

REFERENCE TITLE: drug lab remediation; investigators

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

HB 2362

Introduced by
Representatives Weiers JP, Smith D, Stevens

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; AMENDING TITLE 32, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-113; RELATING TO THE STATE BOARD OF TECHNICAL REGISTRATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 12-990. Definitions

5 In this article, unless the context otherwise requires:

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

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

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

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

28 5. "LSD" has the same meaning prescribed in section 13-3401, paragraph
29 6 and includes any of the precursor chemicals, regulated chemicals, other
30 substances or equipment used in the unlawful manufacture of the dangerous
31 drug.

32 6. "Methamphetamine" has the same meaning prescribed in section
33 13-3401, paragraph 6 and includes any of the precursor chemicals, regulated
34 chemicals, other substances or equipment used in the unlawful manufacture of
35 the dangerous drug.

36 7. "Real property" includes the area within a structure and the area
37 that surrounds a structure and that is within the land boundary or property
38 lines of any of the following:

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

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

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

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

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

3 (b) The county health department.

4 (c) The appropriate local fire department.

5 (d) The state board of technical registration.

6 (e) THE DEPARTMENT OF TRANSPORTATION IF THE SEIZURE OCCURS IN A MOBILE
7 HOME OR RECREATIONAL VEHICLE.

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

13 4. After the peace officer removes all persons pursuant to paragraph 3
14 of this subsection, shall affix the notice of removal in a conspicuous place
15 on the real property or, in the case of a space rental mobile home or
16 recreational vehicle park, on the unit located on the real property. The
17 notice of removal shall state that it is unlawful for any person other than
18 the owner, landlord or manager to enter the residually contaminated portion
19 of the property until the owner remediates the residually contaminated
20 portion of the property. THE OWNER IS RESPONSIBLE FOR MAINTAINING THE POSTED
21 NOTICE OF REMOVAL.

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

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

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

30 3. The date of the seizure or arrest.

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

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

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

41 7. A statement that it is unlawful for any unauthorized person to
42 enter the residually contaminated portion of the real property or, in the
43 case of a space rental mobile home or recreational vehicle park, the unit
44 located on the real property, until the owner, landlord or manager

1 establishes that the portion of the real property noticed as residually
2 contaminated has been remediated by a drug laboratory site remediation firm.

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

4 8. A STATEMENT THAT THE OWNER OF REAL PROPERTY IS SUBJECT TO:

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

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

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

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

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

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

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

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

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

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

5 2. Any person may use, enter, occupy, rent or sell the real property.
6 ~~E~~. F. The ~~county health department~~ STATE BOARD OF TECHNICAL
7 REGISTRATION shall maintain and make available on request any PUBLIC
8 documents that are received pursuant to subsection ~~D~~ E of this section.

9 G. IF THE STATE BOARD OF TECHNICAL REGISTRATION CONDUCTS AN
10 INVESTIGATION AND DETERMINES THAT THE POSTED NOTICE OF REMOVAL IS MISSING,
11 THE STATE BOARD OF TECHNICAL REGISTRATION MAY REPOST THE SITE. IF THE STATE
12 BOARD OF TECHNICAL REGISTRATION DETERMINES THAT THIS IS THE FIRST OCCURRENCE
13 IN WHICH THE REAL PROPERTY OWNER HAS FAILED TO MAINTAIN THE POSTED NOTICE OF
14 REMOVAL, THE STATE BOARD OF TECHNICAL REGISTRATION MAY IMPOSE A CIVIL PENALTY
15 OF NOT MORE THAN TWO THOUSAND DOLLARS PER VIOLATION. IF THE STATE BOARD OF
16 TECHNICAL REGISTRATION CONDUCTS SUBSEQUENT INVESTIGATIONS AND DETERMINES THAT
17 THE POSTED NOTICE OF REMOVAL IS MISSING, THE REAL PROPERTY OWNER MAY BE
18 SUBJECT TO CRIMINAL PROSECUTION PURSUANT TO SUBSECTION L OF THIS SECTION.

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

21 1. ~~Within five days after~~ BEFORE a buyer signs a contract to purchase
22 the real property, the owner shall notify the buyer in writing that
23 methamphetamine, ecstasy or LSD was manufactured on the real property or that
24 an arrest was made pursuant TO this section. The buyer shall acknowledge
25 receipt of the notice. A buyer may cancel the real estate purchase contract
26 within five days after receiving the notice. If the owner does not comply
27 with this paragraph, the buyer may cancel the purchase contract AND THE OWNER
28 MAY BE SUBJECT TO CRIMINAL PROSECUTION FOR FAILURE TO DISCLOSE.

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

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

42 4. 2. The owner shall notify a BEFORE A buyer or prospective tenant
43 SIGNS A PURCHASE CONTRACT, THE OWNER SHALL NOTIFY THE BUYER in writing that
44 methamphetamine, ecstasy or LSD was manufactured in the mobile home or
45 recreational vehicle or that an arrest was made pursuant to this section.

1 The buyer shall acknowledge receipt of the notice before taking possession of
2 the mobile home or recreational vehicle. A buyer may cancel the purchase
3 contract within five days after receiving the notice. ~~The tenant shall~~
4 ~~acknowledge receipt of the notice before taking possession of the mobile home~~
5 ~~or recreational vehicle or before signing a rental agreement for the mobile~~
6 ~~home or recreational vehicle. The notice shall be attached to the rental~~
7 ~~agreement. If the owner does not comply with this paragraph, the tenant may~~
8 ~~void the rental agreement.~~ IF THE OWNER DOES NOT COMPLY WITH THIS PARAGRAPH,
9 THE BUYER MAY CANCEL THE PURCHASE CONTRACT AND THE OWNER MAY BE SUBJECT TO
10 CRIMINAL PROSECUTION FOR FAILURE TO DISCLOSE.

11 ~~5.~~ 3. If a mobile home or recreational vehicle in a space rental park
12 contains a clandestine drug laboratory, the landlord, on receipt of a notice
13 pursuant to this section, shall notify the lienholder of record and the owner
14 of record of the unit to remove it from the park within thirty days PURSUANT
15 TO RULES ADOPTED BY THE STATE BOARD OF TECHNICAL REGISTRATION. If the unit
16 is not removed within thirty days, AFTER OBTAINING ABANDONED TITLE AND
17 BECOMING THE OWNER, the landlord may remove or demolish the unit PURSUANT TO
18 RULES ADOPTED BY THE STATE BOARD OF TECHNICAL REGISTRATION and dispose of it
19 ~~as junk~~ IN AN AUTHORIZED MANNER and shall notify the department of
20 transportation of the demolition. A landlord that complies with this
21 subsection is not liable for such action.

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

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

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

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

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

1 L. IT IS A CLASS 5 FELONY FOR A PERSON TO DO ANY OF THE FOLLOWING:
2 1. KNOWINGLY ENTER OR OCCUPY REAL PROPERTY THAT IS NOT REMEDIATED
3 EXCEPT TO PERFORM NECESSARY MANAGERIAL DUTIES OR LAWFULLY CONDUCT
4 REMEDIATION.
5 2. REMOVE ANY ITEMS FROM THE RESIDUALLY CONTAMINATED PORTION OF THE
6 REAL PROPERTY, MOBILE HOME, RECREATIONAL VEHICLE OR DWELLING UNIT BEFORE
7 REMEDIATION.
8 3. IF THE PERSON IS NOT THE REAL PROPERTY OWNER, DISTURB OR REMOVE THE
9 NOTICE OF REMOVAL POSTED ON THE REAL PROPERTY.
10 4. IF THE PERSON IS THE REAL PROPERTY OWNER:
11 (a) FAIL TO MAINTAIN A POSTED NOTICE OF REMOVAL ON THE REAL PROPERTY
12 AFTER A CIVIL PENALTY WAS IMPOSED AGAINST THE PERSON PURSUANT TO SUBSECTION G
13 OF THIS SECTION.
14 (b) FAIL TO NOTIFY A BUYER AS PRESCRIBED IN SUBSECTION H OF THIS
15 SECTION BEFORE THE BUYER SIGNS A PURCHASE CONTRACT FOR THE REAL PROPERTY.
16 (c) KNOWINGLY CONTRACT WITH A PERSON WHO IS NOT A DRUG LABORATORY SITE
17 REMEDIATION FIRM TO ATTEMPT A CLEANUP OF THE RESIDUALLY CONTAMINATED PORTION
18 OF THE REAL PROPERTY OR DWELLING UNIT.
19 5. LEASE OR RENT REAL PROPERTY BEFORE REMEDIATION IS COMPLETE.
20 6. REMOVE A MOBILE HOME AS DEFINED IN SECTION 33-1409 OR A
21 RECREATIONAL VEHICLE AS DEFINED IN SECTION 33-2102 FROM THE REAL PROPERTY
22 BEFORE AUTHORIZATION FROM THE STATE BOARD OF TECHNICAL REGISTRATION.
23 M. SUBSECTION L OF THIS SECTION DOES NOT APPLY TO PEACE OFFICERS OR
24 EMPLOYEES OF THE STATE BOARD OF TECHNICAL REGISTRATION WHO ARE LAWFULLY
25 PERFORMING THEIR DUTIES.
26 Sec. 3. Title 13, chapter 34, Arizona Revised Statutes, is amended by
27 adding section 13-3423, to read:
28 13-3423. Penalty assessment
29 IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, THE COURT SHALL
30 ORDER A PERSON WHO IS CONVICTED OF A VIOLATION OF THIS CHAPTER INVOLVING
31 METHAMPHETAMINE, ECSTASY OR LSD TO PAY AN ADDITIONAL ASSESSMENT OF ONE
32 HUNDRED DOLLARS. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. THE COURT
33 SHALL TRANSMIT THE MONIES RECEIVED PURSUANT TO THIS SUBSECTION TO THE COUNTY
34 TREASURER. THE COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE
35 STATE TREASURER. THE STATE TREASURER SHALL DEPOSIT THE MONIES RECEIVED IN
36 THE TECHNICAL REGISTRATION FUND ESTABLISHED BY SECTION 32-109.
37 Sec. 4. Section 32-109, Arizona Revised Statutes, is amended to read:
38 32-109. Technical registration fund
39 A. Pursuant to sections 35-146 and 35-147, the executive director
40 shall deposit ten per cent of all fees or other revenues received by the
41 board in the state general fund to assist in defraying the cost of
42 maintaining the state government and shall deposit the remaining ninety per
43 cent in a separate fund, known as the technical registration fund, to be used
44 only in defraying expenses of the board and in prosecuting violations of this
45 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 ITS CRIMINAL
9 INVESTIGATIONS AND THE IMPLEMENTATION OF SECTION 32-113.

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. Title 32, chapter 1, article 1, Arizona Revised Statutes, is
15 amended by adding section 32-113, to read:

16 32-113. Criminal investigations unit; investigators; peace
17 officer status; powers; information sharing

18 A. A CRIMINAL INVESTIGATIONS UNIT IS ESTABLISHED IN THE BOARD OF
19 TECHNICAL REGISTRATION.

20 B. THE UNIT SHALL WORK IN CONJUNCTION WITH OTHER LAW ENFORCEMENT
21 AGENCIES.

22 C. THE EXECUTIVE DIRECTOR MAY INVESTIGATE ANY CRIMINAL ACT PROHIBITED
23 BY THIS CHAPTER OR ANY OTHER CRIMINAL ACT IN VIOLATION OF TITLE 12 OR 13 THAT
24 IS REASONABLY RELATED TO THE PRACTICE OF THE PROFESSIONS OR OCCUPATIONS
25 REGULATED BY THE BOARD. THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S
26 DESIGNEE SHALL ADMINISTER THE CRIMINAL INVESTIGATIONS UNIT.

27 D. THE CRIMINAL INVESTIGATIONS UNIT IS A LAW ENFORCEMENT AGENCY AND
28 MAY RECEIVE AND EXCHANGE CRIMINAL JUSTICE INFORMATION WITH OTHER CRIMINAL
29 JUSTICE AGENCIES.

30 E. THE EXECUTIVE DIRECTOR MAY EMPLOY INVESTIGATORS FOR THE CRIMINAL
31 INVESTIGATIONS UNIT. A UNIT INVESTIGATOR HAS AND SHALL EXERCISE THE LAW
32 ENFORCEMENT POWERS OF A PEACE OFFICER OF THIS STATE. THE DIRECTOR SHALL
33 ADOPT GUIDELINES FOR THE CONDUCT OF INVESTIGATIONS THAT ARE SUBSTANTIALLY
34 SIMILAR TO THE INVESTIGATIVE POLICY AND PROCEDURAL GUIDELINES OF THE
35 DEPARTMENT OF PUBLIC SAFETY FOR PEACE OFFICERS. UNIT INVESTIGATORS SHALL NOT
36 PREEMPT THE AUTHORITY AND JURISDICTION OF OTHER LAW ENFORCEMENT AGENCIES OF
37 THIS STATE OR ITS POLITICAL SUBDIVISIONS. UNIT INVESTIGATORS:

38 1. SHALL HAVE AT LEAST THE QUALIFICATIONS PRESCRIBED BY THE ARIZONA
39 PEACE OFFICER STANDARDS AND TRAINING BOARD PURSUANT TO SECTION 41-1822.

40 2. ARE NOT ELIGIBLE TO PARTICIPATE IN THE PUBLIC SAFETY PERSONNEL
41 RETIREMENT SYSTEM ESTABLISHED BY TITLE 38, CHAPTER 5, ARTICLE 4 DUE SOLELY TO
42 EMPLOYMENT AS UNIT INVESTIGATORS.