

1999 DRAFTING REQUEST

Bill

Received: 09/17/1999

Received By: rmarchan

Wanted: As time permits

Identical to LRB:

For: Alice Clausing (608) 266-7745

By/Representing:

This file may be shown to any legislator: NO

Drafter: rmarchan

May Contact:

Alt. Drafters:

Subject: **Agriculture - miscellaneous**
Buildings/Safety - misc.
Criminal Law - miscellaneous

Extra Copies: **JEO**
RCT

Pre Topic:

No specific pre topic given

Topic:

Anhydrous ammonia

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rmarchan 10/18/1999	csicilia 10/25/1999		_____			State
/P1	rmarchan 10/25/1999	csicilia 10/25/1999	jfrantze 10/25/1999	_____	lrb_docadmin 10/25/1999		State
/P2	rmarchan 12/20/1999	csicilia 12/20/1999	jfrantze 10/25/1999	_____	lrb_docadmin 10/25/1999		State
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/P2		1/1 cjs 12/20/99	jfrantze 10/25/1999	_____	lrb_docadmin 10/25/1999		

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J 12/20 *J* 12/20
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/P1		<i>1P2 cjs 10/25/99</i>	jfrantze 10/25/1999	_____	lrb_docadmin 10/25/1999		

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Jb 10/25
JHR
10/25
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1?	rmarchan	1/11 9/5 10/25 99	Jb 10/25	Jb KM 10/25			

FE Sent For:

<END>

Rules provide exemptions in 43.02(2)
- Preserve these exemptions?

Classing or Ott
(2 bills)

- ① Possession of anhyd. ammon. in unauthorised container = felony } \$10K +
- or transfer to an unauthorised container? } 3 yrs
- ② Tampering w/ authorised container } 6 mos
(Class I
felony)
- ③ Theft of anhyd. ammon. or authorised container + boxes, equipmt, etc. } felony

④ Owner is free from liability unless reckless

forming result from tampering w/ container

Tampering w/ authorized container
(Possession) in an unauthorized container
or transfer of to,

Theft from - unauthorized removal of - ^{a.g.} ~~an~~
material or authorized equipment
container

Civil immunity - except out willful,
wanton & reckless conduct

Class I felony penalty equivalents

Olsen, Jefren

From: Richard, JoAnna M.
Sent: Tuesday, September 14, 1999 5:34 PM
To: Olsen, Jefren
Cc: Wenzel, Bill; Romanski, Randall J.
Subject: Anhydrous Ammonia

Jefren,

Some of our attorneys have looked at both at the laws on the books in Iowa and Illinois relating to tampering with anhydrous ammonia. Anhydrous ammonia is one of the precursors to methamphetamine and we are finding a rash of thefts in this area. On a very serious note, Green County reported that a whole nurse tank was stolen which could provide the materials for a very large quantity of meth. Our idea is to provide increased penalties for the tampering and unauthorized use of anhydrous ammonia. Even if we don't catch them with the drug itself we will have another tool to get at the meth makers.

Here are some of our ideas:

101 ?

1) We would recommend that LRB place any new statutes regulation anhydrous ammonia storage and transportation in Chapter 1001. It should provide broad rulemaking authority to Commerce as well. Rule making authority would allow Commerce to further refine the general restrictions that we want in place. Commerce has already developed some regulations related to anhydrous ammonia--WI Admin. Code, Commerce 43.

2) Make it a crime to possess anhydrous ammonia in containers that do not satisfy requirements established by Commerce or containers that lack labels identifying the contents as anhydrous ammonia. Since Commerce has already adopted rules, etc, this could be easy to deal with.

3) Define a crime of theft of anhydrous ammonia. Because of the nature of this substance (potential for illicit drug manufacture and danger) the legislature could declare the theft of anhydrous ammonia constitutes a felony.

Penalty 2 yrs min

4) Provide limited immunity to the owners of the anhydrous ammonia. We suggest the following language:

"A person convicted or adjudged to acted in violation of this section shall not have a cause of action against the owner of the equipment, any person responsible for the installation and maintenance of the equipment, or the person lawfully selling the anhydrous ammonia for civil damages arising out the tampering."

ch 895/893

Please call me at 7-1932 if you have any questions or concerns.

~~XXXXXXXXXX~~

Can we chat about this ?

Thanks

JED

check ch. 94
94-697
check 100.137

200.18 Violations.

1. If it shall appear from the examination of any commercial fertilizer or soil conditioner or any anhydrous ammonia installation, equipment, or operation that any of the provisions of this chapter or the rules and regulations issued thereunder have been violated, the secretary shall cause notice of the violations to be given to the registrant, distributor, or possessor from whom said sample was taken; any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the secretary. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules and regulations issued thereunder have been violated, the secretary may certify the facts to the proper prosecuting attorney.

2. A person violating this chapter or rules adopted by the secretary pursuant to this chapter shall be guilty of a simple misdemeanor. In addition to the imposition of the simple misdemeanor penalty, a person violating section 200.14 shall be subject to a civil penalty of not more than one thousand five hundred dollars, if the person does any of the following:

a. Intentionally tampers with anhydrous ammonia equipment.

b. Possesses or transports anhydrous ammonia in a container or receptacle which is not authorized to hold anhydrous ammonia according to rules adopted by the secretary.

A person tampering with anhydrous ammonia equipment in violation of section 200.14 shall not have a cause of action against the owner of the equipment, any person responsible for the installation and maintenance of the equipment, or the person lawfully selling the anhydrous ammonia for damages arising out of the tampering.

3. Nothing in this chapter shall be construed as requiring the secretary or the secretary's representative to report for prosecution or for the institution of seizure proceedings minor violations of the chapter when the secretary believes that the public interest will be best served by a suitable notice of warning in writing.

4. It shall be the duty of each county attorney to whom any violation is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

5. The secretary is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under the chapter notwithstanding the existence of other remedies at law, said injunction to be issued without bond.

Section History: Early form

[C46, 50, 54, § 200.11, 200.14; C58, 62, § 200.19; C66, 71, 73, 75, 77, 79, 81, § 200.18]

Section History: Recent form

98 Acts, ch 1004, § 2, 3

Internal References

Iowa General Assembly

200.14 Rules.

shall promulgate

establishing

(2) ~~The secretary is authorized, after public hearing, following due notice, to adopt rules ~~setting forth~~ minimum general safety standards for the design, construction, location, installation and operation of equipment for storage, handling, transportation ~~by tank truck or tank trailer~~, and utilization of **anhydrous ammonia**. The rules shall be ~~such as to~~ reasonably necessary for the protection and safety of the public and persons using **anhydrous ammonia**, and shall ~~be in~~ substantial conformity with ~~the~~ generally accepted standards of safety.~~

It is hereby declared that rules in substantial conformity with the published standards of the agricultural **ammonia** institute for the design, installation and construction of containers and pertinent equipment for the storage and handling of **anhydrous ammonia**, shall be deemed to be in substantial conformity with the generally accepted standards of safety.

substantially conform

promulgated under this subsection

(1) All **anhydrous ammonia** equipment shall be installed and maintained ~~in a safe operating condition~~ in conformity with the rules ~~and regulations of the secretary of agriculture~~. No person, firm or corporation, other than the owner and those authorized by the owner to do so, shall sell, fill, refill, deliver or permit to be delivered, or use in any manner any **anhydrous ammonia** container or receptacle for any gas, compound for any other purpose whatsoever.

~~2. The secretary is hereby charged with the enforcement of this chapter, and after due publicity and due public hearing, is empowered to promulgate and adopt such reasonable rules as may be necessary in order to carry into effect the purpose and intent of this chapter or to secure the efficient administration thereof.~~

~~3. Nothing in this chapter shall prohibit the use of storage tanks smaller than transporting tanks nor the transfer of all kinds of fertilizer including **anhydrous ammonia** directly from transporting tanks to implements of husbandry, if proper safety precautions are observed.~~

Section History: Early form

[C46, 50, 54, § 200.13; C58, 62, § 200.15; C66, 71, 73, 75, 77, 79, 81, § 200.14]

Internal References

Referred to in § 200.21



Iowa General Assembly

State of Illinois
Public Acts
91st General Assembly

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Public Act 91-0402

HB0376 Enrolled

LRB9100710RCksA

AN ACT in relation to anhydrous ammonia.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Criminal Code of 1961 is amended by adding Section 21-1.5 as follows:

(720 ILCS 5/21-1.5 new)

Sec. 21-1.5. Anhydrous ammonia equipment, containers, and facilities.

(a) It is unlawful for any person to tamper with anhydrous ammonia equipment, containers, or storage facilities.

(b) Tampering with anhydrous ammonia equipment, containers, or storage facilities occurs when any person who is not authorized by the owner of the anhydrous ammonia, anhydrous ammonia equipment, storage containers, or storage facilities (transfers or attempts to transfer anhydrous ammonia to another container) causes damage to the anhydrous ammonia equipment, storage container, or storage facility or vents anhydrous ammonia into the environment.

For purposes of this Section:

"Anhydrous ammonia" means the compound defined in paragraph (d) of Section 3 of the Illinois Fertilizer Act of 1961.

"Anhydrous ammonia equipment", "anhydrous ammonia storage containers", and "anhydrous ammonia storage facilities" are defined in rules adopted under the Illinois Fertilizer Act of 1961.

(c) Sentence. A violation of this Section is a Class A misdemeanor.

[\[Top \]](#)

State of Illinois
Public Acts
91st General Assembly

[\[Home \]](#) [\[Public Acts \]](#) [\[ILCS \]](#) [\[Search \]](#) [\[Bottom \]](#)

Public Act 91-0263

SB105 Enrolled

LRB9102110RCks

AN ACT in relation to anhydrous ammonia.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 15. The Code of Civil Procedure is amended by adding Section 2-1119 as follows:

(735 ILCS 5/2-1119 new)

Sec. 2-1119. Tampering with anhydrous ammonia equipment, containers, or storage facilities.

(a) A person tampering with anhydrous ammonia equipment, containers, or storage facilities does not have a cause of action against the owner of the equipment, containers, or storage facilities, any person responsible for the installation or operation of the equipment, containers, or storage facilities, the person lawfully selling anhydrous ammonia, the person who lawfully purchases anhydrous ammonia for agricultural purposes, or the person who operates or uses anhydrous ammonia equipment, containers, or storage facilities when lawfully applying anhydrous ammonia for agricultural purposes.

(b) No person may commence a derivative action against the owner of anhydrous ammonia equipment, containers, or storage facilities, any person responsible for the installation or operation of the equipment, containers, or storage facilities, the person lawfully selling anhydrous ammonia, the person who lawfully purchases anhydrous ammonia for agricultural purposes, or the person who operates or uses anhydrous ammonia equipment, containers, or storage facilities when lawfully applying anhydrous ammonia for agricultural purposes when the injured person has tampered with anhydrous ammonia equipment, containers, or storage facilities.

(c) Tampering with anhydrous ammonia equipment, containers, or storage facilities occurs when any person who is not authorized by the owner of the anhydrous ammonia or anhydrous ammonia equipment, containers, or storage facilities transfers or attempts to transfer anhydrous ammonia to another container or causes damage to anhydrous ammonia equipment, containers, or storage facilities.

(d) For purposes of this Section:

"Anhydrous ammonia" means the compound defined in paragraph (d) of Section 3 of the Illinois Fertilizer Act of 1961.

"Anhydrous ammonia equipment", "anhydrous ammonia storage containers", and "anhydrous ammonia storage facilities" are defined in the rules adopted under the Illinois Fertilizer

Act of 1961.

(e) The immunity to civil liability provided in this Section does not apply to any act or omission caused by the willful and wanton negligence of any person.

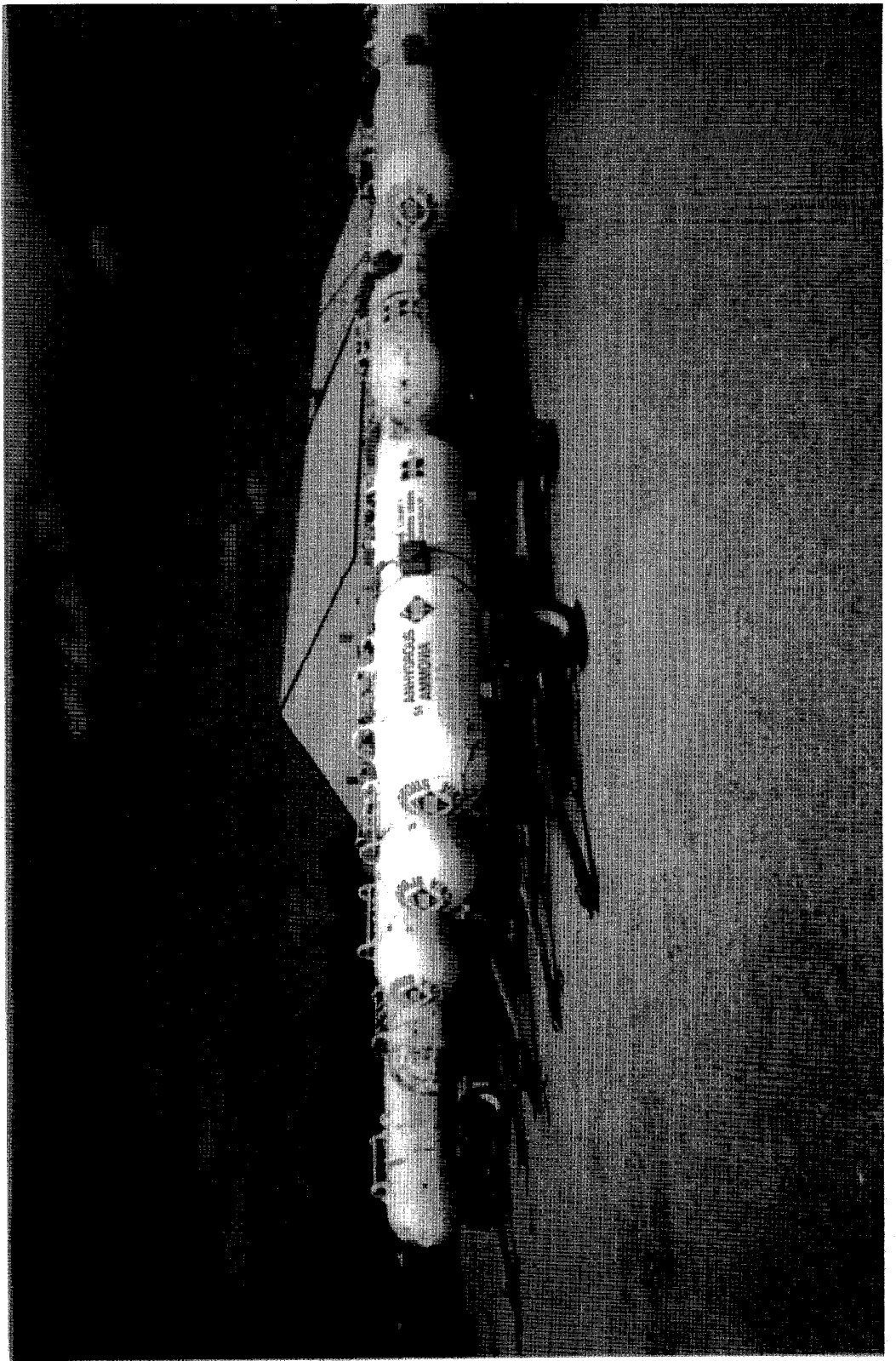
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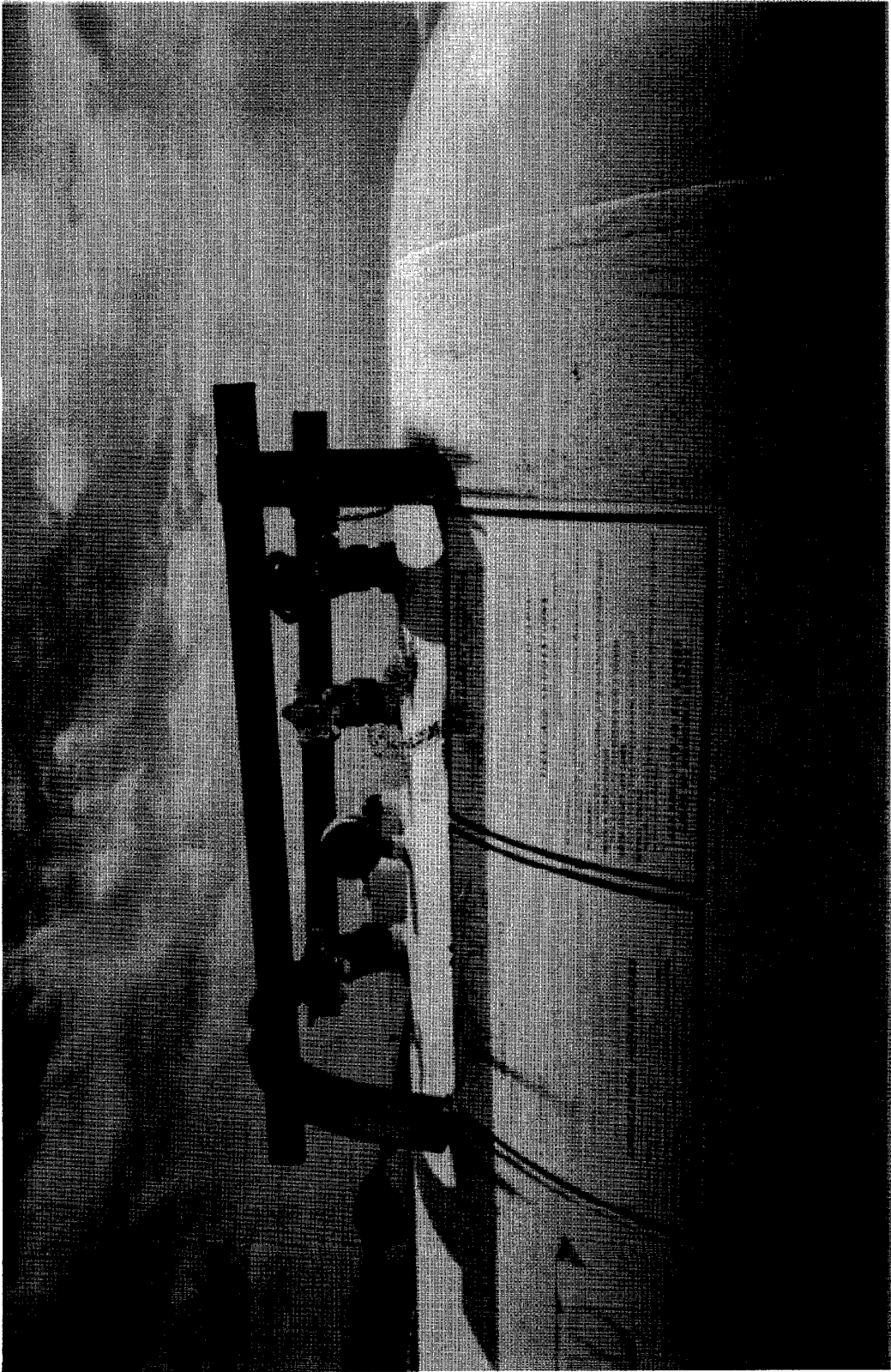
AN ACT REGULATING ANHYDROUS AMMONIA BY PROHIBITING TAMPERING WITH RELATED EQUIPMENT AND THE UNAUTHORIZED POSSESSION AND TRANSPORTATION OF CONTAINERS AND RECEPTACLES USED TO STORE ANHYDROUS AMMONIA, PROVIDING ENHANCED PENALTIES, AND PROVIDING AN EFFECTIVE DATE.

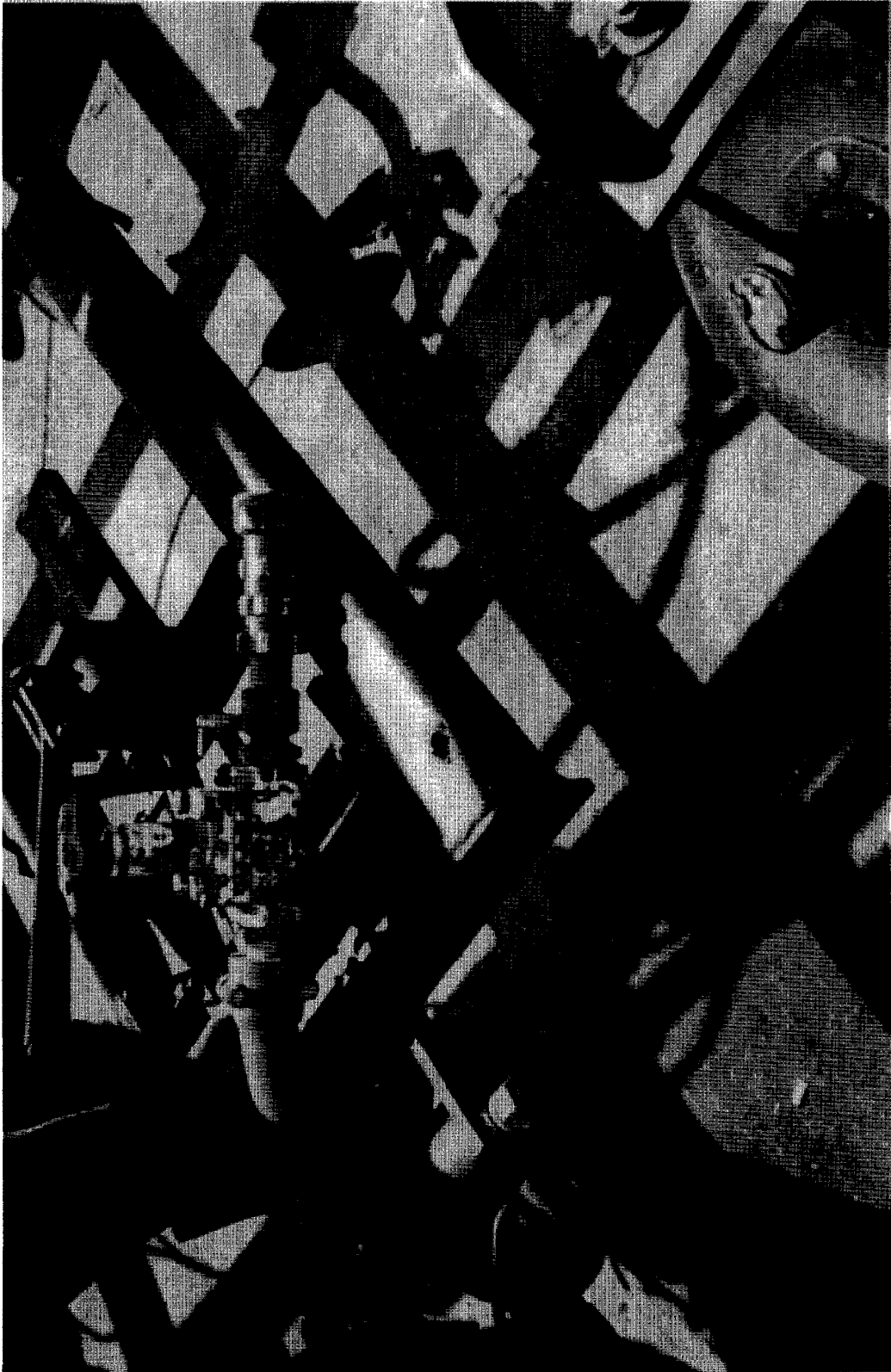
1A. Anhydrous ammonia equipment shall be installed and maintained in a safe operating condition and in conformity with the rules adopted by the secretary. A person shall not intentionally tamper with anhydrous equipment. Tampering occurs when a person who is not authorized by the owner of anhydrous ammonia equipment uses the equipment in violation of a provision of this chapter, including a rule adopted by the secretary. A person shall not in any manner or for any purpose sell, fill, refill, deliver, to be delivered, or use an anhydrous ammonia container or receptacle, include for the storage of any gas or compound, unless the person owns the container or receptacle or is authorized to do so by the owner. A person shall not possess or transport anhydrous ammonia in a container or receptacle which is not authorized by the secretary to hold anhydrous ammonia.

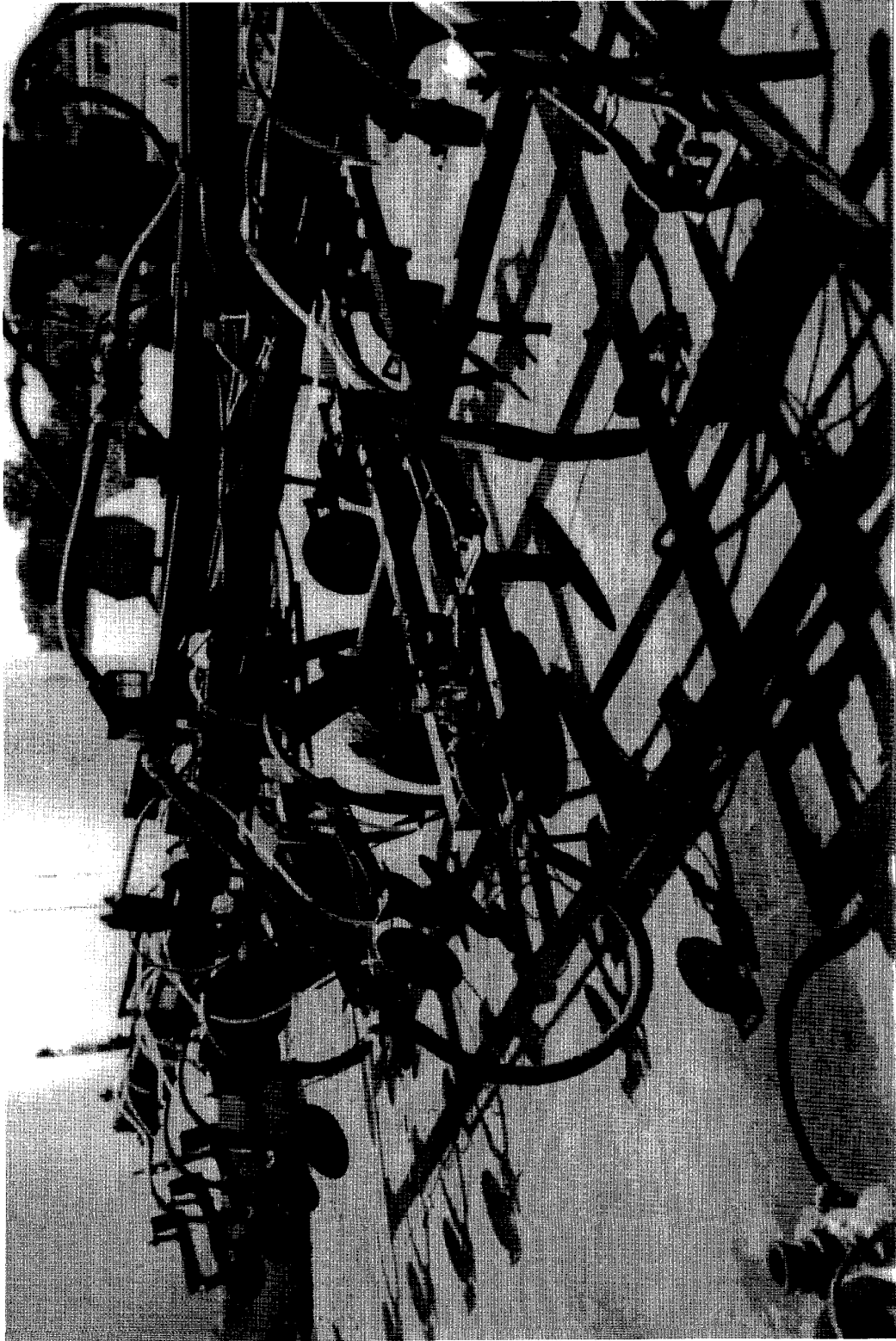
2. A person violates this chapter or rules adopted by the secretary pursuant to this chapter shall be guilty of a simple misdemeanor. In addition to the imposition of the simple misdemeanor penalty, a person violating this section shall be subject to a civil penalty of not more than one thousand five hundred dollars, if the person does any of the following:
- Intentionally tampers with anhydrous ammonia equipment.
 - Possesses or transports anhydrous ammonia in a container or receptacle which is not authorized to hold anhydrous ammonia according to rules adopted by the secretary.

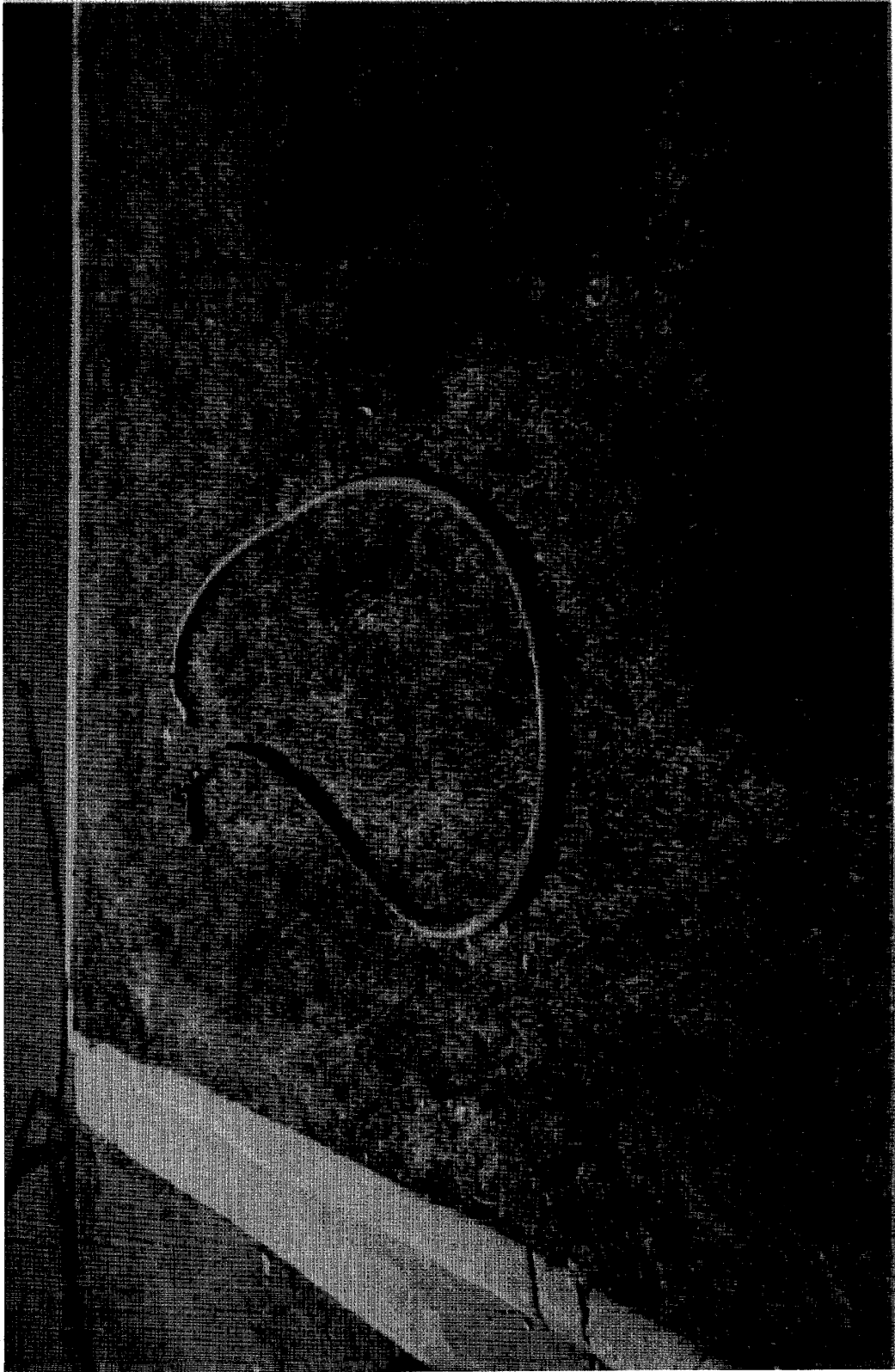
A person tampering with anhydrous ammonia equipment in violation of this section shall not have a cause of action against the owner of the equipment, any person responsible for the installation and maintenance of the equipment, or the person lawfully selling the anhydrous ammonia for damages arising out of the tampering.

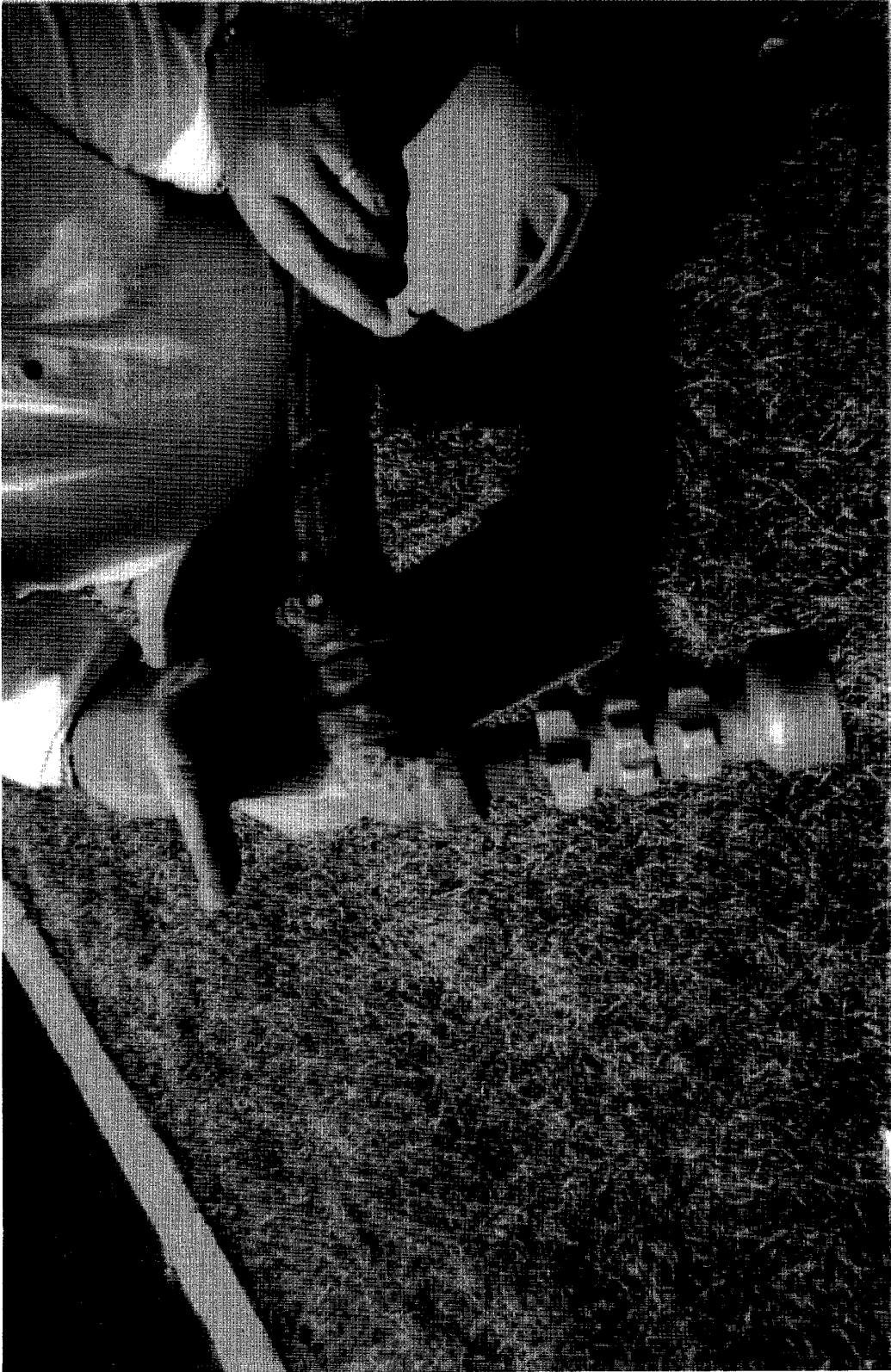


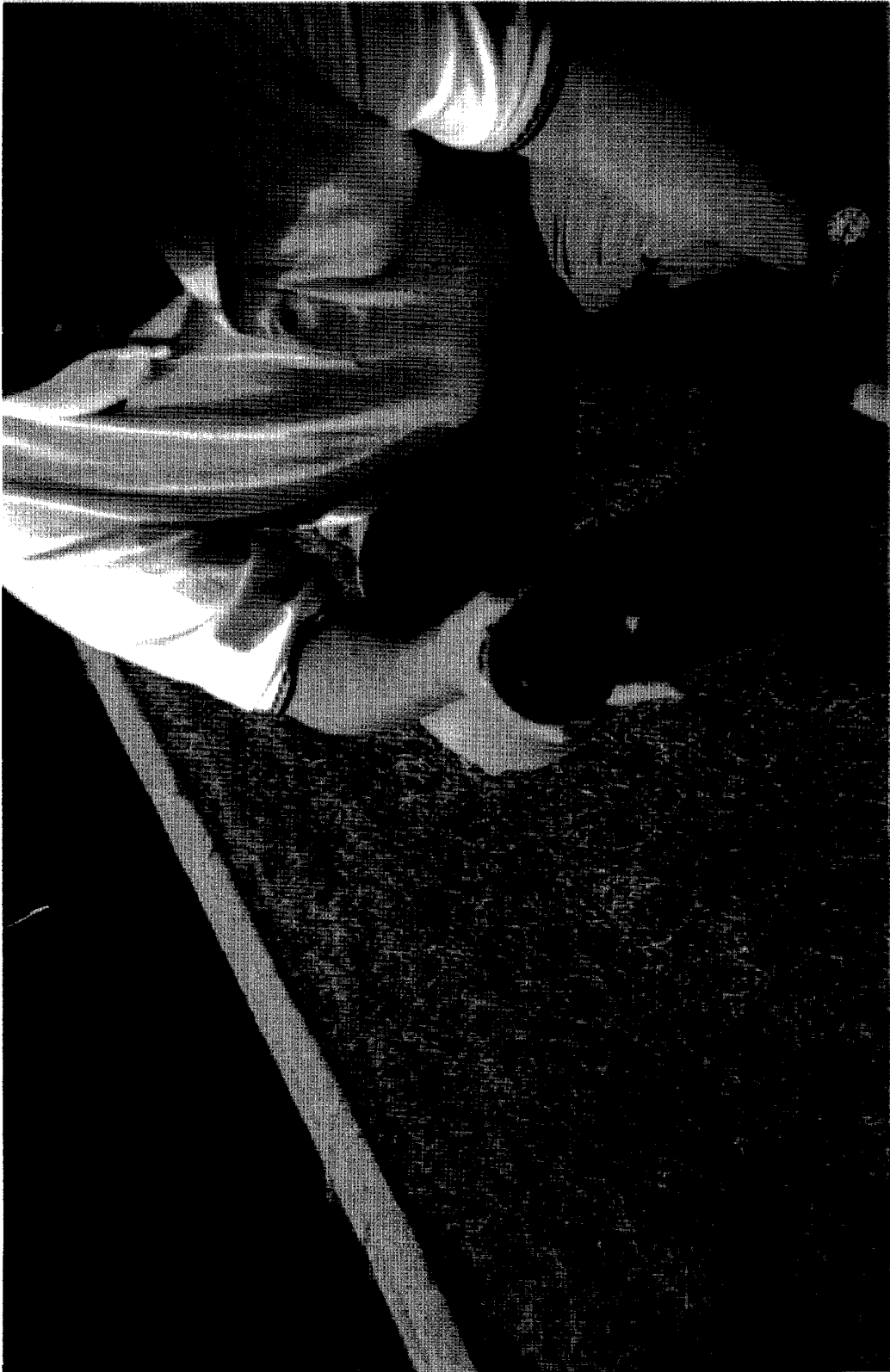


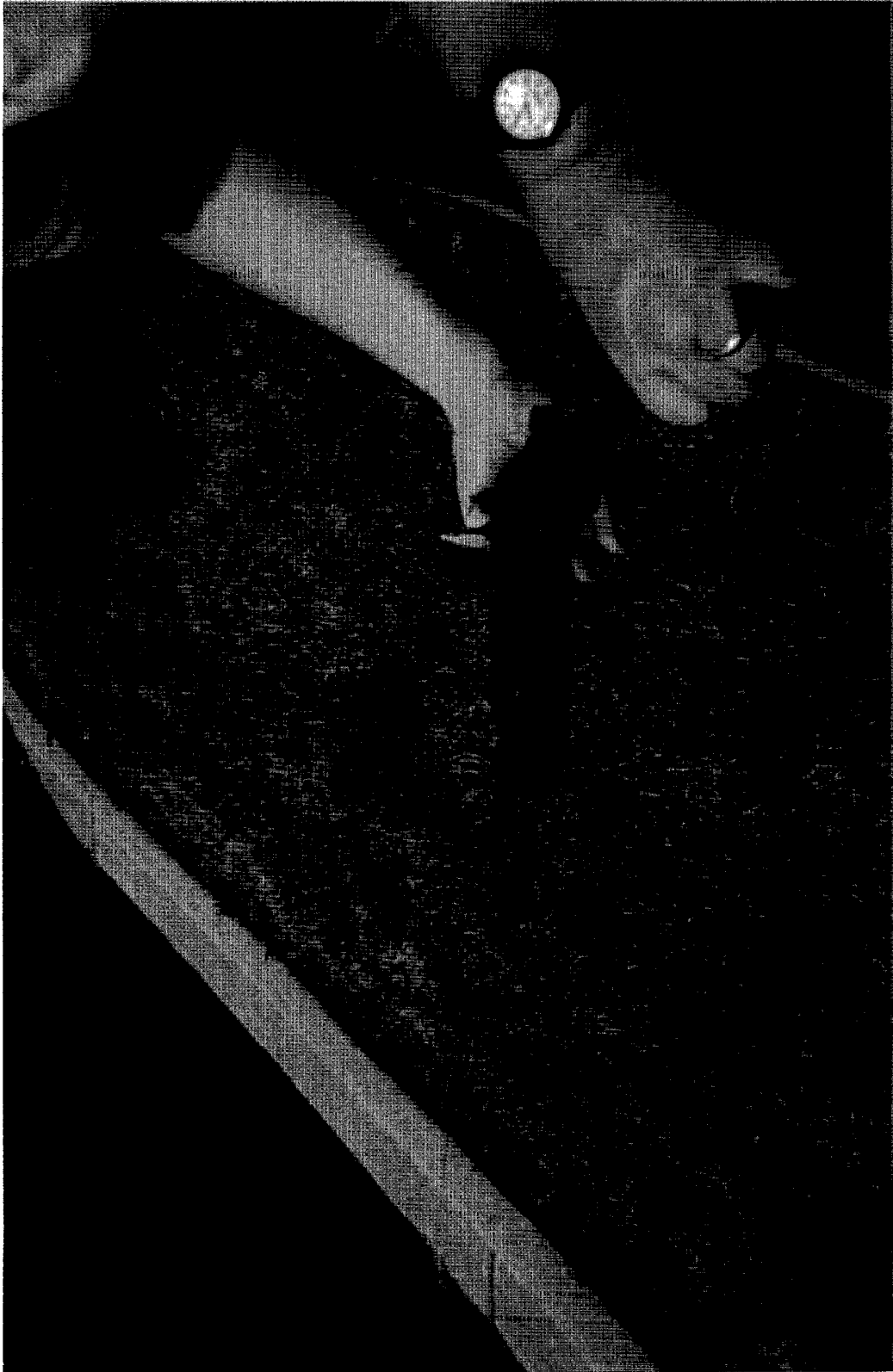














State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3631

RJM:J:....

PI
SJS
DNOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ^{gen. act.}; relating to: storage and handling of anhydrous ammonia, creating
2 an exemption from civil liability and providing a penalty.

Analysis by the Legislative Reference Bureau

Anhydrous ammonia is a chemical compound that primarily is used for agricultural purposes but that may also be used in the production of the controlled substance methamphetamine. Currently, no statute specifically regulates the storage and handling of anhydrous ammonia. However, current rules promulgated by the department of commerce (department) do regulate the storage and handling of anhydrous ammonia. These rules are promulgated under the department's general authority to promote safe places of employment. Any person who violates these rules may be required to forfeit not less than \$10 nor more than \$100.

This bill creates a statute that specifically ^{regulates} ~~deals with~~ the storage and handling of anhydrous ammonia. This bill ~~codifies~~ ^{regulates} the department's ~~authority~~ ^{authority} to promulgate rules to establish reasonable standards relating to the safe storage and handling of anhydrous ammonia. This bill also increases the penalty that applies to certain violations of these rules and creates certain new penalties relating to anhydrous ammonia. Under this bill, any person who does any of the following may be fined not more than \$10,000 or imprisoned for not more than ^{three} ~~2~~ years and ^{six} ~~6~~ months or both:

- (a) Stores, holds or transports anhydrous ammonia in a container that does not meet all applicable requirements ~~established~~ ^{prescribed} by rule of the department.
- (b) Transfers, or attempts to transfer, anhydrous ammonia into a container that does not meet all applicable requirements ~~established~~ ^{prescribed} by rule of the department.
- (c) Transfers, or attempts to transfer, anhydrous ammonia without the consent of the owner of the anhydrous ammonia.

(d) Intentionally causes damage to anhydrous ammonia equipment without the consent of the owner of the equipment.

(e) Commits a theft of anhydrous ammonia or anhydrous ammonia equipment.

This bill also creates a civil liability exemption. ~~Under this bill, any person who owns, maintains or installs anhydrous ammonia equipment is immune from civil liability for any act or omission that relates to the equipment and that causes damage to an individual, if that damage occurs during the individual's violation of items (c), (d) or (e), listed above. However, under this bill, a person is not immune from civil liability for any act or omission that involves reckless, wanton or intentional misconduct.~~ *acts or omissions*

certain

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

101.10
~~101.40~~

1 SECTION 1. ~~101.40~~ of the statutes is created to read:

2 **101.10 Storage and handling of anhydrous ammonia. (1) DEFINITIONS.**

3 In this section:

4 (a) "Anhydrous ammonia" means the compound formed by a chemical
5 combination of nitrogen and hydrogen in the proportion of one part nitrogen to 3
6 parts hydrogen by volume. Anhydrous ammonia may be in gaseous or liquid form.
7 "Anhydrous ammonia" does not include aqua ammonia.

8 *a* (b) "Anhydrous ammonia equipment" means any equipment that is used in the
9 application of anhydrous ammonia for an agricultural purpose or that is used to
10 store, hold, transport or transfer anhydrous ammonia.

11 ~~(c) "Aqua ammonia" means a solution of ammonia gas in water.~~

12 *b* (d) "Transfer" means to remove from a container.

that prescribe

13 (2) RULES. The department shall promulgate rules to ~~establish~~ reasonable
14 standards relating to the safe storage and handling of anhydrous ammonia. The
15 rules shall ~~establish~~ *prescribe* standards for the design, construction, repair, alteration,

1 location, installation, inspection and operation of anhydrous ammonia equipment.
 2 The ~~rules may~~ ^{promulgated under this subsection do not} apply to ammonia manufacturing plants, refrigeration plants where
 3 ammonia is used solely as a refrigerant and ammonia transportation pipelines.

(3) PROHIBITIONS. No person may do any of the following:

4 (a) Store, hold or transport anhydrous ammonia in a container that does not
 5 meet all applicable requirements established by rule of the department promulgated
 6 under sub. (2).

7
 8 (b) Transfer, or attempt ^{to} transfer, anhydrous ammonia into a container that
 9 does not meet all applicable requirements established by rule of the department
 10 promulgated under sub. (2).

11 (c) Transfer, or attempt to transfer, anhydrous ammonia without the consent
 12 of the owner of the anhydrous ammonia.

13 (d) Intentionally cause damage to anhydrous ammonia equipment without the
 14 consent of the owner of the anhydrous ammonia equipment.

15 (e) Intentionally take, carry away, use, conceal, or retain possession of
 16 anhydrous ammonia belonging to another or anhydrous ammonia equipment
 17 belonging to another, without the other's consent and with intent to deprive the
 18 ~~owner~~ ^{owner} permanently of possession of the anhydrous ammonia or anhydrous ammonia
 19 equipment.

WFO leave these words as they were - do not make changes

do not move

20 (4) PENALTIES. (a) Any person who violates a rule of the department
 21 promulgated under sub. (2) may be required to forfeit not less than \$10 nor more than
 22 \$100 for each violation.

23 (b) Any person who violates sub. (3) may be fined not more than \$10,000 or
 24 imprisoned for not more than 3 years and 6 months, or both, for each violation.

25 SECTION 2. 895.555 of the statutes is created to read:

1 **895.555 Liability exemption; anhydrous ammonia. (1) DEFINITIONS. In**

2 ~~this section.~~

3 (a) "Anhydrous ammonia" has the meaning given in s. 101.10 (1) (a).

4 (b) "Anhydrous ammonia equipment" has the meaning given in s. 101.10 (1) (b).

5 (c) "Transfer" has the meaning given in s. 101.10 (1) (c).

sub. (2)

as defined in s. 101.10 (1) (b),

6 **LIABILITY EXEMPTION.** Except as provided under ~~par. (b)~~, any person who

7 owns, maintains or installs anhydrous ammonia equipment is immune from any civil

8 liability for acts or omissions relating to the anhydrous ammonia equipment that

9 cause damage to an individual, if that damage occurs during the individual's

10 violation of s. 101.10 (3) (c), (d) or (e).

sub. (1) if the damage is caused by reckless or wanton

11 (2) **EXCEPTION.**

A person is not immune from civil liability under ~~par. (1)~~ acts or

12 omissions ~~that involves reckless, wanton or intentional misconduct.~~

or by acts or omissions intended by the person to cause damage

13 **SECTION 3. Initial applicability.**

14 (1) **STORAGE AND HANDLING OF ANHYDROUS AMMONIA.** The creation of section
15 101.10 (4) (b) of the statutes first applies to acts occurring on the effective date of this
16 subsection.

17 (2) **LIABILITY EXEMPTION; ANHYDROUS AMMONIA.** The creation of section 895.555
18 ~~(1)~~ of the statutes first applies to acts or omissions occurring on the effective date
19 of this subsection.

20 **SECTION 4. Effective date.**

21 (1) This act takes effect on the first day of the 6th month beginning after
22 publication.

23 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3631/000
RJM:.....

P1dn

cjs

Senator Clausing:

1. The prohibitions in proposed s. 101.10 (3) (a) to (c), stats., provide for strict liability. In other words, these penalties criminalize unintentional and intentional acts. If you did not intend these provisions to establish strict liability, please let me know.

2. Under s. 101.02 (12), stats., every ^{of the subchapter} day that a person is in violation of subch. I of ch. 101 ~~constitutes~~ a separate violation. This provision likely applies to violations of proposed s. 101.10, stats. and may produce unintended results. For example, due to s. 101.02 (12), stats., a person commits ^{three} felonies under the current draft if the person stores anhydrous ammonia in an improper container for ^{three} days. If you intend to provide an exception to avoid this result, please let me know.

3. The department of commerce (department) has already promulgated a chapter of rules dealing with anhydrous ammonia. See ch. COMM 43, Wis. Adm. Code. This ~~draft~~ ^{draft} ~~confers the authority of~~ the department to promulgate these rules. Currently, these rules do not apply to ammonia manufacturing plants, refrigeration plants where ammonia is used solely as a refrigerant and ammonia transportation pipelines. See s. COMM 43.02 (2), Wis. Adm. Code. This draft preserves these exceptions by prohibiting the department from promulgating a rule that applies to ammonia manufacturing plants, refrigeration plants where ammonia is used solely as a refrigerant and ammonia transportation pipelines. If this treatment is not what you intend, please contact me.

4. This draft contains a delayed effective date in order to allow the department time to amend its rules to incorporate the penalties contained in this draft.

Please call if you have any questions or suggested changes. Once this draft meets with your approval, I will redraft it into introducible form.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: Robert.Marchant@legis.state.wi.us

4. This draft does not contain a definition of "anhydrous ammonia." However, the term is currently defined in s. Comm 43.04(2), Wis. Adm. Code. Please review the definition in the administrative code and let me know if you intend to specify a different definition.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3631/P1dn
RJM:cjs:jf

October 25, 1999

Senator Clausing:

1. The prohibitions in proposed s. 101.10 (3) (a) to (c), stats., provide for strict liability. In other words, these penalties criminalize unintentional and intentional acts. If you did not intend these provisions to establish strict liability, please let me know.

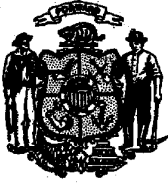
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3. The department of commerce (department) has already promulgated a chapter of rules dealing with anhydrous ammonia. See ch. COMM 43, Wis. Adm. Code. This draft specifically requires the department to promulgate these rules. Currently, these rules do not apply to ammonia manufacturing plants, refrigeration plants where ammonia is used solely as a refrigerant and ammonia transportation pipelines. See s. COMM 43.02 (2), Wis. Adm. Code. This draft preserves these exceptions by prohibiting the department from promulgating a rule that applies to ammonia manufacturing plants, refrigeration plants where ammonia is used solely as a refrigerant and ammonia transportation pipelines. If this treatment is not what you intend, please contact me.

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Please call if you have any questions or suggested changes. Once this draft meets with your approval, I will redraft it into introducible form.

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3631/21

RJM:cjs:jf

P2

10-20-99

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

PMNR

DNOTE

Open call

- 1 AN ACT to create 101.10 and 895.555 of the statutes; relating to: storage and
2 handling of anhydrous ammonia, creating an exemption from civil liability and
3 providing a penalty.

Analysis by the Legislative Reference Bureau

Anhydrous ammonia is a chemical compound that primarily is used for agricultural purposes but that may also be used in the production of the controlled substance methamphetamine. Currently, no statute specifically regulates the storage and handling of anhydrous ammonia. However, current rules promulgated by the department of commerce (department) do regulate the storage and handling of anhydrous ammonia. These rules are promulgated under the department's general authority to promote safe places of employment. Any person who violates these rules may be required to forfeit not less than \$10 nor more than \$100.

This bill creates a statute that specifically regulates the storage and handling of anhydrous ammonia. This bill requires the department to promulgate rules to establish reasonable standards relating to the safe storage and handling of anhydrous ammonia. This bill also increases the penalty that applies to certain violations of these rules and creates certain new penalties relating to anhydrous ammonia. Under this bill, any person who does any of the following may be fined not more than \$10,000 or imprisoned for not more than three years and six months or both:

- (a) Stores, holds or transports anhydrous ammonia in a container that does not meet all applicable requirements prescribed by rule of the department.
- (b) Transfers or attempts to transfer anhydrous ammonia into a container that does not meet all applicable requirements prescribed by rule of the department.

(c) Transfers or attempts to transfer anhydrous ammonia without the consent of the owner of the anhydrous ammonia.

(d) Intentionally causes damage to anhydrous ammonia equipment without the consent of the owner of the equipment.

(e) Commits a theft of anhydrous ammonia or anhydrous ammonia equipment.

This bill also creates a civil liability exemption. Under this bill, any person who owns, maintains or installs anhydrous ammonia equipment is immune from civil liability for any act or omission that relates to the equipment and that causes damage to an individual, if that damage occurs during the individual's violation of items (c), (d) or (e), listed above. However, under this bill, a person is not immune from civil liability for certain reckless, wanton or intentional acts or omissions.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 101.10 of the statutes is created to read:

2 **101.10 Storage and handling of anhydrous ammonia. (1) DEFINITIONS.**

3 In this section:

4 (a) "Anhydrous ammonia equipment" means any equipment that is used in the
5 application of anhydrous ammonia for an agricultural purpose or that is used to
6 store, hold, transport or transfer anhydrous ammonia.

7 (b) "Transfer" means to remove from a container.

8 **(2) RULES.** The department shall promulgate rules that prescribe reasonable
9 standards relating to the safe storage and handling of anhydrous ammonia. The
10 rules shall prescribe standards for the design, construction, repair, alteration,
11 location, installation, inspection and operation of anhydrous ammonia equipment.
12 The rules promulgated under this subsection do not apply to ammonia
13 manufacturing plants, refrigeration plants where ammonia is used solely as a
14 refrigerant and ammonia transportation pipelines.

15 **(3) PROHIBITIONS.** No person may do any of the following:

1 (a) Store, hold or transport anhydrous ammonia in a container that does not
2 meet all applicable requirements established by rule of the department promulgated
3 under sub. (2).

4 (b) Transfer or attempt to transfer anhydrous ammonia into a container that
5 does not meet all applicable requirements established by rule of the department
6 promulgated under sub. (2).

7 (c) Transfer or attempt to transfer anhydrous ammonia without the consent of
8 the owner of the anhydrous ammonia.

9 (d) Intentionally cause damage to anhydrous ammonia equipment without the
10 consent of the owner of the anhydrous ammonia equipment.

11 (e) Intentionally take, carry away, use, conceal or retain possession of
12 anhydrous ammonia belonging to another or anhydrous ammonia equipment
13 belonging to another, without the other's consent and with intent to deprive the
14 owner permanently of possession of the anhydrous ammonia or anhydrous ammonia
15 equipment.

16 (4) PENALTIES. (a) Any person who violates a rule of the department
17 promulgated under sub. (2) may be required to forfeit not less than \$10 nor more than
18 \$100 for each violation.

19 (b) Any person who violates sub. (3) may be fined not more than \$10,000 or
20 imprisoned for not more than 3 years and 6 months, or both, for each violation.

21 SECTION 2. 895.555 of the statutes is created to read:

22 895.555 Liability exemption; anhydrous ammonia. (1) LIABILITY
23 EXEMPTION. Except as provided under sub. (2), any person who owns, maintains or
24 installs anhydrous ammonia equipment, as defined in s. 101.10 (1) ^(a), is immune
25 from any civil liability for acts or omissions relating to the anhydrous ammonia

1 equipment that cause damage to an individual, if that damage occurs during the
2 individual's violation of s. 101.10 (3) (c), (d) or (e).

3 (2) EXCEPTION. A person is not immune from civil liability under sub. (1) if the
4 damage is caused by reckless or wanton acts or omissions or by acts or omissions
5 intended by the person to cause damage.

6 **SECTION 3. Initial applicability.**

7 (1) STORAGE AND HANDLING OF ANHYDROUS AMMONIA. The creation of section
8 101.10 (4) (b) of the statutes first applies to acts occurring on the effective date of this
9 subsection.

10 (2) LIABILITY EXEMPTION; ANHYDROUS AMMONIA. The creation of section 895.555
11 (1) of the statutes first applies to acts or omissions occurring on the effective date of
12 this subsection.

13 **SECTION 4. Effective date.**

14 (1) This act takes effect on the first day of the 6th month beginning after
15 publication.

16 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3631/P2
RJM/cjs:jf

October 25, 1999

WPO - please make
no changes to this
d-note

1. This draft corrects an erroneous cross-reference contained in the "1P1" version. I apologize for any inconvenience caused by this error. The remainder of this drafter's note is taken from the "1P1" version.

Senator Clausing:

1. The prohibitions in proposed s. 101.10 (3) (a) to (c), stats., provide for strict liability. In other words, these penalties criminalize unintentional and intentional acts. If you did not intend these provisions to establish strict liability, please let me know.

2. Under s. 101.02 (12), stats., every day that a person is in violation of subch. I of ch. 101 is a separate violation of the subchapter. This provision likely applies to violations of proposed s. 101.10, stats. and may produce unintended results. For example, due to s. 101.02 (12), stats., a person commits three felonies under the current draft if the person stores anhydrous ammonia in an improper container for three days. If you intend to provide an exception to avoid this result, please let me know.

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DRAFTER'S NOTE
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LEGISLATIVE REFERENCE BUREAU

LRB-3631/P2dn
RJM:cjs:jf

October 25, 1999

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Legislative Attorney
Phone: (608) 261-4454
E-mail: Robert.Marchant@legis.state.wi.us

Barman, Mike

From: Barman, Mike
Sent: Tuesday, November 30, 1999 2:01 PM
To: Anderson, Linda
Subject: 99-3631/P2 (per your request)



99-3631/P2



99-3631/P2dn

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

Marchant, Robert

From: Richard, JoAnna M.
Sent: Wednesday, December 15, 1999 11:07 AM
To: Marchant, Robert
Cc: Wenzel, Bill
Subject: LRB 3631

Rob,

Our attorneys suggested a few modifications. They are:

Insert 3-20

1) For the point you bring up on the violation being applied each day the material is being improperly stored, our attorneys suggested that an exemption be written. Therefore, for violations of 101.10, the violation is applied for each occurrence or act. They suggested that it be put in as a 101.02 (12) (a). but I leave that up to your drafting recommendations as to where it is properly placed. Our intent is to have that one act, regardless of how many days the substance was improperly stored, to be charged.

to f Jo Anna. Not needed because language is broad enough to cover this.

2) As to the strict liability question. It might make it clearer to add "of that person or of others" after the word omissions on line 25 of page 3. Also you may want to add the words "that person's" after the word by (1st one) on line 4 of page 4. Our attorneys thought this would better define when the immunity was being applied.

OK

As to the definition of anhydrous ammonia. We are comfortable with the DOC rule definition. If you believe we don't have to redefine it in the statutes, that's fine with us.

I hope this all makes sense. Thanks for your help.

JoAnna Richard
Legislative Liaison
Office of the Attorney General
267-1932

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

PMUR

DNOTE

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This bill also creates a civil liability exemption. Under this bill, any person who owns, maintains or installs anhydrous ammonia equipment is immune from civil liability for any act or omission that relates to the equipment and that causes damage to an individual, if that damage occurs during the individual's violation of items (c), (d) or (e), listed above. However, under this bill, a person is not immune from civil liability for certain reckless, wanton or intentional acts or omissions.

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19 (b) Any person who violates sub. (3) may be fined not more than \$10,000 or
20 imprisoned for not more than 3 years and 6 months, or both, for each violation.

21 SECTION 2. 895.555 of the statutes is created to read:

22 **895.555 Liability exemption; anhydrous ammonia.** (1) LIABILITY
23 EXEMPTION. Except as provided under sub. (2), any person who owns, maintains or
24 installs anhydrous ammonia equipment, as defined in s. 101.10 (1) (a), is immune
25 from any civil liability for acts or omissions relating to the anhydrous ammonia

No. 9
Notwithstanding s. 101.02(12), each act in violation of sub. (3) constitutes a separate offense.

1 equipment that cause damage to an individual, if that damage occurs during the
2 individual's violation of s. 101.10 (3) (c), (d) or (e).

3 (2) EXCEPTION. A person is not immune from civil liability under sub. (1) if the
4 damage is caused by ^{the person's} reckless or wanton acts or omissions or by acts or omissions
5 intended by the person to cause damage.

6 **SECTION 3. Initial applicability.**

7 (1) STORAGE AND HANDLING OF ANHYDROUS AMMONIA. The creation of section
8 101.10 (4) (b) of the statutes first applies to acts occurring on the effective date of this
9 subsection.

10 (2) LIABILITY EXEMPTION; ANHYDROUS AMMONIA. The creation of section 895.555
11 (1) of the statutes first applies to acts or omissions occurring on the effective date of
12 this subsection.

13 **SECTION 4. Effective date.**

14 (1) This act takes effect on the first day of the 6th month beginning after
15 publication.

16 (END)

RJM:cs:

NOTE

Senator Clausung: ^{NO SPACE}

I redrafted the attached bill based upon the instructions of JoAnna Richard at DOJ. Please feel free to call if you have any questions.

(Name: RJM)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3631/1dn
RJM:cjs:jf

December 20, 1999

Senator Clausing:

I redrafted the attached bill based upon the instructions of JoAnna Richard at DOJ.
Please feel free to call if you have any questions.

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Legislative Attorney
Phone: (608) 261-4454
E-mail: Robert.Marchant@legis.state.wi.us