

State of Arizona  
Senate  
Fiftieth Legislature  
Second Regular Session  
2012

# 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)

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, EXCEPT IN  
37 A MOBILE HOME PARK OR A RECREATIONAL VEHICLE PARK, the area that surrounds a  
38 structure and that is within the land boundary or property lines of any of  
39 the following:

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

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

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

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

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

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

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

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

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

22           12-1000. Clandestine drug laboratories; notice; cleanup;  
23   residual contamination; civil penalty; immunity;  
24   restitution; violation; classification

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

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

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

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

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

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

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

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

28 3. The date of the seizure or arrest.

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

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

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

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

1           ~~8. A statement that it is a class 6 felony to violate this section.~~  
2           8. A STATEMENT THAT THE OWNER OF REAL PROPERTY WHO KNOWINGLY ALLOWS  
3 THE NOTICE OF REMOVAL POSTED ON THE REAL PROPERTY TO BE DISTURBED IS SUBJECT  
4 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 KNOWINGLY ALLOWED THE POSTED NOTICE OF  
14 REMOVAL TO BE DISTURBED, THE STATE BOARD OF TECHNICAL REGISTRATION MAY IMPOSE  
15 A CIVIL PENALTY OF NOT MORE THAN TWO THOUSAND DOLLARS PER VIOLATION. IF THE  
16 STATE BOARD OF TECHNICAL REGISTRATION CONDUCTS SUBSEQUENT INVESTIGATIONS AND  
17 DETERMINES THAT THE POSTED NOTICE OF REMOVAL IS MISSING, THE REAL PROPERTY  
18 OWNER MAY BE SUBJECT TO CRIMINAL PROSECUTION PURSUANT TO SUBSECTION L OF THIS  
19 SECTION.

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

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

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

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

43 ~~4.~~ 2. The owner shall notify a buyer ~~or prospective tenant~~ IN WRITING  
44 WITHIN FIVE DAYS AFTER SIGNING A PURCHASE CONTRACT. THE ~~in writing~~  
45 NOTIFICATION SHALL STATE that methamphetamine, ecstasy or LSD was

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

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

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

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

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

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

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

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

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

5 2. SELL ANY ITEMS FROM THE RESIDUALLY CONTAMINATED PORTION OF THE REAL  
6 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) ALLOW A POSTED NOTICE OF REMOVAL TO BE DISTURBED ON THE REAL  
12 PROPERTY AFTER A CIVIL PENALTY WAS IMPOSED AGAINST THE PERSON PURSUANT TO  
13 SUBSECTION G OF THIS SECTION.

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

16 (c) 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 TO PAY AN  
31 ADDITIONAL ASSESSMENT OF FIFTEEN DOLLARS. THIS ASSESSMENT IS NOT SUBJECT TO  
32 ANY SURCHARGE. THE COURT SHALL TRANSMIT THE MONIES RECEIVED PURSUANT TO THIS  
33 SUBSECTION TO THE COUNTY TREASURER. THE COUNTY TREASURER SHALL TRANSMIT THE  
34 MONIES RECEIVED TO THE STATE TREASURER. THE STATE TREASURER SHALL DEPOSIT  
35 THE MONIES RECEIVED IN THE TECHNICAL REGISTRATION FUND ESTABLISHED BY SECTION  
36 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 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.