



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 33

128th General Assembly  
(As Passed by the House)

**Reps.** Dyer, Hagan, B. Williams, Boyd, Chandler, Harris, DeBose, Winburn, Bacon, Batchelder, Beck, Belcher, Bolon, Bubb, Celeste, Daniels, DeGeeter, Derickson, Dodd, Domenick, Driehaus, Evans, Fende, Foley, Garland, Garrison, Goyal, Grossman, Harwood, Heard, Koziura, Lehner, Letson, Luckie, Lundy, Mallory, Mandel, McClain, Moran, Murray, Oelslager, Otterman, Patten, Pillich, Pryor, Reece, Ruhl, Sayre, Skindell, Slesnick, Sykes, Szollosi, Weddington, Yuko

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## BILL SUMMARY

- Requires a law enforcement agency to report specified information to the Superintendent of the Bureau of Criminal Identification and Investigation when it discovers an illegal methamphetamine manufacturing laboratory on real property or discovers such a laboratory or its components in a motor vehicle.
- Requires the Superintendent to establish and maintain on the Attorney General's official web site a database of properties and motor vehicles where illegal laboratories or components were reported under the provision described in the preceding dot point.
- Requires the Superintendent to remove real property from the database upon receipt from a property owner of a copy of an affidavit required to be submitted to the property owner under the bill by a contractor who conducted methamphetamine residue removal from the property.
- Requires the Superintendent to develop procedures for the removal of a property from the database if the property was included in the database erroneously or improperly.
- Requires the Attorney General to adopt rules to implement the provisions of the bill governing the duties of the Superintendent of the Bureau of Criminal Identification and Investigation and specifies that those rules and those provisions become operative only on the effective date of the rules described in the next dot point.

- Authorizes the Director of Health to adopt rules that establish guidelines for the removal of methamphetamine residue from real property on which an illegal methamphetamine manufacturing laboratory has been discovered, and specifies that the rules may be adopted only when a federal agency establishes guidelines for the removal of methamphetamine residue from property and must conform to those federal guidelines.
- Requires rules adopted by the Director of Health to require a contractor responsible for conducting the removal of methamphetamine residue from real property to submit to the owner of the real property a notarized affidavit that attests that methamphetamine residue was removed from the property in accordance with the guidelines.
- Declares that a false statement knowingly made on an affidavit described in the preceding dot point is falsification, which is a first degree misdemeanor under existing law.
- Requires the Director of Commerce to revise the residential real property disclosure form prescribed and used under existing law to require disclosure of information concerning any illegal methamphetamine manufacturing laboratory that has been discovered on residential real property and inclusion of the property in the database established under the bill.
- Specifies that if real property is removed from the database established under the bill, a property owner is not required to include any information regarding an illegal methamphetamine laboratory on the disclosure form described in the preceding dot point.
- Requires information regarding the inclusion of a motor vehicle on the illegal methamphetamine manufacturing laboratory database to be recorded on the title of the vehicle when the clerk of a court of common pleas issues a certificate of title for the vehicle to a law enforcement agency that has seized the vehicle and the clerk is informed by the agency that the vehicle is listed on the database.
- Declares that the bill is to be known as the Methamphetamine Awareness and Notification Act.

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## **CONTENT AND OPERATION**

### **Background**

Existing law requires a law enforcement agency that arrests any person for a violation of R.C. 2925.04 that is based on the manufacture of methamphetamine or a

methamphetamine product, or a violation of R.C. 2925.041 or any other drug law prohibition that is based on the possession of chemicals sufficient to produce methamphetamine or a methamphetamine product (see **COMMENT 1**), to prepare an annual report that contains specified information related to those arrests and to illegal methamphetamine laboratories, dump sites, and chemical caches. The agency must submit the report to the Superintendent of the Bureau of Criminal Identification and Investigation (BCII). The report is a statistical report, and nothing in the report or in the information it contains can identify, or enable the identification of, any person who was arrested and whose arrest is included in the information contained in the report. The report includes specified information regarding the total number of arrests described above, regarding the total number of dump sites and chemical caches related to illegal methamphetamine manufacturing (see **COMMENT 2**), and regarding the total number of "illegal methamphetamine manufacturing laboratories" (see "**Definitions**," below) at which one or more reported arrests described above occurred or that the reporting agency discovered in that calendar year, but at which none of the reported arrests occurred. The report is a public record. (R.C. 109.60(C), not in the bill.) Existing law does not require the report to include the location of laboratories.

## **Duty to report methamphetamine manufacturing laboratory location**

### **On real property**

The bill requires any law enforcement agency that discovers an "illegal methamphetamine manufacturing laboratory" to inform BCII's Superintendent in writing of the location of the real property on which the laboratory is discovered and provide any other information related to the laboratory or the property that the Superintendent may require. If the laboratory is discovered in a room of a hotel, motel, or similar establishment, the agency also must provide the room number or location of the room within that hotel, motel, or establishment. (R.C. 109.5731(B).)

### **In a motor vehicle**

The bill requires any law enforcement agency that discovers an illegal methamphetamine manufacturing laboratory or its components in a motor vehicle to inform BCII's Superintendent of the vehicle identification number and provide any other information related to the laboratory, components, or motor vehicle that the Superintendent may require. (R.C. 109.5731(C).)

## **Public database**

The bill requires BCII's Superintendent to establish and maintain, on the Attorney General's official web site, a database of all properties and motor vehicles reported to the Superintendent pursuant to the bill's requirements described above.

The database entry for a motor vehicle must include the vehicle identification number and the entry for property must include the name of the owner of record, the parcel number in the general tax list of the county, and other information that would cause the property's inclusion in the database to be discovered through a title search. For any laboratory discovered in the room of a hotel, motel, or similar establishment, the database entry must include the room number or the location of the room within the hotel, motel, or establishment. (R.C. 109.5731(D).)

### **Removal of a property from the public database**

The bill requires BCII's Superintendent to remove a property from the database described above upon receipt from a property owner of a copy of an affidavit required to be submitted to the property owner by a contractor who conducted removal of methamphetamine residue. The affidavit is required to attest that methamphetamine residue has been removed from the property in accordance with guidelines established in rules adopted by the Director of Health under the bill (see "**Rules of the Director of Health for the removal of methamphetamine residue**," below). The Superintendent must not remove a property from the database unless and until the Superintendent has received from the property owner a copy of an affidavit regarding the property, except as described below regarding property included in the database erroneously or improperly. The bill authorizes an owner of real property that has been included in the database to submit a copy of the affidavit to the Superintendent and to the Director of Health. (R.C. 109.5731(D) and 3701.181(A).) The bill declares that a false statement knowingly made on an affidavit is the offense of "falsification." Falsification committed in these circumstances is a first degree misdemeanor. (R.C. 2921.13(A)(16) and (F).) The bill also requires the Superintendent to develop procedures for the removal of property from the database if the property was included in the database erroneously or improperly (R.C. 109.5731(E)).

### **Rules of the Attorney General; date of operation**

The bill requires the Attorney General to adopt rules in accordance with the Administrative Procedure Act to implement the provisions of the bill described above that are applicable to BCII's Superintendent. Further, the bill specifies that the rules adopted by the Attorney General and those provisions of the bill become operative only on the effective date of rules adopted by the Director of Health under the bill (see "**Rules of the Director of Health for the removal of methamphetamine residue**," below). (R.C. 109.5731(F) and (G).)

## **Rules of the Director of Health for the removal of methamphetamine residue**

Under the bill, the Director of Health is authorized to adopt rules in accordance with the Administrative Procedure Act establishing guidelines for the removal of methamphetamine residue from real property on which an "illegal methamphetamine manufacturing laboratory" has been discovered when a federal agency establishes guidelines for the removal of methamphetamine residue from real property. The rules must conform with the guidelines established by the federal agency. In addition, the rules must require a contractor responsible for conducting the removal of methamphetamine residue from real property to submit to the owner of the real property a notarized affidavit that attests that the contractor has removed the methamphetamine residue in compliance with the guidelines that are established in the rules and that conform with the guidelines established by the federal agency. (R.C. 3701.181(B).)

### **Property disclosure forms**

Under current law, the Director of Commerce is required to prescribe a disclosure form that generally must be used by transferors of residential real property to disclose material matters related to the physical condition of the property to be transferred. Current law lists 14 types of residential real property transfers that are not subject to the disclosure requirement (see **COMMENT 3**). The form must allow for the disclosure of information regarding the source of water supply to the property, the nature of the sewer system serving the property, the condition of the structure of the property, the presence of hazardous materials or substances that are within the actual knowledge of the transferor, and any material defects in the property that are within the transferor's actual knowledge. The form generally must be delivered to each prospective transferee or prospective transferee's agent as soon as is practicable. (R.C. 5302.30.)

The bill requires the Director to revise the disclosure form to require disclosure of information concerning any "illegal methamphetamine manufacturing laboratory" that has been discovered on the property and inclusion of the property in the database established under the bill, as described above. If the property has been removed from the database, the property owner is not required to include any information regarding the illegal methamphetamine manufacturing laboratory on the disclosure form. The Director is required to revise the disclosure form within 30 days of the date on which rules adopted by the Director of Health under the bill take effect (see "**Rules of the Director of Health for the removal of methamphetamine residue**," above). (R.C. 5302.30(D)(3) and (J).)

## **Notation on the title of a motor vehicle included on the database**

Under current law, when a clerk of a court of common pleas issues a certificate of title for a motor vehicle that was last previously registered in Ohio and was a law enforcement vehicle or taxicab or was once in a flood, the clerk is required to record that information on the title. The bill requires that when a clerk issues a certificate of title to a law enforcement agency for a motor vehicle that has been seized by the agency and the clerk is informed by the agency that the vehicle is listed on the illegal methamphetamine manufacturing laboratory database established under the bill, as described above, the clerk must record that information on the title. (R.C. 4505.08(C).)

As used in this provision, "law enforcement agency" means a police department, the office of a sheriff, the State Highway Patrol, a county prosecuting attorney, or a federal, state, or local governmental body that enforces criminal laws and that has employees who have a statutory power of arrest (R.C. 4505.08(C), by reference to existing R.C. 109.573 which is not in the bill).

## **Name of the act**

The bill specifies that it is to be known as the Methamphetamine Awareness and Notification Act (Section 3).

## **Definitions**

Under the bill, "illegal methamphetamine manufacturing laboratory" has the same meaning as in existing R.C. section 3745.13 (not in the bill). The following are the relevant definitions in continuing law from that section.

"Methamphetamine" means methamphetamine, any salt, isomer, or salt of an isomer of methamphetamine, or any compound, mixture, preparation, or substance containing methamphetamine or any salt, isomer, or salt of an isomer of methamphetamine. (R.C. 3745.13(B)(1).)

"Illegal methamphetamine manufacturing laboratory" means any laboratory or other premises that is used for the manufacture or production of methamphetamine in violation of section 2925.04 of the Revised Code, whether or not there has been a prior conviction of that violation. (R.C. 3745.13(B)(2).)

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## COMMENT

1. Existing R.C. 2925.04 and 2925.041, not in the bill, provide as follows:

(a) Existing R.C. 2925.04 prohibits a person from knowingly cultivating marihuana or knowingly manufacturing or otherwise engaging in any part of the production of a controlled substance. The prohibition does not apply to any manufacturer, licensed health professional authorized to prescribe drugs, pharmacist, owner of a pharmacy, or other person whose conduct is in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741., or, if the conduct involves an anabolic steroid, certain persons engaging in specified types of conduct regarding the substance. A violation of the prohibition that involves a drug other than marihuana is the offense of "illegal manufacture of drugs," and a violation of the prohibition that involves marihuana is the offense of "illegal cultivation of marihuana." The penalty for a violation varies, depending upon the type and amount of the controlled substance involved. If the drug involved in the violation is methamphetamine, it generally is a felony of the second degree, and the court must impose one of several possible mandatory prison terms on the offender. If the offense was committed in the vicinity of a juvenile, in the vicinity of a school, or on public premises, it is a felony of the first degree, and the court must impose one of several possible mandatory prison terms on the offender. In addition to the required mandatory prison term and in addition to any other sanction imposed for the offense, the court must impose upon the offender a mandatory fine unless the court determines that the offender is indigent, the court must suspend the offender's driver's or commercial driver's license or permit, and if the offender is a professionally licensed person the court immediately must comply with R.C. 2929.18.

(b) Existing R.C. 2925.041 prohibits a person from knowingly assembling or possessing one or more chemicals that may be used to manufacture a controlled substance in Schedule I or II with the intent to manufacture a controlled substance in Schedule I or II in violation of R.C. 2925.04, as described above in **COMMENT** 1(a). In a prosecution for a violation of the prohibition, it is not necessary to allege or prove that the offender assembled or possessed all chemicals necessary to manufacture a controlled substance in Schedule I or II. The assembly or possession of a single chemical that may be used in the manufacture of a controlled substance in Schedule I or II, with the intent to manufacture a controlled substance in either schedule, is sufficient to violate the prohibition. A violation of the prohibition is the offense of "illegal assembly or possession of chemicals for the manufacture of drugs." The offense generally is a felony of the third degree, but if it was committed in the vicinity of a juvenile or in the vicinity of a school, it is a felony of the second degree.

If the chemical or chemicals assembled or possessed in committing the violation of the prohibition may be used to manufacture methamphetamine, the court must impose a mandatory prison term on the offender. In addition to the required mandatory prison term and in addition to any other sanction imposed for the offense, the special sanction provisions summarized above in the last sentence of **COMMENT 1(a)** apply to the offender.

2. The annual report must include all of the following information regarding the arrests described above and regarding dump sites and chemical caches related to illegal methamphetamine manufacturing (R.C. 109.60(C)(3)): (a) the total number of arrests made by the reporting agency in the calendar year covered by the report for a violation of R.C. 2925.04 that is based on the manufacture of methamphetamine or a methamphetamine product, a violation of R.C. 2925.041 that is based on the possession of chemicals sufficient to produce methamphetamine or a methamphetamine product, or a violation of any other provision of R.C. Chapter 2925. or 3719. that is based on the possession of chemicals sufficient to produce methamphetamine or a methamphetamine product, and (b) the total number of dump sites and chemical caches that are, or that are reasonably believed to be, related to illegal methamphetamine manufacturing and that were discovered in the calendar year covered by the report within the territory served by the reporting agency.

3. Current law specifies that the following types of residential real property transfers are not subject to the required use of the property disclosure forms prescribed by the Director of Commerce (R.C. 5302.30(B)(2)): (a) a transfer pursuant to court order, (b) a transfer to a mortgagee by a mortgagor by deed in lieu of foreclosure or in satisfaction of the mortgage debt, (c) a transfer to a beneficiary of a deed of trust by a trustor in default, (d) a transfer by a foreclosure sale that follows a default in the satisfaction of an obligation secured by a mortgage, (e) a transfer by a sale under a power of sale following a default in the satisfaction of an obligation that is secured by a deed of trust or another instrument containing a power of sale, (f) a transfer by a mortgagee, or a beneficiary under a deed of trust, who has acquired the residential real property at a sale conducted pursuant to a power of sale under a mortgage or a deed of trust or who has acquired the residential real property by a deed in lieu of foreclosure, (g) a transfer by a fiduciary in the course of the administration of a decedent's estate, a guardianship, a conservatorship, or a trust, (h) a transfer from one co-owner to one or more other co-owners, (i) a transfer made to the transferor's spouse or to one or more persons in the lineal line of consanguinity of one or more of the transferors, (j) a transfer between spouses or former spouses as a result of a decree of divorce, dissolution of marriage, annulment, or legal separation or as a result of a property settlement agreement incidental to a decree of divorce, dissolution of marriage, annulment, or legal separation, (k) a transfer to or from the state, a political subdivision of the state, or



another governmental entity, (l) a transfer that involves newly constructed residential real property that previously has not been inhabited, (m) a transfer to a transferee who has occupied the property as a personal residence for one or more years immediately prior to the transfer, and (n) a transfer from a transferor who both has not occupied the property as a personal residence within one year immediately prior to the transfer and has acquired the property through inheritance or devise.

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## HISTORY

ACTION	DATE
Introduced	02-19-09
Reported, H. Public Safety & Homeland Security	05-19-10
Passed House (98-0)	05-19-10

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