

H.B. 123

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DRUG LAB CLEANUP AND DISCLOSURE

2

2004 GENERAL SESSION

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STATE OF UTAH

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Sponsor: David Litvack

5

LONG TITLE

General Description:

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

Highlighted Provisions:

11 This bill:

- 12 . requires law enforcement agencies to report contaminated property locations
to the
- 13 local health department;
- 14 . requires the local health departments to make these reports available to the
public,
- 15 as advisory information only;
- 16 . requires the local health department to notify the property owner of the
report, and
- 17 also to notify the county or municipality if the property owner is not taking action
18 regarding the contamination;
- 19 . directs the state Department of Health to make rules that include certification
20 standards regarding the decontamination of contaminated property;
- 21 . requires the Department of Environmental Quality to establish a certification
22 program for decontamination specialists;
- 23 . requires clean-up of contamination and certification that a contaminated
property
- 24 has been cleaned up;
- 25 . establishes a program to certify specialists who provide evaluation,
sampling, and
- 26 clean-up of contaminated properties; and
- 27 . includes in the real estate definition of stigmatized property that is not
subject to

disclosure contaminated property that has been decontaminated.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **57-1-1**, as last amended by Chapter 10, Laws of Utah 1991

36 ENACTS:

37 **19-6-901**, Utah Code Annotated 1953

38 **19-6-902**, Utah Code Annotated 1953

39 **19-6-903**, Utah Code Annotated 1953

40 **19-6-904**, Utah Code Annotated 1953

41 **19-6-905**, Utah Code Annotated 1953

42 **19-6-906**, Utah Code Annotated 1953

43

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

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

46

Part 9. Illegal Drug Operations Site Reporting and Decontamination Act

47 **19-6-901. Title.**

48 *This part is known as the "Illegal Drug Operations Site Reporting and*
Decontamination

49 *Act.*

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

51 **19-6-902. Definitions.**

52 *As used in this part:*

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

55 *(2) "Certified decontamination specialist" means an individual who has met the*
56 *standards for certification as a decontamination specialist and has been certified*
by the board

57 *under Subsection 19-6-906 (2).*

58 *(3) "Contaminated" or "contamination" means polluted by hazardous materials*
that

59

cause property to be unfit for human habitation or use due to immediate or long-term health
60 *hazards.*

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

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

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

65 *(5) "Decontaminated" means property that at one time was contaminated, but*

the
66 contaminants have been removed.
67 (6) "Hazardous materials":
68 (a) has the same meaning as "hazardous or dangerous materials" as defined in
Section
69 58-37d-3 ; and
70 (b) includes any illegally manufactured controlled substances.
71 (7) "Health department" means a local health department under Title 26A,
Local
72 Health Authorities.
73 (8) "Owner of record":
74 (a) means the owner of real property as shown on the records of the county
recorder in
75 the county where the property is located; and
76 (b) may include an individual, financial institution, company, corporation, or
other
77 entity.
78 (9) "Property":
79 (a) means any real property, site, structure, part of a structure, or the grounds
80 surrounding a structure; and
81 (b) includes single-family residences, outbuildings, garages, units of
multiplexes,
82 condominiums, apartment buildings, warehouses, hotels, motels, boats, motor
vehicles, trailers,
83 manufactured housing, shops, or booths.
84 (10) "Reported property" means property that is the subject of a law
enforcement report
85 under Section 19-6- 903.
86 Section 3. Section **19-6-903** is enacted to read:
87 **19-6-903. Law enforcement reporting and records -- Removal from list.**
88 (1) (a) When any state or local law enforcement agency in the course of its
official
89 duties observes any paraphernalia of a clandestine drug laboratory operation,
including

90
chemicals or equipment used in the manufacture of unlawful drugs, the agency shall report
the
91 location where the items were observed to the local health department.
92 (b) (i) The law enforcement officer shall make the report under Subsection
(1)(a) at the
93 location where the observation occurred, if making the report at that time will not
compromise
94 an ongoing investigation.
95 (ii) If the report cannot be made at the location, the report shall be made as
soon

96 afterward as is practical.
97 (c) The report under Subsection (1)(a) shall include:
98 (i) the date of the observation;
99 (ii) the name of the reporting agency and the case number of the case that
involves the
100 location of the observation;
101 (iii) the contact information of the officer involved, including name and
telephone
102 number;
103 (iv) the address of the location and descriptions of the property that may be
104 contaminated; and
105 (v) a brief description of the evidence at the location that led to the belief the
property
106 at the location may be contaminated.
107 (2) The law enforcement agency shall forward to the local health department
copies of
108 the reports made under Subsection (1).
109 (3) (a) Upon receipt of a complaint or a report from law enforcement
regarding
110 possibly contaminated property, the local health officer or his designee shall
determine if
111 reasonable evidence exists that the property is contaminated.
112 (b) The local health department shall place property considered to be
contaminated on
113 a contamination list.
114 (4) The local health departments shall maintain searchable records of the
properties on
115 their contamination lists and shall:
116 (a) make the records reasonably available to the public;
117 (b) provide written notification to persons requesting access to the records that
the
118 records are only advisory in determining if specific property has been
contaminated by
119 clandestine drug lab activity; and
120 (c) remove the contaminated property from the list when the following
conditions have

121
been met:
122 (i) the local health department has monitored the decontamination process
and, after
123 documenting that the test results meet decontamination standards, has authorized
the removal
124 of or purging of the contamination information from the department's records; or
125 (ii) a certified decontamination specialist submits a report to the local health
126 department stating that the property is decontaminated.

127 Section 4. Section **19-6-904** is enacted to read:
128 **19-6-904. Decontamination specialist reporting to local health**
departments.
129 (1) A certified decontamination specialist is required to report to the local
health
130 department the location of any property that is the subject of decontamination
work by that
131 decontamination specialist. The report shall be submitted prior to
commencement of the
132 decontamination work.
133 (2) The report under Subsection (1) shall include:
134 (a) sufficient information to allow the local health department to investigate
and verify
135 the location of the property, including the address and description of the
property; and
136 (b) a proposed work plan for decontaminating the property.
137 (3) Upon completion of the decontamination process, a report certifying that
the
138 property is decontaminated shall be submitted to the local health department
within 30 days.
139 Section 5. Section **19-6-905** is enacted to read:
140 **19-6-905. Notification of property owner -- Notification of municipality or**
county.
141 (1) (a) If the local health department determines a property is contaminated, it
shall
142 notify the owner of record that the property has been placed on the
contamination list and shall
143 provide to the owner information regarding remediation options and the
requirements
144 necessary to clean up the property, obtain certification that the property is
decontaminated, and
145 remove the property from the contamination list.
146 (b) The notification shall include a deadline for the owner to provide to the
local health
147 department information on how the owner plans to address the contamination.
148 (c) This part does not require that decontamination be conducted by a certified
149 decontamination specialist. However, upon completion of the decontamination,
the property
150 must be determined to be decontaminated in accordance with Subsection 19-6-
903 (4)(c) in
151 order to be removed from the contamination list.

152
(2) If the local health department does not receive a response from the owner of record
153 within the time period specified in the notice, or the owner of record advises the
local health

154 department that the owner does not intend to take action or that the reported
property will be
155 abandoned, the local health department shall notify the municipality in which the
reported
156 property is located, or the county, if the location is in an unincorporated area, of
the owner of
157 record's response or lack of response.
158 Section 6. Section **19-6-906** is enacted to read:
159 **19-6-906. Decontamination standards -- Specialist certification standards -**

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160 **Rulemaking.**
161 (1) The Department of Health shall make rules under Title 63, Chapter 46a,
Utah
162 Administrative Rulemaking Act, in consultation with the local health departments
and the
163 Department of Environmental Quality, to establish:
164 (a) decontamination and sampling standards and best management practices
for the
165 inspection and decontamination of property and the disposal of contaminated
debris under this
166 part;
167 (b) appropriate methods for the testing of buildings and interior surfaces, and
168 furnishings, soil, and septic tanks for contamination; and
169 (c) when testing for contamination may be required.
170 (2) The Department of Environmental Quality Solid and Hazardous Waste

Control
171 Board shall make rules under Title 63, Chapter 46a, Utah Administrative
Rulemaking Act, in
172 consultation with the Department of Health and local health departments, to
establish within
173 the Department of Environmental Quality Division of Environmental Response
and
174 Remediation:
175 (a) certification standards for any private person, firm, or entity involved in
the
176 decontamination of contaminated property; and
177 (b) a process for revoking the certification of a decontamination specialist who
fails to
178 maintain the certification standards.
179 (3) All rules made under this part shall be consistent with other state and
federal
180 requirements.
181 (4) The Department of Environmental Quality shall make rules under Title 63,
Chapter
182 46a, Utah Administrative Rulemaking Act, in consultation with the local health
departments

183
184 and the Department of Health, to establish procedures for the appropriate management of
185 chemically contaminated properties.
(5) The Department of Environmental Quality has authority to enforce the
provisions
186 under Subsections (2) and (4).
187 Section 7. Section **57-1-1** is amended to read:
188 **57-1-1. Definitions.**
189 As used in this title:
190 (1) "Certified copy" means a copy of a document certified by its custodian to
be a true
191 and correct copy of the document or the copy of the document maintained by the
custodian,
192 where the document or copy is maintained under the authority of the United
States, the state of
193 Utah or any of its political subdivisions, another state, a court of record, a foreign
government,
194 or an Indian tribe.
195 (2) "Document" means every instrument in writing, including every
conveyance,
196 affecting, purporting to affect, describing, or otherwise concerning any right,
title, or interest in
197 real property, except wills and leases for a term not exceeding one year.
198 (3) "Real property" or "real estate" means any right, title, estate, or interest in
land,
199 including all nonextracted minerals located in, on, or under the land, all
buildings, fixtures and
200 improvements on the land, and all water rights, rights-of-way, easements, rents,
issues, profits,
201 income, tenements, hereditaments, possessory rights, claims, including mining
claims,
202 privileges, and appurtenances belonging to, used, or enjoyed with the land or any
part of the
203 land.
204 (4) "Stigmatized" means:
205 (a) the site or suspected site of a homicide, other felony, or suicide; [Ø] ~~or~~
206 (b) the dwelling place of a person infected, or suspected of being infected, with
the
207 Human Immunodeficiency Virus, or any other infectious disease that the Utah
Department of
208 Health determines cannot be transferred by occupancy of a dwelling place[-]; or
209 (c) property that has been found to be contaminated, and that the local health
210 department has subsequently found to have been decontaminated in accordance
with Title 19.

