

CHAPTER NO. 855

HOUSE BILL NO. 2385

By Representatives Curtiss, Walker, Winningham, Davidson, Vincent, DuBois, Matheny, Phillip Johnson, Sontany, McDonald, Russell Johnson

Substituted for: Senate Bill No. 2979

By Senators Burks, McNally, Kurita, Kilby

AN ACT to amend Tennessee Code Annotated, Title 68, relative to the inspection, testing and quarantine of property where methamphetamine was manufactured.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, is amended by adding Sections 2 through 7 of this act as a new part.

SECTION 2. As used in this part, the "commissioner" means the commissioner of environment and conservation.

SECTION 3. The commissioner shall compile and maintain a list of certified industrial hygienists and such other persons or entities as the commissioner certifies as qualified to perform the services of industrial hygienists. The commissioner shall also compile and maintain a list of persons authorized to perform clean-up of hazardous waste sites, including but not limited to property used to manufacture methamphetamine. Such property may include, but is not limited to, leased or rented property such as a hotel or motel room, rented home or apartment, or any residential property. Such lists may also be posted on the website maintained by the commissioner.

SECTION 4.

(a) The combination of substances necessary for the manufacture of methamphetamine is declared to be a hazardous substance pursuant to section 68-131-102 (9) (A).

(b) Any property, or any structure or room in any structure on any property wherein the manufacture of a controlled substance listed in § 39-17-408(d)(2) is occurring or has occurred, may be quarantined by the local law enforcement agency where such property is located. The law enforcement agency which quarantines the property shall be responsible for posting signs indicating that the property has been quarantined and, to the extent they can be reasonably identified, for notifying all parties having any right, title or interest in the quarantined property, including any lienholders.

(c)

(1) Any person who has an interest in property quarantined pursuant to this section may file a petition in the general sessions, criminal, circuit or chancery court of the county in which the property is located. Such a petition

shall be for the purpose of requesting that the court order the quarantine of such property be lifted for one of the following reasons:

(A) That the property was wrongfully quarantined; or

(B) That the property has been properly cleaned, all hazardous materials removed and that it is now safe for human use but the law enforcement agency who imposed the quarantine refuses to lift it.

(2) The court shall take such proof as it deems necessary to rule upon a petition filed pursuant to this section and, after hearing such proof, may grant the petition and lift the quarantine or deny the petition and keep the quarantine in place.

SECTION 5. The commissioner is authorized to promulgate rules concerning the inspection, testing and quarantine of the property.

SECTION 6. Once the property has been quarantined, any party having a right, title or interest in the quarantined property, including any lienholders, may contact either a certified industrial hygienist or other person or entity certified as qualified from the list maintained by the commissioner to perform appropriate testing on the property to determine whether hazardous waste is present on the property, or a contractor from the list maintained by the commissioner for clean-up and removal of all hazardous waste from the property. The property must remain quarantined until a certified industrial hygienist or other person or entity named on the commissioner's list compiled pursuant to Section 3 certifies to the quarantining agency that the property is safe for human use.

SECTION 7. Any inspection, testing or quarantine conducted pursuant to this act shall be considered when calculating the appropriate restitution under § 39-17-417 (c)(2)(B).

SECTION 8. For the purpose of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2004, the public welfare requiring it.

PASSED: May 20, 2004


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 8th day of June 2004


PHIL BREDESEN, GOVERNOR

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June 29, 2004

New Legislation Alert – Public Chapter 855

FILED NOTICES of HAZARDOUS SUBSTANCE (Effective July 1, 2004)

Tennessee continues to lead all other states in the production of methamphetamine, (meth). Tennessee law enforcement agencies have recently begun the practice of posting property sites which are suspected of being meth cooking sites with notices that the site may contain hazardous substances in the improvements and/or in the land. Many local law enforcement agencies are taking the additional steps of writing the record landowners and mortgage holders to disclose the existence of hazardous substances. They are also filing copies of these letters/notices with the register of deeds and/or the tax assessors. Different Registers, without any guidance from statutes, are handling these notices differently. Some file and index, some just file. Some file and note on the margins of the vesting instruments. Some counties place a notation in the tax records. Some provide access to the notices, some do not. The intention of law enforcement is to notify all parties in interests, landowners, mortgagees, etc., as well as prospective buyers and lenders of the suspected existence of hazardous substances.

Effective July 1, 2004, Public Chapter 855 establishes a new part of TCA Title 68 that will place upon law enforcement the responsibility and authority to "quarantine" property suspected of being a site of meth cooking. This new statute also states that law enforcement must notify all interested parties, (to the extent possible) including lien holders, of the quarantine. This will result in many more instances of filings in the local registers' offices. The new statute establishes a procedure for adversely effected parties to seek judicial removal of the quarantined status.

In addition, the Governor has established a Meth Task Force Committee charged with recommending new steps to deal with the meth epidemic. The Task Force is considering the establishment of a statewide database maintained by the Commissioner of Environment and Conservation and the requirement of filing notices on all affected property by address. This database would be available to the public via a state hosted website.

While no meth-specific lien for cleanup has been established – the filing of notices of hazardous substances and/or quarantines in the public records, even if not statutorily authorized, may create a "cloud" on the title to real property from the point of view of a new buyer or lender. Buyers and lenders may have the expectation that their neighborhood closing professional has a duty to search, find and disclose any such "cloud" prior to closing. Look for mortgage investors to add language regarding meth notices to their master closing instructions.

Particularly troublesome is the suggestion that information regarding property can be filed outside the register of deeds office and still provide constructive notice to the world. We are still fighting the concept of a statewide, website database hosted by the Tennessee Department of Human Services in lieu of recording child support liens in the local register of deeds offices. Southern Title continues its efforts to oppose the establishment of web based data as a substitute for local county recordation.

Southern Title suggests that the best course of action for its agents and approved attorneys is to list any such notice of hazardous substance or quarantine as an exception or notation to title even though no specific lien has been statutorily established. This approach should reduce your exposure to liability for failure to disclose a condition of the property ascertainable from the public records.

A copy of Public Chapter 855 is available for review in our Resource Library at www.stichome.com – Anyone receiving this memo may go to www.stichome.com and click on the "Front Porch" area and look for reference number 186.