

By: Senator(s) Watson

To: Drug Policy; Judiciary,
Division B

SENATE BILL NO. 2046

1 AN ACT TO REQUIRE A SELLER OR TRANSFEROR OF REAL PROPERTY TO
2 DISCLOSE IN WRITING IF, TO HIS KNOWLEDGE, METHAMPHETAMINE
3 PRODUCTION HAS OCCURRED ON HABITABLE PROPERTY; TO DECLARE
4 LEGISLATIVE FINDINGS AND PURPOSE OF THE ACT; TO DEFINE CERTAIN
5 TERMS; TO ESTABLISH A DECONTAMINATION STANDARD FOR METHAMPHETAMINE
6 INSIDE HABITABLE PROPERTY UNLESS A DIFFERENT STANDARD IS ADOPTED
7 BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY; TO AUTHORIZE THE
8 DEPARTMENT OF ENVIRONMENTAL QUALITY TO ESTABLISH BY RULE THE
9 MINIMUM STANDARDS FOR TRAINING AND CERTIFICATION OF CONTRACTORS
10 WHO PERFORM REMEDIATION OF THE PROPERTY; TO REQUIRE STATE AND
11 LOCAL LAW ENFORCEMENT AGENCIES TO REPORT TO THE DEPARTMENT OF
12 ENVIRONMENTAL QUALITY WHENEVER HABITABLE PROPERTY HAS BEEN
13 CONTAMINATED BY ITS USE AS A CLANDESTINE METHAMPHETAMINE DRUG LAB;
14 TO REQUIRE THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO MAINTAIN A
15 LIST OF HABITABLE PROPERTIES THAT HAVE BEEN REPORTED AS
16 CONTAMINATED; TO AMEND SECTION 89-1-527, MISSISSIPPI CODE OF 1972,
17 IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

19 **SECTION 1.** The Legislature finds that some properties are
20 being contaminated with hazardous chemical residues created by the
21 manufacture of methamphetamine. Innocent members of the public
22 may be harmed when unknowingly exposed to these residues if the
23 properties are not decontaminated prior to any subsequent rental,
24 sale or use of the properties. Remediation of properties has been
25 frustrated by the lack of a decontamination standard. The purpose
26 of this act is to protect the public health, safety and welfare by
27 providing specific cleanup standards and authorizing the
28 department to establish a voluntary program that will provide for
29 a property decontamination process that will meet state standards.

30 **SECTION 2.** Unless the context requires otherwise, the
31 following definitions apply:

32 (a) "Department" means the Department of Environmental
33 Quality of the State of Mississippi.



34 (b) "Habitable property" means any building or
35 structure used as a clandestine methamphetamine drug lab that is
36 intended to be primarily occupied by people, either as a dwelling
37 or a business, including a storage facility, mobile home or
38 recreational vehicle, that may be sold, leased or rented for any
39 length of time, and does not mean any water system, sewer system,
40 land, or water outside of such a building or structure.

41 (c) "Surface material" means any porous or nonporous
42 substance common to the interior of a building or structure,
43 including, but not limited to, ceilings and walls, window
44 coverings, floors and floor coverings, counters, furniture,
45 heating and cooling duct work, and any other surfaces to which
46 inhabitants of the building or structure may be exposed.

47 **SECTION 3.** (1) The decontamination standard for
48 methamphetamine inside habitable property is less than or equal to
49 0.1 micrograms of methamphetamine per one hundred (100) square
50 centimeters of surface material unless a different standard is
51 adopted by the department by rule to protect human health. The
52 department may adopt standards by rule for precursors to
53 methamphetamine that are consistent with the standard for
54 methamphetamine.

55 (2) (a) The department may by rule establish the number and
56 locations of surface material samples to be collected based on the
57 circumstances of the contamination and acceptable testing methods.

58 (b) In the absence of a rule described in paragraph (a)
59 of this subsection, at least three (3) samples must be collected
60 from the surface material most likely to be contaminated at each
61 property.

62 **SECTION 4.** (1) The department is authorized to establish by
63 rule minimum standards for the training and certification of
64 contractors and their employees who are to perform the assessment
65 or remediation of habitable property contaminated by
66 methamphetamine residues.



67 (2) The department may train and test or may approve courses
68 to train and test contractors and their employees in the proper
69 methods of assessing, remediating and testing habitable property
70 contaminated by methamphetamine residues. If the department
71 conducts the training and testing of contractors and their
72 employees, it may adopt rules to provide for the assessment of
73 reasonable fees to cover the state's costs of providing the
74 training and testing.

75 (3) The department shall establish by rule procedures for
76 the certification of contractors and their employees, including
77 procedures for the decertification of contractors and their
78 employees for cause. The rules may provide for the assessment of
79 reasonable fees to cover the cost of the contractor certification
80 program.

81 (4) Any contractor and the contractor's employees certified
82 to perform the remediation of habitable property in any other
83 state are approved for certification in Mississippi unless the
84 department determines that the certification process in the other
85 state is not substantially similar to the minimum certification
86 standards established by the department.

87 (5) The department shall maintain a list of certified
88 contractors and shall make the list available to local health
89 officials, law enforcement officials and the public.

90 **SECTION 5.** (1) Whenever a state or local law enforcement
91 agency becomes aware that habitable property has been contaminated
92 by its use as a clandestine methamphetamine drug lab, the agency
93 shall report the contamination to the department and to the local
94 health officer.

95 (2) The department shall maintain a list of habitable
96 property that has been reported as contaminated, and the list must
97 be made available to the public through a Web site except as
98 provided in subsection (3) of this section.



99 (3) Upon confirmation by the department that habitable
100 property has been properly remediated to the standards established
101 in Section 3 of this act or that the habitable property meets the
102 decontamination standards without decontamination, the department
103 shall remove the habitable property from the list required in
104 subsection (2) of this section. The department shall provide
105 written notification to the local health officer and the property
106 owner of record when the documentation shows that the habitable
107 property has been properly assessed or remediated.

108 (4) The department may adopt rules establishing reasonable
109 requirements for the sufficiency of documentation to be provided
110 by a certified contractor.

111 **SECTION 6.** (1) Before signing an agreement to sell or
112 transfer habitable property, the seller or transferor shall
113 disclose in writing to the buyer or transferee if, to the seller's
114 or transferor's knowledge, methamphetamine production has occurred
115 on the property. If methamphetamine production has occurred on
116 the property, the disclosure shall include a statement informing
117 the buyer or transferee the status of removal and remediation on
118 the property.

119 (2) Unless the buyer or transferee and seller or transferor
120 agree to the contrary in writing before the closing of the sale, a
121 seller or transferor who fails to disclose, to the best of his
122 knowledge, at the time of sale any of the facts required, and who
123 knew or had reason to know of methamphetamine production on the
124 property, is liable to the buyer or transferee for:

125 (a) Costs relating to remediation of the property
126 according to the Department of Environmental Quality's clandestine
127 drug labs general cleanup guidelines and best practices; and

128 (b) Reasonable attorney fees for collection of costs
129 from the seller or transferor.

130 An action under this subsection shall be commenced within six
131 (6) years after the date on which the buyer or transferee closed



132 the purchase or transfer of the real property where the
133 methamphetamine production occurred.

134 (3) This section preempts all local ordinances relating to
135 the sale or transfer of habitable property designated as a
136 clandestine methamphetamine drug lab site.

137 **SECTION 7.** Section 89-1-527, Mississippi Code of 1972, is
138 amended as follows:

139 89-1-527. (1) The fact or suspicion that real property is
140 or was:

141 (a) The site of a natural death, suicide, homicide or
142 felony crime, except for illegal drug activity that affects the
143 physical condition of the property, its physical environment or
144 the improvements located thereon, and as provided in Section 6 of
145 this act;

146 (b) The site of an act or occurrence that had no effect
147 on the physical condition of the property, its physical
148 environment or the improvements located thereon;

149 (c) Owned or occupied by a person affected or exposed
150 to any disease not known to be transmitted through common
151 occupancy of real estate including, but not limited to, the human
152 immunodeficiency virus (HIV) and the acquired immune deficiency
153 syndrome (AIDS);

154 does not constitute a material fact that must be disclosed in a
155 real estate transaction. A failure to disclose such nonmaterial
156 facts or suspicions shall not give rise to a criminal, civil or
157 administrative action against the owner of such real property, a
158 licensed real estate broker or any affiliated licensee of the
159 broker.

160 (2) A failure to disclose in any real estate transaction any
161 information that is provided or maintained, or is required to be
162 provided or maintained, in accordance with Section 45-33-21
163 through Section 45-33-57, shall not give rise to a cause of action
164 against an owner of real property, a licensed real estate broker



165 or any affiliated licensee of the broker. Likewise, no cause of
166 action shall arise against any licensed real estate broker or
167 affiliated licensee of the broker for revealing information to a
168 seller or buyer of real estate in accordance with Section 45-33-21
169 through Section 45-33-57. Any factors related to this subsection,
170 if known to a property owner or licensee shall be disclosed if
171 requested by a consumer.

172 (3) Failure to disclose any of the facts or suspicions of
173 facts described in subsections (1) and (2) shall not be grounds
174 for the termination or rescission of any transaction in which real
175 property has been or will be transferred or leased. This
176 provision does not preclude an action against an owner of real
177 estate who makes intentional or fraudulent misrepresentations in
178 response to a direct inquiry from a purchaser or prospective
179 purchaser regarding facts or suspicions that are not material to
180 the physical condition of the property, including, but not limited
181 to, those factors listed in subsections (1) and (2).

182 **SECTION 8.** This act shall take effect and be in force from
183 and after July 1, 2012.

