

HOUSE BILL NO. 401

INTRODUCED BY M. CAFERRO, KAUFMANN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO METHAMPHETAMINE
5 CONTAMINATION; CLARIFYING THE DEFINITION OF "INHABITABLE PROPERTY"; PROHIBITING A
6 CONTAMINATED PROPERTY FROM BEING INHABITED UNTIL THE PROPERTY IS PROPERLY
7 REMEDIATED; AUTHORIZING ADMINISTRATIVE AND CIVIL PENALTIES; ESTABLISHING THE
8 METHAMPHETAMINE CONTAMINATION CLEANUP ACCOUNT; AMENDING SECTIONS 75-10-1302,
9 75-10-1305, AND 75-10-1306, MCA; AND PROVIDING AN EFFECTIVE DATE."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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13 **Section 1.** Section 75-10-1302, MCA, is amended to read:
14 **"75-10-1302. Definitions.** Unless the context requires otherwise, in this part, the following definitions
15 apply:

16 (1) "Board" means the board of environmental review provided for in 2-15-3502.
17 ~~(1)~~(2) "Department" means the department of environmental quality provided for in 2-15-3501.
18 ~~(2)~~(3) (a) "Inhabitable property" means:
19 ~~(i) any building or structure used as a clandestine methamphetamine drug lab that is intended to be~~
20 ~~primarily occupied by people, either as a dwelling or a business, including a storage facility; or, mobile home, or~~
21 ~~recreational vehicle; OR RECREATIONAL VEHICLE that may be sold, leased, or rented for any length of time; or~~
22 ~~—— (ii) a vehicle.~~
23 (b) The term does not mean any water system, sewer system, land, or water outside of a building or
24 structure described in subsection ~~(2)~~(3)~~(a)~~(a).

25 ~~(3)~~(4) "Surface material" means any porous or nonporous substance common to the interior of a building
26 or structure, including but not limited to ceilings and walls, window coverings, floors and floor coverings, counters,
27 furniture, heating and cooling duct work, and any other surfaces to which inhabitants of the building or structure
28 may be exposed."
29

30 **Section 2.** Section 75-10-1305, MCA, is amended to read:

1 **"75-10-1305. Occupant notice Notice by owner of inhabitable property -- immunity.** (1) An owner
 2 of inhabitable property that is known by the owner to have been ~~used as a clandestine methamphetamine drug~~
 3 ~~lab~~ exposed to the use, presence, or processing of methamphetamine shall notify in writing any subsequent
 4 ~~occupant or purchaser, lessee, or renter~~ of the inhabitable property of that fact if the inhabitable property has not
 5 been remediated to the standards established in 75-10-1303 by a contractor who is certified in accordance with
 6 75-10-1304.

7 (2) An owner or an owner's agent referred to in subsection (1) may provide notice to a subsequent
 8 ~~occupant or purchaser, lessee, or renter~~ that the owner or the owner's agent has submitted:

9 (a) documentation to the department by a contractor who is certified pursuant to 75-10-1304 that the
 10 inhabitable property has been remediated to the standards established in 75-10-1303; or

11 (b) documentation by a certified contractor that the property meets the decontamination standards
 12 without decontamination.

13 (3) Notice as required or authorized in this section must occur before agreement to a lease or sale of
 14 the inhabitable property.

15 (4) If the department has confirmed that the decontamination standard provided for in 75-10-1303 has
 16 been met and if notice has been given as provided in subsections (2) and (3), the owner and the owner's agent
 17 are not liable in any action brought by a person who has been given notice that is based on the presence of
 18 methamphetamine in an inhabitable property.

19 (5) The immunity provided for in subsection (4) does not apply to an owner or an owner's agent who
 20 caused the methamphetamine contamination."

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22 **Section 3.** Section 75-10-1306, MCA, is amended to read:

23 **"75-10-1306. Reporting requirements -- prohibition.** (1) Whenever a state or local law enforcement
 24 agency becomes aware that an inhabitable property has been contaminated by ~~its use as a clandestine~~
 25 ~~methamphetamine drug lab~~ the use, presence, or processing of methamphetamine, the agency shall report the
 26 contamination to the department and to the local health officer.

27 (2) The department shall maintain a list of inhabitable property that has been reported as contaminated,
 28 and the list must be made available to the public through a website except as provided in subsection ~~(3)~~ (4).

29 (3) An inhabitable property listed pursuant to subsection (2) may not be inhabited until the property has
 30 been properly remediated to the standards established in 75-10-1303 or it has been documented to the

1 department's satisfaction that the inhabitable property meets the decontamination standards without
 2 decontamination.

3 ~~(3)~~(4) Upon confirmation by the department that an inhabitable property has been properly remediated
 4 to the standards established in 75-10-1303 or that the inhabitable property meets the decontamination standards
 5 without decontamination, the department shall remove the inhabitable property from the list required in subsection
 6 (2). The department shall provide written notification to the local health officer and the property owner of record
 7 when the documentation shows that the inhabitable property has been properly assessed or remediated.

8 ~~(4)~~(5) The department may adopt rules establishing reasonable requirements for the sufficiency of
 9 documentation to be provided by a certified contractor.

10 ~~(5)~~(6) Notwithstanding any other provision of law, once an inhabitable property has been removed from
 11 the list required in subsection (2), a property owner, landlord, or real estate agent is not required to report or
 12 otherwise disclose the past contamination."
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14 **NEW SECTION. Section 4. Administrative enforcement.** (1) If the department believes that a violation
 15 of this part, a rule adopted under this part, or an order issued under this part has occurred, it may serve written
 16 notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the
 17 provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to
 18 constitute a violation. The notice must include an order to take necessary corrective action within a reasonable
 19 period of time. The time period must be stated in the order. Service is complete on the date of mailing.

20 (2) If the alleged violator does not request a hearing before the board within 30 days of the date of
 21 service, the order is final.

22 (3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the
 23 board shall schedule a hearing. After the hearing is held, the board may:

24 (a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation
 25 has occurred; or

26 (b) rescind the department's order if the board finds that a violation has not occurred.

27 (4) An order issued by the department or the board may set a date by which the violation must cease
 28 and set a time limit for the violator to correct the violation.

29 (5) (a) An action initiated by the department under this section may include an administrative penalty not
 30 to exceed \$500 for each day of violation. Administrative penalties collected under this section must be deposited

1 in the methamphetamine contamination cleanup account provided for in [section 6].

2 (b) Penalties assessed under this section must be determined in accordance with the penalty factors
3 in 75-1-1001.

4 (6) The contested case provisions of the Montana Administrative Procedure Act provided for in Title 2,
5 chapter 4, part 6, apply to a hearing under this section.

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7 **NEW SECTION. Section 5. Civil penalty.** (1) A district court may assess a civil penalty of not more than
8 \$5,000 upon a property owner or an owner's agent that violates the provisions of 75-10-1306(3).

9 (2) Penalties provided for in subsection (1) are recoverable in an action brought by the department.

10 (3) Penalties collected under this section must be deposited in the methamphetamine contamination
11 cleanup account provided for in [section 6].

12 (4) An action under this section does not bar enforcement by injunction or other appropriate civil or
13 administrative remedies.

14
15 **NEW SECTION. Section 6. Methamphetamine contamination cleanup account.** (1) There is a
16 methamphetamine contamination cleanup account in the state special revenue fund to the credit of the
17 department.

18 (2) The methamphetamine contamination cleanup account consists of money deposited into the account
19 from FEES COLLECTION PURSUANT TO 75-10-1304, FROM administrative penalties collected pursuant to [section 4],
20 and from civil penalties collected pursuant to [section 5]. Any interest earned on the account must be deposited
21 into the account.

22 (3) The methamphetamine contamination cleanup account must be used by the department to implement
23 the provisions of this part.

24
25 **NEW SECTION. Section 7. Codification instruction.** [Sections 4 through 6] are intended to be codified
26 as an integral part of Title 75, chapter 10, part 13, and the provisions of Title 75, chapter 10, part 13, apply to
27 [sections 4 through 6].

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29 **NEW SECTION. Section 8. Effective date.** [This act] is effective July 1, 2009.

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