

Representative A. Lamont Tyler proposes to substitute the following bill:

1 **STANDARDS FOR ILLEGAL DRUG LAB DECONTAMINATION**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: A. Lamont Tyler**

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

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

17 AMENDS:

18 **26A-1-114**, as last amended by Chapter 345, Laws of Utah 1998

19 ENACTS:

20 **19-6-801**, Utah Code Annotated 1953

21 **19-6-802**, Utah Code Annotated 1953

22 **19-6-803**, Utah Code Annotated 1953

23 **19-6-804**, Utah Code Annotated 1953

24 **19-6-805**, Utah Code Annotated 1953

25 **19-6-806**, Utah Code Annotated 1953

26 **19-6-807**, Utah Code Annotated 1953

27 **19-6-808**, Utah Code Annotated 1953

28 **19-6-809**, Utah Code Annotated 1953

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

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

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

32 **19-6-801. Title.**

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

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

36 **19-6-802. Definitions.**

37 As used in this part:

38 (1) "Authorized contractor" means a person who decontaminates, demolishes, or disposes
39 of contaminated property as required by this part and who is certified by the Utah Solid and
40 Hazardous Waste Control Board as provided for in Section 19-6-807.

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

42 (3) "Contaminated" or "contamination" means polluted by hazardous materials so that the
43 property is unfit for human habitation or use due to immediate or long-term hazards. Property that
44 at one time was contaminated but has been satisfactorily decontaminated according to procedures
45 established by the Utah Solid and Hazardous Waste Control Board is not "contaminated."

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

48 (5) "Health officer" means a local health officer authorized under Title 26A, Local Health
49 Authorities.

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

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

56 **19-6-803. Reporting -- Notice -- Duties of local health officer.**

57 (1) Whenever a law enforcement agency has probable cause to believe that property has
58 been contaminated by hazardous materials related to the manufacturing and consumption of
59 controlled substances, the agency shall report the suspected contamination to the local health
60 officer within 24 hours.

61 (2) The local health officer shall:

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

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

66 (c) cause the property to be inspected within 14 days after receiving notice of suspected
67 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 a reasonable fee to cover the costs of inspections of
72 property requested 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 Utah Solid and Hazardous Waste Control Board shall keep a list of contaminated
81 properties and make the list available upon request to health associations, landlord and realtor
82 organizations, prosecutors, and other interested parties. The list shall be promptly updated to
83 remove those properties which 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 determines that it is
87 contaminated, the property shall be considered unfit for use. The local health officer shall issue

88 an order 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 board has the burden of
111 showing that the property is contaminated or unfit 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 health officer for review and approval. The health officer may request assistance from the
127 Department of Environmental Quality in reviewing any plans submitted.

128 (4) The health officer may charge a reasonable fee to cover the costs of review and
129 approval of the work plan.

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

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

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

136 **19-6-806. Municipality or county options.**

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

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

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

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

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

149 **19-6-807. Certification of contractors -- Denial, suspension, or revocation of**

150 **certificate -- Duties of Department of Health and Utah Solid and Hazardous Waste Control**
151 **Board.**

152 (1) After January 1, 2001, a contractor may not perform decontamination, demolition, or
153 disposal work at a property determined to be contaminated under this part unless issued a
154 certificate by the Utah Solid and Hazardous Waste Control Board.

155 (2) The Utah Solid and Hazardous Waste Control Board in consultation with the
156 Department of Health shall establish performance and certification standards for contractors by
157 rule in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

158 (3) The Utah Solid and Hazardous Waste Control Board in consultation with the
159 Department of Health shall train and test, or may approve courses to train and test, contractors and
160 their employees on the essential elements in assessing property used as an illegal drug
161 manufacturing or storage site to determine:

162 (a) hazard reduction measures needed;

163 (b) techniques for adequately reducing contaminants;

164 (c) use of personal protective equipment;

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

166 (e) relevant federal and state regulations.

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

169 (5) The Utah Solid and Hazardous Waste Control Board in consultation with the
170 Department of Health may require the successful completion of annual refresher courses provided
171 or approved by the departments for the continued certification of the contractor or employee.

172 (6) (a) The Utah Solid and Hazardous Waste Control Board shall provide for reciprocal
173 certification of any individual trained to engage in decontamination, demolition, or disposal work
174 in another state when the prior training is shown to be substantially similar to the training required
175 by the department.

176 (b) The Utah Solid and Hazardous Waste Control Board may require individuals to take
177 an examination or refresher course before certification.

178 (7) The Utah Solid and Hazardous Waste Control Board may deny, suspend, or revoke a
179 certificate for failure to comply with the requirements of this part or any rule adopted pursuant to
180 this part. A certificate may be denied, suspended, or revoked on any of the following grounds:

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

183 (b) failure to file a work plan;

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

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

186 (e) failure to properly dispose of contaminated materials; or

187 (f) the certificate was obtained by error, misrepresentation, or fraud.

188 (8) A contractor who violates any provision of this part shall be subject to the penalties
189 found in Section 19-1-303.

190 (9) The Utah Solid and Hazardous Waste Control Board shall set fees in accordance with
191 Section 63-38-3.2 for the issuance and renewal of certificates, the administration of examinations,
192 and for the review of training courses.

193 (10) Fees collected under Subsection (9) shall be deposited in the General Fund as
194 dedicated credits to be used by the Department of Environmental Quality in the administration of
195 Section 19-6-807.

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

197 **19-6-808. Illegal Drug Manufacturing and Storage Site Decontamination Loan Fund.**

198 (1) There is created a revolving loan fund known as the State Illegal Drug Manufacturing
199 and Storage Site Decontamination Loan Fund.

200 (2) The fund shall consist of:

201 (a) fines collected under the provisions of Section 19-6-807;

202 (b) direct appropriations by the Legislature; and

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

205 (3) The fund shall be used to make loans to property owners to decontaminate property as
206 required in this part.

207 (4) The Utah Solid and Hazardous Waste Control Board shall administer the fund.

208 (5) The Utah Solid and Hazardous Waste Control Board shall make rules for authorizing
209 loans from the fund.

210 (6) Loans may only be made to the property owner for the cost of inspection and clean up
211 of contaminated residential property as required in Section 19-6-805.

212 (7) Loans may not be made to the owner of the property if the owner knew of or
213 participated in the activity that resulted in the contamination of the property. A determination by
214 a prosecutor not to charge the owner or a finding of not guilty by a court of the owner of charges
215 stemming from the discovery of the source of the contamination may indicate that the owner did
216 not know or participate in the activity that resulted in the contamination of the property.

217 (8) Interest on loans shall be at the rate determined by the Utah Solid and Hazardous Waste
218 Control Board and shall be set at rates necessary to cover administrative costs and protect the fund
219 from depletion. Interest rates may be set below commercial lending rates.

220 (9) The Division of Finance shall account for and track all outstanding loans under this
221 section as required in Section 63-65-4.

222 (10) Administrative costs for the loan processing and accounting may be paid from the
223 fund.

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

225 **19-6-809. Rules and standards -- Authority to develop.**

226 (1) The Utah Solid and Hazardous Waste Control Board in consultation with the
227 Department of Health shall promulgate rules and standards for carrying out the provisions of this
228 part in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act. All rules
229 developed under this part shall be submitted to local health officers for review and comment.

230 (2) The Departments of Health and Environmental Quality shall provide technical
231 assistance to local health boards and officers to carry out their duties under this part.

232 (3) The Utah Solid and Hazardous Waste Control Board shall develop:

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

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

237 (4) All rules developed under this part shall be consistent with other state and federal
238 environmental requirements.

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

240 **26A-1-114. Powers and duties of departments.**

241 (1) A local health department may:

242 (a) enforce state laws, local ordinances, department rules, and local health department

243 standards and regulations relating to public health and sanitation, including the plumbing code
244 adopted by the Division of Occupational and Professional Licensing under Section 58-56-4 and
245 under Title 26, Chapter 15a, Food Safety Manager Certification Act;

246 (b) establish, maintain, and enforce isolation and quarantine, and exercise physical control
247 over property and over individuals as the local health department finds necessary for the protection
248 of the public health;

249 (c) establish and maintain medical, environmental, occupational, and other laboratory
250 services considered necessary or proper for the protection of the public health;

251 (d) establish and operate reasonable health programs or measures not in conflict with state
252 law that:

253 (i) are necessary or desirable for the promotion or protection of the public health and the
254 control of disease; or

255 (ii) may be necessary to ameliorate the major risk factors associated with the major causes
256 of injury, sickness, death, and disability in the state;

257 (e) close theaters, schools, and other public places and prohibit gatherings of people when
258 necessary to protect the public health;

259 (f) abate nuisances or eliminate sources of filth ~~[and]~~, infectious and communicable
260 diseases affecting the public health, inspect and order the cleanup of contaminated property under
261 the provisions of Title 19, Chapter 6, Part 8, Illegal Drug Manufacturing and Storage Site
262 Decontamination Act, and bill the owner or other person in charge of the premises upon which this
263 nuisance occurs for the cost of abatement;

264 (g) make necessary sanitary and health investigations and inspections on its own initiative
265 or in cooperation with the Department of Health or Environmental Quality, or both, as to any
266 matters affecting the public health;

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

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

270 (iii) make agreements not in conflict with state law that are conditional to receiving a
271 donation or grant;

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

- 274 (i) the health and wellness of the population, specific hazards, and risk factors that may
275 adversely affect the health and wellness of the population; and
- 276 (ii) specific activities individuals and institutions can engage in to promote and protect the
277 health and wellness of the population;
- 278 (j) investigate the causes of morbidity and mortality;
- 279 (k) issue notices and orders necessary to carry out this part;
- 280 (l) conduct studies to identify injury problems, establish injury control systems, develop
281 standards for the correction and prevention of future occurrences, and provide public information
282 and instruction to special high risk groups;
- 283 (m) cooperate with boards created under Section 19-1-106 to enforce laws and rules within
284 the jurisdiction of the boards; and
- 285 (n) cooperate with the state health department, the Department of Corrections, the
286 Administrative Office of the Courts, the Division of Youth Corrections, and the Crime Victims
287 Reparations Board to conduct testing for HIV infection of convicted sexual offenders and any
288 victims of a sexual offense.
- 289 (2) The local health department shall:
- 290 (a) establish programs or measures to promote and protect the health and general wellness
291 of the people within the boundaries of the local health department;
- 292 (b) investigate infectious and other diseases of public health importance and implement
293 measures to control the causes of epidemic and communicable diseases and other conditions
294 significantly affecting the public health which may include involuntary testing of convicted sexual
295 offenders for the HIV infection pursuant to Section 76-5-502 and voluntary testing of victims of
296 sexual offenses for HIV infection pursuant to Section 76-5-503;
- 297 (c) cooperate with the department in matters pertaining to the public health and in the
298 administration of state health laws; and
- 299 (d) coordinate implementation of environmental programs to maximize efficient use of
300 resources by developing with the Department of Environmental Quality a Comprehensive
301 Environmental Service Delivery Plan that:
- 302 (i) recognizes that the Department of Environmental Quality and local health departments
303 are the foundation for providing environmental health programs in the state;
- 304 (ii) delineates the responsibilities of the department and each local health department for

305 the efficient delivery of environmental programs using federal, state, and local authorities,
306 responsibilities, and resources;

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

310 (iv) is reviewed and updated annually.

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

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

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

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

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

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

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

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