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HOUSE BILL 354

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Thomas E. Swisstack

AN ACT

RELATING TO CONTROLLED SUBSTANCES; ENACTING THE CLANDESTINE
DRUG LABORATORY ACT; PROVIDING FOR NOTICE, A DRUG LABORATORY
LIST, REMEDIATION, CONDEMNATION, LOANS AND RESTITUTION;
AUTHORIZING DESTRUCTION OF PROPERTY; IMPOSING PENALTIES; MAKING
AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Clandestine Drug Laboratory Act".

Section 2. DEFINITIONS.--As used in the Clandestine Drug
Laboratory Act:

A. "clandestine drug laboratory" means the site
where a controlled substance listed in Schedules I through V of
the Controlled Substances Act or a derivative of a controlled
substance has been manufactured, processed, cooked, disposed of

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1 or stored, including structures and vehicles, and all proximate
2 areas and equipment that are likely to be contaminated as a
3 result; and

4 B. "remediation" means the cleanup, removal or
5 destruction of chemicals or contaminants at a clandestine drug
6 laboratory to conform with applicable rules promulgated by the
7 department of environment and any action, including the
8 destruction of property, necessary to investigate, prevent,
9 minimize or mitigate damages to the public health or to the
10 environment that may result from the chemicals or contaminants.

11 Section 3. CLANDESTINE DRUG LABORATORY--PROCEDURES UPON
12 DISCOVERY.--A law enforcement agency that discovers or verifies
13 information received about the location of a clandestine drug
14 laboratory shall immediately:

15 A. seize and secure the clandestine drug laboratory
16 from improper entry and order the removal of persons from the
17 laboratory;

18 B. notify the state drug czar in the office of the
19 governor or a state office or officer that succeeds the state
20 drug czar of the existence of the clandestine drug laboratory;
21 and

22 C. notify the appropriate county health department
23 of the existence of the clandestine drug laboratory.

24 Section 4. COUNTY HEALTH DEPARTMENT--NOTICE.--Immediately
25 after being notified of a clandestine drug laboratory by a law

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1 enforcement agency as provided in Section 3 of the Clandestine
2 Drug Laboratory Act, the county health department shall post a
3 notice of contamination in a conspicuous place at the
4 clandestine drug laboratory and, within twenty-four hours after
5 being notified, issue a notice of contamination to the:

6 A. owner, landlord or manager of the clandestine
7 drug laboratory property, if known, by certified mail;

8 B. appropriate district health officer;

9 C. local fire department;

10 D. department of health;

11 E. taxation and revenue department if a vehicle is
12 involved; and

13 F. department of environment.

14 Section 5. NOTICE OF CONTAMINATION.--The notice of
15 contamination required by Section 4 of the Clandestine Drug
16 Laboratory Act shall contain:

17 A. the word "WARNING" in large bold type at the top
18 and bottom of the notice;

19 B. a statement that a clandestine drug laboratory
20 was seized;

21 C. the date of the seizure;

22 D. the address or location of the clandestine drug
23 laboratory, including the identification of structures or
24 vehicles and, if known, a structure, room or apartment number
25 or a vehicle registration or vehicle identification number;

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1 E. the name of the law enforcement agency that
2 seized the clandestine drug laboratory and that agency's
3 telephone number;

4 F. a statement that hazardous substances, toxic
5 chemicals or other residual contamination from operation of the
6 clandestine drug laboratory may still be present;

7 G. a statement that it is a fourth degree felony
8 for an unauthorized person to enter, occupy or use the
9 clandestine drug laboratory property or otherwise violate the
10 provisions of the notice of contamination until remediation of
11 the clandestine drug laboratory property has taken place in
12 accordance with rules promulgated by the department of
13 environment;

14 H. a statement that it is a misdemeanor to disturb
15 the notice of contamination posted at the clandestine drug
16 laboratory; and

17 I. contact information for the county health
18 department.

19 Section 6. AFFIDAVIT FOR RECORDING.--

20 A. Within forty-eight hours of the discovery or
21 verification of a clandestine drug laboratory, the county
22 health department providing the notice of contamination
23 pursuant to Section 3 of the Clandestine Drug Laboratory Act
24 shall record with the county clerk of the county where the
25 clandestine drug laboratory property is located an affidavit

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1 that discloses to a potential transferee of that property:

2 (1) the name of the owner of the property
3 where the clandestine drug laboratory was located;

4 (2) a legal description of the property where
5 the clandestine drug laboratory was located;

6 (3) that the property or portion of the
7 property was the site of a clandestine drug laboratory and that
8 a notice of contamination has been issued;

9 (4) a map drawn from available information
10 showing the boundary of the property and the location of the
11 contaminated area on the property that is prohibited from being
12 entered, occupied or used; and

13 (5) that the use of the property or some
14 portion of it may be restricted as provided in Subsection G of
15 Section 5 of the Clandestine Drug Laboratory Act.

16 B. The affidavit shall be executed by the head of
17 the county health department providing the notice of
18 contamination or that person's designee.

19 C. The county clerk of the county where the
20 clandestine drug laboratory is located shall record an
21 affidavit presented under the Clandestine Drug Laboratory Act
22 in a manner that ensures its disclosure in the ordinary course
23 of a title search of the clandestine drug laboratory property;
24 provided that if the description of the property provided in
25 the affidavit is not sufficient for recording purposes, the

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1 county clerk shall locate the description sufficient for
2 recording and record the affidavit.

3 Section 7. CERTIFICATE OF TITLE NOTATION.--

4 A. If a vehicle is part of a clandestine drug
5 laboratory and the applicable law enforcement agency is able to
6 obtain the certificate of title for the vehicle, the agency
7 shall forward the certificate of title to the taxation and
8 revenue department.

9 B. If the taxation and revenue department receives
10 a notice of contamination pursuant to Section 3 of the
11 Clandestine Drug Laboratory Act and a certificate of title as
12 provided in this section, it shall include on the certificate
13 of title issued for a vehicle that is part of a clandestine
14 drug laboratory the term "hazardous substance contaminated
15 vehicle".

16 Section 8. STATE DRUG CZAR NOTICE.--Upon being notified
17 of the existence of a clandestine drug laboratory by a law
18 enforcement agency pursuant to Section 3 of the Clandestine
19 Drug Laboratory Act, the state drug czar in the office of the
20 governor, or a state office or officer that succeeds the state
21 drug czar, shall notify the department of environment of the
22 existence of the clandestine drug laboratory.

23 Section 9. DEPARTMENT OF ENVIRONMENT--DRUG LABORATORY
24 LIST--RULES.--The department of environment shall:

25 A. maintain a list of clandestine drug laboratory

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1 properties on the department's web site based on information
2 received from the state drug czar in the office of the
3 governor, or a state office or officer that succeeds the state
4 drug czar; and

5 B. promulgate rules for assessment and remediation
6 of clandestine drug laboratory properties.

7 Section 10. OWNER RESPONSIBLE FOR REMEDIATION--NOTICE
8 VACATED.--

9 A. The owner of a clandestine drug laboratory
10 property is responsible for remediation of the property in
11 compliance with rules promulgated by the department of
12 environment.

13 B. Within five days from the completion of
14 remediation, the owner of a clandestine drug laboratory
15 property shall verify to the county health department issuing
16 the notice of contamination pursuant to Section 4 of the
17 Clandestine Drug Laboratory Act and to the department of
18 environment that the remediation was completed in compliance
19 with the department of environment's remediation rules.

20 C. Upon receipt of a verification of remediation,
21 the department of environment shall remove the owner's
22 clandestine drug laboratory property from its web site register
23 of clandestine drug laboratory properties.

24 D. Upon receipt of a verification of remediation,
25 the county health department shall vacate its notice of

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1 contamination and shall file an affidavit with the county clerk
2 of the county where the clandestine drug laboratory was
3 located, executed by the head of the county health department
4 or that person's designee, that:

5 (1) references the affidavit recorded pursuant
6 to Section 6 of the Clandestine Drug Laboratory Act;

7 (2) states that the notice of contamination
8 has been vacated;

9 (3) states that remediation of the affected
10 property has occurred; and

11 (4) states that there are no restrictions as
12 to entering, occupying or using the affected property.

13 E. Upon receipt of a verification of remediation
14 involving a vehicle, the county health department shall vacate
15 its notice of contamination and shall file an affidavit,
16 executed by the head of the county health department or that
17 person's designee, to that effect with the taxation and revenue
18 department, which shall then issue a certificate of title for
19 the vehicle without the term "hazardous substance contaminated
20 vehicle".

21 Section 11. CONDEMNATION--LOAN.--

22 A. If the owner of the clandestine drug laboratory
23 property or any person with an interest in the property refuses
24 or fails to engage in remediation of the property within the
25 time limits established by the rules of the department of

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1 environment for remediation, the appropriate county or
2 municipality shall condemn the property and engage in its
3 remediation. An appraisal of the property for condemnation
4 purposes shall take into account the fact that the property was
5 a clandestine drug laboratory.

6 B. If the county or municipality in which the
7 property, not including a vehicle, is located condemns the
8 property pursuant to Subsection A of this section, the county
9 or municipality may apply for a loan from the New Mexico
10 finance authority, pursuant to the requirements and procedures
11 of the New Mexico finance authority, to cover the costs of
12 remediation.

13 Section 12. RESTITUTION.--

14 A. A court may require a person convicted of a
15 crime involving a clandestine drug laboratory to pay
16 restitution to a public entity that took any action under the
17 Clandestine Drug Laboratory Act. The restitution ordered may
18 cover the reasonable costs of the actions taken.

19 B. In addition to the restitution authorized in
20 Subsection A of this section, a court may require a person
21 convicted of a crime involving a clandestine drug laboratory to
22 pay restitution to a property owner who incurred remediation
23 costs because of the crime.

24 Section 13. MOBILE HOME OR RECREATIONAL VEHICLE.--If a
25 mobile home or recreational vehicle in a space-rental park was

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1 used as a clandestine drug laboratory, the landlord shall
2 request the lienholder and owner of the mobile home or
3 recreational vehicle to remove it from the park within thirty
4 days. If the mobile home or recreational vehicle is not
5 removed within thirty days, the landlord may remove or dispose
6 of it. Removal and disposal of clandestine drug laboratory
7 wastes shall be in accordance with rules promulgated by the
8 department of environment. A landlord shall not be liable to
9 the lienholder and owner of a mobile home or recreational
10 vehicle for actions taken in accordance with this subsection.

11 Section 14. NOTICE BY OWNER TO TRANSFEREE.--

12 A. Until remediation is completed, an owner shall
13 not sell, lease, rent, loan, assign, exchange or otherwise
14 transfer the clandestine drug laboratory property unless the
15 owner:

16 (1) provides written notice to the transferee,
17 with a copy to the department of environment, that a controlled
18 substance was manufactured on the property; and

19 (2) receives a written acknowledgment, and
20 provides a copy to the department of environment, that the
21 notice was received by the transferee.

22 B. Any formal or informal transfer agreement or
23 contract shall be void if notice is not provided pursuant to
24 this section and the owner shall be liable for any harm
25 resulting from the owner's failure to comply with the

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1 requirements of this section.

2 Section 15. CIVIL PENALTIES.--

3 A. Whenever on the basis of any information the
4 secretary of environment determines that an owner has failed to
5 comply with the provisions of:

6 (1) Subsection A or B of Section 10 of the
7 Clandestine Drug Laboratory Act regarding remediation in
8 compliance with department of environment rules, the secretary
9 of environment shall issue an order imposing on the owner a
10 civil penalty of five thousand dollars (\$5,000), which amount
11 shall be deposited in the state treasury and credited to the
12 hazardous waste emergency fund; or

13 (2) Section 14 of the Clandestine Drug
14 Laboratory Act regarding notice to a transferee, the secretary
15 of environment shall issue an order imposing on the owner a
16 civil penalty of one thousand dollars (\$1,000), which amount
17 shall be deposited in the state treasury and credited to the
18 hazardous waste emergency fund.

19 B. An order issued pursuant to Subsection A of this
20 section shall become final unless, no later than thirty days
21 after the order is served, the owner named in the order submits
22 a written request to the secretary of environment for a public
23 hearing. Upon that request, the secretary of environment shall
24 promptly conduct a public hearing. The secretary of
25 environment shall appoint an independent hearing officer to

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1 preside over the public hearing. The hearing officer shall
2 make and preserve a complete record of the proceedings and
3 forward recommendations based on the record to the secretary of
4 environment, who shall make the final decision. In connection
5 with a hearing under this section, the secretary of environment
6 may issue subpoenas for the attendance and testimony of
7 witnesses and the production of relevant papers, books and
8 documents and may promulgate rules for discovery procedures.

9 Section 16. PENALTIES.--

10 A. A person who knowingly violates a notice of
11 contamination issued by a law enforcement officer pursuant to
12 the Clandestine Drug Laboratory Act is guilty of a fourth
13 degree felony and shall be sentenced in accordance with the
14 provisions of Section 31-18-15 NMSA 1978.

15 B. A person who knowingly disturbs a notice of
16 contamination posted on residually contaminated property is
17 guilty of a misdemeanor and shall be sentenced in accordance
18 with the provisions of Section 31-19-1 NMSA 1978.

19 Section 17. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2007.

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