

SB 175 S

FILED

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**WEST VIRGINIA LEGISLATURE**  
SEVENTY-EIGHTH LEGISLATURE  
REGULAR SESSION, 2007  
WEST VIRGINIA  
SECRETARY OF STATE

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# ENROLLED

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FOR

## Senate Bill No. 175

(SENATORS PREZIOSO, MINARD,  
KESSLER AND FOSTER, *original sponsors*)

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[Passed March 10, 2007; in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §60A-11-1, §60A-11-2, §60A-11-3, §60A-11-4, §60A-11-5 and §60A-11-6, all relating to regulation and procedures

for the remediation of clandestine drug laboratories; defining terms; establishing a program of certification and licensing of persons engaged in the business of remediation; providing for legislative rules; authorizing the Department of Health and Human Resources to establish fees for certification, licensing and notification requirements; setting forth the responsibility of law-enforcement agencies to notify the Department of Health and Human Resources and residential property owners of the existence of a clandestine drug laboratory; setting forth the responsibility of residential property owners for remediation of clandestine drug laboratories; providing immunity from liability for innocent property owners who successfully remediate a clandestine drug laboratory; and establishing civil penalties for persons convicted pursuant to subsection (d), section four, article ten of said chapter and whose actions resulted in the necessity of remediation of a clandestine drug laboratory.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §60A-11-1, §60A-11-2, §60A-11-3, §60A-11-4, §60A-11-5 and §60A-11-6, all to read as follows:

**ARTICLE 11. CLANDESTINE DRUG LABORATORY REMEDIATION ACT.**

**§60A-11-1. Legislative findings and purpose.**

1       (a) *Findings.*— The Legislature finds that some  
2 residential and business properties are being used for  
3 the consumption, production and manufacture of illegal  
4 drugs resulting in contamination with hazardous  
5 chemical residues. These illegal laboratories present an  
6 immediate and ongoing danger to public health and

7 safety. Innocent members of the public may be harmed  
8 when they are exposed to the chemical residues if the  
9 property is not decontaminated prior to subsequent  
10 rental, sale or use of the property.

11 (b) *Purpose.*— The purpose of this article is to protect  
12 the public health, safety and welfare by designating the  
13 Department of Health and Human Resources as the  
14 state agency to set forth standards for the remediation  
15 of clandestine drug laboratories.

**§60A-11-2. Definitions.**

1 In this article:

2 (a) “Clandestine drug laboratory” means the area or  
3 areas where controlled substances, or their immediate  
4 precursors, have been, or were attempted to be,  
5 manufactured, processed, cooked, disposed of or stored  
6 and all proximate areas that are likely to be  
7 contaminated as a result of such manufacturing,  
8 processing, cooking, disposing or storing.

9 (b) “Department” means the West Virginia  
10 Department of Health and Human Resources.

11 (c) “Controlled substance” means the same as that  
12 term is defined in section one hundred one, article one  
13 of this chapter and article ten, section three of this  
14 chapter a drug, substance or immediate precursor in  
15 Schedules I through V of article two of this chapter.

16 (d) “Immediate precursor” means a substance which  
17 the “West Virginia Board of Pharmacy” (hereinafter in  
18 this act referred to as the State Board of Pharmacy) has

19 found to be and by rule designates as being the  
20 principal compound commonly used or produced  
21 primarily for use and which is an immediate chemical  
22 intermediary used or likely to be used in the  
23 manufacture of a controlled substance, the control of  
24 which is necessary to prevent, curtail or limit  
25 manufacture.

26 (e) "Law-enforcement agency" means the West  
27 Virginia State Police or any other policing agency of the  
28 state or of any political subdivision of the state.

29 (f) "Remediation" means the act of rendering safe and  
30 usable for the purposes for which it is intended  
31 residential property, as defined in subsection (g) of this  
32 section, or any structure appurtenant to the residential  
33 property, or other structure on the residential property  
34 that has been used for the manufacture or consumption  
35 of methamphetamines or other illicit drug products.

36 (g) "Residential property" means any building or  
37 structure to be primarily occupied by people, either as  
38 a dwelling or as a business, including, but not limited  
39 to, a storage facility, a mobile home, manufactured  
40 home or recreational vehicle, hotel or motel that may be  
41 sold, leased or rented for any length of time.

42 (h) "Residential property owner" means the person  
43 holding record title to residential property as that term  
44 is defined in subsection (f) of this section.

**§60A-11-3. Remediation of clandestine drug laboratories;  
promulgation of legislative rules.**

1 (a) The Department of Health and Human Resources

2 shall propose rules for legislative approval in  
3 accordance with the provisions of article three, chapter  
4 twenty-nine-a of this code to address, at a minimum,  
5 the following issues:

6 (1) Establishment of scientific guidelines and numeric  
7 decontamination levels for the remediation of  
8 clandestine drug laboratories;

9 (2) Establishment of a certification program for  
10 persons or contractors who engage in the business of  
11 clandestine drug lab remediation;

12 (3) Establishment of a licensure procedure whereby  
13 individuals and businesses certified to do remediation  
14 of clandestine drug laboratories obtain a license from  
15 the Department of Health and Human Resources to do  
16 such work;

17 (4) Requiring licensed contractors to notify the  
18 Department of Health and Human Resources prior to  
19 beginning any remediation project;

20 (5) Setting forth certification procedures for the  
21 department to certify that the completed remediation of  
22 the residential property fully meets the scientific  
23 guidelines and numeric decontamination levels set forth  
24 in the legislative rule; and

25 (6) Establishing requirements for property owners,  
26 sellers and landlords to disclose the existence of any  
27 former clandestine laboratory site or activity to any  
28 potential occupant of the residential property.

29 (b) Fees may be set by the legislative rule to be

30 charged to persons or contractors engaged in the  
31 business of clandestine drug laboratory remediation for  
32 certification, licensing and notification as required in  
33 this article.

**§60A-11-4. Law-enforcement responsibility.**

1 Any law-enforcement agency, upon locating  
2 chemicals, equipment, supplies or precursors indicative  
3 of a clandestine drug laboratory on residential property,  
4 shall notify the residential property owner and the  
5 department in a manner prescribed by the legislative  
6 rule authorized by this article.

**§60A-11-5. Residential property owner responsibility; owner immunity; voluntary compliance.**

1 (a) Upon notification to the residential property owner  
2 by a law-enforcement agency that chemicals,  
3 equipment, supplies or precursors indicative of a  
4 clandestine drug laboratory have been located on the  
5 residential property owner's property, the residential  
6 property owner shall be responsible for actions  
7 necessary to meet the remediation standards established  
8 by the legislative rule authorized by this article. The  
9 residential property owner is responsible for actions to  
10 ensure the residential property shall remain unoccupied  
11 from the time the residential property owner is notified  
12 of the clandestine drug laboratory until such time as the  
13 department certifies that the completed remediation  
14 meets the numeric decontamination levels set forth in  
15 the legislative rule authorized in this article. The  
16 department shall have forty-five days from receipt of all  
17 necessary paperwork and documentation to complete  
18 remediation certification: *Provided*, That a residential

19 property owner may demolish the residential property  
20 as an alternative to meeting the remediation standards  
21 established by the department.

22 (b) Once the remediation has been certified complete  
23 by the department, the residential property owner and  
24 any representative or agent of a residential property  
25 owner who neither knew or should have known of the  
26 property's illegal use shall be immune from civil  
27 liability for action brought for injuries or loss based  
28 upon the prior use of the residential property as a  
29 clandestine drug laboratory by future owners, renters,  
30 lessees or any other person who occupies the residential  
31 property.

32 (c) Any residential property owner who neither knew  
33 or should have known of the property's illegal use who  
34 chooses to voluntarily and successfully complete the  
35 remediation prior to notification by a law-enforcement  
36 agency shall have the same immunity from liability as  
37 set forth in subsection (b) of this section if the  
38 remediation meets the certification standards set forth  
39 in legislative rules authorized by this article.

**§60A-11-6. Liability for costs of remediation.**

1 Any person convicted pursuant to section four,  
2 subsection (d), article ten of this chapter and whose  
3 actions also resulted in the necessity of remediation of  
4 a clandestine drug laboratory, shall be liable to the  
5 person or entity for all costs associated with the  
6 remediation of the clandestine drug laboratory. These  
7 costs may include attorney's fees and court costs  
8 reasonably necessary to bring an action to collect the  
9 amount paid for the remediation.



Enr. Com. Sub. for Com. Sub. for S. B. No. 175] 8

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
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Chairman Senate Committee

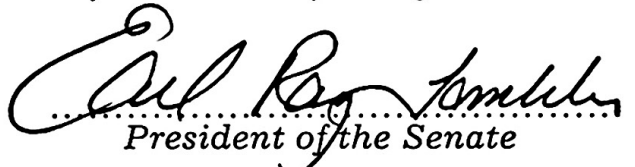
  
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Chairman House Committee

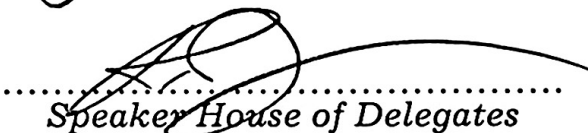
Originated in the Senate.

In effect ninety days from passage.

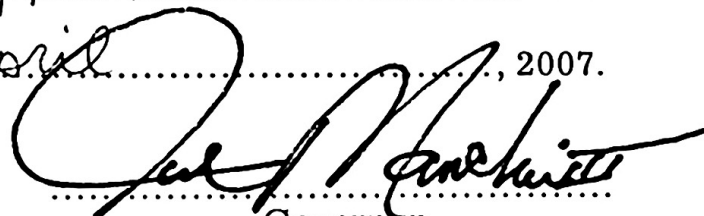
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker House of Delegates

The within ..... *is approved* ..... this  
the *3<sup>rd</sup>* Day of *April* ....., 2007.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 03 2007

Time 1:30 pm