

SENATE FILE NO. SF0019

Clandestine drug laboratories-remediation.

Sponsored by: Senator(s) Fecht and Representative(s)
Illoway, Meyer, Throne and Walsh

A BILL

for

1 AN ACT relating to public health and safety; providing that
2 the discovery on property of hazardous material related to
3 clandestine laboratory operations constitutes an incident
4 requiring response under the Wyoming Emergency Response
5 Act; providing for rules and regulations setting standards
6 for remediation of clandestine laboratory operations;
7 providing for securing of incident sites as specified;
8 restricting transfer of property declared uninhabitable;
9 providing for reimbursement of response costs; creating a
10 clandestine laboratory remediation account; providing for
11 reimbursement of response costs through the crime victims'
12 compensation account; providing for notice and time for
13 private remediation; providing an appropriation; and
14 providing for an effective date.

15

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

1

2 **Section 1.** W.S. 1-40-102(a) by creating a new
3 paragraph (xii), 1-40-118(g)(i) by creating a new
4 subparagraph (C), 35-9-152(a)(iv), 35-9-153 by creating a
5 new subsection (h), 35-9-156(c) and (d),
6 35-9-157(b)(intro), 35-9-158(a) and 35-9-159(b) and by
7 creating new subsections (d) through (f) are amended to
8 read:

9

10 **1-40-102. Definitions.**

11

12 (a) As used in this act:

13

14 (xii) "Clandestine laboratory operation
15 remediation" means a remediation of a clandestine
16 laboratory operation carried out by a law enforcement
17 agency acting as an emergency responder pursuant to W.S.
18 35-9-136.

19

20 **1-40-118. Distribution of monies to crime victim**
21 **service and victim assistance providers.**

22

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

4
5 (i) Distribute the state funding provided for
6 victim assistance providers as follows:

7
8 (C) If funds are available and unexpended
9 under this subsection at the end of the fiscal year, prior
10 to reversion pursuant to W.S. 9-2-1008, 9-2-1012(e) and
11 9-4-207(a), a law enforcement agency that has carried out a
12 clandestine laboratory operation remediation may apply for
13 compensation under this subsection for any remediation
14 expenses not otherwise collected pursuant to W.S.
15 35-9-158(a). The maximum amount payable pursuant to this
16 subsection to a law enforcement agency that has carried out
17 a clandestine laboratory operation remediation shall be the
18 amount set forth in the court approved expense report as
19 provided under W.S. 35-9-158(a) minus amounts collected
20 from other sources pursuant to W.S. 35-9-158(a).

21
22 **35-9-152. Definitions.**

23
24 (a) As used in this act:

1

2 (iv) "Incident" means the release, or imminent
3 threat of release, of a hazardous material, or a situation
4 involving a potential weapon of mass destruction that
5 requires the emergency action of responders to limit or
6 prevent damage to life or property. "Incident" also
7 includes the discovery of hazardous materials related to
8 clandestine laboratory operations as defined in W.S.
9 35-7-1058;

10

11 **35-9-153. State emergency response commission;**
12 **creation; duties.**

13

14 (h) The commission shall, by rule and regulation,
15 establish standards for protection of the safety of law
16 enforcement personnel during clandestine laboratory
17 incident responses and standards for remediation required
18 to render former clandestine laboratory operation sites
19 safe for re-entry, habitation or use with respect to the
20 following:

21

22 (i) Decontamination and sampling standards and
23 best management practices for the inspection and

1 decontamination of property and the disposal of
2 contaminated debris;

3
4 (ii) Appropriate methods for the testing of
5 buildings and interior surfaces, furnishings, soil and
6 septic tanks for contamination;

7
8 (iii) When testing for contamination may be
9 required; and

10
11 (iv) When a site may be declared remediated.

12
13 **35-9-156. Local response authority.**

14
15 (c) Any unusual incident involving hazardous
16 materials or weapons of mass destruction and any incident
17 involving a clandestine laboratory operation shall be
18 investigated to determine if a criminal act has occurred
19 until it is determined otherwise. To ensure preservation
20 of evidence while mitigating the threat to life and
21 property under this subsection, a command structure with
22 primary command authority by the appropriate law
23 enforcement agency shall be implemented.

1 (d) The incident commander shall declare an incident
2 ended when he has determined the threat to public health
3 and safety has ended. Until the incident commander has
4 declared the threat to public safety has ended the incident
5 commander shall have the authority to declare the site or
6 premise uninhabitable, secure the site or premise and take
7 appropriate steps to minimize exposure to identified or
8 suspected contamination at the site or premise. Any
9 property that is declared uninhabitable under this
10 subsection shall only be transferred or sold prior to
11 remediation if full, written disclosure is made to the
12 prospective purchaser, attached to the earnest money
13 receipt if any, and shall accompany the sale documents but
14 not be a part of the deed nor shall it be recorded. The
15 transferor or seller shall notify the incident commander of
16 the transfer or sale within ten (10) days of the transfer
17 or sale.

18
19 **35-9-157. Right to claim reimbursement.**
20

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

1

2 **35-9-158. Expense recovery and civil remedies.**

3

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

19

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

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

3
4 (ii) The court shall examine, correct, if
5 necessary, and allow the expense account to the extent the
6 expenses exceed those recovered from the party responsible
7 for the clandestine laboratory operation. If the owner did
8 not know or could not with reasonable diligence have known
9 of the clandestine laboratory operation, the amount
10 recoverable from the owner shall be limited to one percent
11 (1%) of the value of the real property on which the
12 clandestine laboratory operation incident occurred;

13
14 (iii) The amount allowed by the court
15 constitutes a lien against the real property on which a
16 clandestine laboratory operation incident occurred or was
17 situated. If the amount is not paid by the owner within
18 six (6) months after the amount has been examined and
19 approved by the court, the real estate shall be sold under
20 court order by the county sheriff in the manner provided by
21 law for the sale of real estate upon execution;

22
23 (iv) The proceeds of the sale shall be paid into
24 the treasury of the governing body of the law enforcement

1 agency acting as the emergency responder. If the amount
2 received as salvage or upon sale exceeds the expenses
3 allowed by the court, the court shall direct payment of the
4 surplus to the previous owner for his use and benefit;

5
6 (v) Whenever any debt which is a lien pursuant
7 to this subsection is paid and satisfied, the law
8 enforcement agency acting as an emergency responder shall
9 file notice of satisfaction of the lien statement in the
10 office of the county clerk of any county in which the lien
11 is filed; and

12
13 (vi) If the expenses of the law enforcement
14 agency exceed the amount allowed by the court pursuant to
15 paragraph (ii) of this subsection, the law enforcement
16 agency acting as an emergency responder may apply for
17 reimbursement of the excess expenses from the crime
18 victims' compensation account pursuant to W.S. 1-40-118(g).
19 If the expenses further exceed amounts available from the
20 crime victims' compensation account, the emergency
21 responder may apply for reimbursement from the clandestine
22 laboratory remediation account created pursuant to W.S.
23 35-9-159(f).

24

1 **35-9-159. Exceptions to reimbursements; exception to**
2 **act; clandestine laboratory remediation fund.**

3
4 (b) Except with respect to a response to a
5 clandestine laboratory operation incident, the state,
6 political subdivisions of the state or other unit of local
7 government shall not be entitled to reimbursement under
8 this act from any responsible party for an incident
9 involving less than the following quantities of hazardous
10 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	Combustible Liquid	300 gallons

1	(Table 2 material)		
2	4.1	Flammable Solid or	11 pounds
3	4.2	Spontaneously Combustible	
4	(Table 2 materials)	Material	
5	4.3	Dangerous When Wet	3 pounds
6	(Table 1 material)		
7	5.1	Oxidizer	1001 pounds
8	(Table 2 material)	(Includes inorganic	
9		Peroxides)	
10	5.2	Organic Peroxide	66 pounds
11	(Table 1 material)		
12	6.1	Poison (Inhalation	32 pounds
13	(Table 1 material)	Hazard Zone A or B)	
14	6.1	Poison (Other than	1001 pounds
15	(Table 2 material)	Inhalation Hazard Zone	
16		A or B)	
17	6.2	Infectious Substance	1001 pounds
18	(Table 2 material)		
19	Class 7	Radioactive Material	Any quantity
20	(Table 1 material)	(Yellow Label III only)	
21	Class 8	Corrosive Material	1001 pounds
22	(Table 2 material)		
23	Class 9	Miscellaneous	1001 pounds
24	(Table 2 material)	Hazardous Material	

25

26 (d) Notwithstanding any other provision of this act,

27 if a local law enforcement agency acting as an emergency

28 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 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

1 appeal to the district court within sixty (60) days of the
2 issuance of the denial. The law enforcement agency's
3 authority to take remediation action shall be stayed while
4 the appeal is pending.

5
6 (f) There is created the clandestine laboratory
7 remediation account to be administered by the attorney
8 general. A local law enforcement agency acting as an
9 emergency responder may apply for reimbursement from the
10 account for expenses incurred in responding to a
11 clandestine laboratory operation incident as provided in
12 W.S. 35-9-158(a)(vi).

13
14 **Section 2.** There is appropriated two hundred fifty
15 thousand dollars (\$250,000.00) from the general fund to the
16 clandestine laboratory remediation account created by W.S.
17 35-9-159(f). This appropriation shall be for the period
18 beginning with the effective date of this act and ending
19 June 30, 2010. Notwithstanding any other provision of law,
20 this appropriation shall not be transferred or expended for
21 any other purpose and any unexpended, unobligated funds
22 remaining from this appropriation shall revert as provided
23 by law on June 30, 2010. This appropriation shall not be

1 included in the attorney general's 2011-2012 standard
2 biennial budget request.

3

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

8

9 (END)