

SENATE BILL REPORT

SB 5228

As of February 4, 2004

Title: An act relating to selling or leasing contaminated property.

Brief Description: Selling or leasing contaminated property.

Sponsors: Senators Regala, Winsley, Rasmussen, Schmidt, Haugen, Kastama and Franklin.

Brief History:

Committee Activity: Commerce & Trade: 2/20/03, 3/5/03 [DPS]; 2/5/04.

SENATE COMMITTEE ON COMMERCE & TRADE

Staff: John Dziedzic (786-7784)

Background: The hazardous chemicals used to manufacture illegal drugs can contaminate the personal property (cars, trailers, etc.) and real property (homes, apartments, storage units, etc.) in which they are used, and thus present a public health hazard. Innocent members of the public have been harmed by the residue left by these chemicals when the contaminated properties are subsequently sold or rented without having been decontaminated.

Under current law, when a law enforcement agency becomes aware that any property is contaminated by these chemicals, the agency must inform the local health officer, who then is empowered to declare the property "unfit for use." This finding is recorded in the real property records of the county. Owners of property found to be unfit must use an authorized contractor when decontaminating the property. If, upon retesting, the local health official concurs that the property is decontaminated, the officer will file a "release for reuse" document in the county real property records.

Instances have been reported where vehicles contaminated by hazardous chemicals were sold at public auction under the Towing and Impoundment statutes, without notice of the contamination to prospective purchasers.

Summary of Second Substitute Bill: Vehicles impounded by a law enforcement agency and found to be "unfit for use" cannot be sold at public auction, and must be destroyed unless decontaminated in accordance with an approved plan by either the (a) vehicle's owner; (b) a lender, insurer, or other entity with a financial interest in the vehicle; (c) the registered tow truck operator in possession of the impounded vehicle; or (d) a purchaser who agrees to decontaminate it as a condition of purchase.

The local law enforcement agency that had the vehicle impounded must reimburse the tow truck operator for the net, out-of-pocket expenses of destroying the vehicle incurred by the tow truck operator. The agency may apply for a grant from the local toxics control account, administered by the Department of Ecology, to help offset this reimbursement obligation.

The provisions regarding who may decontaminate vehicles and other tangible personal property are also applicable to real property, except that public entities exercising the right of eminent domain may transfer ownership of contaminated property before it is cleaned up, as long as the entity has obtained approval of a decontamination plan from the local health officer.

If tangible personal property or real property is sold or leased within a year after it is decontaminated, the owner must give a copy of the "release for reuse" document to each purchaser/lessee during that time, unless the property is occupied or otherwise used for its intended purposes during that time, in which case the notice must be provided during only the first six months of such use.

Penalties are established for failure to provide the required notice that a property has been decontaminated during the applicable period:

- (a) Tangible personal property: the initial purchaser may rescind the transaction and obtain attorney fees. Subsequent purchasers also have recourse against the seller that failed to provide notice. Innocent intermediate purchasers are not liable for non-disclosure.
- (b) Real property: the transaction can be terminated at the lessee/purchaser's option and deposits must be refunded and relocation expenses paid by the lessor/seller. Unless the owner can show that the failure to provide the required disclosure was inadvertent, the owner may also be required to pay a penalty equivalent to two month's rent and attorney fees.

Transferring contaminated property that has not been decontaminated is a gross misdemeanor, and the seller is liable for any direct or consequential damages suffered by the purchaser.

Second Substitute Bill Compared to Substitute Bill: The substitute bill was not considered.

Appropriation: None.

Fiscal Note: Requested on March 3, 2003.

Effective Date: Ninety days after adjournment of session in which bill is passed.