

**224.01-410 Legislative findings regarding methamphetamine contamination -- --
Definitions -- Decontamination standards -- Procedures for assessment --
Tiered response system -- Certification by owner that property cleaned and
standard met -- Certification of decontamination contractors -- Posting
methamphetamine contamination notice -- Written notice of property
contamination to buyer or lessee -- Integrated state effort -- Federal funding to
be pursued.**

- (1) The General Assembly finds that properties contaminated with hazardous chemical residues created by the manufacture of methamphetamine endanger innocent members of the public due to exposure to these residues where properties are not properly decontaminated prior to the subsequent rental, sale, or use of the properties. Remediation of properties has been frustrated by a lack of comprehensive standards and procedures for decontamination of properties found to have been involved with methamphetamine production. The purpose of this section where law enforcement has found evidence of the manufacture of methamphetamine is to protect the public health, safety, and welfare by providing specific cleanup standards and procedures.
- (2) As used in this section, the following definitions shall apply:
 - (a) "Clandestine methamphetamine lab" means any inhabitable property used for the manufacture of methamphetamine as defined by KRS 218A.1431;
 - (b) "Contaminated property" means any inhabitable property that has been used to manufacture methamphetamine and has been assessed as containing methamphetamine contamination;
 - (c) "Decontamination standards" means standards used to determine that a contaminated property has become decontaminated;
 - (d) "Inhabitable property" means any building or structure and any related curtilage, water, water system, or sewer system used as a clandestine methamphetamine drug lab that is intended to be primarily occupied by people, including a mobile home or an individual unit of a multifamily housing unit, that may be sold, leased, or rented for any length of time. "Inhabitable property" shall not include a hotel, as defined in KRS 219.011;

- (e) "Surface material" means any porous or nonporous substance common to the interior of a building or structure, including but not limited to ceilings and walls, window coverings, floor and floor coverings, counters, furniture, heating and cooling duct work, and any other surface to which inhabitants of the building or structure may be exposed; and
 - (f) "Related hazardous material or hazardous waste" means any hazardous waste as defined in this chapter or hazardous material as defined in KRS 174.405 that is related to the clandestine production of methamphetamine.
- (3) (a) The cabinet shall promulgate administrative regulations providing for decontamination standards for contaminated property, including:
- 1. Decontamination standards for methamphetamine and methamphetamine precursors;
 - 2. Decontamination standards for materials used in methamphetamine production, including related hazardous material or hazardous waste; and
 - 3. Sampling and testing standards for contaminated properties with a tiered response system for decontamination services.
- (b) Absent administrative regulations described in this subsection, the decontamination standard for methamphetamine inside inhabitable property is less than or equal to one-tenth of one (0.1) microgram of methamphetamine per one hundred (100) square centimeters of surface material.
- (4) The Department of Kentucky State Police shall promulgate administrative regulations establishing assessment procedures for determining if an inhabitable property is a contaminated property.
- (5) Upon a determination that an inhabitable property is a contaminated property under subsection (4) of this section, the state or local law enforcement agency shall notify the cabinet of its findings and results of assessment.
- (6) (a) The cabinet shall promulgate administrative regulations to establish a reasonable, appropriate, and protective tiered response system to address the level of decontamination services required for a contaminated property based upon the degree of methamphetamine production and the degree of potential contamination resulting from methamphetamine production as indicated by the results of assessment by responding state or local law enforcement.

- (b) Tier 1 shall be for a transient contaminated property where the manufacturing of methamphetamine with anhydrous ammonia was initiated but only limited amounts of reagents or precursors are present and open, and where minimal spill and staining may be observed.
 - (c) Tier 2 shall be for a transient contaminated property where the manufacturing of methamphetamine with moderate activity or the use of red phosphorous is evident but only limited amounts of methamphetamine, reagents, or precursors were produced over a relatively short period of time, and where spills and staining may be observed.
 - (d) Tier 3 shall be for an entrenched contaminated property where precursors and reagent production has occurred over an extended period of time, from many weeks to several months, and where spills, staining, and burn pits may be observed. This tier designation shall be considered as the default tier designation for homes and rental property with recurring methamphetamine production.
 - (e) Tier 4 shall be for a mass production contaminated property where large quantities, such as multiple pounds, of methamphetamine, reagents, or precursors are present, and where potentially severe environmental effects may be indicated because of the large quantities of drummed or buried waste is discovered. Due to the potential for significant releases of hazardous substances, pollutants, or contaminants, law enforcement agencies shall consult with the cabinet prior to making this tier recommendation.
- (7) Any contaminated property, regardless of the initial level of methamphetamine contamination, shall meet the decontamination standard set forth in subsection (3) of this section and, regardless of the results of testing or assessment, shall require at least a Tier 1 cleanup response. A property owner shall certify to the cabinet that the property has been cleaned to the standard set forth in subsection (3) of this section.
- (8) (a) Only contractors certified by the cabinet shall be authorized to conduct the decontamination services for inhabitable properties following the protocols

of the tiered response system. The cabinet shall maintain a list of vendors and contractors with current certification to provide decontamination services. In order to become a certified contractor, a contractor shall:

1. Register with the cabinet;
2. Post a surety bond or obtain other financial assurance, which shall include but is not limited to a corporate guarantee, financial test-based self-insurance, irrevocable letter of credit, or any combination of assurances, in the amount of one hundred thousand dollars (\$100,000) for a Tier 1, 2, or 3 cleanup and two hundred fifty thousand dollars (\$250,000) for a Tier 4 cleanup, which may be aggregated;
3. Provide a certificate issued by an insurance company licensed to do business in Kentucky, certifying that the contractor has a public liability insurance policy in an amount deemed sufficient by the cabinet for any personal or property damages that might occur to third parties arising from the performance of decontamination services for inhabitable properties by the contractor or his or her employees or agents;
4. Certify that decontamination will be performed safely and in accordance with 803 KAR 2:403; and
5. Certify that each cleanup conducted meets the decontamination standard required by subsection (3) of this section.

(b) Any contractor who is certified by the cabinet, and whose certification is in good standing, prior to July 15, 2008, shall retain that certification without having to be recertified.

(c) Upon registration, the cabinet shall either accept or deny the contractor's certification. The cabinet may revoke the certification of any contractor for cause and may collect the forfeited financial assurance of any contractor found to be in violation of this section. Forfeited financial assurance may be used by the cabinet to decontaminate inhabitable properties.

- (d) The cabinet shall promulgate administrative regulations to establish standards and procedures for contractor certification and to establish reasonable fees to implement this section.
- (9) When a state or local law enforcement agency investigates an inhabitable property that it has reason to believe has been used as a clandestine methamphetamine drug lab, the state or local law enforcement agency shall, at the request of the state or local health department under its respective authority pursuant to KRS Chapter 211 or 212, post a methamphetamine contamination notice on each exterior door of the inhabitable property, except that in the case of a multifamily housing unit, it shall post the notice on each entrance door to the individual unit. The Department for Public Health shall promulgate administrative regulations establishing the notice requirements and the process for removing the notice from inhabitable properties. Any homeowner listed on the deed of the dwelling may request an administrative hearing pursuant to KRS Chapter 13B to determine whether the methamphetamine contamination notice is proper by filing a request for appeal with the Department for Public Health within thirty (30) days of the methamphetamine contamination notice having been posted on the property. The responding state or local law enforcement agency shall, within three (3) business days of when the notice is posted, report it by fax or e-mail to the local health department.
- (10) Any owner of contaminated property who leases, rents, or sells contaminated property upon which a methamphetamine contamination notice has been posted under subsection (9) of this section shall disclose in writing to any potential lessee, tenant, or buyer that the property is contaminated with methamphetamine and has not been decontaminated pursuant to the requirements set forth in this section. If the property has been decontaminated and released by the cabinet from the need for further action, notice under this subsection shall not be required. The Department for Public Health shall promulgate administrative regulations setting forth the disclosure requirements.
- (11) Once contaminated property has been decontaminated in accordance with standards set forth in subsection (3)

of this section, the cabinet shall make available to owners of contaminated property who lease or rent the inhabitable property information about federal income tax deductions or credits available to compensate for damage done to the property in commission of a crime, including methamphetamine production done by someone other than the owner.

- (12) To effect the provisions and promote the purposes of this section, the Environmental and Public Protection Cabinet, the Cabinet for Health and Family Services, and the Justice and Public Safety Cabinet shall integrate their efforts with other state agencies to provide information and training to the public about the health hazards associated with methamphetamine laboratories.
- (13) The Environmental and Public Protection Cabinet, the Cabinet for Health and Family Services, and the Justice and Public Safety Cabinet shall pursue funds from the federal government, through grants or any other funding source, to help pay for the cost of assessment and decontamination of inhabitable properties.

Effective: July 15, 2008

History: Amended 2008 Ky. Acts ch. 161, sec. 1, effective July 15, 2008. -- Created 2007 Ky. Acts ch. 83, sec. 1, effective June 26, 2007.

Legislative Research Commission Note (7/15/2008). The internal numbering of subsection (6) of this section has been altered from that of 2008 Ky. Acts ch. 161, sec. 1, under the authority of KRS 7.136.

Legislative Research Commission Note (7/15/2008). A manifest clerical or typographical error in subsection (10) of this section has been corrected by the Reviser of Statutes under the authority of KRS 7.136.

Legislative Research Commission Note (6/26/2007). 2007 Ky. Acts ch. 85, relating to the creation and organization of the Justice and Public Safety Cabinet, instructs the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in that Act. Such a correction has been made in this section.

Legislative Research Commission Note (6/26/2007). A manifest clerical or typographical error in subsection (6) of this section has been corrected by the Reviser of Statutes under the authority of KRS 7.136.

Legislative Research Commission Note (6/26/2007). The numbering of subsections in this section has been altered from the numbering of 2007 Ky. Acts ch. 83, sec. 1, by the Reviser of Statutes under the authority of KRS 7.136.