and Ecology
29 Commission under this subchapter.

30 (ii) The inspection, sampling, remediation, and
31 removal of contaminated materials is performed by an employee of a public
32 agency that has the responsibility of regulatory enforcement, emergency
33 response, the protection of public health and welfare or the protection of
34 the environment while the employee is acting in the course of that
35 employment; and

36 (B) The property has met the remediation standards

1 developed by the department;

2 (4)(A) Post the results of a cleanup on the department's website
3 for ten (10) working days after the department determines that the property
4 has been adequately remediated.

5 (B) After the ten (10) working days of posting required
6 under subdivision (b)(4)(A) of this section, the department shall remove from
7 the department's website the formerly contaminated property and the results
8 of the cleanup; and

9 (5) Remove a property from the list when the department finds
10 that the property has been adequately remediated.

11 (c)(1) The department shall make the list of properties contaminated
12 through the manufacture of controlled substances available to law enforcement
13 officials and to the public:

14 (A) On the department's website; and

15 (B) In hard copy upon request to the department.

16 (2) The department shall keep hard copies of the information
17 required under this section until the department has removed the property
18 from the list of properties contaminated through the manufacture of
19 controlled substances.

20
21 8-7-1405. Notice – Cleanup – Residual contamination.

22 (a) If a law enforcement officer discovers a laboratory for the
23 manufacture of controlled substances or arrests a person for having equipment
24 used in manufacturing controlled substances on any real property, the law
25 enforcement officer shall at the time of the discovery or arrest deliver a
26 copy of the notice of removal required under subsection (d) of this section
27 to:

28 (1) The owner of the real property if the owner is present at
29 the time of the discovery or arrest;

30 (2) The on-site manager if the on-site manager is present at the
31 time of the discovery or arrest;

32 (3) An on-site drop box if available; or

33 (4) In the case of a tenant-owner unit in a space-rental mobile
34 home or a recreational vehicle park to:

35 (A) The occupant if the occupant is on site at the time of
36 delivery; or

1 (B) The on-site park landlord if the on-site park landlord
2 is present at the time of delivery.

3 (b)(1) If neither the owner nor the on-site manager of a property used
4 in manufacturing controlled substances is on the property at the time of the
5 discovery of or arrest regarding a laboratory for the manufacture of
6 controlled substances, the law enforcement officer shall make every
7 reasonable effort to obtain the necessary contact information concerning the
8 owner from the tenant, property manager, or neighbors.

9 (2) Within five (5) business days after the discovery of or
10 arrest regarding a laboratory for the manufacture of controlled substances,
11 the law enforcement officer shall send the notice of removal required under
12 subsection (d) of this section by certified mail and regular mail to the
13 owner of the property and the owner's on-site manager or in the case of a
14 space-rental mobile home or a recreational vehicle park to the park landlord.

15 (3) The Arkansas Department of Environmental Quality shall
16 cooperate with the Arkansas Crime Information Center to create a computer
17 link that will allow the center to transfer to the department information
18 from the National Clandestine Laboratory Seizure Report required under 28
19 C.F.R. Part 23 that is relevant to the notice of removal required under
20 subsection (d) of this section.

21 (c)(1) At the time a law enforcement officer removes the gross
22 contamination from property used as a laboratory for the manufacture of
23 controlled substances, the law enforcement officer shall order the removal of
24 all persons from the residually contaminated portion of the property or
25 dwelling unit or in the case of a space-rental mobile home or a recreational
26 vehicle park from the unit located on the property.

27 (2) After the law enforcement officer removes all persons under
28 subdivision (c)(1) of this section, the law enforcement officer shall affix
29 the notice of removal required under subsection (d) of this section in a
30 conspicuous place on the property or in the case of a space-rental mobile
31 home or a recreational vehicle park on the unit located on the property.

32 (d) The notice of removal under this section shall be in writing and
33 shall contain all of the following:

34 (1) The word "WARNING" in large bold type at the top and the
35 bottom of the notice;

36 (2) The date of the seizure and removal;

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

4 (4) The name of the law enforcement agency that seized the
5 laboratory for the manufacture of controlled substances and the agency's
6 contact telephone number;

7 (5) A list of telephone numbers and contact information for all
8 local and state agencies involved in the process of remediation;

9 (6) The contact numbers for local and state agencies associated
10 with the cleanup of laboratories for the manufacture of controlled
11 substances; and

12 (7) A statement that:

13 (A) A laboratory for the manufacture of controlled
14 substances was discovered on the property;

15 (B) Chemicals or equipment, or both, that were used in the
16 manufacture of controlled substances were seized at the property;

17 (C) Hazardous substances, toxic chemicals, or other waste
18 products may still be present on the property or in the case of space-rental
19 mobile home or a recreational vehicle park, in the unit located on the
20 property;

21 (D)(i) It is unlawful for any unauthorized person to enter
22 a residually contaminated property or in the case of a space-rental mobile
23 home or recreational vehicle park the unit located on the property until the
24 Arkansas Department of Environmental Quality establishes that the portion of
25 the property identified as residually contaminated has been properly
26 remediated.

27 (ii) As used in subdivision (d)(7)(D)(i) of this
28 section, "authorized person" means:

29 (a) An employee of the Arkansas Department of
30 Environmental Quality;

31 (b) A law enforcement officer;

32 (c) The owner of a residually contaminated
33 property; and

34 (d) A representative of an owner of a
35 residually contaminated property if the representative has signed a
36 waiver of liability;

1 (E) Failure to comply with § 8-7-1405 is a violation of
 2 the department's rules pertaining to the cleanup of laboratories for the
 3 manufacture of controlled substances;

4 (F) Disturbing the notice of removal posted on the
 5 property is a violation of the department's rules concerning the cleanup of
 6 laboratories for the manufacture of controlled substances; and

7 (G) The owner of the property is responsible for
 8 remediating the residually contaminated portion of the property in compliance
 9 with the department's rules concerning the cleanup of laboratories for the
 10 manufacture of controlled substances.

11
 12 8-7-1406. Remediated property.

13 (a) After property contaminated through the manufacture of controlled
 14 substances is remediated and the property owner receives official
 15 notification from the Arkansas Department of Environmental Quality, no
 16 person, including the property owner, landlord, and real estate agent, is
 17 required to report or otherwise disclose the past contamination.

18 (b) Unless retention is mandated by federal law, the department shall
 19 destroy all copies of information required to be kept under this subchapter
 20 that refer to a specific property location once the property is officially
 21 removed from the contaminated properties list.

22
 23 8-7-1407. Penalties.

24 Any person who pleads guilty or nolo contendere to or is found guilty
 25 of violating § 8-7-1405 (d)(7)(D) or § 8-7-1405 (E) is guilty of a Class B
 26 misdemeanor.

27
 28 */s/ Broadway*