

ENROLLED ACT NO. 52, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2008 BUDGET SESSION

AN ACT relating to public health and safety; providing that the discovery on property of hazardous material related to clandestine laboratory operations constitutes an incident requiring response under the Wyoming Emergency Response Act; providing for rules and regulations setting standards for remediation of clandestine laboratory operations; providing for securing of incident sites as specified; restricting transfer of property declared uninhabitable; providing for reimbursement of response costs; creating a clandestine laboratory remediation account; providing for reimbursement of response costs; providing for notice and time for private remediation; providing for due process; providing an appropriation; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 1-40-102(a) by creating a new paragraph (xii), 1-40-106(a)(iv), (v) and by creating a new paragraph (vi), 1-40-118(g)(i) by creating a new subparagraph (C), 1-40-208(a), 35-9-152(a)(iv), 35-9-153 by creating new subsections (h) and (j), 35-9-156(c), (d) and by creating new subsections (e) through (h), 35-9-157(b)(intro), 35-9-158(a) and 35-9-159(b) and by creating new subsections (d) through (f) are amended to read:

1-40-102. Definitions.

(a) As used in this act:

(xii) "Clandestine laboratory operation remediation" means a remediation of a clandestine laboratory operation carried out by a law enforcement

ORIGINAL SENATE
FILE NO. 0019

ENROLLED ACT NO. 52, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2008 BUDGET SESSION

agency acting as an emergency responder pursuant to W.S. 35-9-152(a)(i).

1-40-106. Eligibility for compensation.

(a) The victim or his dependent is entitled to compensation under this act if:

(iv) The appropriate law enforcement authorities were notified of the criminal act allegedly causing the injury to or death of the victim as soon as practical under the circumstance after perpetration of the offense and the claimant cooperates with appropriate law enforcement authorities with respect to the crime for which compensation is sought; ~~and~~

(v) The application for compensation is filed with the division within one (1) year after the date of the injury to or death of the victim, or within any extension of time the division allows for good cause shown; ~~and~~ and

(vi) The owner of real estate has paid all claims for reimbursement pursuant to W.S. 35-9-158(a)(ii).

1-40-118. Distribution of monies to crime victim service and victim assistance providers.

(g) To the extent the legislature provides funding for victim assistance providers that serve victims of all crimes, the division of victim services shall:

(i) Distribute the state funding provided for victim assistance providers as follows:

(C) If funds have been returned to the division pursuant to unfulfilled contracts under this

ORIGINAL SENATE
FILE NO. 0019

ENROLLED ACT NO. 52, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2008 BUDGET SESSION

subsection at the end of the fiscal year, prior to reversion pursuant to W.S. 9-2-1008, 9-2-1012(e) and 9-4-207(a), a law enforcement agency that has carried out a clandestine laboratory operation remediation may apply for compensation under this subsection for any remediation expenses not otherwise collected pursuant to W.S. 35-9-158(a). The maximum amount payable pursuant to this subsection to a law enforcement agency that has carried out a clandestine laboratory operation remediation shall be the amount set forth in the court approved expense report as provided under W.S. 35-9-158(a) minus amounts collected from other sources pursuant to W.S. 35-9-158(a).

1-40-208. Prompt return of property.

(a) Victims and witnesses have the right to have any personal property, which is not contraband, promptly returned and any real estate, subject to declaration as uninhabitable under W.S. 35-9-156(d), released to the control of the real estate owner, provided it does not interfere with prosecution, trial or appellate review of the case.

35-9-152. Definitions.

(a) As used in this act:

(iv) "Incident" means the release, or imminent threat of release, of a hazardous material, or a situation involving a potential weapon of mass destruction that requires the emergency action of responders to limit or prevent damage to life or property. "Incident" also includes the discovery of hazardous materials related to clandestine laboratory operations as defined in W.S. 35-7-1058;

ORIGINAL SENATE
FILE NO. 0019

ENROLLED ACT NO. 52, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2008 BUDGET SESSION

35-9-153. State emergency response commission; creation; duties.

(h) The commission shall, by rule and regulation, establish standards for protection of the safety of responding personnel during clandestine laboratory incident responses, standards for determining a site uninhabitable under W.S. 35-9-156(d), standards for determining the extent of contamination and standards for remediation required to render former clandestine laboratory operation sites safe for re-entry, habitation or use with respect to the following:

(i) Decontamination and sampling standards and best management practices for the inspection and decontamination of property and the disposal of contaminated debris;

(ii) Appropriate methods for the testing of buildings and interior surfaces, furnishings, soil and septic tanks for contamination;

(iii) When testing for contamination may be required; and

(iv) When a site may be declared remediated.

(j) The commission shall, by rule and regulation, establish due process standards for the protection of the property interests of real estate owners, subject to subsection (h) of this section.

35-9-156. Local response authority.

(c) Any unusual incident involving hazardous materials or weapons of mass destruction and any incident

ORIGINAL SENATE
FILE NO. 0019

ENROLLED ACT NO. 52, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2008 BUDGET SESSION

involving a clandestine laboratory operation shall be investigated to determine if a criminal act has occurred until it is determined otherwise. To ensure preservation of evidence while mitigating the threat to life and property under this subsection, a command structure with primary command authority by the appropriate law enforcement agency shall be implemented.

(d) The incident commander shall declare an incident ended when he has determined the threat to public health and safety has ended. Until the incident commander has declared the threat to public safety has ended the incident commander shall have the authority to issue an order on behalf of the political subdivision that any portion of the building, structure or land is uninhabitable, secure the portion of the building, structure or land that is uninhabitable and take appropriate steps to minimize exposure to identified or suspected contamination at the site or premise. If the subject of the site or premise is commercial real estate, the incident commander shall limit the declaration of uninhabitable to the areas affected by the clandestine laboratory operation and shall not declare the entire commercial real estate uninhabitable unless the entire commercial property has been documented and determined uninhabitable using the standards promulgated by the state emergency response commission under W.S. 35-9-153(h). The incident commander shall provide written notice to the commercial real estate owner, describing with specificity the extent of the commercial property deemed uninhabitable. Any property that is ordered uninhabitable under this subsection shall only be transferred or sold prior to remediation if full, written disclosure is made to the prospective purchaser, attached to the earnest money receipt if any, and shall accompany the sale documents but not be a part of the deed nor shall it be recorded. The transferor or seller shall notify the incident commander of

ORIGINAL SENATE
FILE NO. 0019

ENROLLED ACT NO. 52, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2008 BUDGET SESSION

the transfer or sale within ten (10) days of the transfer or sale.

(e) The order issued under subsection (d) of this section shall be in writing, shall state the grounds for the order and shall be filed in the office of the clerk of the district court of the county in which the building or structure is situated. A copy of the order shall be served in accordance with the Wyoming Rules of Civil Procedure upon the owner and any occupants of the building or structure with a written notice that the order has been filed and shall remain in force, unless the owner or occupant files his objections or answer with the clerk of the district court within the time specified in subsection (f) of this section. A copy of the order shall be posted in a conspicuous place upon the building or structure.

(f) Within twenty (20) days of service of an order issued under subsection (d) of this section, the owner or occupant may file with the clerk of the district court and serve upon the political subdivision issuing the order, an answer denying the existence of any of the allegations in the order. If no answer is filed and served, the court shall affirm the order declaring the site uninhabitable and fix a time when the order shall be enforced. If an answer is filed and served, the court shall hear and determine the issues raised as set forth in subsection (g) of this section.

(g) The court shall hold a hearing within eleven (11) days from the date of the filing of the answer. If the court sustains the order, the court shall fix a time within which the order shall be enforced. Otherwise, the court shall annul or set aside the order declaring the property to be uninhabitable.

ORIGINAL SENATE
FILE NO. 0019

ENROLLED ACT NO. 52, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2008 BUDGET SESSION

(h) An appeal from the judgment of the district court may be taken by any party to the proceeding in accordance with the Wyoming Rules of Appellate Procedure.

35-9-157. Right to claim reimbursement.

(b) Notwithstanding subsection (a) of this section and except with respect to a response to a clandestine laboratory operation incident, no person shall be liable under this act if the incident was caused by:

35-9-158. Expense recovery and civil remedies.

(a) The decision to commence a civil action to recover expenses shall be made by the state, political subdivision of the state or other unit of local government, including local emergency response authorities and regional response teams, in consultation with the attorney general or county or municipal attorney as appropriate. With respect to a civil action to recover expenses for a clandestine laboratory operation incident, the governing body shall first make such claim against the party responsible for the clandestine laboratory operation and shall use the proceeds of any asset forfeiture directly related to the building or structure containing the clandestine laboratory to offset expenses, including expenses for remediation of the site. Claims of expenses for remediation for a clandestine laboratory operation incident may be made against the owner of a building or structure containing a clandestine laboratory operation only as follows:

(i) The law enforcement agency acting as an emergency responder shall keep an accurate account of the expenses incurred in carrying out the remediation and shall report the actions and present a statement of the expenses

ORIGINAL SENATE
FILE NO. 0019

ENROLLED ACT NO. 52, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2008 BUDGET SESSION

incurred and the amount received from any salvage sale to the court for approval and allowance;

(ii) The court shall examine, correct, if necessary, and allow the expense account to the extent the expenses exceed those recovered from the party responsible for the clandestine laboratory operation. If the owner did not know or could not with reasonable diligence have known of the clandestine laboratory operation, the amount recoverable from the owner shall be limited to one percent (1%) of the fair market value as determined by the county assessor of that portion of the building, structure or land declared uninhabitable by the incident commander;

(iii) The amount allowed by the court constitutes a lien against the real property on which a clandestine laboratory operation incident occurred or was situated. If the amount is not paid by the owner within six (6) months after the amount has been examined and approved by the court, the real estate may be sold under court order by the county sheriff in the manner provided by law for the sale of real estate upon execution;

(iv) The proceeds of the sale shall be paid into the treasury of the governing body of the law enforcement agency acting as the emergency responder. If the amount received as salvage or upon sale exceeds the expenses allowed by the court, the court shall direct payment of the surplus to the previous owner for his use and benefit;

(v) Whenever any debt which is a lien pursuant to this subsection is paid and satisfied, the law enforcement agency acting as an emergency responder shall file notice of satisfaction of the lien statement in the office of the county clerk of any county in which the lien is filed; and

ORIGINAL SENATE
FILE NO. 0019

ENROLLED ACT NO. 52, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2008 BUDGET SESSION

(vi) If the expenses of the law enforcement agency exceed the amount allowed by the court pursuant to paragraph (ii) of this subsection, the law enforcement agency acting as an emergency responder may apply for reimbursement of the excess expenses from the funds as authorized by W.S. 1-40-118(g)(i)(C). If the expenses further exceed amounts available under W.S. 1-40-118(g)(i)(C), the emergency responder may apply for reimbursement from the clandestine laboratory remediation account created pursuant to W.S. 35-9-159(f).

35-9-159. Exceptions to reimbursements; exception to act; clandestine laboratory remediation fund.

(b) Except with respect to a response to a clandestine laboratory operation incident, the state, political subdivisions of the state or other unit of local government shall not be entitled to reimbursement under this act from any responsible party for an incident involving less than the following quantities of hazardous materials:

Hazard Class/Division from 49 CFR Article 100-185	Hazard Type	Quantity subject to reimbursement
1.1, 1.2, 1.3 (Table 1 materials)	Explosive Materials	Any quantity
1.4, 1.5, 1.6 (Table 2 materials)	Explosive Materials	1001 pounds
2.1 (Table 2 material)	Flammable Gas	150 gallons
2.3 (Table 1 material)	Poison Gas	Any quantity
3 (Table 2 material)	Flammable Liquid	150 gallons
3 (Table 2 material)	Combustible Liquid	300 gallons

ORIGINAL SENATE
FILE NO. 0019

ENROLLED ACT NO. 52, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2008 BUDGET SESSION

4.1	Flammable Solid or	11 pounds
4.2	Spontaneously Combustible	
(Table 2 materials)	Material	
4.3	Dangerous When Wet	3 pounds
(Table 1 material)		
5.1	Oxidizer	1001 pounds
(Table 2 material)	(Includes inorganic Peroxides)	
5.2	Organic Peroxide	66 pounds
(Table 1 material)		
6.1	Poison (Inhalation Hazard Zone A or B)	32 pounds
(Table 1 material)		
6.1	Poison (Other than Inhalation Hazard Zone A or B)	1001 pounds
(Table 2 material)		
6.2	Infectious Substance	1001 pounds
(Table 2 material)		
Class 7	Radioactive Material (Yellow Label III only)	Any quantity
(Table 1 material)		
Class 8	Corrosive Material	1001 pounds
(Table 2 material)		
Class 9	Miscellaneous Hazardous Material	1001 pounds
(Table 2 material)		

(d) Notwithstanding any other provision of this act, if a local law enforcement agency acting as an emergency responder does not find an immediate and substantial threat to public health when responding to a clandestine laboratory operation incident the local law enforcement agency discovering the clandestine laboratory operation shall provide written notice of the discovery to the owner of the property. The owner of the property shall have ninety (90) days to remediate the property in accordance with standards established pursuant to W.S. 35-9-153(h). If the property is not remediated within ninety (90) days of receipt of notice pursuant to this subsection, the law enforcement agency acting as an emergency responder may take remediation action as provided in rules authorized under W.S. 35-9-153(h). If the owner is unable to complete the remediation within ninety (90) days, the owner may

ORIGINAL SENATE
FILE NO. 0019

ENROLLED ACT NO. 52, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2008 BUDGET SESSION

request an extension of time from the local law enforcement agency which shall grant the extension if it finds:

(i) The owner is making a good faith effort to remediate the property; and

(ii) The owner has a practical time schedule to complete the remediation.

(e) If the law enforcement agency denies an extension pursuant to subsection (d) of this section, the owner may appeal to the district court within sixty (60) days of the issuance of the denial. The law enforcement agency's authority to take remediation action shall be stayed while the appeal is pending.

(f) There is created the clandestine laboratory remediation account to be administered by the attorney general. A local law enforcement agency acting as an emergency responder may apply for reimbursement from the account for expenses incurred in responding to a clandestine laboratory operation incident as provided in W.S. 35-9-158(a)(vi).

Section 2. There is appropriated one hundred fifty thousand dollars (\$150,000.00) from the general fund to the clandestine laboratory remediation account created by W.S. 35-9-159(f). This appropriation shall be for the period beginning with the effective date of this act and ending June 30, 2010. Notwithstanding any other provision of law, this appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2010. This appropriation shall not be included in the attorney general's 2011-2012 standard biennial budget request.

ORIGINAL SENATE
FILE NO. 0019

ENROLLED ACT NO. 52, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2008 BUDGET SESSION

Section 3. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk