

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 19-6-810, Utah Code Annotated 1953

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

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

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

33 **19-6-801. Title.**

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

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

37 **19-6-802. Definitions.**

38 As used in this part:

39 (1) "Authorized contractor" means a person who decontaminates, demolishes, or disposes
40 of contaminated property as required by this part and who is certified by the Utah Solid and
41 Hazardous Waste Control Board as provided for in Section 19-6-808.

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

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

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

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

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

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

57 **19-6-803. Local Health Authority Regulations.**

58 Notwithstanding the procedures in this chapter with regard to determinations concerning
59 contamination, notices, hearings, and inspections, any local health department with regulations
60 adopted in accordance with Title 26A, Local Health Authorities, may proceed under their own
61 regulations.

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

63 **19-6-804. Reporting -- Notice -- Duties of local health officer.**

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

68 (2) The local health officer shall:

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

71 (b) notify the Department of Health and the Department of Environmental Quality of his
72 actions; and

73 (c) cause the property to be inspected within 14 days after receiving notice of suspected
74 contamination.

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

78 (4) Local health officers may charge a reasonable fee to cover the costs of inspections of
79 property requested by property owners.

80 (5) After having received notice pursuant to Subsection (1), and notwithstanding Section
81 26A-1-113, a local health officer may enter, inspect, and survey at reasonable times any properties
82 for which there are reasonable grounds to believe that the property has become contaminated.

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

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

85 (b) report the contaminated property to the Department of Health and Department of
86 Environmental Quality.

87 (7) The Utah Solid and Hazardous Waste Control Board shall keep a list of contaminated

88 properties and make the list available upon request to health associations, landlord and realtor
89 organizations, prosecutors, and other interested parties. The list shall be promptly updated to
90 remove those properties which have been decontaminated according to provisions of this part.

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

92 **19-6-805. Unfit for use -- Notice -- Hearing.**

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

96 (2) The order shall be served either personally or by certified mail, with return receipt
97 requested, upon all occupants and persons having any interest in the property, as shown by the
98 records of the recorder's office of the county in which the property is located. In addition, the order
99 shall be posted in a conspicuous place on the property.

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

107 (4) The order shall contain a notice that a hearing before the local health board shall be
108 held upon the request of a person required to be notified of the order under this section.

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

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

116 (7) In any hearing concerning whether property is fit for use, the local health officer has
117 the burden of showing that the property is contaminated or unfit for use.

118 (8) The owner or any person having an interest in the property may file an appeal on any

119 order issued by the local health officer within 30 days from the date of service of the order. All
120 proceedings before the board, including any subsequent appeals to the district court, shall be
121 governed by procedures established in accordance with Title 63, Chapter 46b, Administrative
122 Procedures Act.

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

124 **19-6-806. Notice to local health officer -- Decontamination by owner -- Requirements.**

125 (1) An owner or any person having an interest in the contaminated property shall notify
126 the local health officer of his intent to have the property decontaminated. Notification shall be
127 made in writing within 30 days of receipt of the order issued pursuant to Subsection 19-6-805(1),
128 unless the order is appealed. In the event the order is appealed, the 30-day notification period shall
129 run from the date of the final order.

130 (2) The services of an authorized contractor shall be used to decontaminate the property.

131 (3) The contractor shall prepare and submit a written work plan for decontamination to the
132 health officer for review and approval. The health officer may request assistance from the
133 Department of Environmental Quality in reviewing any plans submitted.

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

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

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

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

142 **19-6-807. Municipality or county options.**

143 (1) If the local health officer does not receive the notice required by Subsection
144 19-6-805(1) or the owner notifies him that he intends to abandon the property, the local health
145 officer shall notify the municipality, or county for unincorporated areas, in which the contaminated
146 property is located within 24 hours.

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

149 (3) The municipality or county shall use an authorized contractor if property is

150 decontaminated, demolished, or removed under this section.

151 (4) A municipality or county may not condemn, decontaminate, or demolish property
152 pursuant to this section until all procedures granting the right of notice and the opportunity to
153 appeal have been exhausted.

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

155 **19-6-808. Certification of contractors -- Denial, suspension, or revocation of**
156 **certificate -- Duties of Department of Health and Utah Solid and Hazardous Waste Control**
157 **Board.**

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

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

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

168 (a) hazard reduction measures needed;

169 (b) techniques for adequately reducing contaminants;

170 (c) use of personal protective equipment;

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

172 (e) relevant federal and state regulations.

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

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

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

181 by the department.

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

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

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

189 (b) failure to file a work plan;

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

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

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

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

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

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

199 (10) Fees collected under Subsection (9) shall be deposited in the General Fund as
200 dedicated credits to be used by the Department of Environmental Quality in the administration of
201 Section 19-6-808.

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

203 **19-6-809. Illegal Drug Manufacturing and Storage Site Decontamination Loan Fund.**

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

206 (2) The fund shall consist of:

207 (a) fines collected under the provisions of Section 19-6-808;

208 (b) direct appropriations by the Legislature; and

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

211 (3) The fund shall be used to make loans to property owners to decontaminate property as

212 required in this part.

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

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

216 (6) Loans may only be made to the property owner for the cost of inspection and clean up
217 of contaminated residential property as required in Section 19-6-806.

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

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

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

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

230 Section 10. Section **19-6-810** is enacted to read:

231 **19-6-810. Rules and standards -- Authority to develop.**

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

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

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

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

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

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

245 Section 11. Section **26A-1-114** is amended to read:

246 **26A-1-114. Powers and duties of departments.**

247 (1) A local health department may:

248 (a) enforce state laws, local ordinances, department rules, and local health department
249 standards and regulations relating to public health and sanitation, including the plumbing code
250 adopted by the Division of Occupational and Professional Licensing under Section 58-56-4 and
251 under Title 26, Chapter 15a, Food Safety Manager Certification Act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

295 (2) The local health department shall:

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

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

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

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

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

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

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

316 (iv) is reviewed and updated annually.

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

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

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

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

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

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

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

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