

NOTE: The governor signed this measure on 5/28/2013.

An Act

SENATE BILL 13-219

BY SENATOR(S) Tochtrop, Aguilar, Carroll, Giron, Guzman, Heath, Hudak, Jahn, Jones, Kerr, Newell, Nicholson, Schwartz, Todd;
also REPRESENTATIVE(S) Peniston, Court, Hullinghorst, Labuda, Lebsack, Melton, Ryden, Schafer, Singer, Young.

CONCERNING THE REMEDIATION PERFORMED ON PROPERTY CONTAMINATED
BY AN ILLEGAL DRUG LABORATORY, AND, IN CONNECTION
THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **amend** article 18.5 of title 25 as follows:

25-18.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the state board of health in the department of public health and environment.

(2) ~~(Deleted by amendment, L. 2009, (SB 09-060), ch. 140, p. 600, § 1, effective April 20, 2009.)~~ "CERTIFIED INDUSTRIAL HYGIENIST" MEANS AN INDIVIDUAL WHO IS CERTIFIED BY THE AMERICAN BOARD OF INDUSTRIAL

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

HYGIENE OR ITS SUCCESSOR.

(3) "CLEAN-UP STANDARDS" MEANS THE ACCEPTABLE STANDARDS FOR THE REMEDIATION OF AN ILLEGAL DRUG LABORATORY INVOLVING METHAMPHETAMINE, AS ESTABLISHED BY THE BOARD UNDER SECTION 25-18.5-102.

(4) "CONSULTANT" MEANS A CERTIFIED INDUSTRIAL HYGIENIST OR INDUSTRIAL HYGIENIST WHO IS NOT AN EMPLOYEE, AGENT, REPRESENTATIVE, PARTNER, JOINT VENTURE PARTICIPANT, OR SHAREHOLDER OF THE CONTRACTOR OR OF A PARENT OR SUBSIDIARY COMPANY OF THE CONTRACTOR, AND WHO HAS BEEN CERTIFIED UNDER SECTION 25-18.5-106.

(5) "CONTRACTOR" MEANS A PERSON:

(a) HIRED TO DECONTAMINATE AN ILLEGAL DRUG LABORATORY IN ACCORDANCE WITH THE PROCEDURES ESTABLISHED BY THE BOARD UNDER SECTION 25-18.5-102; AND

(b) CERTIFIED BY THE DEPARTMENT UNDER SECTION 25-18.5-106.

(6) "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

~~(2.5)~~ (7) "Governing body" means the agency or office designated by the city council or board of county commissioners where the property in question is located. If there is no such designation, the governing body shall be the county, district, or municipal public health agency, building department, and law enforcement agency with jurisdiction over the property in question.

~~(2.7)~~ (8) "Illegal drug laboratory" means the areas where controlled substances, as defined by section 18-18-102, C.R.S., have been manufactured, processed, cooked, disposed of, used, or stored and all proximate areas that are likely to be contaminated as a result of ~~such~~ THE manufacturing, processing, cooking, disposal, use, or ~~storing~~ STORAGE.

(9) "INDUSTRIAL HYGIENIST" HAS THE SAME MEANING AS SET FORTH IN SECTION 24-30-1402 (2.2), C.R.S.

(3) (10) "Property" means anything that may be the subject of ownership, including ~~but not limited to~~, land, buildings, structures, and vehicles.

(4) (11) "Property owner", for the purposes of real property, means the person holding record fee title to real property. "Property owner" also means the person holding ~~the~~ title to a manufactured home.

25-18.5-102. Illegal drug laboratories - rules. (1) The board shall promulgate ~~health-protective rules that establish procedures for testing and evaluation of contamination and the acceptable standards for the cleanup of illegal drug laboratories involving methamphetamine.~~ IN ACCORDANCE WITH SECTION 24-4-103, C.R.S., AS NECESSARY TO IMPLEMENT THIS ARTICLE, INCLUDING:

(a) PROCEDURES FOR TESTING CONTAMINATION, EVALUATING CONTAMINATION, AND ESTABLISHING THE ACCEPTABLE STANDARDS FOR CLEANUP OF ILLEGAL DRUG LABORATORIES INVOLVING METHAMPHETAMINE;

(b) PROCEDURES FOR A TRAINING AND CERTIFICATION PROGRAM FOR PEOPLE INVOLVED IN THE ASSESSMENT, DECONTAMINATION, AND SAMPLING OF ILLEGAL DRUG LABORATORIES. THE BOARD MAY DEVELOP DIFFERENT LEVELS OF TRAINING AND CERTIFICATION REQUIREMENTS BASED ON A PERSON'S PRIOR EXPERIENCE IN THE ASSESSMENT, DECONTAMINATION, AND SAMPLING OF ILLEGAL DRUG LABORATORIES.

(c) A DEFINITION OF "ASSESSMENT", "DECONTAMINATION", AND "SAMPLING" FOR PURPOSES OF THIS ARTICLE;

(d) PROCEDURES FOR THE APPROVAL OF PERSONS TO TRAIN CONSULTANTS OR CONTRACTORS IN THE ASSESSMENT, DECONTAMINATION, OR SAMPLING OF ILLEGAL DRUG LABORATORIES; AND

(e) PROCEDURES FOR CONTRACTORS AND CONSULTANTS TO ISSUE CERTIFICATES OF COMPLIANCE TO PROPERTY OWNERS UPON COMPLETION OF ASSESSMENT, DECONTAMINATION, AND SAMPLING OF ILLEGAL DRUG LABORATORIES TO CERTIFY THAT THE REMEDIATION OF THE PROPERTY MEETS THE CLEAN-UP STANDARDS ESTABLISHED BY THE BOARD UNDER PARAGRAPH (a) OF THIS SUBSECTION (1).

(2) THE BOARD SHALL ESTABLISH FEES FOR THE FOLLOWING:

(a) CERTIFICATION OF PERSONS INVOLVED IN THE ASSESSMENT, DECONTAMINATION, AND SAMPLING OF ILLEGAL DRUG LABORATORIES;

(b) MONITORING OF PERSONS INVOLVED IN THE ASSESSMENT, DECONTAMINATION, AND SAMPLING OF ILLEGAL DRUG LABORATORIES, IF NECESSARY TO ENSURE COMPLIANCE WITH THIS ARTICLE; AND

(c) APPROVAL OF PERSONS INVOLVED IN TRAINING FOR CONSULTANTS OR CONTRACTORS UNDER PARAGRAPH (d) OF SUBSECTION (1) OF THIS SECTION.

(3) THE BOARD SHALL ADOPT RULES FOR DETERMINING ADMINISTRATIVE PENALTIES FOR VIOLATIONS OF THIS ARTICLE, BASED ON THE FACTORS ENUMERATED IN SECTION 25-18.5-107 (2) (g).

25-18.5-103. Discovery of illegal drug laboratory - property owner - cleanup - liability. (1) (a) Upon notification from a peace officer that chemicals, equipment, or supplies ~~indicative~~ of an illegal drug laboratory are located on a property, or when an illegal drug laboratory ~~used to manufacture methamphetamine~~ is otherwise discovered and the property owner has received notice, the owner of any contaminated property shall meet the clean-up standards for property established by the board in section 25-18.5-102; except that a property owner may, ~~at his or her option and~~ subject to paragraph (b) of this subsection (1), elect instead to demolish the contaminated property. If the owner elects to demolish the contaminated property, the governing body or, if none has been designated, the county, district, or municipal public health agency, building department, or law enforcement agency with jurisdiction over ~~the area where~~ the property is ~~located~~ may require the owner to fence off the property or otherwise make it inaccessible ~~to persons~~ for occupancy or intrusion.

(b) An owner of ~~any~~ personal property within a structure or vehicle contaminated by illegal drug laboratory activity ~~shall have~~ HAS ten days after the date of discovery of the laboratory or contamination to remove or clean ~~his or her personal~~ THE property according to board rules AND PARAGRAPH (c) OF THIS SUBSECTION (1). If the personal property owner fails to remove the personal property within ten days, the owner of the structure or vehicle may dispose of the personal property during the clean-up process

without liability to the owner of the personal property for such THE disposition.

(c) A PERSON WHO REMOVES PERSONAL PROPERTY OR DEBRIS FROM A DRUG LABORATORY SHALL SECURE THE PROPERTY AND DEBRIS TO PREVENT THEFT OR EXPOSING ANOTHER PERSON TO ANY TOXIC OR HAZARDOUS CHEMICALS UNTIL THE PROPERTY AND DEBRIS IS APPROPRIATELY DISPOSED OF OR CLEANED ACCORDING TO BOARD RULES.

(2) (a) EXCEPT AS SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (2), once a property owner has ~~met the clean-up standards and documentation requirements established by the board, as evidenced by a copy of the results provided to the governing body,~~ RECEIVED CERTIFICATES OF COMPLIANCE FROM A CONTRACTOR AND A CONSULTANT IN ACCORDANCE WITH SECTION 25-18.5-102 (1) (e) or has demolished the property, OR MET THE CLEAN-UP STANDARDS AND DOCUMENTATION REQUIREMENTS OF THIS SECTION AS IT EXISTED BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (2), AS AMENDED, THE PROPERTY OWNER:

(I) ~~compliance with subsection (1) of this section shall establish immunity for the property owner~~ SHALL FURNISH COPIES OF THE CERTIFICATES OF COMPLIANCE TO THE GOVERNING BODY; AND

(II) IS IMMUNE FROM A SUIT BROUGHT BY A CURRENT OR FUTURE OWNER, RENTER, OCCUPANT, OR NEIGHBOR OF THE PROPERTY for ~~alleged health-based civil actions brought by any future owner, renter, or other person who occupies such property, or a neighbor of such property, in which the alleged cause of the injury or loss is the existence of the illegal drug laboratory used to manufacture methamphetamine; except that immunity from a civil suit is not established for the~~ THAT ALLEGE INJURY OR LOSS ARISING FROM THE ILLEGAL DRUG LABORATORY.

(b) A person convicted for the ~~production~~ MANUFACTURE of methamphetamine OR FOR POSSESSION OF CHEMICALS, SUPPLIES, OR EQUIPMENT WITH INTENT TO MANUFACTURE METHAMPHETAMINE IS NOT IMMUNE FROM SUIT.

(3) ~~A person who removes personal property or debris from a drug laboratory shall secure the property and debris to prevent theft or exposing another person to any toxic or hazardous chemicals until the property and~~

~~debris is appropriately disposed of or cleaned according to board rules.~~

25-18.5-104. Entry into illegal drug laboratories. (1) If a structure or vehicle has been determined to be contaminated or if a governing body or law enforcement agency issues a notice of probable contamination, the owner of the structure or vehicle shall not permit any person to have access to the structure or vehicle unless:

(a) The person is trained or certified to handle contaminated property ~~pursuant to~~ UNDER board rules or federal law; OR

(b) THE OWNER HAS RECEIVED CERTIFICATES OF COMPLIANCE UNDER SECTION 25-18.5-102 (1) (e).

25-18.5-105. Drug laboratories - governing body - authority. (1) GOVERNING BODIES MAY DECLARE an illegal drug laboratory that has not met the clean-up standards set by the board in section 25-18.5-102 ~~shall be deemed~~ a public health nuisance.

(2) Governing bodies may enact ordinances or resolutions to enforce this article, including ~~but not limited to~~, preventing unauthorized entry into contaminated property; requiring contaminated property to meet clean-up standards before it is occupied; notifying the public of contaminated property; coordinating services and sharing information between law enforcement, building, public health, and social services agencies and officials; and charging reasonable inspection and testing fees.

25-18.5-106. Powers and duties of department. (1) THE DEPARTMENT SHALL IMPLEMENT, COORDINATE, AND OVERSEE THE RULES PROMULGATED BY THE BOARD IN ACCORDANCE WITH THIS ARTICLE, INCLUDING:

(a) THE CERTIFICATION OF PERSONS INVOLVED IN THE ASSESSMENT, DECONTAMINATION, OR SAMPLING OF ILLEGAL DRUG LABORATORIES;

(b) THE APPROVAL OF PERSONS TO TRAIN CONSULTANTS AND CONTRACTORS IN THE ASSESSMENT, DECONTAMINATION, OR SAMPLING OF ILLEGAL DRUG LABORATORIES.

25-18.5-107. Enforcement. (1) A PERSON THAT VIOLATES ANY

RULE PROMULGATED BY THE BOARD UNDER SECTION 25-18.5-102 IS SUBJECT TO AN ADMINISTRATIVE PENALTY NOT TO EXCEED FIFTEEN THOUSAND DOLLARS PER DAY PER VIOLATION UNTIL THE VIOLATION IS CORRECTED.

(2) (a) WHENEVER THE DEPARTMENT HAS REASON TO BELIEVE THAT A PERSON HAS VIOLATED ANY RULE PROMULGATED BY THE BOARD UNDER SECTION 25-18.5-102, THE DEPARTMENT SHALL NOTIFY THE PERSON, SPECIFYING THE RULE ALLEGED TO HAVE BEEN VIOLATED AND THE FACTS ALLEGED TO CONSTITUTE THE VIOLATION.

(b) THE DEPARTMENT SHALL EITHER:

(I) SEND THE NOTICE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, TO THE ALLEGED VIOLATOR'S LAST-KNOWN ADDRESS; OR

(II) PERSONALLY SERVE THE NOTICE UPON THE ALLEGED VIOLATOR OR THE ALLEGED VIOLATOR'S AGENT.

(c) THE ALLEGED VIOLATOR HAS THIRTY DAYS FOLLOWING RECEIPT OF THE NOTICE TO SUBMIT A WRITTEN RESPONSE CONTAINING DATA, VIEWS, AND ARGUMENTS CONCERNING THE ALLEGED VIOLATION AND POTENTIAL CORRECTIVE ACTIONS.

(d) WITHIN FIFTEEN DAYS AFTER RECEIVING NOTICE OF AN ALLEGED VIOLATION, THE ALLEGED VIOLATOR MAY REQUEST AN INFORMAL CONFERENCE WITH DEPARTMENT PERSONNEL TO DISCUSS THE ALLEGED VIOLATION. THE DEPARTMENT SHALL HOLD THE INFORMAL CONFERENCE WITHIN THE THIRTY DAYS ALLOWED FOR A WRITTEN RESPONSE.

(e) AFTER CONSIDERATION OF ANY WRITTEN RESPONSE AND INFORMAL CONFERENCE, THE DEPARTMENT SHALL ISSUE A LETTER, WITHIN THIRTY DAYS AFTER THE DATE OF THE INFORMAL CONFERENCE OR WRITTEN RESPONSE, WHICHEVER IS LATER, AFFIRMING OR DISMISSING THE VIOLATION. IF THE DEPARTMENT AFFIRMS THE VIOLATION, THE DEPARTMENT SHALL ISSUE AN ADMINISTRATIVE ORDER WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE TIME FOR A WRITTEN RESPONSE HAS EXPIRED. THE ADMINISTRATIVE ORDER MUST INCLUDE ANY REMAINING CORRECTIVE ACTIONS THAT THE VIOLATOR SHALL TAKE AND ANY ADMINISTRATIVE PENALTY THAT THE DEPARTMENT DETERMINES IS APPROPRIATE.

(f) THE DEPARTMENT SHALL SERVE AN ADMINISTRATIVE ORDER UNDER THIS ARTICLE ON THE PERSON SUBJECT TO THE ORDER BY PERSONAL SERVICE OR BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, AT THE PERSON'S LAST-KNOWN ADDRESS. AN ORDER MAY BE PROHIBITORY OR MANDATORY IN EFFECT. THE ORDER IS EFFECTIVE IMMEDIATELY UPON ISSUANCE UNLESS OTHERWISE PROVIDED IN THE ORDER.

(g) IN DETERMINING THE AMOUNT OF AN ADMINISTRATIVE PENALTY, THE DEPARTMENT SHALL CONSIDER THE FOLLOWING FACTORS:

(I) THE SERIOUSNESS OF THE VIOLATION;

(II) WHETHER THE VIOLATION WAS INTENTIONAL, RECKLESS, OR NEGLIGENT;

(III) ANY IMPACT ON, OR THREAT TO, THE PUBLIC HEALTH OR ENVIRONMENT AS A RESULT OF THE VIOLATION;

(IV) THE VIOLATOR'S DEGREE OF RECALCITRANCE;

(V) WHETHER THE VIOLATOR HAS HAD A PRIOR VIOLATION AND, IF SO, THE NATURE AND SEVERITY OF THE PRIOR VIOLATION;

(VI) THE ECONOMIC BENEFIT THE VIOLATOR RECEIVED AS A RESULT OF THE VIOLATION;

(VII) WHETHER THE VIOLATOR VOLUNTARILY, TIMELY, AND COMPLETELY DISCLOSED THE VIOLATION BEFORE THE DEPARTMENT DISCOVERED IT;

(VIII) WHETHER THE VIOLATOR FULLY AND PROMPTLY COOPERATED WITH THE DEPARTMENT FOLLOWING DISCLOSURE OR DISCOVERY OF THE VIOLATION; AND

(IX) ANY OTHER RELEVANT AGGRAVATING OR MITIGATING CIRCUMSTANCES.

(3) IF THE DEPARTMENT DETERMINES THAT A PERSON HAS BEEN GROSSLY NONCOMPLIANT WITH THE RULES PROMULGATED BY THE BOARD UNDER SECTION 25-18.5-102, THE DEPARTMENT MAY:

(a) SUSPEND OR REVOKE THE PERSON'S CERTIFICATION FOR THE ASSESSMENT, DECONTAMINATION, OR SAMPLING OF ILLEGAL DRUG LABORATORIES; OR

(b) SUSPEND OR REVOKE THE APPROVAL OF A PERSON TO PROVIDE TRAINING FOR CONSULTANTS OR CONTRACTORS PERFORMING ASSESSMENT, DECONTAMINATION, OR SAMPLING OF ILLEGAL DRUG LABORATORIES.

25-18.5-108. Illegal drug laboratory fund. THE ILLEGAL DRUG LABORATORY FUND IS HEREBY ESTABLISHED IN THE STATE TREASURY. THE DEPARTMENT SHALL TRANSFER THE FEES COLLECTED UNDER SECTION 25-18.5-102 (2) TO THE STATE TREASURER WHO SHALL CREDIT THESE FEES TO THE FUND. THE GENERAL ASSEMBLY SHALL APPROPRIATE THE MONEYS IN THE FUND FOR THE IMPLEMENTATION OF THIS ARTICLE. THE TREASURER SHALL CREDIT TO THE FUND ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND. THE MONEYS IN THE FUND STAY IN THE FUND AT THE END OF THE FISCAL YEAR AND DO NOT REVERT TO THE GENERAL FUND OR ANY OTHER FUND.

25-18.5-109. Judicial review. THE DEPARTMENT'S DECISIONS ARE SUBJECT TO JUDICIAL REVIEW IN ACCORDANCE WITH SECTION 24-4-106, C.R.S.

SECTION 2. In Colorado Revised Statutes, 38-35.7-103, **amend** (2) (c) and (4) as follows:

38-35.7-103. Disclosure - methamphetamine laboratory.
(2) (c) If the seller receives ~~the~~ A notice referred to in paragraph (b) of UNDER this subsection (2) ~~or if the seller receives the notice referred to in paragraph (a) of this subsection (2)~~ and does not elect to have the property retested ~~pursuant to paragraph (b) of~~ UNDER this subsection (2), then an illegal drug laboratory used to manufacture methamphetamine ~~shall be deemed to have~~ HAS been discovered. ~~and the owner shall be deemed to have received notice pursuant to section 25-18.5-103 (1) (a), C.R.S.~~ Nothing in this section ~~shall prohibit~~ PROHIBITS a buyer from purchasing the property and assuming liability ~~pursuant to~~ UNDER section 25-18.5-103, C.R.S., if, on the date of closing, the buyer provides notice to the department of public health and environment AND GOVERNING BODY of the purchase and assumption of liability and if the remediation required by section 25-18.5-103, C.R.S., is completed within ninety days after the date

of closing.

(4) If the seller ~~became~~ BECOMES aware that the property was ~~once used for the production of methamphetamine~~ AN ILLEGAL DRUG LABORATORY and REMEDIATES the property ~~was remediated~~ in accordance with the standards established ~~pursuant to~~ BY section 25-18.5-102, C.R.S., and ~~evidence of such remediation was received by the applicable governing body in~~ RECEIVES CERTIFICATES OF compliance ~~with the documentation requirements established pursuant to~~ UNDER section 25-18.5-102 (1) (e), C.R.S., then:

(a) The seller shall not be required to disclose that the property was used as a methamphetamine laboratory to a buyer; and

(b) The property ~~shall be removed from~~ IS NO LONGER ELIGIBLE FOR INCLUSION IN any government-sponsored informational service listing properties that have been used for the production of methamphetamine.

SECTION 3. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the illegal drug laboratory fund created in section 25-18.5-108, Colorado Revised Statutes, not otherwise appropriated, to the department of public health and environment, for the fiscal year beginning July 1, 2013, the sum of \$61,491 and 0.5 FTE, or so much thereof as may be necessary, to be allocated to hazardous materials and waste management division for the implementation of this act as follows:

(a) \$39,363 and 0.5 FTE for the hazardous waste control program for personal services;

(b) \$6,678 for the hazardous waste control program for operating expenses; and

(c) \$15,450 for the purchase of legal services.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2013, the sum of \$15,450 and 0.1 FTE, or so much thereof as may be necessary, for the provision of legal services for the department of public health and environment related to the implementation of this act. Said sum

is from reappropriated funds received from the department of public health and environment out of the appropriation made in paragraph (c) of subsection (1) of this section.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014

and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

John P. Morse
PRESIDENT OF
THE SENATE

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO