WEST VIRGINIA CODE CHAPTER 60A ARTICLE 11

WV Legislature

§60A-11-1. Legislative findings and purpose.

(a) Findings. — The Legislature finds that some residential and business properties are being used for the consumption, production and manufacture of illegal drugs resulting in contamination with hazardous chemical residues. These illegal laboratories present an immediate and ongoing danger to public health and safety. Innocent members of the public may be harmed when they are exposed to the chemical residues if the property is not decontaminated prior to subsequent rental, sale or use of the property.

(b) Purpose. -– The purpose of this article is to protect the public health, safety and welfare by designating the Department of Health as the state agency to set forth standards for the remediation of clandestine drug laboratories.

WV Legislature

§60A-11-2. Definitions.

In this article:

(a) "Clandestine drug laboratory" means the area or areas where controlled substances, or their immediate precursors, have been, or were attempted to be, manufactured, processed, cooked, disposed of or stored and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposing or storing.

(b) "Department" means the West Virginia Department of Health.

(c) "Controlled substance" means the same as that term is defined in section one hundred one, article one of this chapter and article ten, section three of this chapter a drug, substance or immediate precursor in Schedules I through V of article two of this chapter.

(d) "Immediate precursor" means a substance which the "West Virginia Board of Pharmacy" (hereinafter in this act referred to as the state Board of Pharmacy) has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(e) "Law-enforcement agency" means the West Virginia State Police or any other policing agency of the state or of any political subdivision of the state.

(f) "Remediation" means the act of rendering safe and usable for the purposes for which it is intended residential property, as defined in subsection (g) of this section, or any structure appurtenant to the residential property, or other structure on the residential property that has been used for the manufacture or consumption of methamphetamines or other illicit drug products.

(g) "Residential property" means any building or structure to be primarily occupied by people, either as a dwelling or as a business, including, but not limited to, a storage facility, a mobile home, manufactured home or recreational vehicle, hotel or motel that may be sold, leased or rented for any length of time.

(h) "Residential property owner" means the person holding record title to residential property as that term is defined in subsection (f) of this section.

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§60A-11-3. Remediation of clandestine drug laboratories; promulgation of legislative rules.

(a) The Department of Health shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to address, at a minimum, the following issues:

(1) Establishment of scientific guidelines and numeric decontamination levels for the remediation of clandestine drug laboratories;

(2) Establishment of a certification program for persons or contractors who engage in the business of clandestine drug lab remediation;

(3) Establishment of a licensure procedure whereby individuals and businesses certified to do remediation of clandestine drug laboratories obtain a license from the Department of Health to do such work;

(4) Requiring licensed contractors to notify the Department of Health prior to beginning any remediation project;

(5) Setting forth certification procedures for the department to certify that the completed remediation of the residential property fully meets the scientific guidelines and numeric decontamination levels set forth in the legislative rule; and

(6) Establishing requirements for property owners, sellers and landlords to disclose the existence of any former clandestine laboratory site or activity to any potential occupant of the residential property.

(b) Fees may be set by the legislative rule to be charged to persons or contractors engaged in the business of clandestine drug laboratory remediation for certification, licensing and notification as required in this article.

WV Legislature

§60A-11-4. Law-enforcement responsibility.

Any law-enforcement agency, upon locating chemicals, equipment, supplies or precursors indicative of a clandestine drug laboratory on residential property, shall notify the residential property owner and the department in a manner prescribed by the legislative rule authorized by this article.

WV Legislature

§60A-11-5. Residential property owner responsibility; owner immunity; voluntary compliance.

(a) Upon notification to the residential property owner by a law-enforcement agency that chemicals, equipment, supplies or precursors indicative of a clandestine drug laboratory have been located on the residential property owner's property, the residential property owner shall be responsible for actions necessary to meet the remediation standards established by the legislative rule authorized by this article. The residential property owner is responsible for actions to ensure the residential property shall remain unoccupied from the time the residential property owner is notified of the clandestine drug laboratory until such time as the department certifies that the completed remediation meets the numeric decontamination levels set forth in the legislative rule authorized in this article. The department shall have forty-five days from receipt of all necessary paperwork and documentation to complete remediation certification: Provided, That a residential property owner may demolish the residential property as an alternative to meeting the remediation standards established by the department.

(b) Once the remediation has been certified complete by the department, the residential property owner and any representative or agent of a residential property owner who neither knew or should have known of the property's illegal use shall be immune from civil liability for action brought for injuries or loss based upon the prior use of the residential property as a clandestine drug laboratory by future owners, renters, lessees or any other person who occupies the residential property.

(c) Any residential property owner who neither knew or should have known of the property's illegal use who chooses to voluntarily and successfully complete the remediation prior to notification by a law-enforcement agency shall have the same immunity from liability as set forth in subsection (b) of this section if the remediation meets the certification standards set forth in legislative rules authorized by this article.

WV Legislature

§60A-11-6. Liability for costs of remediation.

Any person convicted pursuant to section four, subsection (d), article ten of this chapter and whose actions also resulted in the necessity of remediation of a clandestine drug laboratory, shall be liable to the person or entity for all costs associated with the remediation of the clandestine drug laboratory. These costs may include attorney's fees and court costs reasonably necessary to bring an action to collect the amount paid for the remediation.

WV Legislature