



H.B. 412

126th General Assembly
(As Introduced)

Reps. Distel, Driehaus, Hartnett, Boccieri, DeGeeter, J. McGregor, Fende, C. Evans, D. Stewart, Strahorn, Yuko, Skindell, Brown

BILL SUMMARY

- Requires a seller or landlord of real property to disclose whether the property was a site for the manufacture of methamphetamine if the seller or landlord has actual knowledge of that use.
- Establishes criminal penalties for sellers or landlords who fail to comply with the disclosure requirement.
- Specifies actions that may be taken regarding the transfer of real property if a seller fails to make the disclosure.
- Permits a tenant to terminate a rental agreement and to bring a civil action to recover damages if a landlord fails to make the disclosure.

CONTENT AND OPERATION

Disclosure of methamphetamine manufacturing by a seller of real property

Under current law, every person who intends to transfer any residential real property on or after July 1, 1993, by sale, land installment contract, lease with option to purchase, exchange, or lease for a term of 99 years and renewable forever must complete all applicable items in a property disclosure form prescribed by the Director of Commerce and must deliver a signed and dated copy of the completed form, in accordance with requirements specified in continuing law, to each prospective transferee or prospective transferee's agent as soon as is practicable (sec. 5302.30(C) and (D)) (see **COMMENT**). Current law requires the Director to include specified statements and instructions in the form.

The bill requires the Director to revise the disclosure form so that it permits a transferor of property who has actual knowledge of the illegal manufacture of

methamphetamine on the property to disclose that knowledge on the form (sec. 5302.30(D)(3)). Under the bill, if a transferor of property has actual knowledge of the illegal manufacture of methamphetamine on the property that is to be transferred, the transferor must disclose that knowledge on the disclosure form. The disclosure must not include the names of the persons involved in the illegal manufacture of methamphetamine.

Potential actions against a seller for failing to disclose

If the transferor fails to comply with this required disclosure and the transfer is not yet complete, the transfer of residential real property may be invalidated as in the same manner as a contract is rescinded under current law. If the transfer of property is complete, the transferee may bring a civil action in an appropriate court for invalidation of the contract on the basis of fraud or other appropriate cause of action. In addition, the transferee may bring a civil action for the recovery of any damages that the transferee suffers that result from or are related to the former use of the property in the illegal manufacture of methamphetamine. (Sec. 5302.30(K)(5).) Additionally, under the bill, if a transferor of residential real property fails to comply with the disclosure requirements concerning methamphetamine, the transferor is guilty of a first-degree misdemeanor. Each failure to provide a disclosure concerning methamphetamine constitutes a separate offense. (Sec. 5302.30(M).)

Disclosure of methamphetamine manufacturing by a landlord

Under the bill, if a landlord of residential premises has actual knowledge of the illegal manufacture of methamphetamine on those premises, the landlord must disclose that knowledge to any prospective or current tenant of those premises. The disclosure must not include the names of the persons involved in the illegal manufacture of methamphetamine.

Potential actions against a landlord for failing to disclose

If a landlord fails to comply with the disclosure requirement, the landlord is guilty of a first-degree misdemeanor. Each failure to provide the required disclosure constitutes a separate offense. Additionally, the bill permits a tenant, if a landlord fails to comply with the required disclosure concerning methamphetamine, to terminate the rental agreement for the residential premises and to bring a civil action for the recovery of any damages for injury, death, or loss to person or property that the tenant suffers that result from or are related to the former use of the residential premises in the illegal manufacture of methamphetamine. (Sec. 5321.041.)

COMMENT

Under current law, the following types of transfers are exempt from the disclosure form requirements:

(1) A transfer pursuant to court order, including, but not limited to, a transfer ordered by a probate court during the administration of a decedent's estate, and a transfer pursuant to a writ of execution, by a trustee in bankruptcy, as a result of the exercise of the power of eminent domain, or that results from a decree for specific performance of a contract or other agreement between persons;

(2) A transfer to a mortgagee by a mortgagor by deed in lieu of foreclosure or in satisfaction of the mortgage debt;

(3) A transfer to a beneficiary of a deed of trust by a trustor in default;

(4) A transfer by a foreclosure sale that follows a default in the satisfaction of an obligation secured by a mortgage;

(5) A transfer by a sale under a power of sale following a default in the satisfaction of an obligation that is secured by a deed of trust or another instrument containing a power of sale;

(6) A transfer by a mortgagee, or a beneficiary under a deed of trust, who has acquired the residential real property at a sale conducted pursuant to a power of sale under a mortgage or a deed of trust or who has acquired the residential real property by a deed in lieu of foreclosure;

(7) A transfer by a fiduciary in the course of the administration of a decedent's estate, a guardianship, a conservatorship, or a trust;

(8) A transfer from one co-owner to one or more other co-owners;

(9) A transfer made to the transferor's spouse or to one or more persons in the lineal line of consanguinity of one or more of the transferors;

(10) A transfer between spouses or former spouses as a result of a decree of divorce, dissolution of marriage, annulment, or legal separation or as a result of a property settlement agreement incidental to a decree of divorce, dissolution of marriage, annulment, or legal separation;

(11) A transfer to or from the state, a political subdivision of the state, or another governmental entity;

(12) A transfer that involves newly constructed residential real property that previously has not been inhabited;

(13) A transfer to a transferee who has occupied the property as a personal residence for one or more years immediately prior to the transfer;

(14) A transfer from a transferor who both has not occupied the property as a personal residence within one year immediately prior to the transfer and has acquired the property through inheritance or devise. (Sec. 5302.30(B)(2) and (C).)

HISTORY

ACTION	DATE
Introduced	11-09-05

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