

1 **STANDARDS FOR ILLEGAL DRUG LAB**

2 **DECONTAMINATION**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: A. Lamont Tyler**

6 AN ACT RELATING TO ENVIRONMENTAL QUALITY; CREATING THE ILLEGAL DRUG
7 MANUFACTURING AND STORAGE SITE DECONTAMINATION ACT; PROVIDING FOR
8 THE DEPARTMENT OF HEALTH AND THE DEPARTMENT OF ENVIRONMENTAL
9 QUALITY TO JOINTLY OVERSEE THE IDENTIFICATION AND CLEANUP OF
10 CONTROLLED SUBSTANCES MANUFACTURING SITES; PROVIDING RULEMAKING
11 AUTHORITY FOR THE DEPARTMENT OF HEALTH TO SET STANDARDS AND LICENSE
12 CONTRACTORS FOR THE CLEANUP OF SITES; PROVIDING FOR INITIAL
13 NOTIFICATION OF A SITE BY LAW ENFORCEMENT TO THE LOCAL HEALTH
14 AUTHORITY; PROVIDING FOR LOCAL HEALTH AUTHORITY INSPECTIONS;
15 CREATING AN ILLEGAL DRUG MANUFACTURING AND STORAGE SITE
16 DECONTAMINATION FUND WITHIN THE GENERAL FUND; AND MAKING TECHNICAL
17 CORRECTIONS.

18 This act affects sections of Utah Code Annotated 1953 as follows:

19 AMENDS:

20 **26A-1-114**, as last amended by Chapter 345, Laws of Utah 1998

21 ENACTS:

22 **19-6-801**, Utah Code Annotated 1953

23 **19-6-802**, Utah Code Annotated 1953

24 **19-6-803**, Utah Code Annotated 1953

25 **19-6-804**, Utah Code Annotated 1953

26 **19-6-805**, Utah Code Annotated 1953

27 **19-6-806**, Utah Code Annotated 1953

28 19-6-807, Utah Code Annotated 1953

29 19-6-808, Utah Code Annotated 1953

30 19-6-809, Utah Code Annotated 1953

31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section 19-6-801 is enacted to read:

33 **Part 8. Illegal Drug Manufacturing and Storage Site Decontamination Act**

34 **19-6-801. Title.**

35 This part is known as the "Illegal Drug Manufacturing and Storage Site Decontamination
36 Act."

37 Section 2. Section 19-6-802 is enacted to read:

38 **19-6-802. Definitions.**

39 As used in this part:

40 (1) "Authorized contractor" means a person who decontaminates, demolishes, or disposes
41 of contaminated property as required by this part and who is certified by the Department of Health
42 as provided for in Section 19-6-807.

43 (2) "Board" means a local board of health as established under Section 26A-1-109.

44 (3) "Contaminated" or "contamination" means polluted by hazardous materials so that the
45 property is unfit for human habitation or use due to immediate or long-term hazards. Property that
46 at one time was contaminated but has been satisfactorily decontaminated according to procedures
47 established by the Department of Health is not "contaminated."

48 (4) "Hazardous materials" has the same meaning as "hazardous and dangerous materials"
49 as that term is defined in Section 58-37d-3.

50 (5) "Officer" means a local health officer authorized under Title 26A, Local Health
51 Authorities.

52 (6) "Property" means any property, site, structure, part of a structure, or the grounds
53 surrounding the structure which is involved in the unauthorized manufacture or storage of
54 hazardous materials. This includes but is not limited to single-family residences, units of
55 multiplexes, condominiums, apartment buildings, hotels, motels, boats, motor vehicles, trailers,
56 manufactured housing, or any shop, or booth.

57 Section 3. Section 19-6-803 is enacted to read:

58 **19-6-803. Reporting -- Notice -- Duties of local health officer.**

59 (1) Whenever a law enforcement agency has probable cause to believe that property has
60 been contaminated by hazardous materials, the agency shall report the suspected contamination
61 to the local health officer within 24 hours.

62 (2) The local health officer shall:

63 (a) cause a notice to be posted on the premises immediately upon being notified of the
64 suspected contamination;

65 (b) notify the Department of Health and the Department of Environmental Quality of his
66 actions; and

67 (c) inspect the property within 14 days after receiving notice of suspected contamination.

68 (3) If a property owner believes that a tenant has contaminated property that was being
69 leased or rented, and the property is vacated or abandoned, the property owner shall contact the
70 local health officer about the suspected contamination.

71 (4) Local health officers may charge reasonable fees for inspections of property requested
72 by property owners.

73 (5) After having received notice pursuant to Subsection (1), and notwithstanding Section
74 26A-1-113, a local health officer may enter, inspect, and survey at reasonable times any properties
75 for which there are reasonable grounds to believe that the property has become contaminated.

76 (6) If property is determined to be contaminated, the local health officer shall:

77 (a) post a notice on the premises; and

78 (b) report the contaminated property to the Department of Health and Department of
79 Environmental Quality.

80 (7) The Department of Health shall keep a list of contaminated properties and make the
81 list available upon request to health associations, landlord and realtor organizations, prosecutors,
82 and other interested parties. The list shall be promptly updated to remove those properties which
83 have been decontaminated according to provisions of this part.

84 Section 4. Section **19-6-804** is enacted to read:

85 **19-6-804. Unfit for use -- Notice -- Hearing.**

86 (1) If, after inspection of the property, the local health officer finds that it is contaminated,
87 the property shall be considered unfit for use. The local health officer shall issue an order
88 requiring that the property be vacated and prohibiting use of the property.

89 (2) The order shall be served either personally or by certified mail, with return receipt

90 requested, upon all occupants and persons having any interest in the property, as shown by the
91 records of the recorder's office of the county in which the property is located. In addition, the order
92 shall be posted in a conspicuous place on the property.

93 (3) If the whereabouts of the persons is unknown and cannot be ascertained by the local
94 health officer in the exercise of reasonable diligence, and the health officer makes an affidavit to
95 that effect, then the serving of the order upon those persons may be made either by personal service
96 or by mailing a copy of the order by certified mail, postage prepaid, return receipt requested, to
97 each person at the address appearing on the last equalized tax assessment roll of the county where
98 the property is located or at the address known to the county assessor. The order shall be posted
99 conspicuously at the residence.

100 (4) A copy of the order shall also be mailed, addressed to each person or party having a
101 recorded right, title, estate, lien, or interest in the property. The order shall contain a notice that
102 a hearing before the local health board or officer shall be held upon the request of a person required
103 to be notified of the order under this section.

104 (5) The request for a hearing must be made within ten days of serving the order. The
105 hearing shall then be held not less than ten days nor more than 30 days after the request for a
106 hearing is made. The officer shall prohibit use as long as the property is found to be contaminated.

107 (6) A copy of the order shall also be filed with the recorder of the county in which the
108 property is located, and the filing of the complaint or order shall have the same force and effect
109 as other *lis pendens* notices provided by law.

110 (7) In any hearing concerning whether property is fit for use, the property owner has the
111 burden of showing that the property is decontaminated or fit for use.

112 (8) The owner or any person having an interest in the property may file an appeal on any
113 order issued by the local health board or officer within 30 days from the date of service of the
114 order. All proceedings before the appeals commission, including any subsequent appeals to the
115 district court, shall be governed by procedures established in accordance with Title 63, Chapter
116 46b, Administrative Procedures Act.

117 Section 5. Section **19-6-805** is enacted to read:

118 **19-6-805. Notice to local health officer -- Decontamination by owner -- Requirements.**

119 (1) An owner of contaminated property shall notify the local health officer of his intent to
120 have the property decontaminated. Notification shall be made in writing within 30 days of receipt

121 of the order issued pursuant to Subsection 19-6-804(1), unless the order is appealed. In the event
122 the order is appealed, the 30-day notification period shall run from the date of the final order.

123 (2) The owner shall use the services of an authorized contractor to decontaminate the
124 property.

125 (3) The contractor shall prepare and submit a written work plan for decontamination to the
126 local health officer for review and approval. The local health officer may charge a reasonable fee
127 for review and approval of the work plan.

128 (4) The health officer shall allow reuse of the property if the work plan is approved, the
129 decontamination is completed, and the property is reinspected according to the plan and properly
130 documented.

131 (5) A notice shall be recorded in the real property records if applicable, indicating the
132 property has been decontaminated in accordance with requirements of this part.

133 Section 6. Section **19-6-806** is enacted to read:

134 **19-6-806. Municipality or county options.**

135 (1) If the local health officer does not receive the notice required by Subsection
136 19-6-805(1) or the owner notifies him that he intends to abandon the property, the local health
137 officer shall notify the municipality, or county for unincorporated areas, in which the contaminated
138 property is located within 24 hours.

139 (2) The municipality or county may take action to condemn, decontaminate, or demolish
140 the property.

141 (3) The municipality or county shall use an authorized contractor if property is
142 decontaminated, demolished, or removed under this section.

143 (4) A municipality or county may not condemn, decontaminate, or demolish property
144 pursuant to this section until all procedures granting the right of notice and the opportunity to
145 appeal in Section 19-6-804 have been exhausted.

146 Section 7. Section **19-6-807** is enacted to read:

147 **19-6-807. Certification of contractors -- Denial, suspension, or revocation of**
148 **certificate -- Duties of Department of Health.**

149 (1) After January 1, 2001, a contractor may not perform decontamination, demolition, or
150 disposal work at a property determined to be contaminated under this part unless issued a
151 certificate by the Department of Health.

152 (2) The Department of Health shall establish performance and certification standards for
153 contractors by rule in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
154 Act.

155 (3) The Department of Health, with input from the Department of Environmental Quality,
156 shall train and test, or may approve courses to train and test, contractors and their employees on
157 the essential elements in assessing property used as an illegal drug manufacturing or storage site
158 to determine:

159 (a) hazard reduction measures needed;

160 (b) techniques for adequately reducing contaminants;

161 (c) use of personal protective equipment;

162 (d) methods for proper demolition, removal, and disposal of contaminated property; and

163 (e) relevant federal and state regulations.

164 (4) Upon successful completion of the training, the contractor or employee shall be
165 certified.

166 (5) The Department of Health may require the successful completion of annual refresher
167 courses provided or approved by the department for the continued certification of the contractor
168 or employee.

169 (6) (a) The Department of Health shall provide for reciprocal certification of any individual
170 trained to engage in decontamination, demolition, or disposal work in another state when the prior
171 training is shown to be substantially similar to the training required by the department.

172 (b) The department may require individuals to take an examination or refresher course
173 before certification.

174 (7) The Department of Health may deny, suspend, or revoke a certificate for failure to
175 comply with the requirements of this part or any rule adopted pursuant to this part. A certificate
176 may be denied, suspended, or revoked on any of the following grounds:

177 (a) failure to perform decontamination, demolition, or disposal work under the supervision
178 of trained personnel;

179 (b) failure to file a work plan;

180 (c) failure to perform work pursuant to the approved work plan;

181 (d) failure to perform work that meets the requirements of the department; or

182 (e) the certificate was obtained by error, misrepresentation, or fraud.

183 (8) A contractor who violates any provision of this part may be assessed a fine not to
184 exceed \$500 for each violation.

185 (9) The Department of Health shall set fees for the issuance and renewal of certificates,
186 the administration of examinations, and for the review of training courses.

187 Section 8. Section **19-6-808** is enacted to read:

188 **19-6-808. Illegal Drug Manufacturing and Storage Site Decontamination Fund --**
189 **Creation.**

190 (1) There is created within the General Fund a restricted account known as the State Illegal
191 Drug Manufacturing and Storage Site Decontamination Account.

192 (2) Funds which shall be deposited in this account include:

193 (a) fees and fines collected under the provisions of Section 19-6-807;

194 (b) direct appropriations by the Legislature; and

195 (c) repayments and interest on loans from the account to property owners to help with
196 environmental decontamination under the provisions of this part.

197 (3) Moneys in the account may only be spent after appropriation for costs incurred by the
198 Department of Health in the administration and enforcement of this part.

199 Section 9. Section **19-6-809** is enacted to read:

200 **19-6-809. Rules and standards -- Authority to develop.**

201 (1) The Department of Health, in conjunction with the Department of Environmental
202 Quality, and with input from local health departments, shall promulgate rules and standards for
203 carrying out the provisions of this part in accordance with Title 63, Chapter 46a, Utah
204 Administrative Rulemaking Act.

205 (2) The Department of Health shall provide technical assistance to local health boards and
206 officers to carry out their duties under this part.

207 (3) The Department of Health, in conjunction with the Department of Environmental
208 Quality, and with input from local health departments, shall develop:

209 (a) guidelines for decontamination of property used as a drug manufacturing and storage
210 site; and

211 (b) methods for the testing of ground water, surface water, soil, and septic tanks for
212 contamination.

213 Section 10. Section **26A-1-114** is amended to read:

214 **26A-1-114. Powers and duties of departments.**

215 (1) A local health department may:

216 (a) enforce state laws, local ordinances, department rules, and local health department
217 standards and regulations relating to public health and sanitation, including the plumbing code
218 adopted by the Division of Occupational and Professional Licensing under Section 58-56-4 and
219 under Title 26, Chapter 15a, Food Safety Manager Certification Act;220 (b) establish, maintain, and enforce isolation and quarantine, and exercise physical control
221 over property and over individuals as the local health department finds necessary for the protection
222 of the public health;223 (c) establish and maintain medical, environmental, occupational, and other laboratory
224 services considered necessary or proper for the protection of the public health;225 (d) establish and operate reasonable health programs or measures not in conflict with state
226 law that:227 (i) are necessary or desirable for the promotion or protection of the public health and the
228 control of disease; or229 (ii) may be necessary to ameliorate the major risk factors associated with the major causes
230 of injury, sickness, death, and disability in the state;231 (e) close theaters, schools, and other public places and prohibit gatherings of people when
232 necessary to protect the public health;233 (f) abate nuisances or eliminate sources of filth [and], infectious and communicable
234 diseases affecting the public health, inspect and order the cleanup of contaminated property under
235 the provisions of Title 19, Chapter 6, Part 8, Illegal Drug Manufacturing and Storage Site
236 Decontamination Act, and bill the owner or other person in charge of the premises upon which this
237 nuisance occurs for the cost of abatement;238 (g) make necessary sanitary and health investigations and inspections on its own initiative
239 or in cooperation with the Department of Health or Environmental Quality, or both, as to any
240 matters affecting the public health;

241 (h) (i) establish and collect appropriate fees;

242 (ii) accept, use, and administer all federal, state, or private donations or grants of funds,
243 property, services, or materials for public health purposes; and

244 (iii) make agreements not in conflict with state law that are conditional to receiving a

245 donation or grant;

246 (i) prepare, publish, and disseminate information necessary to inform and advise the public
247 concerning:

248 (i) the health and wellness of the population, specific hazards, and risk factors that may
249 adversely affect the health and wellness of the population; and

250 (ii) specific activities individuals and institutions can engage in to promote and protect the
251 health and wellness of the population;

252 (j) investigate the causes of morbidity and mortality;

253 (k) issue notices and orders necessary to carry out this part;

254 (l) conduct studies to identify injury problems, establish injury control systems, develop
255 standards for the correction and prevention of future occurrences, and provide public information
256 and instruction to special high risk groups;

257 (m) cooperate with boards created under Section 19-1-106 to enforce laws and rules within
258 the jurisdiction of the boards; and

259 (n) cooperate with the state health department, the Department of Corrections, the
260 Administrative Office of the Courts, the Division of Youth Corrections, and the Crime Victims
261 Reparations Board to conduct testing for HIV infection of convicted sexual offenders and any
262 victims of a sexual offense.

263 (2) The local health department shall:

264 (a) establish programs or measures to promote and protect the health and general wellness
265 of the people within the boundaries of the local health department;

266 (b) investigate infectious and other diseases of public health importance and implement
267 measures to control the causes of epidemic and communicable diseases and other conditions
268 significantly affecting the public health which may include involuntary testing of convicted sexual
269 offenders for the HIV infection pursuant to Section 76-5-502 and voluntary testing of victims of
270 sexual offenses for HIV infection pursuant to Section 76-5-503;

271 (c) cooperate with the department in matters pertaining to the public health and in the
272 administration of state health laws; and

273 (d) coordinate implementation of environmental programs to maximize efficient use of
274 resources by developing with the Department of Environmental Quality a Comprehensive
275 Environmental Service Delivery Plan that:

276 (i) recognizes that the Department of Environmental Quality and local health departments
277 are the foundation for providing environmental health programs in the state;

278 (ii) delineates the responsibilities of the department and each local health department for
279 the efficient delivery of environmental programs using federal, state, and local authorities,
280 responsibilities, and resources;

281 (iii) provides for the delegation of authority and pass through of funding to local health
282 departments for environmental programs, to the extent allowed by applicable law, identified in the
283 plan, and requested by the local health department; and

284 (iv) is reviewed and updated annually.

285 (3) The local health department has the following duties regarding public and private
286 schools within its boundaries:

287 (a) enforce all ordinances, standards, and regulations pertaining to the public health of
288 persons attending public and private schools;

289 (b) exclude from school attendance any person, including teachers, who is suffering from
290 any communicable or infectious disease, whether acute or chronic, if the person is likely to convey
291 the disease to those in attendance;

292 (c) (i) make regular inspections of the health-related condition of all school buildings and
293 premises;

294 (ii) report the inspections on forms furnished by the department to those responsible for
295 the condition and provide instructions for correction of any conditions that impair or endanger the
296 health or life of those attending the schools; and

297 (iii) provide a copy of the report to the department at the time the report is made.

298 (4) If those responsible for the health-related condition of the school buildings and
299 premises do not carry out any instructions for corrections provided in a report in Subsection (3)(c),
300 the local health board shall cause the conditions to be corrected at the expense of the persons
301 responsible.

302 (5) The local health department may exercise incidental authority as necessary to carry out
303 the provisions and purposes of this part.

Legislative Review Note

as of 10-21-99 9:57 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Health and Human Services Interim Committee recommended this bill.