



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 877 (as enrolled)  
House Bill 4108 (as enrolled)  
Sponsor: Senator Valde Garcia (S.B. 877)  
Representative Jeff Mayes (H.B. 4108)  
Senate Committee: Agriculture, Forestry and Tourism  
House Committee: Agriculture

**PUBLIC ACT 417 of 2006**  
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Date Completed: 1-25-07

### **RATIONALE**

Anhydrous ammonia is both a widely used fertilizer and a key ingredient in the illegal manufacture of methamphetamine. As a fertilizer, anhydrous ammonia is an efficient source of nitrogen that is readily available to farmers in large quantities at a low cost. This accessibility, however, also has made farmers and suppliers an increasingly popular target of thieves, who use anhydrous ammonia to convert pseudoephedrine, commonly found in over-the-counter cold medicine, into the addictive stimulant methamphetamine. Whether used by farmers or illegal drug-makers, the chemical can be extremely dangerous if it is not properly handled. It must be stored under high pressure in specially designed tanks, and workers must be trained to handle the product and follow strict procedures. When anhydrous ammonia comes into contact with body tissue, it can cause dehydration, cell destruction, and severe chemical burns, leading to permanent injury or death, depending on the amount and duration of the exposure.

Although individuals who sell or use anhydrous ammonia as a fertilizer presumably are aware of its risks and take the proper precautions, people who steal the chemical might cut hoses, damage tubing, and smash valves—jeopardizing themselves, other individuals, and livestock. In addition to the physical injury, property damage, and the costs that may result, the victims face another concern: the potential exposure to lawsuits brought by others, including the thieves, who have been injured or lost property. To address this concern, it was suggested that standards for the storage of anhydrous ammonia should be developed, and that farmers and suppliers who comply

with the standards should be immune from tort liability.

### **CONTENT**

**Senate Bill 877 created the "Anhydrous Ammonia Security Act" to do the following:**

- **Require the Agriculture Commission to issue anhydrous ammonia safety and security practices (AASSPs) regarding the security of anhydrous ammonia in the possession of sellers and end users in this State.**
- **Require the AASSPs to include storage in a properly locked tank and storage with a dye as safe and secure storage practices.**

**House Bill 4108 amended the Revised Judicature Act to establish tort immunity for a seller or end user who stores, secures, uses, transports, or protects anhydrous ammonia in compliance with the AASSPs.**

The bills were tie-barred to each other and took effect on September 29, 2007.

### **Senate Bill 877**

The Agriculture Commission is required to issue the AASSPs within six months after the bill's effective date. In addition to any other practices included, the AASSPs must provide that both of the following, either separately or in combination as the Commission determines advisable, constitute safe and secure storage practices for anhydrous ammonia:

- Storage in a tank that is properly equipped with a functioning tank or valve lock that is used at all times except when the seller or end user is taking anhydrous ammonia from the tank or filling it.
- Storage with a substance added to the anhydrous ammonia that is or that contains a dye that, on release from the container holding the anhydrous ammonia, will stain objects that it comes in contact with, including skin and clothing, in a highly visible manner.

In establishing the AASSPs, the Commission must 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.

The bill defines "seller" as a person selling anhydrous ammonia at wholesale or retail to an end user for a legal purpose. "End user" means the person actually using anhydrous ammonia for a legal purpose.

### **House Bill 4108**

The bill provides that a seller or end user who stores, secures, uses, transports, or protects anhydrous ammonia in compliance with the AASSPs is immune from tort liability for personal injury, property damage, or death that results from the larceny or attempted larceny of anhydrous ammonia, or from a person obtaining or using, or attempting to obtain or use, anhydrous ammonia illegally. This includes immunity from liability for an injury to, damage to the property of, or the death of a person who is not the person committing or attempting to commit a larceny of, or obtaining, using, or attempting to obtain or use, anhydrous ammonia illegally.

The failure of a seller or end user to store, secure, use, transport, or protect anhydrous ammonia in compliance with the AASSPs does not, by itself, create tort liability for personal injury, property damage, or death caused by the storage, securing, use, transportation, or protection of anhydrous ammonia.

These provisions apply to a cause of action that accrues after the bill's effective date and after the AASSPs are issued.

MCL 286.771-286.775 (S.B. 877)  
600.2976 (H.B. 4108)

### **BACKGROUND**

"Anhydrous" means without water. Consequently, when anhydrous ammonia comes into contact with water, it rapidly combines with the moisture and forms ammonia hydroxide. When injected into the soil, the liquid ammonia expands into a gas and readily combines with soil moisture. Similarly, the liquid or gas that contacts body tissue—especially the eyes, skin, and respiratory tract—will remove the water and cause dehydration, cell destruction, and severe chemical burns. A concentration of anhydrous ammonia vapor of 134 parts per million (PPM) will cause most people to experience dryness and irritation of the nose, throat, and eyes. At 700 PPM, it can cause coughing and severe eye irritation, which may lead to partial or total loss of sight if untreated. A concentration of 1,700 PPM can cause serious lung damage and, if untreated, death. After a few seconds of exposure at 2,000 PPM, burns and blisters can result. At 5,000 PPM, death by suffocation can occur within minutes. (Source: "Using Agricultural Anhydrous Ammonia Safely", Robert D. Grisso, David Morgan, and Rollin D. Schneider, University of Nebraska Cooperative Extension EC94-738-B.)

### **ARGUMENTS**

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

#### **Supporting Argument**

The hazards of anhydrous ammonia theft were demonstrated a couple years ago in an incident at a farm in southwestern Michigan. As reported in *The Detroit News*, after thieves tapped into a tank and left its valve open, a dozen animals were found dead and others sick and dying when the problem was discovered the next morning; by that evening, 64 animals had died or were to be destroyed, and 30 to 40 were sick and blinded ("Thieves raiding farmers' tanks of anhydrous ammonia", 6-11-05). Also, according to the article, a robbery of an

anhydrous ammonia distributor in May 2004 resulted in a leak so serious that neighboring farms were evacuated. Reportedly, to avoid these problems, some farmers park the tanks far from their homes or return them to the supplier at the end of the day, while others are giving up on anhydrous ammonia altogether and switching to more costly fertilizers.

Farmers and suppliers should not have to worry about being sued by people injured by exposure to the chemical, in addition to potentially losing animals, incurring physical injuries, and having to replace damaged equipment, as the result of anhydrous ammonia theft. By requiring the Agriculture Commission to issue safe and secure storage practices, and extending civil immunity to farmers and suppliers who comply with the AASSPs, the bills will enable farmers to continue using a highly effective, inexpensive fertilizer without fear of litigation.

### **Supporting Argument**

According to a survey conducted by the National Association of Counties, released on July 5, 2005, "Local officials from across the country declared methamphetamine the nation's leading law enforcement scourge—a more insidious drug problem than cocaine—and blamed it for crowding jails and fueling increases in theft and violence, as well as [a] host of social welfare problems" ("Officials Across U.S. Describe Drug Woes", *New York Times*, 7-6-05). Also known as "speed", "crank", or "ice", methamphetamine is highly addictive and, over time, its use can lead to paranoia, psychosis, brain damage, and increased risk of stroke and heart failure. Methamphetamine is typically manufactured with common chemicals—including anhydrous ammonia and pseudoephedrine—in clandestine labs, which until recently were on the rise in this State.

Through legislation enacted in recent years, the State has taken a number of steps to fight this problem, including the creation of severe penalties for related offenses. For example, owning or using a building, vehicle, or laboratory equipment to manufacture methamphetamine, under certain circumstances, is subject to a maximum penalty of 20 years' imprisonment and/or a \$25,000 fine; the possession of more than 12 grams of ephedrine or

pseudoephedrine is punishable by up to two years and/or \$2,000; and the maximum penalty for transporting or possessing anhydrous ammonia in an unapproved container, or tampering with an approved container, is four years and/or \$5,000. In addition, Public Acts 86 and 87 of 2005 regulate over-the-counter sales of products containing ephedrine or pseudoephedrine, and various measures were enacted in 2006 to address environmental concerns and child safety issues, as well as prescribe penalties for additional offenses.

Senate Bill 877 and House Bill 4108 also will help fight against the manufacture of methamphetamine. By requiring the Agriculture Commission to issue safety and storage security practices, and offering immunity to farmers and suppliers who comply with them, the bills enhance the measures already taken to protect anhydrous ammonia from would-be thieves, and reduce the availability of the chemical for use in meth labs.

### **Supporting Argument**

Under the Senate bill, the storage of anhydrous ammonia with a dye additive constitutes a safe and secure storage practice (alone or in combination with storage in a properly locked tank). A product called "GloTell", when added to anhydrous ammonia, turns the substance pink, leaves a visible stain that is difficult to wash off, and remains detectable by ultraviolet light for up to 72 hours after being washed off. The use of the dye may deter some thieves and lead to the detection of others. It also can interfere with the manufacture of methamphetamine by producing a gummy pink substance, rather than the desired white powder. Thus, including storage with the dye in the AASSPs should help reduce both anhydrous ammonia theft and meth production.

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: Debra Hollon

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.