STATE OF NEW YORK

1823

2017-2018 Regular Sessions

IN SENATE

January 11, 2017

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the real property law, the public health law, the penal law and the executive law, in relation to properties contaminated by the production, distribution or storage of the narcotic drug methamphetamine

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The real property law is amended by adding a new article 14-A to read as follows:

ARTICLE 14-A

PROPERTY DISCLOSURE IN THE SALE OF RESIDENTIAL REAL PROPERTY UTILIZED FOR ILLEGAL DRUG LABORATORIES

Section 468. Property condition disclosure statement.
468-a. Rights.
468-b. Remedies.

§ 468. Property condition disclosure statement. 1. a. Every seller of residential real property pursuant to a real estate purchase contract shall complete and sign a property condition disclosure statement as prescribed by subdivision two of this section and cause it, or a copy thereof, to be delivered to a buyer or buyer's agent prior to the signing by the buyer of a binding contract of sale. A copy of the property condition disclosure statement containing the signatures of both seller and buyer shall be attached to the real estate purchase contract.

b. For purposes of this section, "residential real property" includes any: vacant land zoned for residential development; manufactured homes; mobile homes; condominiums; co-ops; town-homes; homes sold by the owner, a financial institution, or the federal department of housing and urban development; rental properties, including apartments; and short-term residences such as motels or hotels. Provided further, that the disclosure requirements contained herein shall apply to any structures or

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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buildings whether temporary or permanent in nature that were, or currently are, on the curtilage of the subject property.

2. The following shall be the disclosure form:

PROPERTY CONDITION DISCLOSURE STATEMENT

NAME OF SELLER OR SELLERS OR LESSOR AND LESSEE:

SUBJECT PROPERTY ADDRESS:

ARTICLE 14-A OF THE REAL PROPERTY LAW REQUIRES THE SELLER OR LESSOR OF RESIDENTIAL REAL PROPERTY TO CAUSE THIS DISCLOSURE STATEMENT OR A COPY THEREOF TO BE DELIVERED TO A BUYER OR BUYER'S AGENT OR LESSEE OR LESSEE'S AGENT PRIOR TO THE SIGNING BY THE BUYER OF A BINDING CONTRACT OF SALE.

PURPOSE OF STATEMENT: THIS IS A STATEMENT OF CONDITIONS AND INFORMATION CONCERNING THE PROPERTY KNOWN TO THE SELLER OR LESSOR AND WHETHER SUCH PROPERTY WAS AT ANY TIME USED IN WHOLE OR IN PART AS A METHAMPHETAMINE DRUG LABORATORY. THIS DISCLOSURE STATEMENT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR LESSOR OR BY ANY AGENT REPRESENTING THE SELLER OR LESSOR IN THIS TRANSACTION. IT IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR TESTS AND THE BUYER OR LESSEE IS ENCOURAGED TO OBTAIN HIS OR HER OWN INDEPENDENT PROFESSIONAL INSPECTIONS AND ENVIRONMENTAL TESTS AND ALSO IS ENCOURAGED TO CHECK PUBLIC RECORDS PERTAINING TO THE PROPERTY.

A KNOWINGLY FALSE OR INCOMPLETE STATEMENT BY THE SELLER OR LESSOR ON THIS FORM MAY SUBJECT THE SELLER OR LESSOR TO CLAIMS BY THE BUYER OR LESSEE PRIOR TO OR AFTER THE TRANSFER OF TITLE PURSUANT TO SECTION 468-B OF THE REAL PROPERTY LAW OR OCCUPANCY BY THE LESSEE. IN THE EVENT A SELLER FAILS TO PERFORM THE DUTY PRESCRIBED IN ARTICLE 14-A OF THE REAL PROPERTY LAW TO DELIVER A DISCLOSURE STATEMENT PRIOR TO THE SIGNING BY THE BUYER OR OF A BINDING CONTRACT OF SALE, THE BUYER SHALL RECEIVE UPON THE TRANSFER OF TITLE A CREDIT OF $500 AGAINST THE AGREED UPON PURCHASE PRICE OF THE RESIDENTIAL REAL PROPERTY.

INSTRUCTIONS TO THE SELLER OR LESSOR:

(a) ANSWER QUESTIONS BASED UPON YOUR ACTUAL KNOWLEDGE.

(b) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS REQUIRED.

(c) COMPLETE THIS FORM YOURSELF.

(d) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK "NA" (NON-APPLICABLE). IF YOU DO NOT KNOW THE ANSWER CHECK "UNKN" (UNKNOWN).

SELLER'S/LESSOR'S STATEMENT: THE SELLER/LESSOR MAKES THE FOLLOWING REPRESENTATIONS TO THE BUYER/LESSEE BASED UPON THE SELLER'S/LESSOR'S ACTUAL KNOWLEDGE AT THE TIME OF SIGNING THIS DOCUMENT. THE SELLER/LESSOR AUTHORIZES HIS OR HER AGENT, IF ANY, TO PROVIDE A COPY OF THIS STATEMENT TO A PROSPECTIVE BUYER/LESSEE OF THE RESIDENTIAL REAL PROPERTY. THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER/LESSOR AND ARE NOT THE REPRESENTATIONS OF THE SELLER'S/LESSOR'S AGENT.

1. HAS THE SUBJECT PROPERTY EVER BEEN USED AS A METHAMPHETAMINE LABORATORY?

2. IF YOU HAVE ANSWERED YES TO NUMBER ONE DID THE SELLER PERFORM OR CAUSE TO BE PERFORMED ANY INSPECTIONS OR ENVIRONMENTAL REMEDIATION AFTER SUCH USE?

3. IF YOU HAVE ANSWERED YES TO NUMBER TWO DO YOU HAVE ANY REPORTS, DOCUMENTATION OR FINDINGS TO SUPPORT ANY REMEDIATION ACTIONS THAT MAY HAVE BEEN TAKEN BY OR ESTIMATE THE COSTS ASSOCIATED WITH SUCH REMEDIATION?

NOTE: BUYER IS ENCOURAGED TO CHECK PUBLIC RECORDS CONCERNING THE PROPERTY (E.G. TAX RECORDS AND WETLAND AND FLOOD PLAIN MAPS)

THE SELLER/LESSOR SHOULD USE THIS AREA TO FURTHER EXPLAIN ANY ITEM ABOVE. IF NECESSARY, ATTACH ADDITIONAL PAGES AND INDICATE HERE THE NUMBER OF ADDITIONAL PAGES ATTACHED.

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SELLER'S/LESSOR'S CERTIFICATION: SELLER/LESSOR CERTIFIES THAT THE INFORMATION IN THIS PROPERTY CONDITION DISCLOSURE STATEMENT IS TRUE AND COMPLETE TO THE SELLER'S/LESSOR'S ACTUAL KNOWLEDGE AS OF THE DATE SIGNED BY THE SELLER/LESSOR. IF A SELLER/LESSOR OF RESIDENTIAL REAL PROPERTY ACQUIRES KNOWLEDGE WHICH RENDERS MATERIALLY INACCURATE A PROPERTY CONDITION DISCLOSURE STATEMENT PROVIDED PREVIOUSLY, THE SELLER/LESSOR SHALL DELIVER A REVISED PROPERTY CONDITION DISCLOSURE STATEMENT TO THE BUYER/LESSEE AS SOON AS PRACTICABLE. IN NO EVENT, HOWEVER, SHALL A SELLER BE REQUIRED TO PROVIDE A REVISED PROPERTY CONDITION DISCLOSURE STATEMENT AFTER THE TRANSFER OF TITLE FROM THE SELLER TO THE BUYER OR OCCUPANCY BY THE BUYER, WHICHEVER IS EARLIER.

SELLER/LESSOR _____ DATE _____

SELLER/LESSOR _____ DATE _____

BUYER'S/LESSEE'S ACKNOWLEDGMENT: BUYER/LESSEE ACKNOWLEDGES RECEIPT OF A COPY OF THIS STATEMENT AND BUYER/LESSEE UNDERSTANDS THAT THIS INFORMATION IS A STATEMENT OF CERTAIN CONDITIONS AND INFORMATION CONCERNING THE PROPERTY KNOWN TO THE SELLER/LESSOR. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER/LESSOR OR SELLER'S/LESSOR'S AGENT AND IS NOT A SUBSTITUTE FOR OTHER INSPECTIONS OR TESTING OF THE PROPERTY OR INSPECTION OF THE PUBLIC RECORDS.

BUYER/LESSEE _____ DATE _____

BUYER/LESSEE _____ DATE _____

§ 468-a. Rights. 1. A buyer of residential real property has the right to test the property for the purpose of determining whether the property has ever been used as a methamphetamine illegal drug laboratory as defined in section 220.00 of the penal law.

2. Tests conducted pursuant to this section shall be performed by a certified industrial hygienist or industrial hygienist, as those terms are defined in section thirteen hundred seventy-eight of the public health law. If the buyer's test results indicate that the property has been used as a methamphetamine illegal drug laboratory but has not been remediated to meet the standards established by the department of health as promulgated, the buyer shall promptly give written notice to the

seller of the results of the test, and the buyer may terminate the contract.

3. The seller shall have thirty days after receipt of the notice to conduct a second independent test at their own expense. If the seller's test results indicate that the property has been used as an illegal drug laboratory but has not been remediated to meet the standards established by the department of health as promulgated then the second independent hygienist shall so notify the seller.

4. If the seller receives the notice referred to in subdivision two or three of this section and does not elect to have the property retested pursuant to subdivision three of this section, then an illegal drug laboratory used to manufacture methamphetamine shall be deemed to have been discovered and the owner shall be deemed to have received notice. Nothing in this section shall prohibit a buyer from purchasing the property and assuming liability pursuant to section thirteen hundred seventy-eight-b of the public health law, provided that on the date of closing, the buyer shall provide written notice to the department of public health and the department of environmental conservation of the purchase and assumption of liability.

§ 468-b. Remedies. 1. The following provisions shall apply provided that the buyer has not elected to purchase the property and assume liability pursuant to subdivision four of section four hundred sixty-eight-a of this article. The seller shall disclose in writing to the buyer whether the seller knows that the property was previously used as a methamphetamine illegal drug laboratory pursuant to subdivision two of section four hundred sixty-eight of this article. In instances where contamination is discovered during the executory period of the contract the seller shall have an ongoing duty to disclose such information to the buyer in writing.

2. A seller who fails to make a disclosure required by this section at or before the time of sale and who knew or knows of methamphetamine contamination on the property is liable to the buyer for:

a. Costs relating to remediation of the property according to the standards established by rules of the department of health promulgated pursuant to section thirteen hundred seventy-eight-a of the public health law;

b. Costs relating to health-related injuries occurring after the sale to residents of the property caused by methamphetamine production on the property; and

c. Reasonable attorney fees for collection of costs from the seller.

3. A buyer shall commence an action under this section within three years after the date on which the buyer closed the purchase of the property where the methamphetamine production occurred or within two and one-half years of the discovery of a health-related injury.

4. If the seller became aware that the property was once used for the production of methamphetamine and the property was remediated in accordance with the standards established pursuant to section thirteen hundred seventy-eight-a of the public health law, and evidence of such remediation was received by the applicable governing body in compliance with the documentation requirements established pursuant to section thirteen hundred seventy-eight-a of the public health law, then the seller shall not be required to disclose that the property was used as a methamphetamine laboratory to a buyer and the property shall be removed from any government-sponsored informational service listing of properties that have been used for the production of methamphetamine.

§ 2. Article 13 of the public health law is amended by adding a new title 10-A to read as follows:

TITLE 10-A

CONTROL OF METHAMPHETAMINE CONTAMINATED PROPERTIES

Section 1378. Definitions.
1378-a. Methamphetamine illegal drug laboratories rules.
1378-b. Discovery of illegal drug laboratories, property owner, clean-up and liability.

§ 1378. Definitions. As used in this article, unless the context otherwise requires:

1. "Governing body" means the agency or office designated by the city council or board of county commissioners where the property in question is located. If there is no such designation, the governing body shall be the county, district, or municipal public health agency, building department, and law enforcement agency with jurisdiction over the property in question.

2. "Illegal drug laboratory" means the areas where controlled substances, as defined by section 220.00 of the penal law have been manufactured, processed, cooked, disposed of, used, or stored and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposal, use, or storing. When used in this chapter the term "methamphetamine illegal drug laboratory" shall have the same definition as provided herein.

3. "Property" means anything that may be the subject of ownership, including, but not limited to, land, buildings, structures, and vehicles.

4. "Property owner", for the purposes of real property, means the person holding record fee title to real property. "Property owner" also means the person holding the title to a manufactured home.

5. "Certified industrial hygienist" means an individual that is certified by the American board of industrial hygiene or its successor.

6. "Industrial hygienist" means an individual who has obtained a baccalaureate or graduate degree in industrial hygiene, biology, chemistry, engineering, physics, or a closely related physical or biological science from an accredited college or university. The special studies and training of such individual shall be sufficient in the cognate sciences to provide the ability and competency to:

a. anticipate and recognize the environmental factors and stresses associated with work and work operations and to understand their effects on individuals and their well-being;

b. evaluate on the basis of training and experience and with the aid of quantitative measurement techniques the magnitude of such environmental factors and stresses in terms of their ability to impair human health and well-being;

c. prescribe methods to prevent, eliminate, control, or reduce such factors and stresses and their effects;

d. any individual who has practiced within the scope of the meaning of industrial hygiene for a period of not less than five years immediately prior to July first, nineteen hundred ninety-seven, is exempt from the degree requirements set forth in this section.

e. any individual who has a two-year associate of applied science degree in environmental science from an accredited college or university and in addition not less than four years practice immediately prior to July first, nineteen ninety-seven, within the scope of the meaning of industrial hygiene is exempt from the degree requirements set forth in this section.

§ 1378-a. Methamphetamine illegal drug laboratories rules. The commissioner, in conjunction with the commissioner of the department of environmental conservation, shall jointly promulgate regulations addressing property contamination issues for properties previously used for the production or storage of methamphetamine. Such regulations shall include, but not be limited to: establishing procedures for testing and evaluation of contaminated properties, establishing and maintaining acceptable standards for the cleanup and remediation of contaminated properties, establishing and maintaining documentation of contaminated properties including a state-sponsored informational service listing of properties that are deemed contaminated, and ensuring that all such regulations ensure the health and safety of the people of the state of New York.

§ 1378-b. Discovery of illegal drug laboratories, property owner, clean-up and liability.

1. An owner of any personal property within a structure or vehicle contaminated by illegal drug laboratory activity and whose owner chooses to remediate shall have ten days after the date of discovery of the laboratory or contamination to remove or clean his or her personal property according to department rules. If the personal property owner fails to remove the personal property within ten days, the owner of the structure or vehicle may dispose of the personal property during the clean-up process without liability to the owner of the personal property for such disposition.

2. Once a property owner has provided the necessary documentation and testing results as established by the department the provisions of subdivision three of this section shall control.

3. Upon completion of any provision outlined in subdivision two of this section immunity shall be established for the property owner from a suit for alleged health-based civil actions brought by any future owner, renter, or other person who occupies such property, or a neighbor of such property, in which the alleged cause of the injury or loss is the existence of the illegal drug laboratory used to manufacture methamphetamine; except that immunity from a civil suit is not established for the person convicted for the production of methamphetamine.

4. A person who removes personal property or debris from a drug laboratory shall secure the property and debris to prevent theft or exposing another person to any toxic or hazardous chemicals until the property and debris is appropriately disposed of or cleaned according to department rules.

5. Governing bodies may enact ordinances or resolutions to further enforce this article, including, but not limited to, preventing unauthorized entry into contaminated property; requiring contaminated property to meet clean-up standards before it is occupied; notifying the public of contaminated property; coordinating services and sharing information between law enforcement, building, public health, and social services agencies and officials; and charging reasonable inspection and testing fees provided, however local ordinances shall not conflict with any rules established by the department. Should a conflict arise between a state regulation and any local law, ordinance or resolution the state rule shall be deemed to preempt any local law, ordinance or resolution.

§ 3. Subdivision 16 of section 220.00 of the penal law is amended by adding a new paragraph (f) to read as follows:

(f) "Illegal drug laboratory" means the areas where controlled substances, as defined in this section, have been manufactured, proc-

essed, cooked, disposed of, used, or stored and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposal, use, or storing.

§ 4. Subdivision 2 of section 221-d of the executive law, as added by chapter 394 of the laws of 2005, is amended to read as follows:

2. Whenever the division of state police receives a report of an unlawful methamphetamine laboratory, or discovers or recognizes the presence of an unlawful methamphetamine laboratory, such division, as soon as reasonably practicable shall notify, or cause to be notified, the department of environmental conservation **and the department of health** of such information.

§ 5. This act shall take effect on the three hundred sixty-fifth day after it shall have become a law, provided however, that the commissioner of health and the commissioner of environmental conservation shall have the authority to jointly issue any rules or regulations necessary for the implementation of this act prior to or after it becomes a law.