

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 864 of the Regular Session

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007  
4

As Engrossed: S3/14/07

**A Bill**

SENATE BILL 829

5 By: Senator Broadway  
6  
7

**For An Act To Be Entitled**

9 AN ACT TO PROTECT PROPERTY OWNERS FROM  
10 CONTAMINATION BY MANUFACTURING OF CONTROLLED  
11 SUBSTANCES; TO AUTHORIZE THE ARKANSAS DEPARTMENT  
12 OF ENVIRONMENTAL QUALITY TO CREATE A PROGRAM FOR  
13 REMEDIATION OF CONTAMINATED PROPERTY; TO REQUIRE  
14 PUBLIC NOTIFICATION OF CONTAMINATED PROPERTY; AND  
15 FOR OTHER PURPOSES.  
16

**Subtitle**

17 AN ACT TO PROTECT PROPERTY OWNERS FROM  
18 CONTAMINATION BY MANUFACTURING OF  
19 CONTROLLED SUBSTANCES AND TO CREATE A  
20 PROGRAM FOR REMEDIATION AND NOTIFICATION  
21 OF CONTAMINATED PROPERTY.  
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
26

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

29 8-7-1401. Title.

30 This subchapter shall be known and may be cited as the "Controlled  
31 Substances Contaminated Property Cleanup Act".  
32

33 8-7-1402. Professional cleanup of properties contaminated through the  
34 manufacture of controlled substances.

35 (a) The Arkansas Department of Environmental Quality shall:



1           (1) Establish and administer a certification program to:

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

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

9           (2) Have established the certification program no later than May  
10 1, 2008;

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

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

15                   (A) On the department's website; and

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

17           (5) Annually review and update the remediation standards.

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

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

24                   (A) Application forms for certification;

25                   (B) Continuing education requirements;

26                   (C) Professional and technical standards for  
27 certification;

28                   (D) Renewals of certification;

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

31                   (F) Reasonable fees.

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33           8-7-1403. Reporting of properties contaminated through the manufacture  
34 of controlled substances.

35           (a) If a private property owner finds an abandoned laboratory for the  
36 manufacture of controlled substances on his or her property and there has

1 been no active on-site law enforcement involvement, the property owner shall  
2 notify local law enforcement for proper removal of contaminated material.

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

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

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15 8-7-1404. Recordkeeping required.

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

19 (b) The department shall:

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

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

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

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

31 (ii) The inspection, sampling, remediation, and  
32 removal of contaminated materials is performed by an employee of a public  
33 agency that has the responsibility of regulatory enforcement, emergency  
34 response, the protection of public health and welfare or the protection of  
35 the environment while the employee is acting in the course of that  
36 employment; and

1                   (B) The property has met the remediation standards  
2 developed by the department;

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

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

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

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

15                   (A) On the department's website; and

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

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

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22                   8-7-1405. Notice – Cleanup – Residual contamination.

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

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

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

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

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

36                   (A) The occupant if the occupant is on site at the time of

1 delivery; or

2 (B) The on-site park landlord if the on-site park landlord  
3 is present at the time of delivery.

4 (b)(1) If neither the owner nor the on-site manager of a property used  
5 in manufacturing controlled substances is on the property at the time of the  
6 discovery of or arrest regarding a laboratory for the manufacture of  
7 controlled substances, the law enforcement officer shall make every  
8 reasonable effort to obtain the necessary contact information concerning the  
9 owner from the tenant, property manager, or neighbors.

10 (2) Within five (5) business days after the discovery of or  
11 arrest regarding a laboratory for the manufacture of controlled substances,  
12 the law enforcement officer shall send the notice of removal required under  
13 subsection (d) of this section by certified mail and regular mail to the  
14 owner of the property and the owner's on-site manager or in the case of a  
15 space-rental mobile home or a recreational vehicle park to the park landlord.

16 (3) The Arkansas Department of Environmental Quality shall  
17 cooperate with the Arkansas Crime Information Center to create a computer  
18 link that will allow the center to transfer to the department information  
19 from the National Clandestine Laboratory Seizure Report required under 28  
20 C.F.R. Part 23 that is relevant to the notice of removal required under  
21 subsection (d) of this section.

22 (c)(1) At the time a law enforcement officer removes the gross  
23 contamination from property used as a laboratory for the manufacture of  
24 controlled substances, the law enforcement officer shall order the removal of  
25 all persons from the residually contaminated portion of the property or  
26 dwelling unit or in the case of a space-rental mobile home or a recreational  
27 vehicle park from the unit located on the property.

28 (2) After the law enforcement officer removes all persons under  
29 subdivision (c)(1) of this section, the law enforcement officer shall affix  
30 the notice of removal required under subsection (d) of this section in a  
31 conspicuous place on the property or in the case of a space-rental mobile  
32 home or a recreational vehicle park on the unit located on the property.

33 (d) The notice of removal under this section shall be in writing and  
34 shall contain all of the following:

35 (1) The word "WARNING" in large bold type at the top and the  
36 bottom of the notice;

1           (2) The date of the seizure and removal;

2           (3) The address or location of the property, including the  
3 identification of any dwelling unit, room number, apartment number, or  
4 vehicle number;

5           (4) The name of the law enforcement agency that seized the  
6 laboratory for the manufacture of controlled substances and the agency's  
7 contact telephone number;

8           (5) A list of telephone numbers and contact information for all  
9 local and state agencies involved in the process of remediation;

10          (6) The contact numbers for local and state agencies associated  
11 with the cleanup of laboratories for the manufacture of controlled  
12 substances; and

13          (7) A statement that:

14               (A) A laboratory for the manufacture of controlled  
15 substances was discovered on the property;

16               (B) Chemicals or equipment, or both, that were used in the  
17 manufacture of controlled substances were seized at the property;

18               (C) Hazardous substances, toxic chemicals, or other waste  
19 products may still be present on the property or in the case of space-rental  
20 mobile home or a recreational vehicle park, in the unit located on the  
21 property;

22               (D)(i) It is unlawful for any unauthorized person to enter  
23 a residually contaminated property or in the case of a space-rental mobile  
24 home or recreational vehicle park the unit located on the property until the  
25 Arkansas Department of Environmental Quality establishes that the portion of  
26 the property identified as residually contaminated has been properly  
27 remediated.

28                       (ii) As used in subdivision (d)(7)(D)(i) of this  
29 section, "authorized person" means:

30                               (a) An employee of the Arkansas Department of  
31 Environmental Quality;

32                               (b) A law enforcement officer;

33                               (c) The owner of a residually contaminated  
34 property; and

35                               (d) A representative of an owner of a  
36 residually contaminated property if the representative has signed a

1 waiver of liability;

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

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

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

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13 8-7-1406. Remediated property.

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

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

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24 8-7-1407. Penalties.

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

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29 */s/ Broadway*

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31 *APPROVED: 4/3/2007*