

HOUSE BILL No. 2539

By Committee on Corrections and Juvenile Justice

4-28

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to methamphetamine; amending K.S.A. 2-1218, 21-2501a, as
11 amended by section 9 of 2005 Senate Bill No. 27, and 65-7013 and
12 repealing the existing sections.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. (a) Subject to appropriation, there is hereby created
16 in the state treasury the clandestine methamphetamine site clean-up fund
17 which shall be administered by the secretary of health and environment.
18 All expenditures from the clandestine methamphetamine site clean-up
19 fund shall be for cleaning up methamphetamine drug labs or dump sites.
20 All expenditures from the clandestine methamphetamine site clean-up
21 fund shall be made in accordance with appropriation acts upon warrants
22 of the director of accounts and reports issued pursuant to vouchers ap-
23 proved by the secretary of health and environment or the secretary's
24 designee.

25 (b) On or before the 10th day of each month, the director of accounts
26 and reports shall transfer from the state general fund to the clandestine
27 methamphetamine site clean-up fund interest earnings based on:

28 (1) The average daily balance of moneys in the clandestine meth-
29 amphetamine site clean-up fund for the preceding month; and
30 (2) the net earnings rate of the pooled money investment portfolio
31 for the preceding month.

32 New Sec. 2. (a) The secretary of health and environment shall have
33 the power to:

34 (1) Determine that the clean up of a methamphetamine lab or dump
35 site is necessary to protect the public health or the environment;

36 (2) expend and authorize the expenditure of moneys from the clan-
37 destine methamphetamine site clean-up fund;

38 (3) issue clean-up orders to persons responsible for the health or en-
39 vironmental hazard created by the methamphetamine lab or dump site;

40 (4) recover moneys from persons responsible for the health or envi-
41 ronmental hazard created by the methamphetamine lab or dump site,
42 which shall be deposited into the clandestine methamphetamine site
43 clean-up fund;

- 1 (5) assign personnel and equipment necessary to carry out the pur-
2 pose of this act; and
- 3 (6) enter into contracts or agreements with any person or company
4 to conduct the necessary clean-up operations.
- 5 (b) Any authorized officer, employee or agent of the department or
6 any person under contract with the department may enter onto any prop-
7 erty or premises, at reasonable times and upon written notice to the
8 owner or occupant, to gather data, conduct investigations or take remedial
9 action where the secretary determines that such action is necessary to
10 protect the public health or environment:
- 11 (1) If consent is not granted by the person in control of a site or
12 suspected site regarding any request made by any employee or agent of
13 the secretary under the provisions of this section, the secretary may issue
14 an order directing compliance with the request. The order may be issued
15 after such notice and opportunity for consultation as is reasonably appro-
16 priate under the circumstances;
- 17 (2) the secretary may ask the attorney general to commence a civil
18 action to compel compliance with a request or order referred to in par-
19 agraph (1). Where there is a reasonable basis to believe there may be
20 pollution, the court shall take the following actions:
- 21 (A) In the case of interference with entry or investigation, the court
22 shall enjoin such interference or direct compliance with orders to prohibit
23 interference with entry or investigation unless under circumstances of the
24 case the demand for the entry or investigation is arbitrary and capricious,
25 an abuse of discretion or otherwise not in accordance with law;
- 26 (B) in the case of information or document requests or orders, the
27 court shall enjoin interference with such information or document re-
28 quests or orders or direct compliance with the requests or orders to pro-
29 vide such information or documents unless under the circumstances of
30 the case the demand for information or documents is arbitrary and ca-
31 pricious, an abuse of discretion or otherwise not in accordance with law;
32 or
- 33 (3) all orders issued hereunder shall be subject to the provisions of
34 K.S.A. 65-3456a, and amendments thereto.
- 35 (c) The secretary is hereby authorized to adopt any rules and regu-
36 lations necessary to carry out the provisions of this act.
- 37 New Sec. 3. (a) In the event that any premises to be sold, transferred
38 or conveyed is or was used as a site for methamphetamine production or
39 as a dumping site, the owner, seller or other transferor shall disclose in
40 writing to the prospective purchaser or transferee the fact that meth-
41 amphetamine was produced or dumped on the premises, provided that
42 the owner, seller or other transferor has knowledge of such prior meth-
43 amphetamine production or usage as a dumping site. The owner shall

1 disclose any prior knowledge of methamphetamine production or usage
2 as a dumping site, regardless of whether the persons involved in the pro-
3 duction were convicted for such production or usage as a dumping site.

4 (b) A seller or transferor of any parcel of real property shall disclose
5 in writing the fact that any premises to be sold or transferred either was
6 the place of residence of a person convicted of any of the following crimes,
7 provided that the seller or transferor knew or should have known of such
8 convictions:

9 (1) Manufacture of a controlled substance in violation of K.S.A. 65-
10 4159, and amendments thereto;

11 (2) possession of methamphetamine precursors with intent to man-
12 ufacture methamphetamine in violation of K.S.A. 65-7006, and amend-
13 ments thereto;

14 (3) unlawful use of drug paraphernalia with the intent to manufacture
15 methamphetamine in violation of K.S.A. 65-4153, and amendments
16 thereto;

17 (4) endangering the welfare of a child by any of the means described
18 in subsection (2) of K.S.A. 21-3608a, and amendments thereto; or

19 (5) any other crime related to methamphetamine, its salts, isomers
20 and salts of isomers either in chapter 65 of the Kansas Statutes Annotated,
21 and amendments thereto, or in any other provision of law.

22 New Sec. 4. (a) In the event that any premises to be rented, leased
23 or conveyed is or was used as a site for methamphetamine production or
24 as a dumping site, the owner, landlord or other transferor shall disclose
25 in writing to the prospective lessee or transferee the fact that metham-
26 phetamine was produced or dumped on the premises, provided that the
27 owner, landlord or other transferor has knowledge of such prior meth-
28 amphetamine production or usage as a dumping site, or was the storage
29 site or laboratory for any of the substances for which a person was con-
30 victed of any of the following crimes, regardless of whether the persons
31 involved in the production were convicted for such production or usage
32 as a dumping site.

33 (b) A landlord shall disclose in writing the fact that any premises to
34 be leased by the landlord either was the place of residence of a person
35 convicted of any of the following crimes or was the storage site or labo-
36 ratory for any of the substances for which a person was convicted of any
37 of the following crimes, provided that the landlord knew or should have
38 known of such convictions:

39 (1) Manufacture of a controlled substance in violation of K.S.A. 65-
40 4159, and amendments thereto;

41 (2) possession of methamphetamine precursors with intent to man-
42 ufacture methamphetamine in violation of K.S.A. 65-7006, and amend-
43 ments thereto;

1 (3) unlawful use of drug paraphernalia with the intent to manufacture
2 methamphetamine in violation of K.S.A. 65-4153, and amendments
3 thereto;

4 (4) endangering the welfare of a child by any of the means described
5 in subsection (2) of K.S.A. 21-3608a, and amendments thereto; or

6 (5) any other crime related to methamphetamine, its salts, isomers
7 and salts of isomers either in chapter 65 of the Kansas Statutes Annotated,
8 and amendments thereto, or in any other provision of law.

9 (c) This section shall be part of and supplemental to the residential
10 landlord and tenant act.

11 New Sec. 5. (a) Any taxpayer who makes expenditures for a qualified
12 preventative measure on anhydrous ammonia shall be allowed a credit
13 against the income tax imposed by the Kansas income tax act, as follows:

14 (1) An amount equal to the amount paid for a qualified lock or locks,
15 up to \$1,000 per individual taxpayer; or

16 (2) an amount equal to the amount paid for a qualified additive in
17 that year, up to \$1,000 per individual taxpayer.

18 (b) The department of revenue shall evaluate the taxpayer's compli-
19 ance with the requirements.

20 (c) As used in this section:

21 (1) "Qualified additive" means an anhydrous ammonia additive spec-
22 ified by the department of agriculture by rules and regulations as appro-
23 priate for deterring the theft of anhydrous ammonia and that has been
24 used by the taxpayer;

25 (2) "qualified lock" means a lock designed for use on an anhydrous
26 nurse tank that has been specified by the department of agriculture rules
27 and regulations as appropriate for deterring the theft of anhydrous am-
28 monia and that has been used by the taxpayer; and

29 (3) "qualified preventative measure" means an additive or lock meet-
30 ing the definition of qualified additive or qualified lock.

31 (e) The provisions of this section shall apply to all taxable years com-
32 mencing after December 31, 2005.

33 New Sec. 6. (a) The secretary of corrections, in conjunction with the
34 department of health and environment, the Kansas bureau of investiga-
35 tion, the sentencing commission, treatment providers and other inter-
36 ested parties, shall study the following topics and report their findings to
37 the house committee on corrections and juvenile justice:

38 (1) The long-term trends on offender population from methamphet-
39 amine use;

40 (2) review of effective programs;

41 (3) identification of funding for treatment of methamphetamine ad-
42 diction; and

43 (4) establishment of appropriate protocol for treatment of metham-

1 phetamine addiction.

2 Sec. 7. K.S.A. 2-1218 is hereby amended to read as follows: 2-1218.
3 It shall be unlawful, and a violation of this act, for any person; (a) to
4 operate any anhydrous ammonia facility, any transportation equipment,
5 or to sell or offer to sell any anhydrous ammonia, unless (1) the product
6 container, piping, valves, hose, appurtenances and equipment are con-
7 structed and installed in accordance with the regulations adopted under
8 the provisions of K.S.A. 2-1212, ~~as supplemented and amended, and~~ *and*
9 *amendments thereto*;

10 (2) the product container, piping, valves, hose, appurtenances and
11 other equipment are adequately maintained; ~~and~~

12 (3) *the stationary product container has a lock approved by the de-*
13 *partment of agriculture rules and regulations; and*

14 (4) the stationary product container is located as required in the reg-
15 ulations adopted pursuant to K.S.A. 2-1212, ~~as supplemented and~~
16 ~~amended. Provided, and~~ *amendments thereto*. This subsection shall not
17 apply (A) to a stationary product container located prior to the adoption
18 of the regulations, or (B) to a stationary product container properly lo-
19 cated at the time of its installation.

20 (b) To use any product container, piping, valve, hose, appurtenances
21 or other equipment for handling anhydrous ammonia which is defective
22 or which is otherwise unsafe.

23 (c) To fail to provide, or fail to have available, for use such safety
24 material and such effective safety equipment, as required by regulation.

25 (d) To impede, obstruct or hinder, or to otherwise prevent or to at-
26 tempt to prevent, any authorized state administrative personnel or em-
27 ployee in the performance of his or her duties in connection with the
28 administration of this act.

29 Sec. 8. K.S.A. 21-2501a, as amended by section 9 of Senate Bill No.
30 27, is hereby amended to read as follows: 21-2501a. (a) All law enforce-
31 ment agencies having responsibility for law enforcement in any political
32 subdivision of this state, on forms approved by the attorney general, shall
33 maintain a permanent record of all felony and misdemeanor offenses
34 reported or known to have been committed within their respective
35 jurisdictions.

36 (b) All law enforcement agencies having the responsibility of main-
37 taining a permanent record of offenses shall file with the Kansas bureau
38 of investigation, on a form approved by the attorney general, a report on
39 each offense for which a permanent record is required within 72 hours
40 after such offense is reported or known to have been committed.

41 (c) It is hereby made the duty of every sheriff, police department or
42 countywide law enforcement agency in the state to report *to the attorney*
43 *general and the department of health and environment* within 30 days, on

1 forms approved by the attorney general, any methamphetamine labora-
2 tory seizures or dump sites and any theft or attempted theft of anhydrous
3 ammonia that occurs in such agency's jurisdiction.

4 Sec. 9. K.S.A. 65-7013 is hereby amended to read as follows: 65-
5 7013. (a) The secretary is authorized to: (1) Develop a contract with a
6 hazardous waste response contractor for joint use by the Kansas depart-
7 ment of health and environment and the Kansas bureau of investigation
8 to conduct investigation and clean up of chemicals, chemical-contami-
9 nated materials, soil, or groundwater resulting from an illegal drug man-
10 ufacturing site or from an arrest made pursuant to the provisions of this
11 act;

12 (2) authorize any person to carry out any clean up action in accord-
13 ance with the directions or requirements of the secretary, if the secretary
14 determines that the person will commence and complete the clean up
15 properly and in a timely manner;

16 (3) undertake directly or by contract any cleanup action necessary at
17 an alleged illegal drug manufacturing site including the cleanup, storage
18 and disposal of chemicals and chemical contaminated materials located
19 at an alleged illegal drug manufacturing site;

20 (4) to abate any imminent and substantial danger to the public health,
21 safety or the environment related to a release from an illegal drug man-
22 ufacturing site;

23 (5) direct or authorize a person responsible for creating an illegal
24 drug manufacturing site as defined in subsection (b) to conduct a clean
25 up or perform any related actions;

26 (6) recover moneys expended by the state responding to alleged il-
27 legal drug manufacturing sites from persons responsible for creating such
28 sites;

29 (7) examine and copy records and other information;

30 (8) enter into any agreements with the director necessary to carry out
31 the provisions of this act; and

32 (9) request the attorney general to bring an action in any district court
33 to seize property contaminated with chemicals for purposes of clean up,
34 disposal or to enforce any other provision of this act.

35 (b) The following persons shall be considered responsible for creating
36 an alleged illegal drug manufacturing site and shall be jointly and severally
37 liable for those cleanup costs incurred by the state and for damages for
38 injury to or destruction of any natural resources caused by chemicals at
39 the site: (1) Any person operating an alleged illegal drug manufacturing
40 site;

41 (2) any owner or operator of an alleged illegal drug manufacturing
42 site who obtained actual knowledge of the alleged illegal drug manufac-
43 turing site or damages caused by the site who failed to contact appropriate

1 federal, state or local law enforcement authorities regarding the presence
2 of the site; and

3 (3) any person who, by any acts or omissions, caused or contributed
4 to the alleged illegal drug manufacturing site, unless the acts or omissions
5 were in material compliance with applicable laws, standards, regulations,
6 licenses or permits.

7 (c) Except as otherwise provided in subsection (d), the following persons
8 shall not be considered responsible for creating an alleged illegal
9 drug manufacturing site and shall not be liable for those cleanup costs
10 incurred by the state: (1) Any owner or operator who became the owner
11 or operator after the creation of the alleged illegal drug manufacturing
12 site who did not know and reasonably should not have known of the
13 damages when the person first became the owner or operator;

14 (2) a unit of state or local government that acquired ownership or
15 control of a site by virtue of tax delinquency, abandonment, exercise of
16 eminent domain authority, forfeiture, purchase or condemnation;

17 (3) any person who is not otherwise responsible under subsection (b)
18 who acquired a site by inheritance or bequest;

19 (4) a local government as a result of actions taken in response to an
20 emergency created by the chemicals at or generated by or from an alleged
21 illegal drug manufacturing site owned by another person; and

22 (5) manufacturers, distributors, and retailers who are registered with
23 the state board of pharmacy and acted or failed to act without knowledge
24 of the existence of an illegal drug manufacturing site or without the intent
25 to furnish supplies to an illegal drug manufacturing site.

26 (d) Notwithstanding the exclusions provided in subsection (c) of this
27 section, such persons shall be liable for cleanup costs incurred by the
28 state to the extent that the person's acts or omissions constituted gross
29 negligence or intentional misconduct.

30 (e) If any person who is liable under subsection (b) of this section
31 fails without sufficient cause to conduct a cleanup action as required by
32 an order of the secretary, the person shall be liable for the state's cleanup
33 costs.

34 (f) A local health officer, upon notification by the department or the
35 bureau of the existence of an alleged illegal drug manufacturing site, is
36 authorized to cause an inspection of the property to be conducted to
37 determine the extent of contamination. In those cases where the local
38 health officer does not have the resources or expertise to conduct such
39 an inspection, the secretary is authorized to conduct the inspection.

40 (g) If the local health officer or the secretary determines that the
41 property where the alleged illegal drug manufacturing site exists is unfit
42 for use due to the extent of contamination, the local health officer or the
43 secretary is empowered to post an order prohibiting use of all or portions

1 of the property. The posting shall be in a conspicuous place on the
2 property.

3 (h) In those cases where a person responsible for creating an alleged
4 illegal drug manufacturing site fails to conduct a clean up of the site within
5 60 days of discovery of the site by federal, state or local law enforcement
6 officials, the secretary is authorized to record, in accordance with Kansas
7 law, a notice with the county register of deeds where the property is
8 located that the land has been used to manufacture illegal drugs and that
9 the property contains chemical contamination that may be harmful to the
10 public health, safety or the environment. A notice of release shall be filed
11 upon a showing to the department that the property is no longer harmful
12 to the public health, safety and the environment.

13 (i) Notwithstanding any other provision of law, the State of Kansas,
14 the department of health and environment and the Kansas bureau of
15 investigation and their officers, employees and agents shall not be liable
16 to a person possessing or owning chemicals located at an alleged illegal
17 drug manufacturing site for any claims or actions arising from the iden-
18 tification, cleanup, storage or disposal of such chemicals by the
19 department.

20 (j) Upon request of the law enforcement agency in charge after de-
21 termination of the existence of an alleged illegal drug manufacturing site,
22 any authorized officer, employee or agent of the department or any per-
23 son under contract with the department may enter onto the premises of
24 any alleged illegal drug manufacturing site, at reasonable times to review
25 information, inspect, examine or gather data, conduct investigations, take
26 remedial or other action where the secretary determines that such action
27 is necessary to protect the public health or the environment.

28 (k) *“Illegal drug manufacturing site” does not include a clandestine*
29 *methamphetamine laboratory or dump site under subsections (l), (m), (n)*
30 *or (o).*

31 (l) *The secretary of health and environment or the secretary’s desig-*
32 *nee shall promulgate rules and regulations regarding mandatory proce-*
33 *dures for clandestine methamphetamine laboratory or dump site clean*
34 *up. The rules and regulations shall specify the manner in which the fol-*
35 *lowing stages of clean up shall be carried out:*

36 (1) *Preliminary site assessment, which shall include review by a local*
37 *health department or other oversight agency and identification of areas*
38 *of contamination;*

39 (2) *clean-up procedures for structures;*

40 (3) *post-clean-up assessment for structures; and*

41 (4) *clean-up procedures for soil, groundwater and surface water.*

42 (m) *The rules and regulations shall also specify details for the follow-*
43 *ing clean-up procedures:*

- 1 (1) *Airing out the structure;*
2 (2) *contamination removal and disposal;*
3 (3) *cleaning of surfaces;*
4 (4) *treatment of ventilation systems;*
5 (5) *treatment of plumbing systems;*
6 (6) *repainting;*
7 (7) *cleaning of personal belongings; and*
8 (8) *air testing.*
9 (n) *No structure may be reoccupied until the department of health*
10 *and environment has certified that it has been cleaned up in a manner*
11 *consistent with state law, department rules and regulations and any other*
12 *applicable laws.*
13 (o) *Any local governmental entity participating in the clean up of a*
14 *methamphetamine lab or dump site may recover moneys from persons*
15 *responsible for the methamphetamine lab or dump site, whether such*
16 *persons have been convicted for their involvement.*
17 Sec. 10. K.S.A. 2-1218, 21-2501a, as amended by section 9 of 2005
18 Senate Bill No. 27, and 65-7013 are hereby repealed.
19 Sec. 11. This act shall take effect and be in force from and after its
20 publication in the statute book.