

2001 ASSEMBLY BILL 7

January 16, 2001 – Introduced by Representatives OTT, RHOADES, FREESE, URBAN, MONTGOMERY, LADWIG, KESTELL, SYKORA, MUSSER, WARD, STONE, HUNDERTMARK, ALBERS, PETTIS, LA FAVE, AINSWORTH, WADE, BIES, GRONEMUS, VRAKAS, TOWNSEND, PLOUFF, SKINDRUD, KREIBICH, OLSEN, GUNDERSON, LASSA, WASSERMAN, LOEFFELHOLZ, FRISKE and WILLIAMS, cosponsored by Senators ERPENBACH, BURKE, BAUMGART, SCHULTZ, ZIEN and ROESSLER. Referred to Committee on Agriculture.

- 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. With certain exceptions, 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:

1. Stores, holds or transports anhydrous ammonia in a container that does not meet all applicable requirements prescribed by rule of the department.

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2. Transfers or attempts to transfer anhydrous ammonia into a container that does not meet all applicable requirements prescribed by rule of the department.

3. Transfers or attempts to transfer anhydrous ammonia without the consent of the owner of the anhydrous ammonia.

4. Intentionally causes damage to anhydrous ammonia equipment without the consent of the owner of the equipment.

5. Commits a theft of anhydrous ammonia or anhydrous ammonia equipment.

Any person who commits a violation described in item 1. or 2., listed above, while performing an agricultural activity is subject to a reduced penalty of not less than \$10 nor more than \$100.

This bill also creates a civil liability exemption. Under this bill, any person who owns, maintains, installs, or lawfully uses anhydrous ammonia equipment is immune from civil liability for any act or omission that relates to the equipment or to anhydrous ammonia and that causes damage or injury to an individual, if that damage or injury occurs while the individual commits a violation described in item 3., 4., or 5., 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) “Agricultural activity” means planting, cultivating, propagating,
5 fertilizing, nurturing, producing, harvesting, or manufacturing agricultural,
6 horticultural, viticultural, or dairy products; forest products; livestock; wildlife;
7 poultry; bees; fish; shellfish; or any products of livestock, wildlife, poultry, bees, fish,
8 or shellfish.

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

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1 (c) “Transfer” means to remove from a container.

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

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

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

13 (b) Transfer or attempt to transfer anhydrous ammonia into a container that
14 does not meet all applicable requirements established by rules of the department
15 promulgated under sub. (2).

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

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

20 (e) Intentionally take, carry away, use, conceal, or retain possession of
21 anhydrous ammonia belonging to another or anhydrous ammonia equipment
22 belonging to another, without the other’s consent and with intent to deprive the
23 owner permanently of possession of the anhydrous ammonia or anhydrous ammonia
24 equipment.

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1 **(4) PENALTIES.** (a) Any person who violates a rule of the department
2 promulgated under sub. (2) may be required to forfeit not less than \$10 nor more than
3 \$100 for each violation.

4 (b) Except as provided in par. (c), any person who violates sub. (3) may be fined
5 not more than \$10,000 or imprisoned for not more than 3 years and 6 months, or both,
6 for each violation. Notwithstanding s. 101.02 (12), each act in violation of sub. (3)
7 constitutes a separate offense.

8 (c) Any person who violates sub. (3) (a) or (b) while performing an agricultural
9 activity may be required to forfeit not less than \$10 nor more than \$100 for each
10 violation.

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

12 **895.555 Liability exemption; anhydrous ammonia. (1) LIABILITY**
13 **EXEMPTION.** Except as provided under sub. (2), any person who owns, maintains, or
14 installs anhydrous ammonia equipment, as defined in s. 101.10 (1) (b), or who uses
15 anhydrous ammonia for any legal purpose is immune from any civil liability for acts
16 or omissions relating to the anhydrous ammonia equipment or to anhydrous
17 ammonia that cause damage or injury to an individual, if that damage or injury
18 occurs during the individual's violation of s. 101.10 (3) (c), (d), or (e).

19 **(2) EXCEPTION.** A person is not immune from civil liability under sub. (1) if the
20 damage or injury is caused by the person's reckless or wanton acts or omissions or
21 by acts or omissions intended by the person to cause damage or injury.

22 **SECTION 3. Initial applicability.**

23 **(1) STORAGE AND HANDLING OF ANHYDROUS AMMONIA.** The creation of section
24 101.10 (4) (b) and (c) of the statutes first applies to acts occurring on the effective date
25 of this subsection.

