



Ohio Legislative Service Commission

Bill Analysis

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S.B. 22

130th General Assembly
(As Introduced)

Sens. LaRose and Beagle, Cafaro, Oelslager, Hite

BILL SUMMARY

- Requires a law enforcement agency that discovers an illegal methamphetamine manufacturing laboratory to notify the property owner, board of health, and public children services agency of the location of the laboratory.
- Requires a board of health to declare the property a public health hazard and notify the county recorder that the property may not be occupied until it is no longer a public health hazard.
- Requires a person who intends to transfer an interest in real property that includes a structure or unit that has been declared a public health hazard under the bill to notify the prospective transferee or the transferee's agent.
- Provides special disposition procedures for certain property seized in connection with the operation of an illegal methamphetamine manufacturing laboratory.
- Creates the Contaminated Property Remediation Fund.
- Requires the Director of Health to adopt rules that implement the bill's provisions regarding notices and public health hazard declarations and that regulate the inspection and remediation of property on which an illegal methamphetamine manufacturing laboratory is located, including rules establishing a list of individuals certified to inspect and remediate the property.

CONTENT AND OPERATION

Discovery of an illegal methamphetamine manufacturing laboratory

Required notifications

The bill requires a law enforcement agency that discovers an illegal methamphetamine manufacturing laboratory on real property to make certain notifications. An "illegal methamphetamine manufacturing laboratory" is any laboratory or other premises that is used for the manufacture or production of methamphetamine in violation of the law.¹ The agency must give notice of the location of the laboratory to all of the following:

- (1) The owner of the property;
- (2) The board of health with jurisdiction over the property;
- (3) The public children services agency with jurisdiction over the property (if it appears that children are living on the property).²

The notice must include the room number or location within a building if the laboratory is in a room of a hotel, motel, apartment building, nursing home, or similar establishment. It must be a written notice, which may be provided electronically.

Declaration of property as a public health hazard

If a board of health is notified that an illegal methamphetamine manufacturing laboratory has been discovered, it must declare the unit or structure in which the laboratory is located a public health hazard that may not be occupied until the board determines that the unit or structure is no longer a public health hazard. The board must file this notice with the county recorder.³ The bill specifies that its public health hazard notice provisions do not limit the authority of the state or any political subdivision to declare property a nuisance and to abate the nuisance.⁴

¹ R.C. 3745.13.

² R.C. 3707.60.

³ R.C. 3707.61(B).

⁴ R.C. 3701.61(D).

Notice that property has been declared a public health hazard

The bill requires any person who intends to transfer an interest in real property that includes a structure or unit that is declared a public health hazard under the bill to give written notice to the prospective transferee or the prospective transferee's agent of the declaration. The notice must be received by the transferee or agent at least seven days before the date of the transfer. A transferee may rescind the transfer agreement at any time before one year after the transfer of the property if the notice is not properly provided.⁵

Reclassification – required notice

A board of health that determines, in accordance with rules to be adopted by the Director of Health, that an illegal methamphetamine manufacturing laboratory is no longer a health hazard must file a notice with the county recorder that the structure or unit is no longer a public health hazard and may be occupied.⁶

Liability for contamination costs

Existing law, unchanged by the bill, contains a mechanism that political subdivisions may use to recover costs of dealing with contamination of the environment caused by the operation of an illegal methamphetamine manufacturing laboratory.⁷ In general, when emergency action is required to protect the public health or safety or the environment, any person responsible for the operation of an illegal methamphetamine manufacturing laboratory that caused contamination of the environment is liable for the necessary and reasonable, additional, or extraordinary costs it incurs in investigating, mitigating, minimizing, removing, or abating the contamination.

Under the bill, the owner of property on which is located a structure or unit that includes an illegal methamphetamine manufacturing laboratory that is declared a public health hazard must pay the costs of remediation of the structure or unit. The bill provides that the owner has a cause of action for recovery of all monetary losses incurred because of the declaration, including reasonable attorney fees. This action is available against any person who created or operated the laboratory, or who occupied the structure or unit and consented to the creation or operation of the laboratory, but only if the owner did not create, operate, or consent to the operation of the laboratory.⁸

⁵ R.C. 5302.31.

⁶ R.C. 3701.61(C).

⁷ R.C. 3745.13 (not in the bill).

⁸ R.C. 3707.62.



Disposition of money or property seized in connection with an illegal methamphetamine manufacturing laboratory

Forfeiture refers to transferring property from its owner to the government for the purposes of providing a financial disincentive to crime and repaying society for harm. Ohio's existing Forfeiture Law (R.C. Chapter 2981.) generally governs both criminal and civil asset forfeiture to the state or a political subdivision for an act or omission that could be charged as a criminal offense or delinquent act. Ohio law permits a law enforcement officer to seize property that the officer believes is subject to forfeiture and requires the officer (or the law enforcement agency that employs the officer) to follow specified notification and other procedures regarding the property.⁹ The property must be kept safely in the law enforcement agency's custody until it is no longer needed as evidence or for another lawful purpose, and then must be disposed of in accordance with the Forfeiture Law.

Some types of property, such as drugs, firearms, obscene materials, alcohol, vehicles, and computers, must be disposed of in a particular manner.¹⁰ Other unclaimed or forfeited property may be used by the law enforcement agency, sold at a public auction, or disposed of in another manner the court considers proper. In general, money from the sale of forfeited property must be deposited in the state's General Revenue Fund, or in the general fund of the county, township, or municipal corporation of which the law enforcement agency involved is an agency. But money from the sale of contraband or an instrumentality forfeited under the law must be applied in the following order:

--To pay costs incurred in the seizure, storage, maintenance, security, and sale of the property and in the forfeiture proceeding;

--To any restitution ordered to the victim of the offense or to any recovery ordered for the person harmed;

--To pay the balance due on any security interest preserved under the Forfeiture Law;

--The remaining amounts to the law enforcement trust fund of the prosecutor and a specified fund supporting the law enforcement agency that substantially

⁹ R.C. 2981.03 through 2981.05 (not in the bill).

¹⁰ R.C. 2981.12.



conducted the investigation (in accordance with a written internal control policy adopted by the law enforcement agency).¹¹

The bill provides special disposition provisions for certain property seized in connection with the operation of an illegal methamphetamine manufacturing laboratory. Under the bill, pursuant to a court order of any court with jurisdiction, money seized in connection with the operation of an illegal methamphetamine manufacturing laboratory and money acquired from the sale of property seized in connection with the operation of an illegal methamphetamine manufacturing laboratory must be deposited in the Contaminated Property Remediation Fund, which the bill creates.¹² Other unclaimed or forfeited property in the custody of a law enforcement agency that was seized in connection with the operation of an illegal methamphetamine manufacturing laboratory is to be disposed of pursuant to existing law, as described above.

Contaminated Property Remediation Fund

The bill creates (in the state treasury) the Contaminated Property Remediation Fund, consisting of money seized in connection with an illegal methamphetamine manufacturing laboratory and deposited into the Fund as described above, as well as any other money that may be appropriated or contributed to the Fund.¹³ The Director of Health must use money in the Fund for the sole purpose of eliminating the contamination of property caused by the operation of an illegal methamphetamine manufacturing laboratory. The Director is required to make grants to municipal corporations, counties, and townships and to adopt rules (within 120 days) creating a procedure for those entities to apply for the grants.¹⁴ If money from the Fund is used to pay for any costs of remediation, the bill requires the owner of the property to reimburse the Fund for those costs.¹⁵

Director of Health – rulemaking

The bill requires the Director of Health to adopt rules (within 120 days) implementing the bill's provisions regarding notices and public health hazard

¹¹ R.C. 2981.13 (not in the bill). The disposition differs if the forfeiture was ordered by a juvenile court or if multiple law enforcement agencies are substantially involved in the forfeiture.

¹² R.C. 2981.12.

¹³ R.C. 3701.139.

¹⁴ R.C. 3701.138.

¹⁵ R.C. 3707.62.

declarations and that regulate the inspection and remediation of property on which an illegal methamphetamine manufacturing laboratory or its components have been found. These rules must provide for the Department of Health to maintain a list of persons certified to inspect and remediate property of that nature. The rules may provide for the certification of persons who meet specified qualifications to perform inspections and remediation.

If certification is provided for, the rules must include a requirement that a fee be paid by each person requesting certification. The fee must be used to help pay for the maintenance of the list. The bill does not specify who would be included on the list if the Department does not adopt rules regarding certification.¹⁶

HISTORY

| ACTION | DATE |
|------------|----------|
| Introduced | 02-12-13 |

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¹⁶ R.C. 3701.138.

