

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

1409

2005 HOUSE JUDICIARY

HB 1409

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1409

House Judiciary Committee

Conference Committee

Hearing Date 1/26/05

Tape Number	Side A	Side B	Meter #
1		xx	7.3-end
2	xx		0-18
Committee Clerk Signature <i>APenrose</i>			

Minutes: 12 members present, 2 members absent (Rep. Charging & Zaiser).

Chairman DeKrey: We will open the hearing on HB 1409.

Rep. Bette Grande: This bill is coming to you from the Fargo Police Dept. and this has to do with meth lab cleanup, not only in Fargo but around the state. We are proposing that when we have meth labs that are busted and they're in the houses here, and it's a cleanup procedure. This is really a kind of an area that I am not well versed in, obviously (see written testimony). After this bill was proposed, I had the opportunity to work with the health unit and health department and they have come together with what I see as a very wonderful proposal, as an amendment, and I am offering those amendments to you and I support these amendments. I would urge them to be added to this bill.

Sgt. Pat Clause, Fargo Police Department: Explained the bill, we support this bill and the amendments. I'm a crime lab certified officer that has investigated several labs in Cass County and Fargo, specifically, and until recently, was a Sgt. In charge of the Narcotics Gangs Unit for

the Fargo Police Dept. I also spent five years with the DEA's drug task force in Fargo, working on labs. This bill was precipitated by meth labs being a biohazard, a chemical hazard. On a residence in Fargo last year, we conducted a raid on that location, we finally got the warrant, we entered the lab, we had cameras set up. We went in with masks on, and even then my monitor indicated low oxygen levels, and high explosive levels. One of our outside officers became ill just patting down one of the people we brought out of the building. They were making meth in a room adjacent to where their children's room was at. That house, luckily, the owner of that property, it was a rental property, that owner cooperated with the city, the city was able to purchase that house, and is now gutting it and working their way up to make sure that it is free of hazards. Unfortunately, we find that we are not always that lucky, when we come upon a lab site where the owners are willing to cooperate with us. In our part of the state, the primary method of making meth, is anhydrous ammonia reduction method. It uses anhydrous ammonia, solvents, sodium hydroxide, hydrochloric acid, etc. and we find that there is a lot of residue left over. When we investigate the labs, law enforcement removes the evidence under the court procedures. We remove the actual lab equipment, we photograph it, we sample it, and we have it destroyed because it is hazardous material. That does not allow us to remove the carpet, the furniture, the clothing and everything from those sites and as such, those items are left contaminated at the site, and if the renters move out and nothing's done, an unsuspecting renter, technically could enter that environment and be exposed to all sorts of different chemicals. About 70% of the chemicals seized at labs are solvents, and as the Ag industry and farm industry attempts to shut down access to anhydrous ammonia, unfortunately there are other ways to make meth. One of those ways is red phosphorus reduction method. Red phosphorus reduction method is what the super labs use

in California, Oregon and Washington, and if that method transfers to our area, you will see chemicals such as phosphene gas, iodine (which is a danger to life and health at 2 ml/million) which absorbs into your system. Regardless, we are always going to have this potential hazard. Because of that, this problem affects public health and safety. When we're done with our investigation, what's left there is a hazard to other people, and this bill, we believe addresses the issues that would make those owners who aren't willing, clean up their property to a safe level prior to either renting that property or transferring ownership in that property; so we don't have unsuspecting people living in basically a chemically dangerous zone.

Representative Bernstein: Who bears the cost of cleaning up these houses. What if the owner to the property doesn't let anybody come in, or doesn't want anyone to come in, who bears the cost of this.

Sgt. Pat Clause: If the person refuses, the health department does have administrative ways to get entry to the property and enforce the property. The cost of cleaning up the property, if it isn't purchased like was done by the Fargo Housing Authority, would be borne by the owner of the property. The state assumes no financial responsibility, other than if the municipality or county choose to buy the property as a nuisance.

Representative Koppelman: Along those lines, it seems to me that there are two and potentially three parties affected by this kind of activity and obviously you've got the law enforcement or the public interest on one side and on the other side you have the owner of the property, which may be one and the same person as the perpetrator. The house you mentioned was a rental property, and you may have a potentially innocent landlord, who not only is

damaged by what's going on, has no recourse. What protects landlords if this becomes law from really being in financial straits over this kind of matter. Does insurance cover this sort of thing.

Sgt. Pat Clause: The law does affect the owner or the person responsible. For people who deal in rental property, that is a significant concern. Some insurance may cover it. Clearly, the weight of the responsibility is on the owner of the property. They need to do the best job they possibly can, in getting renters, by checking out the backgrounds of the renters to make sure that they aren't involved in criminal activity. We provide training in how to spot meth labs, how to protect your property, etc. In the end, the cost is borne by the owner. This is no different than renting to someone who turns out to be a party animal and trashing the property.

Representative Koppelman: What is the cost of cleaning up.

Sgt. Pat Clause: The cost varies depending on the level of contamination. Some minor labs or storage locations can be cleaned up with nothing more than a very thorough cleaning, steam cleaning the carpets, painting, etc. Some are so contaminated, the drains, etc. that you have to pull carpet, sheet rock and either remove or steam clean the drains.

Representative Delmore: What if it is in an apartment building, could this possibly affect other apartments in the building, not just the contaminated apartment. Would they have to be cleaned as well.

Sgt. Pat Clause: Yes, based on how long the lab was in operation, what type of lab was used, what procedures they actually used. Air flow could cause vapor and contaminants, or where the waste products were dumped could result in additional areas of the property requiring decontamination.

Representative Galvin: You mentioned that one of the officers got ill just patting down the person. How could the offenders survive in this kind of environment themselves.

Sgt. Pat Clause: We believe that what happened is that hydrogen chloric gas was trapped in a pocket of the clothing. He was right there patting down the offender, and hit the pocket and the gas escaped. The offenders develop a tolerance to the drug, and while it doesn't affect them instantaneously, it affects them eventually.

Representative Klemm: The amendment says that the person is guilty of a Class B misdemeanor, the owner, be guilty of a class B misdemeanor for each day the property is transferred to or used by another person. For example, the apartment is rented out to somebody else, and we don't find out about it for a month, are we charging this person with 30 class B misdemeanors.

Sgt. Pat Clause: I believe that the intent of that would be that once the owner is notified that this is a hazardous location. After we conduct the search, we notify the health department that this was a lab site, we believe it is contaminated, they go out and they concur the site is contaminated. If the owner of that property, either by renting or living there themselves, continue to allow occupancy, even after being advised and failing to abate that hazard, they would be guilty of a class B misdemeanor, one count per day, for each day they continued. You've been told that this area is contaminated, you're not to rent it, it has to be cleaned up because it is a potential health hazard, the guy says he doesn't care, rents it to a family, the family moves in, that owner could be charged with a B misdemeanor, one count for each day they allow someone to occupy that hazardous location.

Representative Klemm: Wouldn't it make more sense to have it a Class A misdemeanor, because collectively it comes up to actually more. If you have a Class B misdemeanor, it's 30 days and a \$1,000. A Class A is one year and \$2,000. You could have 30 Class B misdemeanors, which sort of seems nonsensical to me, or one Class A misdemeanor. I would have no problem with that. That's makes sense to me. I think the idea behind this amendment, is to put a penalty if you don't care of the cleanup.

Representative Klemm: One other question, let's say we have a house that has been used for this purpose, owned by the occupant, they had a loan at the bank, now they are in jail, and the bank forecloses on the house, now the bank is the owner. Would the bank be responsible for the clean up and if they didn't, would the bank be guilty of a Class B misdemeanor.

Sgt. Pat Clause: Yes. Whoever is the owner of the property, if they have a propriety right in this property, in other words they hold the lien to it and they assume ownership, they assume responsibility for it. It is no different than if I owned the property, I trashed it, I reduce the property value and then I declare bankruptcy, or I just abandon it and take off, the bank is left with it. It's one of the risks they assume when they agree to be a lien holder in the property. They would be responsible.

Representative Delmore: One of the other things we do in meth cases is to confiscate property for the state. We also would be responsible for doing that. The state would be liable to do that same type of cleanup, before they turn it over and resell it.

Sgt. Pat Clause: That would be true. If we assume responsibility. If we seize a vehicle that was involved and it's grossly contaminated where it can't be salvaged, we just destroy the vehicle. We don't resell it. The current state law, does not permit us to seize a house under the

current drug statute. Federal law allows us to seize a house, if DEA seizes it. But if it is the decision of the ND state legislature when they did that law, that we would only seize real property if we could show that it had been purchased with drug proceeds. We don't normally seize a house in ND under state law, unless we could show that they used drug money to buy the house. All the federal has to show is that they used the house in the furtherance of a drug crime.

Representative Koppelman: Do worry at all that we are penalizing the wrong people here, particularly in the cases where the owner is not the perpetrator of the crime; especially the amendment, it's pretty stiff for an owner that may have exercised as much due diligence as they know how to try to ensure that they are renting to people that are okay.

Sgt. Pat Clause: Yes it is. The penalty only takes effect if they fail to clean it up. They aren't charged with a crime simply because they own the property where a meth lab was produced if they weren't involved. They would be charged with a crime after being notified that this is a health hazard. Any time a hazard exists, it has to be abated. This wasn't so much a criminal matter, as it is a public safety matter. We don't want an innocent family to be put at risk because the landlord didn't want to take the money to clean up the mess.

Representative Koppelman: I understand that. I don't see anything in the bill that goes after the perpetrator. It seems to me that that is the person who ought to be responsible for the damage they did.

Sgt. Pat Clause: Yes I do agree, but the logistics show that it wouldn't be able to be done in a timely manner to allow that property to get cleaned and used. As for the recovery of the costs, something could be put into the bill, or the owner always has civil redress to go after the person who damaged the property, if the amount is over the person's deposit. I'm not opposed to

someone coming forth with an amendment that would make the person convicted of the crime, responsible for the costs.

Representative Koppelman: If this bill passes in its current form, do you think that would be a disincentive for what happened in Fargo, to occur. In other words, you find a property where meth was made, and some entity came in and said this was a public health hazard, we're going to buy it. With this law in place, where is the incentive would there be to do that.

Sgt. Pat Clause: The owner had said that he would clean it up. Then the City of Fargo purchased it. I still think the owner is responsible. If the property is making money for you, that is a cost benefit analysis for the owner to decide. This is for the person who doesn't want to clean up the property or sell to the city, I just want to rent it the way it is because somebody will rent it from me.

Representative Klemin: The penalty part in the amendment, is that the property owner who transfers or allows a person other than the owner to use the property without abating the hazard is guilty of a class B misdemeanor. That does not say that if the owner uses the property without abating it, that there is a penalty on the owner. It's only under those circumstances. Do you think there should be a criminal penalty on the owner if he doesn't transfer it and uses it himself, that the person should also be guilty under those circumstances.

Sgt. Pat Clause: I'm not sure if I have an answer for that one. Part of me that says if you are the owner, not the owner and your kids. If you put someone else in that environment, then I think we have a problem.

Representative Klemin: It doesn't say that.

Sgt. Pat Clause: It does, it just says owner. If you are the owner and you choose to live there and we've told you it is a hazard, I think that is your decision. This is designed to protect unknowing parties. The way it is written, the way you've just read it, would make it that the owner is not committing a crime if the owner lives or occupies the property.

Representative Klemin: If the owner lives there with his family, it doesn't say that either.

Sgt. Pat Clause: It says allows a person other than the owner. Is a child the owner of that property. These are legal questions. That would be an interpretation. So it might be cleaner just to say that allow anyone to reside there.

Representative Klemin: I'm thinking that the owner might just let this property sit there for a couple of years and then transfer it off and how are you going to catch him now.

Sgt. Pat Clause: That would be a requirement that the Health department would quarantine the property. That would be a criminal investigation if the owner didn't clean it up.

Representative Onstad: Are we adding extra liability or protecting the law enforcement officer. Let's say if you recognize the hazard, but you didn't notify the health department. Two or three months down the road, it's rented out to another party, and now they name everybody, you knew it was a problem, are we opening the door for those, or you feel that law enforcement officers are still protected.

Sgt. Pat Clause: My area is not civil law, I would understand that I have a duty to act and I think that this would clarify it. Was the breach intentional or negligent. We routinely report labs to the health department. If we were aware of a place and didn't report it, we would probably get named.

Representative Boehning: In a rural area, you do a drug bust, there is no board of health, who is going to take care of that, who's going to pay for the person to come out from a larger city, to come out and certify that the house is unsafe. Is the home owner going to do that, or is the health department going to assume that.

Sgt. Pat Clause: I will defer that to the health department.

Chairman DeKrey: Thank you. Further testimony in support of HB 1409.

Keith Johnson, Administrator for Custer Health, ND Public Health, ND Environmental

Health Association: (see written testimony). In regard to the rural areas, all areas of the state are now covered by the Board of Health. After the 1999 legislature, the Board of Health employs environmental health practitioners, like myself, who help the health officer. Since we have 8 regional environmental health positions, every area of the state does have access to the services.

Representative Delmore: Currently if that property were rented out and there were small children present, do we have a statute in place that would allow you to go in there and say, "you have to clean this up or make recompense for these people".

Keith Johnson: Under the general authority of the health officer, we have that. It is a hard thing for states attorneys to work with. This is largely to make enforcement a little easier and a little more straightforward. But the authority is there.

Representative Klemin: We have been talking in the context of real property so far, it seems to me, and the bill says real or personal property. At first, I was looking at personal property like carpets, etc. but a mobile home is not real property. It is personal property that might be in a mobile home park sitting on wheels there. Would this apply to that mobile home. It seems like labs are in those types of homes, as well.

Keith Johnson: That is exactly the case. These labs are being reported everywhere. Also reported in campers, picnic tables and shelters, old basements. We've had meth labs under the skirting of trailers, and the only reason we found it was because the heat from the meth lab melted the vinyl siding down over the skirt. They are in all manners of places.

Representative Klemin: All of these rolling labs that you mentioned, like campers, which would include motor homes and fifth wheels, campers, would an automobile be covered there, as well.

Keith Johnson: Yes. Real or personal property is pretty much going to cover the gamut.

Representative Klemin: So if somebody had a car, and traded it in that had been used for this purpose, would that car dealer become responsible for cleanup and potentially the criminal penalty.

Keith Johnson: That's an interesting thought. It's possible. That has not changed. Whoever has possession of that property has the responsibility for it, whether this law is passed or not. This simply clarifies it and makes it easier to work with.

Representative Boehning: Who pays for the health department to come out and test that home, and what are the levels of testing, what are the safe levels, is there something written down that would say what parts per million that are safe and unsafe.

Keith Johnson: Mr. Berglund will be prepared to talk to that issue. Basically is the responsibility as the local health department. We pay for it out of local health department funds. The standards for clean up are more related to the cleaning and ventilation requirements that are needed. We say that if you've gone through this cleaning and this ventilation, we are saying that this area is safe.

Representative Boehning: So what you are saying is that the taxpayer is going to pay for all the testing, without charging the owner of the property. If you are ventilating it for a certain amount of days that it should be clear and free, is there an air test you can take.

Keith Johnson: I have the current elements of cleanup under the Best Management Practices that is outlined by the state health department. I'd be happy to give them to you if you would like.

Representative Boehning: I looked at those, it tells us what to do, but it doesn't tell us what a safe level is supposed to be.

Keith Johnson: We are not asking for an analysis for certification that the lab is clean, because the analysis is expensive and we think it would be an onerous burden on the property owner.

Representative Boehning: So how do we know if it is contaminant free.

Keith Johnson: There will be an inspection process whereby the health department has been notified, they will work in conjunction with the property owner and inspect. We don't have a magic air sampler or magic surface sampler that is going to say everything is fine. We're going to say that because you went through these procedures, if you followed them appropriately, we are going to assume the place is fine. We don't intend to get more complicated than that.

Representative Boehning: Basically what we're looking at is an assumption that it is clean.

Keith Johnson: During the cleaning, of course, there is an inspection to observe that it is being done appropriately.

Representative Boehning: So when the home owner looks at this, he says all I have to do is clean the carpet and we're good to go then.

Keith Johnson: That would be one interpretation. It does require the sign-off of the health department to accept the certification that it has been done appropriately.

Representative Koppelman: I asked earlier about the cost of this cleanup. He indicated that it could be clean up as you have been discussing, or it could be as serious as removing carpet, sheet rock, gutting a domicile and starting over. Maybe they would be rendered totally beyond repair. I assume there is an extra cost because if this stuff is so toxic, you're having people going in, you can't just call the local carpet cleaner. You have to have people who are protected, that would increase the cost, wouldn't it.

Keith Johnson: You are right. There is a list of cleaners that we send out to the property owners in this regard. But there is an expense involved. One of the reasons that we did not go into all that, is because we have a process under the health officer's order whereby the health officer orders the property to be cleaned, and if it is not done, he orders the local jurisdiction to do the work and bill the costs against the property. That is in place. If the property owner does not pay back the city, there is an additional proviso in the enforcement of the health officer's order that they can attach those costs against other property that is owned within that jurisdiction by the property owner.

Representative Koppelman: I understand when you look at this and look at rental property owners, landlords and say, well this is a business, they are making money from that property and they need to bear the cost of damage. When we look at the landscape in ND, the population in 1940 was about the same as it was today, but the city of Fargo had 28,000 people instead of 100,000 today. We have a lot of abandoned buildings, we have a lot of empty houses that are probably not very salable. People can't sell them, and in some cases they can rent them out.

They are renting as a last resort sometimes. I think when we look at the impact of health ramifications of that property being vacant, abandoned, empty, we've got another whole set of issues. Could this be a standard that would be so onerous that some of those folks that would say that they would rent their property and try to break even, and try to sell my house later, just say forget it. Let it go for back taxes, etc. Are the ripple effects here that we're not thinking about.

Keith Johnson: We have the choice of requiring property owners to carry out that duty on their property, or we have the choice of them saying, I'm not going to tell anybody about this, I'm just going to rent it again. Of the two, I think the other is the more onerous and those are our only two choices. Because the responsibility ultimately lies with the property owner.

Representative Koppelman: Or the third might be, not saying "gee I know there is a meth lab in my house and I'm going to go out and rent it again and endanger the next family that moves in", but just saying that with this new law we have, I can't afford to rent anymore. I can't sell it so it becomes property of the city or county.

Keith Johnson: This problem really is no different than other hazards that a landowner encounters. If you spray a pinhole leak out of the hot water heater, and let it go for a couple of months and turn the place into a mold factory, you have the same problem.

Representative Klemin: In lines 11-13 of the bill, it talks about the public health unit giving the owner a list of procedures and a list of the contractors to clean it up, and then the amendment takes that language out. Why do we want to take that out.

Keith Johnson: The practice that is on the ground already, was not included in the bill because local health departments already have this duty. It's happening under their policies and procedures and by-laws. I did not want to gum up the NDCC with it.

Representative Klemin: It's already covered.

Keith Johnson: Yes.

Chairman DeKrey: Thank you. Further testimony in support of HB 1409.

Myron Berglund, Mgr of Environmental Services for Fargo Cass Public Health: (see written testimony).

Representative Koppelman: Do any of you know if the Fargo program of background checks, etc. is available throughout the state.

Myron Berglund: I'm not aware of any. I think the larger cities might have it, I doubt some of the rural areas have them.

Chairman DeKrey: Thank you. Further testimony in support.

Lyle Witham, Assistant AG, AG's Office: I represent the health department in environmental matters. I hadn't seen this language until it was handed to me when we got to the committee hearing today. Some very good questions were raised here today. First of all, on the amendments, about the 5th line down, it talks about the owner shall certify, in writing, to the local health office that the hazard has been abated according to the Best Management Practices adopted by the state health council. The state health council's responsibility, under the environmental laws is really a rulemaking body. The health department, in particular the hazardous waste section of the health department, has already adopted Best Management Practices guidelines to address contamination at meth lab sites. Either this should be made into a rule where it is adopted by the state health council, or it should be clear that according to Best Management Practices, after the word "guidelines adopted by the state department of health". In other words, a rule has the binding effect of law, a guideline is something that is given but is not

binding. That's one thing to consider. Then it goes on to say, per Rep. Klemin's question, I think you really need to put into that last sentence, some kind of due process or actual notice to the landowner. Because if you're going to be prosecuting these cases, and you want it to mean something, I think to be constitutional, you have to have actual notice or some kind of due process. I was involved with the adoption of the guidelines by the BCI, on how they are going to clean up these, and I know there is already a notice process for the property owner. I suggest that you just add language there to the effect, after a property owner, add the language, "after given actual notice of the contamination". In addition, there is language here that says "and properly certifying abatement to the local health officer. In other words, it is putting the responsibility on, there are going to be guidelines and rules, and I suggest you clarify that by putting the obligation on the landowner to certify completion. It doesn't necessarily require an inspection by the local health officer or by the dept. of health. The dept. of health does not have the resources or employees to go out and check each one of these sites, especially when the employees are based in Bismarck and to drive out to Williston or Fargo, would add a lot of extra cost. That responsibility has fallen on the local health officers. I suggest that if you are going to require an inspection that you look there. I want to point out that the certification is the responsibility of the landowner. Also, I want to emphasize and agree that the amount of cleanup required on each of these properties and sites, varies a lot.

Chairman DeKrey: Are you familiar with any other crime in North Dakota where they continually recharge you with the same crime day after day.

Lyle Witham: Yes, I am, because most environmental crimes are a per day per violation standard. Other than environmental crimes, no. I think it would make sense to do it as Rep.

Klemin suggested and make it a class A misdemeanor, make sure you get the notice in there and then require the property owner to clean up to the standards either established in the rules or guidelines.

Representative Koppelman: Would destroying the property qualify as clean up.

Lyle Witham: I think under the guidelines, anything that removes the hazard would qualify.

Representative Klemin: Do you have any comments whether there should be a penalty if the owner himself uses the property without transferring it to someone else.

Lyle Witham: That's really a policy issue, very often these are abandoned buildings or buildings that are marginal anyway in terms of return on the property. I think if it is something that isn't cleaned up by the property owner and it goes back on taxes, that burden is going to be shifted to the local political subdivision that gets it back, if there is contamination. I think it would make sense, as a matter of policy, to require cleanup within a certain amount of time on all properties, just because of that particular problem. Other than that, when you are not talking about marginal properties, if the landowner has a reason for delaying it, if they haven't decided what they are going to change the use of that property for and they just want to delay the clean up until they make that decision so that they don't have to pay twice. Some flexibility might make sense too. I think those kinds of things could be built into the rules or the guidelines. Those are the kinds of things that we try to find some reasonable policy choices and give property owners some discretion.

Chairman DeKrey: Thank you.

Keith Johnson: The order of the health officer in 23-35, the time to comply with it is not to exceed 30 days. The other thing is that I agree with the amendment proposed by Mr. Witham,

and if we put a property owner who has been properly notified in that penalty phase, that would give us a due process and whatever the committee wants to do with the penalty that seems appropriate is still going to accomplish the purposes of the bill.

Representative Boehning: Have you been in contact with the health department, in looking at doing some rules changes on this.

Keith Johnson: We have been in very intense contact with the health department in the last two days. It is our, and the state health department's assumption, that it is the local health department's responsibility primarily for coming in on a lab.

Representative Koppelman: You were talking about the timetable, it seems reasonable if this all works chronologically, that if you discover a meth lab and the cleanup is ordered, before the landlord actually re-rents the property, then whether it is a class A or class B misdemeanor seems reasonable. But what about if it is discovered after or during the course of rental by somebody, and you notify the landlord and this daily provision is in there, if the landlord gives notice to the tenant to vacate the property or tries to evict them; there are procedures under law for that and that takes a period of time. Are they then guilty from day one for allowing it to be occupied.

Keith Johnson: The order of the health officer would be the initial notification in that case. The order of the health officer is not to exceed 30 days to compliance. Then the order of the health officer is essentially a civil procedure. The abatement procedures under a health officer's order are largely civil and the procedures are civil and the hearings are civil until you get to the criminal portion of it, until you finally throw up your hands and walk away, and say that this guy isn't doing anything. As long as they are cooperating, this wouldn't come into play.

Representative Boehning: What is considered an organizational fine under a class B misdemeanor. Is that an owner of an apartment building or organizations such as KC's or those types of organizations.

Representative Klemin: I think organizational fines refers to entities that are not human and that you can't actually put in jail. So we get a corporation or LLC, if you can fine them a dollar amount but you can't put them in jail.

Representative Boehning: We could fine owners of a corporation \$10,000/day, as a class B misdemeanors.

Representative Klemin: Maximum of \$10,000, not per day. The intern just gave me a definition of organization (read the definition in the NDCC).

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. The subcommittee will consist of Rep. Koppelman, Boehning and Zaiser. Rep. Boehning will chair it and we need a report on Monday.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1409

House Judiciary Committee

Conference Committee

Hearing Date 2/7/05

Tape Number	Side A	Side B	Meter #
1		xx	-42.8
Committee Clerk Signature <i>Ann Penrose</i>			

Minutes: 13 members present, 1 member absent (Rep. Maragos).

Chairman DeKrey: I'm hearing from Representative Boehning is that this bill is a bill without a purpose.

Representative Boehning: I want to put some language in there where the defendant is liable for the costs of clean up. That's what we need. We need something where the cities or counties can go back and get a judgment.

Chairman DeKrey: Recoup the costs.

Representative Boehning: Recoup the costs, yes.

Chairman DeKrey: Do you have the amendment drawn up?

Representative Boehning: Not yet, I have to talk to Vonette Richter about that.

Chairman DeKrey: See if we can get that by this afternoon. We will talk about this matter this afternoon. We will recess for now.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1409

House Judiciary Committee

Conference Committee

Hearing Date 2/8/05

Tape Number	Side A	Side B	Meter #
1	x		37.5-42
Committee Clerk Signature <i>Spencer</i>			

Minutes: 13 members present, 1 member absent (Rep. Maragos).

Chairman DeKrey: What are the committee's wishes in regard to HB 1409.

Representative Boehning: (explained his amendments). I move the amendments.

Representative Delmore: Seconded.

Chairman DeKrey: Motion carried.

Representative Koppelman: I move a Do Pass as amended.

Representative Delmore: Seconded.

13 YES 0 NO 1 ABSENT DO PASS AS AMENDED CARRIER: Rep. Boehning

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1409

Page 1, line 2, after "chemicals" insert "; and to provide a penalty"

Page 1, line 6, after "**procedures**" insert "**- Penalty**"

Page 1, line 9, replace "may" with "shall", after the first "unit" insert "or the department", and replace "If the public health unit" with "The owner of the property shall abate the hazard. Before the property is transferred to or used by a person other than the owner, the owner shall certify in writing to the local health officer that the hazard has been abated according to the best management practices adopted by the state health council. A property owner that transfers to or allows a person other than the owner to use the property without abating the hazard and properly certifying the abatement to the local health officer is guilty of a class B misdemeanor for each day the property is transferred to or used by another person."

Page 1, remove lines 10 through 13

Renumber accordingly

House Amendments to HB 1409 - Judiciary Committee 02/08/2005

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 1 of section 12.1-32-08 of the North Dakota Century Code, relating to restitution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

1. Before imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount ~~thereof of restitution~~. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence ~~it~~ the court may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court, unless the court states on the record, based upon the criteria in this subsection, the reason it does not order restitution or orders only partial restitution. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property. In determining whether to order restitution, the court shall take into account:
 - a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2.
 - b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.
 - c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise, be filed, transcribed, and enforced by the person entitled to the restitution or

reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced."

Renumber accordingly

Date: 2/8/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1409

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Koppelman Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	A		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	✓	
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemm	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Boehning

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1409: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1409 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 1 of section 12.1-32-08 of the North Dakota Century Code, relating to restitution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

1. Before imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount ~~thereof of restitution~~. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence ~~the court~~ may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court, unless the court states on the record, based upon the criteria in this subsection, the reason it does not order restitution or orders only partial restitution. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property. In determining whether to order restitution, the court shall take into account:
 - a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2.
 - b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.
 - c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be

deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise, be filed, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced."

Renumber accordingly

2005 SENATE JUDICIARY

HB 1409

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1409

Senate Judiciary Committee

Conference Committee

Hearing Date March 16, 2005

Tape Number	Side A	Side B	Meter #
2	X		4700 - End
		X	0.0 - End
Committee Clerk Signature <i>Maria L Salberg</i>			

Minutes: Relating to restitution

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Rep. Bette Grande, Dist. #4, (meter 4699) Introduced the bill. This bill has been Hog Housed.

The only original part of the bill is line 14-18. This is the body of the bill. Handed out an

Amendment to bring the bill back to its original state - Att. #1

The bill is about what it costs to put a property back to a livable habituate after a meth arrest has been made. The chemicals used to make the product leaves behind much cleanup. Who is responsible for this if the property is sold to new owner. Rep. Grande discussed the Health Departments position.

Sen. Traynor asked for more clarification on the hazardous material as a result of the meth precursor. (meter 5300) Srg. Claus will clarify

Pat Claus- Fargo Police Department - Certified Drug Enforcement Officer (meter 5720) How do we protect the innocent person or child that will live in a house that has been used as a meth lab, known or unknown? The majority of people take care of the properties after. There are some who do not. What do we do with them. The police department is only responsible to remove crime materials not to clean the environment. The original bill addressed this issue. Meth in ND is produced by the use of anhydrous reduction of ephedrine. Anhydrous ammonia is very dangerous. Other chemicals used are Coleman fuel, acetone and more. All of these are explosive, volatile, cancer causing solvents. Discussed the different chemicals and there "after life", what chemicals/gasses used in "super labs" (meter 0.1 side 2). We go in special outfits to remove the product. We do not "clean" the environment but we do post the building. Usually within 24 hours the posting has been removed. This is not to bring additional work to the property owner. We want it to be the same as if a chemical spill happened on a property etc.

Senator Triplett what is the average cost of a clean up? Ours is a couple of thousand. Some of the sites can be very expensive, they need to rip out all the sheet rock and carpeting and steam blasted out the sewer system. Some only require a thorough cleaning.

Senator Syverson asked if Federal Funds could be used? This funding can only be used for the removal of the product it is not to be used for clean up of the residence. Some states have a fund if you follow certain procedures they will cover a portion of the clean up. This bill does not address this.

Myron Bergland, Manager of Environmental Services, Fargo (meter 315) Gave Testimony - Att. #2. EPA funds are for outdoor clean up only.

Senator Hacker asked about home owners insurance, discussion. Mr. Bergland gave an example of a home that the owners abandoned.

Testimony Neutral to the Bill

Klouse Lemke, Association of Relaters - (meter 795) The land lord is innocent of the act yet he is the one who will get stuck in the end. The owner should not be put in jail when someone else has done the crime. Any marginal property will be abandoned before an owner would try to repair if it is to costly. Perhaps the police department has a fund from seized property that they can use? The money in that fund has been used up with drug training and other programs.

Sen. Traynor questioned that if a property owner is notified and has not done any clean up on the property? We all recognize that it needs to be cleaned up and not rented but you should not put them in jail for not? What do you think the penalty should be? Money should be set aside for the clean up, like they do when people turn in evidence. Discussed different effractions.

Keith Johnson, RS ND Public Health & Environmental Health Assoc. (meter 1500) Gave Testimony - Att. #3.

The committee further discussed the due process and the infraction of \$20 day enough to inspire the clean up. Also discussed if a real-estate transfer has preceded how would the process effect the new owner.

Testimony in Opposition of the Bill

None

Senator John (Jack) T. Traynor, Chairman closed the Hearing

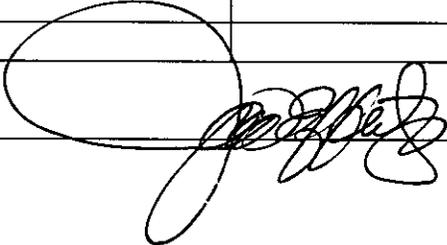
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1409

Senate Agriculture Committee

Conference Committee

Hearing Date March 22, 2005

Tape Number	Side A	Side B	Meter #
2	x		3030 - 4460
Committee Clerk Signature 			

Minutes:

Chairman Traynor opened the discussion on HB 1409.

Senator Hacker said this is a hog house bill. He asked the legislative intern for the original bill.

Senator Syverson said he has been told this is not a loophole but if an officer finds real or personal property and so forth, does that not qualify the whole amendment so that if an owner had someone renting some property and they absconded and the owners went to visit the property and found that it was contaminated would the owners be compelled to comply with section 2.

Senator Triplett said he could chose not to report it to the police.

Senator Trenbeath said this seems to him like it should be an ordinance.

Senator Traynor asked a city ordinance?

Senator Trenbeath said yes, abatement of a nuisance or something like that.

Senator Triplett said counties could do it too.

Senator Hacker said the original version of the bill does not have a class B misdemeanor for each day.

Senator Trenbeath said it could be \$1000 per day. It doesn't make sense. If you transfer the property over to someone, if it is deeded over, it is out of your hands whether it is transferred back to you.

Senator Traynor said it makes it a crime to transfer the property.

Senator Nelson asked where the original bill ends, after adopted by the department.

Senator Hacker said yes.

Senator Triplett said she likes the piece in the house engrossed bill that restitution has to include payment to the owner of real property. That clearly identifies where the burden should be, the one who causes harm should make payment. She realizes they don't always have the money to do restitution but she likes the notion of binding courts to do that.

Senator Trenbeath moved a do pass on HB 1409.

Senator Triplett seconded the motion.

Senator Traynor asked what the original bill did.

Senator Hacker said it provided for notifying the appropriate health unit, a list of what the owner of the property should do.

Senator Trenbeath read the original bill.

Senator Triplett said that puts the burden on the local health authorities who probably showed up in force to oppose the bill.

Senator Nelson said Keith Johnson, head of one of the largest health agencies in the state, favors the original bill.

Senator Nelson asked if it has any penalties in it.

Senator Triplett asked to discuss Mr. Berglund's comments. He suggested this is necessary, because the legislation assigns responsibility to the owner of the property. Isn't the owner of the property already responsible for the condition of their property. If contaminated property is sold without disclosure, there could be a civil liability action. This bill would require them to actively clean it up but many people can't afford that anyway, it could lead to blighted neighborhoods.

Senator Hacker said there are already certain codes required to rent out a home to people. This is good recourse. The only value in the original bill is it provides some direction.

Senator Syverson said this just amplifies present law to address meth. The clean up is more complex. Whether the owner will find restitution from a meth manufacturer, he doesn't know, but at least it is in law.

Senator Trenbeath said restitution orders can be reduced to civil judgments so it will be there for a while.

The motion passed on a roll call vote 6-0-0.

Senator Syverson will carry the bill.

REPORT OF STANDING COMMITTEE (410)
March 22, 2005 5:49 p.m.

Module No: SR-52-5809
Carrier: Syverson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1409, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1409 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1409

**2005 N.D. Legislative Issue
Clandestine (Meth) Lab Decontamination**

We are proposing a new section in state law to prevent the owner(s) of property (including structures or conveyances, i.e., a car, boat, trailer, etc.), in which an active or inactive clandestine laboratory or lab storage site was located, from transferring ownership or leasing that property until the property is deemed "decontaminated" by a state authority.

We suggest a procedure be put into place requiring law enforcement agencies to notify the state or local health department of all clandestine labs and lab storage sites they have taken enforcement action on. The state or local health department would then do a preliminary assessment of the property. If the property is contaminated, the health department would put a hold on any title transfer and temporarily prohibit the owner from selling or leasing the property.

The owner of the property would be supplied with either a list of decontamination procedures and/or a list of certified contractors who could provide the decontamination services. Upon completion of the decontamination process, the health department would inspect and/or certify that the property was decontaminated, or arrange for the contractor to certify the property is decontaminated to an established level of safety.

Once the decontamination process is resolved, the title hold would be lifted. The owner would be notified that the property could now be sold or leased if they desire to do so. The law should also require that the sale or lease of the property or conveyance previously used as a clandestine lab or lab storage site be accompanied by a disclaimer advising the new owner or lessee that the property was previously used as a clandestine lab or as storage site for clandestine lab materials.

HB1409
Testimony in Support
Keith Johnson, R.S.
ND Public Health-ND Environmental Health Assns.
#380

January 26, 2005

I stand in support of this bill, and of the amendments proposed by Rep. Grande. I thank the sponsors for their work and attention to the bill. I am here to go through the amendments, and what they are intended to accomplish.

The bill already had a notification provision in it, whereby law enforcement, if they thought they had a health problem with a lab, could notify the local health department. We changed that "may" in line 9 to a "shall" and added the State Department of Health as an option for notification. Our intent was to allow the officer to notify whomever he knew, and not have to search around for the appropriate department. It is my understanding that an agreement is now in place between BCI and the State Health Department for such notification.

After that is a provision that specifies that a property owner is responsible for cleanup of a lab found on his or her premises. It references a cleanup according to Best Management Practices, a document issued by the State Health Dept. That document will need to be reworked a little to fit into this structure, probably entered into Administrative Code. That is why it is specified to be promulgated by the State Health Council.

The inspection and review process that will go on at the local health level is not specified in the bill. That authority and process is already in place in NDCC 23-35 under the general authority of the Health Officer. This bill just makes clear that a property owner has a responsibility to clean up a drug lab before the building is reoccupied. If the owner can recover the cost of cleanup from the lab owner, that process will be in court, and we can't legislate that process. That is up to the individuals involved.

The penalty of a class b misdemeanor is the same as that for disobeying the order of a health officer, and so is consistent with the other law.

Fargo Cass Public Health – Testimony
Housing Bill No. 1409
Wednesday, January 24, 2005

Good Morning Chairman DeKrey and members of the Judiciary Committee. My name is Myron Berglund and I am Manager of Environmental Services for Fargo Cass Public Health. Our responsibilities include the City of Fargo and Cass County plus contracts with West Fargo and 5 counties in Southeast North Dakota.

First, I would like to thank Representative Grande for bringing the issue forth to address the need for legislation on the proper clean up of illegal Methamphetamine Laboratories in our state.

Meth Labs are not always located in old abandoned houses or in isolated areas with no occupants in close proximity. In the City of Fargo and Cass County, we have experienced homes in good neighborhoods and even a rural church utilized as temporary laboratory sites. Current neighbors, and any future occupants, of these structures want to know a good faith effort has been made towards abatement of the hazards and restoration to a level of reasonable and satisfactory condition based on best management practices for meth lab cleanup.

Here is our current dilemma. Unless there are children, or vulnerable adults, residing on the property, current Public Health laws do not confer any jurisdiction or guidelines on what constitutes an acceptable living environment in a private dwelling. Consequently, we are always walking a fine line when it comes to personal comfort and well being in these situations. With Meth lab dwellings however, the bar is raised to a new level of what constitutes an acceptable living environment.

It is with this in mind, that I suggest to you that the responsibility for hazard abatement as well as cost of restoration must be the obligation of the legal property owner. Therefore, I suggest to the member of the committee, any Legislation must assign liability and responsibility to the owner of the property.

This concludes my testimony. Thank you for your time.

AH #1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1409

Page 1, line 1, after "to" insert "create and enact a new section to chapter 23-35 of the North Dakota Century Code, relating to health hazards created by methamphetamine precursor chemicals; to"

Page 1, line 2, after "restitution" insert "; and to provide a penalty"

Page 2, after line 21, insert:

"SECTION 2. A new section to chapter 23-35 of the North Dakota Century Code is created and enacted as follows:

Methamphetamine - Affected property - Abatement procedures - Penalty.

If a law enforcement officer finds real or personal property that is in a condition that may be hazardous to the health of a person as a result of methamphetamine precursor chemical, the law enforcement officer shall notify the appropriate public health unit or the department. The owner of the property shall abate the hazard. Before the property is transferred to or used by a person other than the owner, the owner shall certify in writing to the local health officer that the hazard has been abated according to the guidelines adopted by the department. A property owner that has been properly notified and which transfers to or allows a person other than the owner to use the property without abating the hazard and properly certifying the abatement to the local health officer is guilty of a class B misdemeanor for each day the property is transferred to or used by another person."

Renumber accordingly

Good Morning Chairman and members of the Judiciary Committee. My name is Myron Berglund and I am Manager of Environmental Services for Fargo Cass Public Health. Our responsibilities include the City of Fargo and Cass County plus contracts with West Fargo and 5 counties in Southeast North Dakota.

First, I would like to thank Representative Grande for bringing the issue forth to address the need for legislation on the proper clean up of illegal Methamphetamine Laboratories in our state.

Meth Labs are not always located in old abandoned houses or in isolated areas without neighbors in close proximity. In the City of Fargo and Cass County, we have already experienced homes in good neighborhoods and even a rural church utilized as temporary laboratory sites. Current neighbors, and any future occupants, of these structures want to know that a good faith effort has been made towards abatement of the hazards and restoration to a level of reasonable and satisfactory condition based on best management practices for meth lab clean up.

Here is our current dilemma. Unless there are children, or vulnerable adults, residing on the property, current Public Health laws do not confer any jurisdiction or guidelines on what constitutes an acceptable living environment in a private dwelling. Consequently, we are always walking a fine line when it comes to personal comfort and well being in these situations. With Meth lab dwellings, however, the bar is raised to a new level of what constitutes an acceptable living environment.

It is with this in mind, that I state to you that the responsibility for hazard abatement as well as cost of restoration must be the obligation of the legal property owner. Therefore, I suggest to the members of the committee, any Legislation must assign liability and responsibility to the owner of the property.

This concludes my testimony. Thank you for your time.

Att #3

HB1409
Testimony in Support
Keith Johnson, R.S.
ND Public Health-ND Environmental Health Assns.
#380

March 16, 2005

I stand in support of this bill, and of the amendments proposed by Rep. Grande. I thank the sponsors for their work and attention to the bill.

This bill was extensively rewritten by the House committee, so much so that it lost its original intent, which was to make sure a drug lab was cleaned up before the property was rented to someone new. The amendments seek to restore that focus, while leaving the language in place that the House committee inserted about restitution.

The amendment specifies that a property owner is responsible for cleanup of a lab found on his or her premises. It references a cleanup according to guidelines issued by the State Health Dept. That document is generated and is available.

The property owner is the only responsible party available to clean up the mess until the perpetrator is in court and restitution is ordered by a judge. As you have heard from others today, the chemicals used in the manufacturing of methamphetamine are dangerous and toxic. It is important to get them removed from a dwelling before others are exposed to them.

The penalty of a class B misdemeanor is the same as that for disobeying the order of a health officer, and so is consistent with other law regarding cleanup of nuisance properties.