



Ohio Legislative Service Commission

Bill Analysis

Audra Tidball

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(As Introduced)

Sens. LaRose and Beagle, Oelslager, Tavares, Cafaro

BILL SUMMARY

- Requires a law enforcement agency that discovers an illegal methamphetamine manufacturing laboratory ("meth lab") on real property to notify the property owner, the local board of health, and, if it appears that children are living on the property, the local public children services agency.
- Requires a board of health to declare property it determines has an illegal meth lab on it a public health hazard that may not be occupied until the contamination is remediated by a certified methamphetamine remediation contractor in accordance with standards and procedures to be established pursuant to the bill.
- Specifies a procedure by which a property owner may challenge a public health hazard declaration.
- Requires a property owner to remediate property declared to be a public health hazard by retaining a certified methamphetamine remediation contractor.
- Requires a board of health to determine when a remediation project has been completed and to declare remediated property to no longer be a public health hazard.
- Requires the Director of Health to (1) adopt rules governing remediation and the certification of remediation contractors, (2) certify contractors, and (3) maintain a public list of certified contractors.
- Requires a transferor of real property to disclose to a transferee information about property that has been declared a public health hazard and has not been remediated or on which an illegal meth lab is or has been located, and provides remedies for nondisclosure.

CONTENT AND OPERATION

Remediation of property housing methamphetamine laboratories

The bill creates a procedure through which a board of health may require the remediation of real property on which an illegal methamphetamine manufacturing laboratory ("meth lab") has been discovered. Under existing law, an illegal meth lab is a laboratory or other premises that is currently used for the illegal manufacture or production of methamphetamine. The bill expands the definition to also include a laboratory or premises that was previously used for such purposes.¹

Notice by law enforcement of discovery of meth lab

The bill requires a law enforcement agency that discovers what appears to be an illegal meth lab on real property to give written notice of the location of the real property to all of the following:

- (1) The owner of record or the owner's statutory agent;
- (2) The board of health of the city or general health district in which the property is located;
- (3) The public children services agency serving the county in which the property is located, if it appears to the law enforcement agency that children are living on the property.

The notice may be in electronic form² and must include the location within the structure and the unit number if the laboratory is in a hotel, apartment building, or similar structure. The notice must contain all information specified in rules adopted by the Director of Health and may be provided on a form included in the rules.³

Action by board of health

Within 30 days after receiving a notice, a board of health must determine whether the structure or unit is an illegal meth lab. If it is, the board must declare the property, structure, or unit to be a public health hazard that may not be occupied until the board receives certification by affidavit from a certified methamphetamine

¹ R.C. 3745.13(B)(2).

² R.C. 3744.01(F).

³ R.C. 3744.12.



remediation contractor that a remediation project has been completed under standards and procedures established by rules adopted by the Director of Health.⁴

If the board declares a public health hazard, then, within the same 30 days, it must deliver written notice, which may be in electronic form, to the property owner of record or the owner's statutory agent specifying all of the following:⁵

- That the property or a structure or unit on the property has been declared a public health hazard that may not be occupied until it has been remediated;
- The procedure for challenging the declaration;
- The standards and procedures for methamphetamine remediation as set forth in the rules;
- That the public health hazard declaration will not be lifted until the board receives certification from a certified methamphetamine remediation contractor that a remediation project has been completed in accordance with the rules;
- Directions for accessing the Director's list of certified methamphetamine remediation contractors.

The board must afford the owner the opportunity for an adjudication in which the owner may present evidence to challenge the public health hazard declaration, and it must maintain in its records a notice containing certain information, including a description of the property involved.⁶

Action by property owner

The owner of real property that is declared a public health hazard due to the existence of a meth lab must cause remediation of contamination of the property, structure, or unit by a certified methamphetamine remediation contractor and pay the costs of the remediation. If the owner did not create, operate, or consent to the operation of the meth lab, the owner has a cause of action to recover damages against any person who created or operated it or occupied the structure or unit and consented to the creation or operation of the meth lab. The owner may recover all monetary losses

⁴ R.C. 3744.13(A).

⁵ R.C. 3744.13(B).

⁶ R.C. 3744.13(C) and (D).

incurred because of contamination of the property, structure, or unit, including reasonable attorney's fees.⁷

Remediation projects

A certified methamphetamine remediation contractor must conduct remediation projects under standards and procedures established in the Director's rules, including worker protection standards and procedures. A board of health may conduct inspections of remediation projects to monitor compliance with the rules and may charge fees authorized by the rules. Inspections may be scheduled or random.⁸

On completing a remediation project, the contractor must certify in an affidavit to the board of health that the project has been completed under the rules.⁹ Within 60 days after receiving the certification, the board must either accept the certification as a final determination that the project has been completed under the rules or conduct an independent investigation to make that determination. Within 30 days after accepting the certification or making its own determination that the project has been properly completed, the board must certify that the property, structure, or unit is no longer a public health hazard and may be occupied. The board must deliver a written notice, which may be in electronic form, of the certification to the owner of record or to the owner's statutory agent and must maintain a copy of the certification in its records.

If the board finds that the project has not been completed under the rules, it must, within 30 days, notify the owner or the owner's agent of the reasons for the determination. Thereafter, if the owner submits a new certification from a certified methamphetamine remediation contractor, the board must either accept the new certification or make an independent investigation, as described above.¹⁰

Rules of the Director of Health

The bill requires the Director of Health, within nine months after the bill's effective date, to adopt rules governing methamphetamine remediation and, within one year after the bill's effective date, rules providing for the certification of remediation contractors. In adopting the rules, the Director must consider process-based recommendations regarding methamphetamine remediation issued by the U.S. Environmental Protection Agency, including Voluntary Guidelines for

⁷ R.C. 3744.15.

⁸ R.C. 3744.16.

⁹ R.C. 3744.17.

¹⁰ R.C. 3744.18.



Methamphetamine Laboratory Cleanup and any other recommendations or guidelines the Director considers appropriate.¹¹

Rules governing remediation

The rules governing remediation must include all of the following:¹²

- Process-based standards and procedures for methamphetamine remediation, including removal and disposal of contaminated material;
- Standards and procedures for protecting the health and safety of workers engaged in methamphetamine remediation;
- Record-keeping and reporting requirements for certified methamphetamine remediation contractors;
- Professional liability insurance requirements for certified contractors;
- Record-keeping and reporting requirements for boards of health with reference to methamphetamine remediation;
- Standards and procedures to be used by a board of health to determine whether a methamphetamine remediation project has been completed in accordance with the rules;
- Fees that a board of health may charge if it elects to conduct inspections;
- Information that must be provided by a law enforcement agency in a notice regarding the discovery of what appears to be an illegal meth lab and a form that may be used to provide the notice;
- Any other rules the Director considers appropriate to implement the bill's remediation provisions.

Rules providing for certification of contractors

The rules governing the certification of methamphetamine remediation contractors must include all of the following:¹³

¹¹ R.C. 3744.02(C).

¹² R.C. 3744.02(A).

¹³ R.C. 3744.02(B).



- Training and qualifications for contractors to be eligible for certification;
- Application forms and procedures;
- Renewal procedures, including any continuing education requirements;
- Fees for initial certification and renewal;
- Standards and procedures for suspension, revocation, and reinstatement of certification.

Certification of remediation contractors

The bill requires that persons wishing to be certified as methamphetamine remediation contractors apply to the Director. The Director must certify an applicant who has the training and qualifications required by the rules and who pays the fee. A certificate is good for two years and may be renewed in accordance with standard renewal procedures set forth in existing law for occupational licenses and certificates.¹⁴

An individual (see **COMMENT**) who is licensed, certified, or otherwise approved under the law of another state to perform functions substantially similar to those of a methamphetamine remediation contractor may apply for certification. If the Director determines that the standards for licensure, certification, or approval in the other state are substantially equivalent to those established under the bill and the Director's rules, the Director must certify the applicant.¹⁵

The bill authorizes the Director, after providing an opportunity for an administrative adjudication, to reject an application for initial certification or renewal or to suspend or revoke a certificate for any violation of the bill's provisions or of the Director's rules, for failure to pay a required fee, for any material misrepresentation in an application for a certificate or renewal of a certificate, or failure to meet the requirements established in the rules.¹⁶

The Director must maintain a list of certified contractors. The information contained in the list is a public record and is open to inspection and copying.¹⁷

¹⁴ R.C. 3744.03, 3744.04(A) and (B), and 4745.01(A).

¹⁵ R.C. 3744.04(C).

¹⁶ R.C. 3744.06.

¹⁷ R.C. 3744.09.

Abatement of nuisances

The bill states that it does not limit the authority of the state or any political subdivision to declare property on which an illegal meth lab is located a nuisance requiring abatement and to order an abatement of the nuisance.¹⁸

Transfer of real property that is declared a public health hazard

Required disclosures

Under current law, a person who transfers real property to another must disclose to the transferee certain information, such as the water source for the property and the presence of asbestos on the property.¹⁹ The bill requires the transferor to disclose the following additional information:

- **Nonremediated public health hazards** – a declaration that the real property or a structure or unit to be transferred has been declared a public health hazard under the bill, if the property, structure, or unit has not been certified as being no longer a public health hazard;
- **Meth labs not discovered by law enforcement** – actual knowledge that the transferor has that an illegal meth lab was or is located on the property or in a structure or unit, even if the property, structure, or unit has never been declared a public health hazard.

The disclosure must be made by delivering to the transferee or the transferee's agent a written, signed, and dated disclosure document that includes a copy of the declaration, if applicable.²⁰

The bill states that its disclosure requirements do not limit or abridge other obligations to disclose information under statutory or common law and do not bar the application of any legal or equitable defense that a transferor may have in a civil action brought by the transferee.²¹

¹⁸ R.C. 3744.20.

¹⁹ R.C. 5302.30(D)(1), not in the bill.

²⁰ R.C. 5302.31(B).

²¹ R.C. 5302.31(F).



Remedies for nondisclosure

If the transferor fails to disclose required information, the transferee may rescind the transfer agreement without incurring any legal liability to the transferor. On rescission, the transferor must return any deposits made by the transferee in connection with the proposed transfer. To rescind a transfer agreement, the transferee must have a document of rescission delivered to the transferor or the transferor's agent by 5 p.m. of the third business day following the date on which the transferee or the transferee's agent receives the disclosure or before the scheduled closing, whichever is earlier.²²

The existence or nonexistence of a right to rescind under the bill does not affect any other causes of action or remedies that a transferee may have against a transferor. The bill gives a transferee a cause of action to recover damages for all monetary loss incurred because of a transferor's failure to disclose. Damages may include the cost of remediation; damages for injury, death, or loss to person or property; and reasonable attorney's fees. However, a transferor is not liable if, at the time of the closing, the transferor did not have actual knowledge that the real property or a structure or unit had been declared a public health hazard or that an illegal meth lab was or had been located on the property or in a structure or unit.²³

Delivery of documents

The documents related to disclosure and rescission described above may be delivered to a party or the party's agent by personal delivery, ordinary or certified mail, or fax.²⁴

Effective date

The bill provides that its provisions governing the reporting of illegal meth labs, declarations of public health hazards, remediation of property, and disclosures upon transfer take effect 15 months after the bill is enacted.²⁵ Those parts of the bill dealing with the adoption of rules by the Director of Health and the certification of remediation contractors take effect as usual.

²² R.C. 5302.31(C).

²³ R.C. 5302.31(D) and (G).

²⁴ R.C. 5302.31(E).

²⁵ Section 3.



COMMENT

The bill allows "persons" to apply for certification as methamphetamine remediation contractors, but it authorizes the Director of Health to certify "individuals" who have been licensed or certified in other states. "Person" includes a corporation or other business entity.²⁶ "Individual" generally means a natural person,²⁷ that is, a human being. In the bill, "individual" probably should be "person."

HISTORY

ACTION	DATE
Introduced	03-04-15

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²⁶ R.C. 1.59.

²⁷ See, e.g., R.C. 1322.01(S), 3904.01(I), and 5747.01(G).

