Conference Engrossed

**FILED**
**KEN BENNETT**
**SECRETARY OF STATE**

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 327

# SENATE BILL 1438

AN ACT

AMENDING SECTIONS 12-990 AND 12-1000, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 34, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3423; AMENDING SECTION 32-109, ARIZONA REVISED STATUTES; RELATING TO THE STATE BOARD OF TECHNICAL REGISTRATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 12-990, Arizona Revised Statutes, is amended to read:

12-990. Definitions

In this article, unless the context otherwise requires:

1. "Clandestine drug laboratory" means real property on which methamphetamine, ecstasy or LSD is being manufactured or where a person is arrested for having on any real property chemicals or equipment used in manufacturing methamphetamine, ecstasy or LSD. In the case of a space rental mobile home or recreational vehicle park, clandestine drug laboratory means the mobile home or recreational vehicle in which methamphetamine, ecstasy or LSD is being manufactured or where a person is arrested for having in the mobile home or recreational vehicle chemicals or equipment used in manufacturing methamphetamine, ecstasy or LSD.

2. "Drug laboratory site remediation firm" means a firm that is ~~licensed~~ CERTIFIED by the ~~registrar of contractors~~ STATE BOARD OF TECHNICAL REGISTRATION pursuant to TITLE 32, chapter ~~10 of this title~~ 1 and that performs remediation of residual contamination from the manufacture of methamphetamine, ecstasy or LSD or the storage of chemicals or equipment used in manufacturing methamphetamine, ecstasy or LSD.

3. "Ecstasy" has the same meaning prescribed in section 13-3401, paragraph 6 and includes any of the precursor chemicals, regulated chemicals, other substances or equipment used in the unlawful manufacture of the dangerous drug.

4. "Gross contamination" means the chemicals, equipment and other items that are found in a clandestine drug laboratory and that are removed by a law enforcement agency or other agency.

5. "LSD" has the same meaning prescribed in section 13-3401, paragraph 6 and includes any of the precursor chemicals, regulated chemicals, other substances or equipment used in the unlawful manufacture of the dangerous drug.

6. "Methamphetamine" has the same meaning prescribed in section 13-3401, paragraph 6 and includes any of the precursor chemicals, regulated chemicals, other substances or equipment used in the unlawful manufacture of the dangerous drug.

7. "Real property" includes the area within a structure and, EXCEPT IN A MOBILE HOME PARK OR A RECREATIONAL VEHICLE PARK, the area that surrounds a structure and that is within the land boundary or property lines of any of the following:

(a) Property that is used primarily for residential OR COMMERCIAL purposes.

(b) Property that is governed by the Arizona residential landlord and tenant act as prescribed by title 33, chapter 10.

~~(c) A mobile home as defined in section 33-1409.~~

~~(d) A recreational vehicle as defined in section 33-2102.~~

8. "Residually contaminated portion of the real property" means the structure or unit where gross contamination was removed and the area of any adjacent structure, unit or land where visible evidence of residual contamination is observed by a peace officer, including any of the following:

(a) If gross contamination is removed from a house, mobile home or recreational vehicle and the notice of removal is posted for the entire house, mobile home or recreational vehicle, the entire house, mobile home or recreational vehicle, not just the room or rooms in which the gross contamination is found.

(b) If gross contamination is removed from a detached shed or garage, the other structures on the land are not affected and the notice of removal is posted only for the detached shed or garage, the detached shed or garage unless visible evidence of residual contamination is found in any of the other structures.

(c) If gross contamination is removed from a hotel, motel room or apartment unit, OR ANY COMMERCIAL UNIT IN A MULTIUNIT STRUCTURE, the adjacent rooms are not affected and the notice of removal is posted only for the contaminated room or ~~apartment~~ unit, the contaminated room or ~~apartment~~ unit unless visible evidence of residual contamination is found in an adjacent room or ~~apartment~~ unit.

Sec. 2. Section 12-1000, Arizona Revised Statutes, is amended to read:

12-1000. <u>Clandestine drug laboratories; notice; cleanup; residual contamination; civil penalty; immunity; restitution; violation; classification</u>

A. If a peace officer discovers a clandestine drug laboratory or arrests a person for having on any real property chemicals or equipment used in manufacturing methamphetamine, ecstasy or LSD or a derivative of methamphetamine, ecstasy or LSD, the peace officer:

1. At the time of the discovery or arrest, shall deliver a copy of the notice of removal pursuant to subsection B of this section to the owner of the real property if the owner is on the site at the time of delivery, the on-site manager if the manager is on the site at the time of delivery or the on-site drop box if available. In the case of a tenant-owned unit in a space rental mobile home or recreational vehicle park, the officer shall deliver a copy of the notice of removal to the occupant of the unit if the occupant is on site at the time of delivery and to the on-site park landlord if the park landlord is on site at the time of delivery.

2. Within two business days after the discovery or arrest, shall send the notice of removal by certified mail to the owner of the real property and the owner's on-site manager or, in the case of a space rental mobile home or recreational vehicle park, to the owner of the mobile home or recreational vehicle, if applicable, and to the park landlord. These persons are deemed to receive the notice of removal five days after the notice is mailed. The notice shall be sent to the following:

(a) The owner's address on file with the county assessor. The county shall waive any fee or charge for the owner's address information.

(b) The county health department.

(c) The appropriate local fire department.

(d) The state board of technical registration.

3. After a law enforcement or other agency removes the gross contamination on the real property, shall order the removal of all persons from the residually contaminated portion of the real property or dwelling unit, if applicable, or, in the case of a space rental mobile home or recreational vehicle park, from the unit located on the real property.

4. After the peace officer removes all persons pursuant to paragraph 3 of this subsection, shall affix the notice of removal in a conspicuous place on the real property or, in the case of a space rental mobile home or recreational vehicle park, on the unit located on the real property. The notice of removal shall state that it is unlawful for any person other than the owner, landlord or manager to enter the residually contaminated portion of the property until the owner remediates the residually contaminated portion of the property. THE OWNER SHALL NOT KNOWINGLY ALLOW THE POSTED NOTICE OF REMOVAL TO BE DISTURBED.

B. The notice of removal shall be in writing and shall contain all of the following:

1. The word "warning" in large bold type at the top and bottom of the notice.

2. A statement that a clandestine drug laboratory was seized or a person was arrested on the real property for having chemicals or equipment used in the manufacturing of methamphetamine, ecstasy or LSD on the real property.

3. The date of the seizure or arrest.

4. The address or location of the real property, including the identification of any dwelling unit, room number, apartment number, COMMERCIAL UNIT or vehicle number.

5. The name of the law enforcement agency or other agency that seized the clandestine drug laboratory or made the arrest and the agency's contact telephone number.

6. A statement that hazardous substances, toxic chemicals or other waste products may still be present on the real property or, in the case of a space rental mobile home or recreational vehicle park, in the unit located on the real property.

7. A statement that it is unlawful for any unauthorized person to enter the residually contaminated portion of the real property or, in the case of a space rental mobile home or recreational vehicle park, the unit located on the real property, until the owner, landlord or manager establishes that the portion of the real property noticed as residually contaminated has been remediated by a drug laboratory site remediation firm.

~~8. A statement that it is a class 6 felony to violate this section.~~

8. A STATEMENT THAT THE OWNER OF REAL PROPERTY WHO KNOWINGLY ALLOWS THE NOTICE OF REMOVAL POSTED ON THE REAL PROPERTY TO BE DISTURBED IS SUBJECT TO:

(a) A CIVIL PENALTY THE FIRST TIME THE NOTICE OF REMOVAL POSTED ON THE REAL PROPERTY IS DISTURBED.

(b) A CLASS 5 FELONY A SECOND OR SUBSEQUENT TIME THE NOTICE OF REMOVAL POSTED ON THE REAL PROPERTY IS DISTURBED.

9. A statement that it is a class ~~2 misdemeanor~~ 5 FELONY FOR A PERSON OTHER THAN THE OWNER to disturb the notice of removal posted on the real property.

10. A statement that the owner of the real property shall remediate the residually contaminated portion of the property in compliance with subsection C of this section.

11. A statement that if an owner fails to provide any notice required by this section, the owner is subject to a civil penalty OR CRIMINAL PROSECUTION, OR BOTH, and a buyer, tenant or customer may void a purchase contract, rental agreement or other agreement.

C. The owner of the real property shall remediate the residually contaminated portion of the real property within twelve months after the date of notice of removal by retaining a registered drug laboratory site remediation firm pursuant to title 32, chapter 1. If the owner of the real property fails to remediate the property under this subsection, a county or city in this state may remediate the property using a registered remediation firm contracted by any county or city in this state with the cost of remediation passed on to the property owner in the form of a lien on the property title.

D. IF A COUNTY, CITY OR TOWN REMEDIATES REAL PROPERTY PURSUANT TO SUBSECTION C OF THIS SECTION, THE COUNTY, CITY OR TOWN MAY APPLY TO THE TECHNICAL REGISTRATION FUND ESTABLISHED BY SECTION 32-109 FOR REMEDIATION MONIES. AFTER THE REAL PROPERTY IS REMEDIATED, THE BOARD OF TECHNICAL REGISTRATION SHALL PLACE A LIEN ON THE PROPERTY WITH THE INTENT TO REPLENISH THE MONIES ON THE SALE OF THE PROPERTY.

~~D.~~ E. A drug laboratory site remediation firm that remediates the residually contaminated portion of any real property pursuant to this section shall comply with the requirements established and the best practices and standards for remediation of residual contamination adopted by the state board of technical registration pursuant to title 32, chapter 1. When remediation is complete, the drug laboratory site remediation firm shall remove the posted notice and shall issue a document stating that the residually contaminated portion of the real property has been remediated. Within twenty-four hours after the remediation is complete, the drug laboratory site remediation firm shall deliver the document or send the document by certified mail to each person and entity listed in subsection A, paragraph 2 of this section and the law enforcement agency that issued the

notice under that subsection. After the document has been issued, both of the following apply:

1. The owner, landlord or manager of the real property is not required to comply with subsection ~~F~~ H of this section.

2. Any person may use, enter, occupy, rent or sell the real property.

~~E.~~ F. The ~~county health department~~ STATE BOARD OF TECHNICAL REGISTRATION shall maintain and make available on request any PUBLIC documents that are received pursuant to subsection ~~D~~ E of this section.

G. IF THE STATE BOARD OF TECHNICAL REGISTRATION CONDUCTS AN INVESTIGATION AND DETERMINES THAT THE POSTED NOTICE OF REMOVAL IS MISSING, THE STATE BOARD OF TECHNICAL REGISTRATION MAY REPOST THE SITE. IF THE STATE BOARD OF TECHNICAL REGISTRATION DETERMINES THAT THIS IS THE FIRST OCCURRENCE IN WHICH THE REAL PROPERTY OWNER HAS KNOWINGLY ALLOWED THE POSTED NOTICE OF REMOVAL TO BE DISTURBED, THE STATE BOARD OF TECHNICAL REGISTRATION MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN TWO THOUSAND DOLLARS PER VIOLATION. IF THE STATE BOARD OF TECHNICAL REGISTRATION CONDUCTS SUBSEQUENT INVESTIGATIONS AND DETERMINES THAT THE POSTED NOTICE OF REMOVAL IS MISSING, THE REAL PROPERTY OWNER MAY BE SUBJECT TO CRIMINAL PROSECUTION PURSUANT TO SUBSECTION L OF THIS SECTION.

~~F.~~ H. The following notice requirements apply until the remediation is complete as provided in subsection ~~D~~ E of this section:

1. Within five days after a buyer signs a contract to purchase the real property, the owner shall notify the buyer in writing that methamphetamine, ecstasy or LSD was manufactured on the real property or that an arrest was made pursuant TO this section. The buyer shall acknowledge receipt of the notice. A buyer may cancel the real estate purchase contract within five days after receiving the notice. ~~If the~~ AN owner WHO does not comply with this paragraph~~, the buyer may cancel the purchase contract~~ IS SUBJECT TO CRIMINAL PROSECUTION FOR FAILURE TO DISCLOSE.

~~2. The landlord shall notify a prospective tenant for a dwelling unit that was the subject of the notice in writing that methamphetamine, ecstasy or LSD was manufactured on the real property or that an arrest was made pursuant to this section. The tenant shall acknowledge receipt of the notice before taking possession of the real property or before signing a rental agreement for the real property. The notice shall be attached to the rental agreement. If the landlord does not comply with this paragraph, the tenant may void the rental agreement.~~

~~3. Before a customer occupies a room that was the subject of the notice, the owner or manager shall notify the customer in writing that methamphetamine, ecstasy or LSD was manufactured in the room or that an arrest was made pursuant to this section. If the owner or manager does not comply with this paragraph, the customer may void the agreement.~~

~~4.~~ 2. The owner shall notify a buyer ~~or prospective tenant~~ IN WRITING WITHIN FIVE DAYS AFTER SIGNING A PURCHASE CONTRACT. THE ~~in writing~~ NOTIFICATION SHALL STATE that methamphetamine, ecstasy or LSD was

manufactured in the mobile home or recreational vehicle or that an arrest was made pursuant to this section. The buyer shall acknowledge receipt of the notice before taking possession of the mobile home or recreational vehicle. A buyer may cancel the purchase contract within five days after receiving the notice. ~~The tenant shall acknowledge receipt of the notice before taking possession of the mobile home or recreational vehicle or before signing a rental agreement for the mobile home or recreational vehicle. The notice shall be attached to the rental agreement. If the owner does not comply with this paragraph, the tenant may void the rental agreement.~~ AN OWNER WHO DOES NOT COMPLY WITH THIS PARAGRAPH IS SUBJECT TO CRIMINAL PROSECUTION FOR FAILURE TO DISCLOSE.

~~5.~~ 3. If a mobile home or recreational vehicle in a space rental park contains a clandestine drug laboratory, the landlord, on receipt of a notice pursuant to this section, shall notify the lienholder of record and the owner of record of the unit to remove it from the park within thirty days PURSUANT TO RULES ADOPTED BY THE STATE BOARD OF TECHNICAL REGISTRATION. If the unit is not removed within thirty days, the landlord may remove or demolish the unit PURSUANT TO RULES ADOPTED BY THE STATE BOARD OF TECHNICAL REGISTRATION and dispose of it ~~as junk~~ IN AN AUTHORIZED MANNER and shall notify the department of transportation AND THE STATE BOARD OF TECHNICAL REGISTRATION of the demolition. A landlord that complies with this subsection is not liable for such action.

~~G. If an owner fails to provide any notice required by this section, the owner is subject to a civil penalty of one thousand dollars and is liable for any harm resulting from the owner's failure to comply with the requirements of this section.~~

~~H.~~ I. A state or local government and a state or local government's employees or authorized representatives are not responsible parties as prescribed by section 49-283 and are not liable for costs or damages incurred as a result of action taken in compliance with this section. This subsection does not preclude liability for costs or damages that result from gross negligence or intentional misconduct by a state or local government. For the purposes of this subsection, "gross negligence" means reckless, wilful or wanton misconduct.

~~I.~~ J. A person who operates a clandestine drug laboratory and who is not the owner of the real property shall pay restitution to the owner of the real property for all costs that the owner incurred to remediate the property.

~~J. A person who knowingly violates an order or notice of removal that is issued by a peace officer under this section is guilty of a class 6 felony. A person who knowingly disturbs a notice of removal posted on the real property is guilty of a class 2 misdemeanor.~~

K. A REAL PROPERTY OWNER IS GUILTY OF A CLASS 4 FELONY IF THE OWNER KNOWINGLY ALLOWS A CHILD OR VULNERABLE ADULT, AS DEFINED IN SECTION 13-3623, TO ENTER OR OCCUPY THE REAL PROPERTY.

L. IT IS A CLASS 5 FELONY FOR A PERSON TO KNOWINGLY DO ANY OF THE FOLLOWING:

1. OCCUPY REAL PROPERTY THAT IS NOT REMEDIATED EXCEPT TO PERFORM NECESSARY MANAGERIAL DUTIES OR LAWFULLY CONDUCT REMEDIATION.

2. SELL ANY ITEMS FROM THE RESIDUALLY CONTAMINATED PORTION OF THE REAL PROPERTY, MOBILE HOME, RECREATIONAL VEHICLE OR DWELLING UNIT BEFORE REMEDIATION.

3. IF THE PERSON IS NOT THE REAL PROPERTY OWNER, DISTURB OR REMOVE THE NOTICE OF REMOVAL POSTED ON THE REAL PROPERTY.

4. IF THE PERSON IS THE REAL PROPERTY OWNER:

(a) ALLOW A POSTED NOTICE OF REMOVAL TO BE DISTURBED ON THE REAL PROPERTY AFTER A CIVIL PENALTY WAS IMPOSED AGAINST THE PERSON PURSUANT TO SUBSECTION G OF THIS SECTION.

(b) FAIL TO NOTIFY A BUYER AS PRESCRIBED IN SUBSECTION H OF THIS SECTION.

(c) CONTRACT WITH A PERSON WHO IS NOT A DRUG LABORATORY SITE REMEDIATION FIRM TO ATTEMPT A CLEANUP OF THE RESIDUALLY CONTAMINATED PORTION OF THE REAL PROPERTY OR DWELLING UNIT.

5. LEASE OR RENT REAL PROPERTY BEFORE REMEDIATION IS COMPLETE.

6. REMOVE A MOBILE HOME AS DEFINED IN SECTION 33-1409 OR A RECREATIONAL VEHICLE AS DEFINED IN SECTION 33-2102 FROM THE REAL PROPERTY BEFORE AUTHORIZATION FROM THE STATE BOARD OF TECHNICAL REGISTRATION.

M. SUBSECTION L OF THIS SECTION DOES NOT APPLY TO PEACE OFFICERS OR EMPLOYEES OF THE STATE BOARD OF TECHNICAL REGISTRATION WHO ARE LAWFULLY PERFORMING THEIR DUTIES.

Sec. 3. Title 13, chapter 34, Arizona Revised Statutes, is amended by adding section 13-3423, to read:

13-3423. Penalty assessment

IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, THE COURT SHALL ORDER A PERSON WHO IS CONVICTED OF A VIOLATION OF THIS CHAPTER TO PAY AN ADDITIONAL ASSESSMENT OF FIFTEEN DOLLARS. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. THE COURT SHALL TRANSMIT THE MONIES RECEIVED PURSUANT TO THIS SUBSECTION TO THE COUNTY TREASURER. THE COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER. THE STATE TREASURER SHALL DEPOSIT THE MONIES RECEIVED IN THE TECHNICAL REGISTRATION FUND ESTABLISHED BY SECTION 32-109.

Sec. 4. Section 32-109, Arizona Revised Statutes, is amended to read:

32-109. Technical registration fund

A. Pursuant to sections 35-146 and 35-147, the executive director shall deposit ten per cent of all fees or other revenues received by the board in the state general fund to assist in defraying the cost of maintaining the state government and shall deposit the remaining ninety per cent in a separate fund, known as the technical registration fund, to be used only in defraying expenses of the board and in prosecuting violations of this chapter.

1 B. Monies deposited in the technical registration fund PURSUANT TO
2 SUBSECTION A OF THIS SECTION shall be subject to the provisions of section
3 35-143.01.
4 C. IN ADDITION TO THE MONIES DEPOSITED IN THE TECHNICAL REGISTRATION
5 FUND PURSUANT TO SUBSECTION A OF THIS SECTION, THE TECHNICAL REGISTRATION
6 FUND CONSISTS OF MONIES RECEIVED PURSUANT TO SECTION 13-3423. THE MONIES
7 THAT ARE RECEIVED IN THE FUND PURSUANT TO THIS SUBSECTION SHALL BE USED:
8 1. TO PAY THE BOARD'S EXPENSES ASSOCIATED WITH INVESTIGATIONS AND
9 ENFORCEMENT ACTIONS PURSUANT TO SECTION 12-1000.
10 2. FOR A COUNTY, CITY OR TOWN FOR REMEDIATION PURSUANT TO SECTION
11 12-1000, SUBSECTION D. NOTWITHSTANDING SECTION 35-143.01, THE MONIES
12 RECEIVED PURSUANT TO SECTION 13-3423 ARE NOT SUBJECT TO LEGISLATIVE
13 APPROPRIATION.
14 Sec. 5. Exemption from rule making
15 For the purposes of this act, the state board of technical registration
16 is exempt from the rule making requirements of title 41, chapter 6, Arizona
17 Revised Statutes, for one year after the effective date of this act.

APPROVED BY THE GOVERNOR MAY 11, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 14, 2012.

Passed the House March 22, 2012,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate March 1, 2012,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

**S.B. 1438**

**HOUSE FINAL PASSAGE**
**as per Joint Conference**

Passed the House May 1, 2012,

by the following vote: 53 Ayes,

3 Nays, 4 Not Voting

Speaker of the House

Cheryl Laube
Chief Clerk of the House

**SENATE FINAL PASSAGE**
**as per Joint Conference**

Passed the Senate April 30, 2012

by the following vote: 23 Ayes,

7 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF GOVERNOR**

This Bill was received by the Governor

this 3rd day of May, 2012,

at 10:24 o'clock A M.

Secretary to the Governor

Approved this 14th day of

May, 2012,

at 2:40 o'clock P. M.

Janice K. Brewer
Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this 14th day of May, 2012,

at 8:30 o'clock a M.

Secretary of State

**S.B. 1438**