For An Act To Be Entitled

AN ACT TO PROTECT PROPERTY OWNERS FROM CONTAMINATION BY MANUFACTURING OF CONTROLLED SUBSTANCES; TO AUTHORIZE THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY TO CREATE A PROGRAM FOR REMEDIATION OF CONTAMINATED PROPERTY; TO REQUIRE PUBLIC NOTIFICATION OF CONTAMINATED PROPERTY; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO PROTECT PROPERTY OWNERS FROM CONTAMINATION BY MANUFACTURING OF CONTROLLED SUBSTANCES AND TO CREATE A PROGRAM FOR REMEDIATION AND NOTIFICATION OF CONTAMINATED PROPERTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 8, Chapter 7 is amended to add an additional subchapter to read as follows:

8-7-1401. Title.
This subchapter shall be known and may be cited as the "Controlled Substances Contaminated Property Cleanup Act".

8-7-1402. Professional cleanup of properties contaminated through the manufacture of controlled substances.
(a) The Arkansas Department of Environmental Quality shall:
(1) Establish and administer a certification program to:

   (A) Certify contractors who choose to undertake the inspection, sampling, remediation, and removal of contaminated materials from property contaminated through the manufacture of controlled substances; and

   (B) Require as a condition of certification that the contractors demonstrate that they have qualifications required to undertake inspection, sampling, remediation, and removal of contaminated materials from property contaminated through the manufacture of controlled substances;

(2) Have established the certification program no later than May 1, 2008;

(3) By March 1, 2008, establish standards for the remediation of properties contaminated through the manufacture of controlled substances;

(4) Make the certification program rules and the remediation standards available to law enforcement officials and the public:

   (A) On the department's website; and

   (B) In hard copy upon request to the department; and

(5) Annually review and update the remediation standards.

(b)(1) The Arkansas Pollution Control and Ecology Commission shall promulgate rules to implement the certification program for contractors in the inspection, sampling, remediation, and removal of contaminated materials from property contaminated through the manufacture of controlled substances.

(2) The rules promulgated by the commission under this section shall including without limitation:

   (A) Application forms for certification;

   (B) Continuing education requirements;

   (C) Professional and technical standards for certification;

   (D) Renewals of certification;

   (E) Procedures for revocation and other actions that affect the status of certification; and

   (F) Reasonable fees.

8-7-1403. Reporting of properties contaminated through the manufacture of controlled substances.

(a) If a private property owner finds an abandoned laboratory for the manufacture of controlled substances on his or her property and there has
been no active on-site law enforcement involvement, the property owner shall notify local law enforcement for proper removal of contaminated material.

(b)(1) If a property owner finds or becomes aware of evidence of a laboratory for the manufacture of controlled substances on his or her property, the property owner shall have the property inspected in accordance with the guidelines established by the Arkansas Department of Environmental Quality under this subchapter by a contractor certified by the department under § 8-7-1402.

(2) If the contractor selected by the property owner under subdivision (b)(1) of this section verifies that a laboratory for the manufacture of controlled substances has been on the property, the contractor shall notify the department and the department shall place the property on the contaminated properties list required under § 8-7-1404.

8-7-1404. Recordkeeping required.

(a) By May 1, 2008, the Arkansas Department of Environmental Quality shall maintain records concerning properties contaminated through the manufacture of controlled substances.

(b) The department shall:

(1) Create a list of properties contaminated through the manufacture of controlled substances;

(2) Place a contaminated property on the contaminated properties list;

(3) Not determine that a property has been adequately remediated unless:

(A)(i) The inspection, sampling, remediation, and removal of contaminated materials is performed by or under the direction and responsible charge of an individual who has obtained a certification under the rules established by the Arkansas Pollution Control and Ecology Commission under this subchapter.

(ii) The inspection, sampling, remediation, and removal of contaminated materials is performed by an employee of a public agency that has the responsibility of regulatory enforcement, emergency response, the protection of public health and welfare or the protection of the environment while the employee is acting in the course of that employment; and
(B) The property has met the remediation standards developed by the department;

(4)(A) Post the results of a cleanup on the department’s website for ten (10) working days after the department determines that the property has been adequately remediated.

(B) After the ten (10) working days of posting required under subdivision (b)(4)(A) of this section, the department shall remove from the department’s website the formerly contaminated property and the results of the cleanup; and

(5) Remove a property from the list when the department finds that the property has been adequately remediated.

(c)(1) The department shall make the list of properties contaminated through the manufacture of controlled substances available to law enforcement officials and to the public:

(A) On the department’s website; and

(B) In hard copy upon request to the department.

(2) The department shall keep hard copies of the information required under this section until the department has removed the property from the list of properties contaminated through the manufacture of controlled substances.

8-7-1405. Notice – Cleanup – Residual contamination.

(a) If a law enforcement officer discovers a laboratory for the manufacture of controlled substances or arrests a person for having equipment used in manufacturing controlled substances on any real property, the law enforcement officer shall at the time of the discovery or arrest deliver a copy of the notice of removal required under subsection (d) of this section to:

(1) The owner of the real property if the owner is present at the time of the discovery or arrest;

(2) The on-site manager if the on-site manager is present at the time of the discovery or arrest;

(3) An on-site drop box if available; or

(4) In the case of a tenant-owner unit in a space-rental mobile home or a recreational vehicle park to:

(A) The occupant if the occupant is on site at the time of
delivery; or

(B) The on-site park landlord if the on-site park landlord

is present at the time of delivery.

(b)(1) If neither the owner nor the on-site manager of a property used

in manufacturing controlled substances is on the property at the time of the

discovery of or arrest regarding a laboratory for the manufacture of

controlled substances, the law enforcement officer shall make every

reasonable effort to obtain the necessary contact information concerning the

owner from the tenant, property manager, or neighbors.

(2) Within five (5) business days after the discovery of or

arrest regarding a laboratory for the manufacture of controlled substances,

the law enforcement officer shall send the notice of removal required under

subsection (d) of this section by certified mail and regular mail to the

owner of the property and the owner's on-site manager or in the case of a

space-rental mobile home or a recreational vehicle park to the park landlord.

(3) The Arkansas Department of Environmental Quality shall

cooperate with the Arkansas Crime Information Center to create a computer

link that will allow the center to transfer to the department information

from the National Clandestine Laboratory Seizure Report required under 28

C.F.R. Part 23 that is relevant to the notice of removal required under

subsection (d) of this section.

(c)(1) At the time a law enforcement officer removes the gross

contamination from property used as a laboratory for the manufacture of

controlled substances, the law enforcement officer shall order the removal of

all persons from the residually contaminated portion of the property or

dwelling unit or in the case of a space-rental mobile home or a recreational

vehicle park from the unit located on the property.

(2) After the law enforcement officer removes all persons under

subdivision (c)(1) of this section, the law enforcement officer shall affix

the notice of removal required under subsection (d) of this section in a

conspicuous place on the property or in the case of a space-rental mobile

home or a recreational vehicle park on the unit located on the property.

(d) The notice of removal under this section shall be in writing and

shall contain all of the following:

(1) The word “WARNING” in large bold type at the top and the

bottom of the notice;
(2) The date of the seizure and removal;
(3) The address or location of the property, including the identification of any dwelling unit, room number, apartment number, or vehicle number;
(4) The name of the law enforcement agency that seized the laboratory for the manufacture of controlled substances and the agency’s contact telephone number;
(5) A list of telephone numbers and contact information for all local and state agencies involved in the process of remediation;
(6) The contact numbers for local and state agencies associated with the cleanup of laboratories for the manufacture of controlled substances; and
(7) A statement that:
   
   (A) A laboratory for the manufacture of controlled substances was discovered on the property;
   (B) Chemicals or equipment, or both, that were used in the manufacture of controlled substances were seized at the property;
   (C) Hazardous substances, toxic chemicals, or other waste products may still be present on the property or in the case of space-rental mobile home or a recreational vehicle park, in the unit located on the property;
   (D)(i) It is unlawful for any unauthorized person to enter a residually contaminated property or in the case of a space-rental mobile home or recreational vehicle park the unit located on the property until the Arkansas Department of Environmental Quality establishes that the portion of the property identified as residually contaminated has been properly remediated.

   (ii) As used in subdivision (d)(7)(D)(i) of this section, "authorized person" means:
   
   (a) An employee of the Arkansas Department of Environmental Quality;
   (b) A law enforcement officer;
   (c) The owner of a residually contaminated property; and
   (d) A representative of an owner of a residually contaminated property if the representative has signed a
waiver of liability;

(E) Failure to comply with § 8-7-1405 is a violation of
the department’s rules pertaining to the cleanup of laboratories for the
manufacture of controlled substances;

(F) Disturbing the notice of removal posted on the
property is a violation of the department’s rules concerning the cleanup of
laboratories for the manufacture of controlled substances; and

(G) The owner of the property is responsible for
remediating the residually contaminated portion of the property in compliance
with the department’s rules concerning the cleanup of laboratories for the
manufacture of controlled substances.

8-7-1406. Remediated property.

(a) After property contaminated through the manufacture of controlled
substances is remediated and the property owner receives official
notification from the Arkansas Department of Environmental Quality, no
person, including the property owner, landlord, and real estate agent, is
required to report or otherwise disclose the past contamination.

(b) Unless retention is mandated by federal law, the department shall
destroy all copies of information required to be kept under this subchapter
that refer to a specific property location once the property is officially
removed from the contaminated properties list.

8-7-1407. Penalties.

Any person who pleads guilty or nolo contendere to or is found guilty
of violating § 8-7-1405 (d)(7)(D) or § 8-7-1405 (E) is guilty of a Class B
misdemeanor.

/s/ Broadway