

2001 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB507)

Received: 10/05/2001

Received By: **rmarchan**

Wanted: 10/09/2001

Identical to LRB:

For: **Alvin Ott (608) 266-5831**

By/Representing: **beata**

This file may be shown to any legislator: **NO**

Drafter: **rmarchan**

May Contact:

Addl. Drafters:

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

Extra Copies: **RCT**

Submit via email: **YES**

Requester's email: **Rep.Ott@legis.state.wi.us**

Carbon copy (CC:) to: **kalies.beata@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

ASA (anhydrous ammonia) to AB-507 (anhdrous 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>
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FE Sent For:

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/?	rmarchan		10/5 pg.	10/5 P81			

FE Sent For:

<END>

Pls -

Please call
when you get this...

Beats 6-SP31

Also please drop

as a substitute
amendment to Bill
AB 507...

Not as a separate
bill...

Thank you



Craft

TO: Robert J. Marchant, Attorney, Legislative Reference Bureau
FROM: Representative Al Ott
RE:
DATE: October 5, 2001

Enclosed with this memorandum is a copy of WLC: 0200/1, prepared by Mark Patronsky of the Legislative Council. The enclosed bill draft relates to anhydrous ammonia regulations, and the penalties for failure to comply with those regulations. This is also the subject of 2001 Assembly Bill 507, which you previously drafted at my request.

I am submitting the enclosed bill draft as a request for another bill draft on this subject. I would like to explain my rationale for the enclosed draft, because it may not be apparent why I am seeking these changes in the statute. If you have further questions, please feel free to contact me or Mark Patronsky.

The *first change* proposed by the bill draft relates to s. 101.10 (2), Stats., which is the authorization for the Department of Commerce (Commerce) to promulgate rules setting standards for storage and handling of anhydrous ammonia. As you recall, this statute was originally created because a decision was made in 2001 Assembly Bill 7, and its predecessor, 1999 Assembly Bill 703, to create penalties for violations of Commerce rules regarding storage and handling of anhydrous ammonia. At that time, Commerce had already promulgated rules regarding anhydrous ammonia in ch. Comm 43. However, the Commerce authority to promulgate these rules consisted of general statutory language regarding the regulation of places of employment and public buildings, and did not contain a specific reference to anhydrous ammonia.

As I understand conventional drafting practices of the Legislative Reference Bureau, statutes ordinarily do not refer directly to administrative rules, but rather to the statutory authority for those rules. Thus, s. 101.10 (2) was created to provide explicit statutory authority for Commerce rules on anhydrous ammonia, and also a statutory reference for the prohibitions and penalties in s. 101.10 (3) and (4), Stats.

The first sentence of s. 101.10 (2), Stats., authorizes Commerce to "promulgate rules that prescribe reasonable standards relating to the safe storage and handling of anhydrous ammonia." The remainder of that subsection was intended, in the original draft legislation, to reflect the current contents of ch. Comm 43. However, industrial users of anhydrous ammonia have approached me with concerns about s. 101.10 (2), to the extent that the failure of industrial employees to comply with ch. Comm 43, even in minor respects, could be deemed a felony. This has never been the intent of this statute. The statute was intended to relate to the theft of anhydrous ammonia from places where it is legitimately stored and used, by individuals involved in illegal drug manufacture.

The enclosed draft proposes to delete all language after the first sentence of s. 101.10 (2). This will leave the decisions regarding the contents and exceptions of this rule to Commerce decision-making subject, of course, to legislative review. This amendment does not affect the content of the Commerce rules, and the prohibitions and penalties in the statute continue to apply to the Commerce rules.

The *second change* of the enclosed draft amends s. 101.10 (4) (c) by adding an additional exemption from the felony penalty. The current statute provides an exception from the felony penalty for those who are performing an agricultural activity. For agricultural activities, the prohibitions in s. 101.10 (3) (a) and (b), which relate to storing, holding, or transporting anhydrous ammonia in a container that does not meet the requirements of the rule, or transferring anhydrous ammonia into a

container that does not meet the requirements of the rule, are subject to a civil forfeiture rather than a felony. The enclosed bill draft also provides that if these activities are undertaken in connection with the activities such as construction, repair or operation of anhydrous ammonia equipment with consent of the owner of the equipment, the activities are also subject to the civil forfeiture.

Thank you for your continued assistance with this drafting issue.

AO:kr

1 **AN ACT** to amend 101.10 (2) and 101.10 (4) (c) of the statutes; relating to: the
2 regulation of anhydrous ammonia.

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

3 **SECTION 1.** 101.10 (2) of the statutes, as affected by 2001 Wisconsin Act 16, is amended
4 to read:

5 101.10 (2) **RULES.** The department shall promulgate rules that prescribe reasonable
6 standards relating to the safe storage and handling of anhydrous ammonia. ~~The rules shall~~
7 ~~prescribe standards for the design, construction, repair, alteration, location, installation,~~
8 ~~inspection, and operation of anhydrous ammonia equipment. Except as otherwise provided~~
9 ~~in this subsection, the rules promulgated under this subsection do not apply to refrigeration~~
10 ~~plants where ammonia is used solely as a refrigerant, facilities where ammonia is~~
11 ~~manufactured, electric generating or cogenerating facilities where ammonia is used as a~~
12 ~~refrigerant, and ammonia transportation pipelines. If ammonia is used on the premises of a~~
13 ~~facility or plant described under this subsection for a purpose or in a manner that is not related~~
14 ~~to the applicable exemption from the rules promulgated under this subsection, the exemption~~
15 ~~does not apply to that use.~~

16 **SECTION 2.** 101.10 (4) (c) of the statutes is amended to read:

17 101.10 (4) (c) Any person who violates sub. (3) (a) or (b) while performing an
18 agricultural activity, or while performing an activity related to the construction, repair,
19 alteration, location, installation, inspection, and operation of anhydrous ammonia equipment

10/05/2001

- 2 -

WLC: 0200/1

1 with the consent of the owner of the anhydrous ammonia equipment, may be required to forfeit
2 not less than \$10 nor more than \$100 for each violation.

3

(END)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBs0193¹/₂
RJM: hnh

10-9-01 NOON

Emur

Duot

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2001 ASSEMBLY BILL 507

1 AN ACT ^{Generate} ...; relating to: the regulation of anhydrous ammonia and providing a
2 penalty.

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

3 SECTION 1. 101.10 (2) of the statutes, as affected by 2001 Wisconsin Act 16, is
4 amended to read:

5 101.10 (2) RULES. The department shall promulgate rules that prescribe
6 reasonable standards relating to the safe storage and handling of anhydrous
7 ammonia. ~~The rules shall prescribe standards for the design, construction, repair,~~
8 ~~alteration, location, installation, inspection, and operation of anhydrous ammonia~~
9 ~~equipment. Except as otherwise provided in this subsection, the rules promulgated~~
10 ~~under this subsection do not apply to refrigeration plants where ammonia is used~~
11 ~~solely as a refrigerant, facilities where ammonia is~~ (manufactured, electric

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Act

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spacing

1 ~~generating or cogenerating facilities where ammonia is used as a refrigerant, and~~
2 ~~ammonia transportation pipelines. If ammonia is used on the premises of a facility~~
3 ~~or plant described under this subsection for a purpose or in a manner that is not~~
4 ~~related to the applicable exemption from the rules promulgated under this~~
5 ~~subsection, the exemption does not apply to that use.~~

6 History: 2001 a. 16.

6 **SECTION 2.** 101.10 (4) (c) of the statutes, as created by 2001 Wisconsin Act 3,
7 is amended to read:

8 101.10 (4) (c) Any person who violates sub. (3) (a) or (b) while performing an
9 agricultural activity or while performing an activity related to the construction,
10 repair, alteration, location, installation, inspection, or operation of anhydrous
11 ammonia equipment with the consent of the owner of the anhydrous ammonia
12 equipment may be required to forfeit not less than \$10 nor more than \$100 for each
13 violation.

proof with Act

14 History: 2001 a. 3.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0193/dn

RJM: *hmb*

DATE

Representative Ott:

Attached is the substitute amendment you requested. Please note that the expansion of the civil forfeiture provision in s. 101.10 (4) (c), stats., is not exactly as you requested. It seemed more consistent with your intent to have the forfeiture cover anyone who does *any* of the listed consensual activities, rather than *all* of them. Please let me know if I have misunderstood your intent.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0193/1dn
RJM:huh:pg

October 5, 2001

Representative Ott:

Attached is the substitute amendment you requested. Please note that the expansion of the civil forfeiture provision in s. 101.10 (4) (c), stats., is not exactly as you requested. It seemed more consistent with your intent to have the forfeiture cover anyone who does *any* of the listed consensual activities, rather than *all* of them. Please let me know if I have misunderstood your intent.

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