

JAN 25 2006

A BILL FOR AN ACT

RELATING TO DECONTAMINATION OF ILLEGAL DRUG MANUFACTURING SITES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the contamination of
2 properties used for illegal drug manufacturing poses a threat to
3 public health. The toxic chemicals left behind by illegal drug
4 manufacturing must be cleaned up to prevent harm to subsequent
5 occupants of the properties. It is the purpose of this Act to
6 ensure that properties are decontaminated in a manner that is
7 efficient, prompt, and that makes them safe to reoccupy.

8 SECTION 2. Chapter 342J, Hawaii Revised Statutes, is
9 amended by adding a new part to be appropriately designated and
10 to read as follows:

11 **"PART . DECONTAMINATION OF ILLEGAL DRUG MANUFACTURING SITES**

12 **§342J-A Definitions.** As used in this part:

13 "Authorized contractor" means a person who decontaminates,
14 demolishes, or disposes of contaminated property as required by
15 this part who is certified by the department pursuant to section
16 342J-E.

17 "Contaminated" or "contamination" means polluted by
18 hazardous chemicals so that the property is unfit for human



1 habitation or use due to immediate or long-term hazards, but
2 does not include property that at one time was contaminated but
3 has been satisfactorily decontaminated according to procedures
4 established by the state board of health.

5 "Hazardous chemicals" means the following substances used
6 in the manufacture of illegal drugs:

- 7 (1) Hazardous waste as defined in section 342J-2; and
- 8 (2) Chemicals for the manufacture of controlled substances
9 regulated by part VI of chapter 329.

10 "Property" means any property, site, structure, or part of
11 a structure that is involved in the unauthorized manufacture or
12 storage of hazardous chemicals. This includes but is not
13 limited to single-family residences, units of multiplexes,
14 condominiums, apartment buildings, boats, motor vehicles,
15 trailers, manufactured housing, or any shop, booth, or garden.

16 **§342J-B Reporting; warning; notice; duties of department.**

17 (a) Whenever a law enforcement agency becomes aware that
18 property has been contaminated by hazardous chemicals, that
19 agency shall report the contamination to the department. The
20 department shall post a written warning on the premises within
21 one working day of notification of the contamination and shall
22 inspect the property within fourteen days after receiving the



1 notice of contamination. The warning shall inform the potential
2 occupants that hazardous chemicals may exist on, or have been
3 removed from, the premises and that entry is unsafe. If a
4 property owner believes that a tenant has contaminated property
5 that was being leased or rented, and the property is vacated or
6 abandoned, then the property owner shall contact the department
7 about the possible contamination. The department may charge
8 property owners reasonable fees for inspections of suspected
9 contaminated property requested by property owners.

10 (b) The department may enter, inspect, and survey at
11 reasonable times any properties for which there are reasonable
12 grounds to believe that the property has become contaminated.
13 If the property is contaminated, the department shall post a
14 written notice declaring that the department intends to issue an
15 order prohibiting use of the property as long as the property is
16 contaminated.

17 (c) The department shall compile a list of all cases of
18 contaminated property reported to the department. The
19 department may make the list of contaminated properties
20 available to health associations, landlord and realtor
21 organizations, prosecutors, and other interested groups. The
22 department shall promptly update the list of contaminated



1 properties to remove those that have been decontaminated
2 according to provisions of this chapter.

3 (d) The department may determine when the services of an
4 authorized contractor are necessary.

5 **§342J-C Unfit for use; order; notice; hearing.** (a) If,
6 after the inspection of the property, the department finds that
7 it is contaminated, then the property shall be found unfit for
8 use. The department shall cause to be served, either personally
9 or by certified mail, with return receipt requested, an order
10 prohibiting use upon all occupants and persons having any
11 interest therein. The department shall also post the order
12 prohibiting use in a conspicuous place on the property.

13 (b) If the whereabouts of persons with an interest in the
14 property is unknown and cannot be ascertained by the department
15 in the exercise of reasonable diligence, and the departmental
16 employee in charge of the investigation makes an affidavit to
17 that effect, then service of the order upon the unknown persons
18 may be made either by personal service or by mailing a copy of
19 the order by certified mail, postage prepaid, return receipt
20 requested, to each person at the address appearing on the real
21 property tax records of the county where the property is located
22 or at the address known to the county real property tax office,



1 and the order shall be posted conspicuously at the residence. A
2 copy of the order shall also be mailed, addressed to each person
3 or party having a recorded right, title, estate, lien, or
4 interest in the property. A copy of the order shall also be
5 filed with the bureau of conveyances or land court, as the case
6 may be, and the filing of the complaint or order shall have the
7 same force and effect as other lis pendens notices provided by
8 law.

9 (c) The order shall contain a notice that a hearing before
10 the department shall be held upon the request of a person
11 required to be notified of the order under this section. The
12 request for a hearing must be made within ten days of service of
13 the order. The hearing shall then be held within not less than
14 twenty days and not more than thirty days after service of the
15 order. In any hearing concerning whether property is fit for
16 use, the property owner has the burden of showing that the
17 property is decontaminated or fit for use. The department shall
18 prohibit use as long as the property is found to be
19 contaminated. The owner or any person having an interest in the
20 property may file an appeal of any order issued by the
21 department to circuit court. All appeal proceedings shall be
22 subject to section 91-14.

1 **§342J-D Decontamination by owner; requirements.** An owner
2 of contaminated property who desires to have the property
3 decontaminated shall use the services of an authorized
4 contractor unless otherwise authorized by the department. The
5 contractor shall prepare and submit a written work plan for
6 decontamination to the department. The department may charge a
7 reasonable fee for review of the work plan. If the work plan is
8 approved, the decontamination is completed, and the property is
9 retested according to the plan and properly documented, then the
10 department shall allow reuse of the property. A release for
11 reuse document shall be recorded in the bureau of conveyances or
12 land court, as the case may be, indicating the property has been
13 decontaminated in accordance with rules adopted pursuant to
14 section 342J-F.

15 **§342J-E Certification of contractors; denial, suspension,**
16 **or revocation of certificate; duties of department.** (a) A
17 contractor may not perform decontamination, demolition, or
18 disposal work unless issued a certificate by the department.
19 The department shall establish performance standards for
20 contractors by rule in accordance with chapter 91. The
21 department shall train and test, or may approve courses to train
22 and test, contractors and their employees on the essential



1 elements in assessing property used as an illegal drug
2 manufacturing or storage site to determine hazard reduction
3 measures needed, techniques for adequately reducing
4 contaminants, use of personal protective equipment, methods for
5 proper decontamination, demolition, removal, and disposal of
6 contaminated property, and relevant federal and state
7 regulations. Upon successful completion of the training, the
8 contractor or employee shall be certified.

9 (b) The department may require the successful completion
10 of annual refresher courses provided or approved by the
11 department for the continued certification of the contractor or
12 employee.

13 (c) The department shall provide for reciprocal
14 certification of any individual trained to engage in
15 decontamination, demolition, or disposal work in another state
16 when the prior training is shown to be substantially similar to
17 the training required by the department. The department may
18 require such individuals to take an examination or refresher
19 course before certification.

20 (d) The department may deny, suspend, or revoke a
21 certificate for failure to comply with the requirements of this
22 chapter or any rule adopted pursuant to this chapter. A



1 certificate may be denied, suspended, or revoked on any of the
2 following grounds:

- 3 (1) Failing to perform decontamination, demolition, or
4 disposal work under the supervision of trained
5 personnel;
- 6 (2) Failing to file a work plan;
- 7 (3) Failing to perform work pursuant to the work plan;
- 8 (4) Failing to perform work that meets the requirements of
9 the department; or
- 10 (5) The certificate was obtained by error,
11 misrepresentation, or fraud.

12 (e) A contractor who violates any provision of this part
13 may be assessed a fine not to exceed \$500 for each violation.

14 (f) The department shall prescribe fees by rule for the
15 issuance and renewal of certificates, the administration of
16 examinations, and for the review of training courses.

17 **§342J-F Standards for the decontamination of illegal drug**
18 **manufacturing sites.** The director shall adopt rules
19 establishing standards for the decontamination of a property
20 used as an illegal drug laboratory and methods for the testing
21 of ground water, surface water, soil, and septic tanks for
22 contamination. The rules shall establish decontamination



1 standards for hazardous chemicals, including but not limited to
2 methamphetamine, lead, mercury, and total volatile organic
3 compounds.

4 §342J-G Remedies not exclusive. Nothing in this part
5 shall be construed to limit state or county authority to act
6 under any other statute."

7 SECTION 3. If any provision of this Act, or the
8 application thereof to any person or circumstance is held
9 invalid, the invalidity does not affect other provisions or
10 applications of the Act, which can be given effect without the
11 invalid provision or application, and to this end the provisions
12 of this Act are severable.

13 SECTION 4. In codifying the new sections added by section
14 2 of this Act, the revisor of statutes shall substitute
15 appropriate section numbers for the letters used in designating
16 the new sections in this Act.

17 SECTION 5. This Act shall take effect on January 1, 2007.

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SB2232

Report Title:

Hazardous Chemicals; Illegal Drug Laboratories

Description:

Establishes a program for reporting illegal drug manufacturing laboratories, for proceedings to find them unfit for use, for site decontamination, and for certification of decontamination contractors.

