

DRUG LAB CLEANUP AND DISCLOSURE

2004 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill provides procedures for local health departments regarding property contaminated by illegal drug operations.

Highlighted Provisions:

This bill:

- ▶ requires law enforcement agencies to report contaminated property locations to the local health department;
- ▶ requires the local health departments to make these reports available to the public, as advisory information only;
- ▶ requires the local health department to notify the property owner of the report, and also to notify the county or municipality if the property owner is not taking action regarding the contamination;
- ▶ directs the state Department of Health to make rules that include certification standards regarding the decontamination of contaminated property;
- ▶ requires the Department of Environmental Quality to establish a certification program for decontamination specialists;
- ▶ requires clean-up of contamination and certification that a contaminated property has been cleaned up;
- ▶ establishes a program to certify specialists who provide evaluation, sampling, and clean-up of contaminated properties; and

▸ includes in the real estate definition of stigmatized property that is not subject to disclosure, contaminated property that has been decontaminated.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-1-1, as last amended by Chapter 10, Laws of Utah 1991

ENACTS:

19-6-901, Utah Code Annotated 1953

19-6-902, Utah Code Annotated 1953

19-6-903, Utah Code Annotated 1953

19-6-904, Utah Code Annotated 1953

19-6-905, Utah Code Annotated 1953

19-6-906, Utah Code Annotated 1953

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

Section 1. Section **19-6-901** is enacted to read:

Part 9. Illegal Drug Operations Site Reporting and Decontamination Act

19-6-901. Title.

This part is known as the "Illegal Drug Operations Site Reporting and Decontamination Act."

Section 2. Section **19-6-902** is enacted to read:

19-6-902. Definitions.

As used in this part:

(1) "Board" means the Solid and Hazardous Waste Control Board, as defined in Section 19-1-106, within the Department of Environmental Quality.

(2) "Certified decontamination specialist" means an individual who has met the standards for certification as a decontamination specialist and has been certified by the board under Subsection 19-6-906(2).

(3) "Contaminated" or "contamination" means polluted by hazardous materials that cause property to be unfit for human habitation or use due to immediate or long-term health hazards.

(4) "Contamination list" means a list maintained by the local health department of properties:

(a) reported to the local health department under Section 19-6-903; and

(b) determined by the local health department to be contaminated.

(5) "Decontaminated" means property that at one time was contaminated, but the contaminants have been removed.

(6) "Hazardous materials":

(a) has the same meaning as "hazardous or dangerous materials" as defined in Section 58-37d-3; and

(b) includes any illegally manufactured controlled substances.

(7) "Health department" means a local health department under Title 26A, Local Health Authorities.

(8) "Owner of record":

(a) means the owner of real property as shown on the records of the county recorder in the county where the property is located; and

(b) may include an individual, financial institution, company, corporation, or other entity.

(9) "Property":

(a) means any real property, site, structure, part of a structure, or the grounds surrounding a structure; and

(b) includes single-family residences, outbuildings, garages, units of multiplexes, condominiums, apartment buildings, warehouses, hotels, motels, boats, motor vehicles, trailers, manufactured housing, shops, or booths.

(10) "Reported property" means property that is the subject of a law enforcement report

under Section 19-6-903.

Section 3. Section **19-6-903** is enacted to read:

19-6-903. Law enforcement reporting and records -- Removal from list.

(1) (a) When any state or local law enforcement agency in the course of its official duties observes any paraphernalia of a clandestine drug laboratory operation, including chemicals or equipment used in the manufacture of unlawful drugs, the agency shall report the location where the items were observed to the local health department.

(b) (i) The law enforcement officer shall make the report under Subsection (1)(a) at the location where the observation occurred, if making the report at that time will not compromise an ongoing investigation.

(ii) If the report cannot be made at the location, the report shall be made as soon afterward as is practical.

(c) The report under Subsection (1)(a) shall include:

(i) the date of the observation;

(ii) the name of the reporting agency and the case number of the case that involves the location of the observation;

(iii) the contact information of the officer involved, including name and telephone number;

(iv) the address of the location and descriptions of the property that may be contaminated;

and

(v) a brief description of the evidence at the location that led to the belief the property at the location may be contaminated.

(2) The law enforcement agency shall forward to the local health department copies of the reports made under Subsection (1).

(3) (a) Upon receipt of a complaint or a report from law enforcement regarding possibly contaminated property, the local health officer or his designee shall determine if reasonable evidence exists that the property is contaminated.

(b) The local health department shall place property considered to be contaminated on a contamination list.

(4) The local health departments shall maintain searchable records of the properties on their contamination lists and shall:

(a) make the records reasonably available to the public;

(b) provide written notification to persons requesting access to the records that the records are only advisory in determining if specific property has been contaminated by clandestine drug lab activity; and

(c) remove the contaminated property from the list when the following conditions have been met:

(i) the local health department has monitored the decontamination process and, after documenting that the test results meet decontamination standards, has authorized the removal of or purging of the contamination information from the department's records; or

(ii) a certified decontamination specialist submits a report to the local health department stating that the property is decontaminated.

Section 4. Section **19-6-904** is enacted to read:

19-6-904. Decontamination specialist reporting to local health departments.

(1) A certified decontamination specialist is required to report to the local health department the location of any property that is the subject of decontamination work by that decontamination specialist. The report shall be submitted prior to commencement of the decontamination work.

(2) The report under Subsection (1) shall include:

(a) sufficient information to allow the local health department to investigate and verify the location of the property, including the address and description of the property; and

(b) a proposed work plan for decontaminating the property.

(3) Upon completion of the decontamination process, a report certifying that the property is decontaminated shall be submitted to the local health department within 30 days.

Section 5. Section **19-6-905** is enacted to read:

19-6-905. Notification of property owner -- Notification of municipality or county.

(1) (a) If the local health department determines a property is contaminated, it shall notify

the owner of record that the property has been placed on the contamination list and shall provide to the owner information regarding remediation options and the requirements necessary to clean up the property, obtain certification that the property is decontaminated, and remove the property from the contamination list.

(b) The notification shall include a deadline for the owner to provide to the local health department information on how the owner plans to address the contamination.

(c) This part does not require that decontamination be conducted by a certified decontamination specialist. However, upon completion of the decontamination, the property must be determined to be decontaminated in accordance with Subsection 19-6-903(4)(c) in order to be removed from the contamination list.

(2) If the local health department does not receive a response from the owner of record within the time period specified in the notice, or the owner of record advises the local health department that the owner does not intend to take action or that the reported property will be abandoned, the local health department shall notify the municipality in which the reported property is located, or the county, if the location is in an unincorporated area, of the owner of record's response or lack of response.

Section 6. Section **19-6-906** is enacted to read:

19-6-906. Decontamination standards -- Specialist certification standards -- Rulemaking.

(1) The Department of Health shall make rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, in consultation with the local health departments and the Department of Environmental Quality, to establish:

(a) decontamination and sampling standards and best management practices for the inspection and decontamination of property and the disposal of contaminated debris under this part;

(b) appropriate methods for the testing of buildings and interior surfaces, and furnishings, soil, and septic tanks for contamination; and

(c) when testing for contamination may be required.

(2) The Department of Environmental Quality Solid and Hazardous Waste Control Board shall make rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, in consultation with the Department of Health and local health departments, to establish within the Department of Environmental Quality Division of Environmental Response and Remediation:

(a) certification standards for any private person, firm, or entity involved in the decontamination of contaminated property; and

(b) a process for revoking the certification of a decontamination specialist who fails to maintain the certification standards.

(3) All rules made under this part shall be consistent with other state and federal requirements.

(4) The board has authority to enforce the provisions under Subsection (2).

Section 7. Section **57-1-1** is amended to read:

57-1-1. Definitions.

As used in this title:

(1) "Certified copy" means a copy of a document certified by its custodian to be a true and correct copy of the document or the copy of the document maintained by the custodian, where the document or copy is maintained under the authority of the United States, the state of Utah or any of its political subdivisions, another state, a court of record, a foreign government, or an Indian tribe.

(2) "Document" means every instrument in writing, including every conveyance, affecting, purporting to affect, describing, or otherwise concerning any right, title, or interest in real property, except wills and leases for a term not exceeding one year.

(3) "Real property" or "real estate" means any right, title, estate, or interest in land, including all nonextracted minerals located in, on, or under the land, all buildings, fixtures and improvements on the land, and all water rights, rights-of-way, easements, rents, issues, profits, income, tenements, hereditaments, possessory rights, claims, including mining claims, privileges, and appurtenances belonging to, used, or enjoyed with the land or any part of the land.

(4) "Stigmatized" means:

H.B. 123

Enrolled Copy

- (a) the site or suspected site of a homicide, other felony, or suicide; ~~[or]~~
- (b) the dwelling place of a person infected, or suspected of being infected, with the Human Immunodeficiency Virus, or any other infectious disease that the Utah Department of Health determines cannot be transferred by occupancy of a dwelling place~~[-];~~ or
- (c) property that has been found to be contaminated, and that the local health department has subsequently found to have been decontaminated in accordance with Title 19, Chapter 6, Part 9, Illegal Drug Operations Site Reporting and Decontamination Act.