

ANHYDROUS AMMONIA SECURITY ACT

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Senate Bill 877 (Substitute H-1

Sponsor: Sen. Valde Garcia

House Committee: Agriculture

Senate Committee: Agriculture, Forestry, and Tourism

First Analysis (6-7-06)

BRIEF SUMMARY: The bill would create a new act to require the Agriculture Commission to develop safety and security practices concerning the storage and handling of anhydrous ammonia, and to exempt individuals who maintain anhydrous ammonia in compliance with those standards from tort liability.

FISCAL IMPACT: The bill would have no apparent fiscal impact on the state or local units of government.

THE APPARENT PROBLEM:

The illegal manufacture and use of methamphetamine (meth) has become increasingly prevalent in Michigan in recent years. In 1996, only six meth labs were found and investigated. That number increased to 186 by 2003. (Early on, these meth labs were primarily confined to a few southwestern counties, though incidents are now being reported elsewhere.) Methamphetamine can easily be manufactured ("cooked") using several common household chemicals and supplies, including drain cleaners, coffee filters, battery acid, and cold medication. One common production method – known as the "Nazi method" – involves using lithium extracted from batteries and anhydrous ammonia to "cook" over-the-counter cold medication into methamphetamine. Anhydrous ammonia is a common agricultural fertilizer and industrial refrigerant that can be stored safely as a liquefied gas in high-pressure tanks. However, when released into the air, it becomes a highly toxic gas that is harmful to individuals who inhale it or otherwise comes in contact with it, as it can cause severe burns, blindness, lung damage, suffocation, and death. ("Anhydrous" means without water and, as such, is attracted to moisture.)

In cooking methamphetamine, only a small amount of anhydrous ammonia is necessary. Thieves typically use small, makeshift containers – such as propane tanks used for barbeque grills, coolers, and gas cans – to steal anhydrous ammonia from agricultural retailers and storage facilities. Given the volatile chemical and physical properties of anhydrous ammonia, these methods of acquiring and transporting it for later use in cooking methamphetamine are highly dangerous. Nevertheless, anhydrous ammonia is fast becoming a common ingredient in methamphetamine because it speeds up the manufacturing process to just a few hours. This has had the unfortunate consequence of making it increasingly vulnerable to theft, placing farms and other storage facilities at

risk. As a result, many farmers are now afraid of being held liable for any injury to another individual stemming from the theft or attempted theft of anhydrous ammonia.

Last session, the governor and legislature enacted Public Act 312 of 2003 (Senate Bill 652) prohibiting the transportation or possession of anhydrous ammonia in a container not approved by law, and making it a violation a Class F felony punishable by a maximum fine of \$5,000, imprisonment of up to four years, or both. (See also Public Act 313/Senate Bill 777)

To combat the theft of anhydrous ammonia, many farmers and agri-businesses have turned to tank and valve locks and dyes. While many state departments, including the Departments of State Police and Community Health, have developed strategies aimed at stemming the production of methamphetamine in the state, people believe more can be done to increase the agricultural industry's awareness of the role it inadvertently plays in Michigan's methamphetamine epidemic, the dangers lurking on farms and agri-businesses throughout the state, and the precautions that can be employed to prevent thefts of anhydrous ammonia, all in an effort to curb the production and use of methamphetamine in Michigan.

THE CONTENT OF THE BILL:

Senate Bill 877 would create a new act entitled the Anhydrous Ammonia Security Act. Generally, the bill would require the Agriculture Commission to develop safety and security practices concerning the storage and handling of anhydrous ammonia and to exempt sellers and legal consumers of anhydrous ammonia following those practices from tort liability stemming from the attempted theft or unlawful use of anhydrous ammonia.

Safety and Security Practices

The bill would require the Agriculture Commission to establish safety and security practices regarding the handling and storage of anhydrous ammonia by sellers and legal consumers within six months of the bill's effective date. In establishing the practices, the commission would have to give due consideration to available Department of Agriculture information and written recommendations from the Michigan State University College of Agriculture and Natural Resources Extension; the Department of State Police; local law enforcement agencies; anhydrous ammonia manufacturers, retailers, and end users; and other professional and industry organizations.

These practices would include storing anhydrous ammonia in a tank that is properly equipped with a tank lock that is used at all times, except when the seller or legal consumer withdraws the product from the tank; and storing anhydrous ammonia with a substance that contains a dye that will, upon release from the container, stain objects in a highly visible manner.

Immunity

In addition, the bill would exempt a seller or legal consumer who practices, uses, or transports anhydrous ammonia in compliance with the safety and security practices set by the commission from tort liability for personal injury (including death) or property damage resulting from the theft or attempted theft of anhydrous ammonia. The seller or legal consumer would also be exempt from tort liability for personal injury caused by a person using or attempting to use anhydrous ammonia in an unlawful manner. The tort immunity would include immunity from liability for the injury (or death) or property damage of a person who is not the person who stole or attempted to steal the anhydrous ammonia or attempted to use it in an unlawful manner. The liability provisions would apply to a cause of action taking place after the bill's effective date and after the Agriculture Commission establishes the safety and security practices.

HOUSE COMMITTEE ACTION:

The House Committee on Agriculture reported an H-1 Substitute for the bill. The substitute drops a provision included in the Senate-passed version that would require the Agriculture Commission to work with the Department of Treasury to facilitate the filing for an income tax credit for expenditures made in implementing the safety and security practices. [There currently is no such credit in the Income Tax Act.]

BACKGROUND INFORMATION:

The bill is tie-barred to House Bill 4108, introduced by Representative Jeff Mayes. In June 2005, the House passed the bill in a version that nearly identical to the current version of Senate Bill 877. The Senate passed a substitute version of the House Bill 4108. The bill now would amend the Revised Judicature Act to exempt sellers and legal consumers of anhydrous ammonia who comply with the safety and security practices developed by the Agriculture Commission from tort liability in the same manner as provide above in Senate Bill 877.

Earlier this session, the legislature and governor enacted Public Act 86 and 87 of 2005. Public Act 86 (House Bill 4322) prohibits a person from selling an ephedrine or pseudoephedrine product to a person under 18 years old, and limits the amount of an ephedrine or pseudoephedrine product that may be sold in a single over-the-counter sale to two packages or 48 tablets or capsules. Public Act 87 (Senate Bill 189) requires retail sellers of ephedrine or pseudoephedrine products to maintain the products behind a counter, within a locked case, or where the attendant can monitor them, or use an antitheft device on the products along with constant video surveillance, and further provides that retail sellers must require photo identification for the purchase of an ephedrine or pseudoephedrine product.

ARGUMENTS:

For:

The bill actually serves two purposes. First, the bill provides for the establishment of safety and security practices for farmers and agri-businesses to employ, not only to protect anhydrous ammonia for its intended use as a fertilizer, but also to protect against the dangers associated with its improper handling and transportation. These safety and security practices will incorporate the use of dyes and tank locks. The use of dyes has become increasingly common, because they reduce the quality of anhydrous ammonia as a meth component without affecting its use as a fertilizer or damaging crops. Tank locks also serve as a visible deterrent to would-be thieves.

Second, the bill provides that sellers or legal consumers who protect anhydrous ammonia using tank locks or dyes in compliance with the Agriculture Commission's standards, would not be liable for any injury or property damage sustained by a person resulting from the theft or attempted theft of anhydrous ammonia. Although, in tort actions, the state follows the doctrine of modified comparative negligence, in which liability is allocated in direct proportion or a person's percentage of fault, it is reported that many farmers are concerned that they could be liable in the event that a person is injured from an exposure to anhydrous ammonia on their property. The bill provides reasonable assurances that if an individual takes an affirmative action to ensure the safety and security of their stock of anhydrous ammonia, they would be immune from tort liability for personal injury or property damage. Moreover, the bill encourages individuals to protect their stock of anhydrous ammonia through the use of locks and dyes. However, the bill also contains an important provision stating that the failure to comply with the commission's standards does not, by itself, create tort liability for personal injury or property damage.

POSITIONS:

The Department of Agriculture supports the bill. (6-6-06)

The Michigan Agri-Business Association supports the bill. (6-6-06)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.