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2003 HOUSE JUDICIARY

HB 1352

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1352

House Judiciary Committee

Conference Committee

Hearing Date 1-22-03

Tape Number	Side A	Side B	Meter #
3		xx	7-31
4	xx		0-8.6
Committee Clerk Signature <i>A. Penrose</i>			

Minutes: 11 members present, 2 members absent (Rep. Bernstein, Rep. Maragos)

Chairman DeKrey: We will open the hearing on HB 1352. Please keep your comments to support or opposition and that if you have amendments, we will be working on this bill on the 28th and at that time present any amendments when the committee discussion takes place, so we ask that you limit your testimony to just support or opposition and make your points on the bill.

Doug Holloway, Deputy Insurance Commissioner: I am here on behalf of Commissioner Poolman to introduce HB 1352. It is my pleasure to do so. First and foremost, I would like to introduce Bob Rietz, Chief Boiler Inspector, on behalf of the ND Insurance Department, and would be an integral part in any rulemaking that the Department may be asked to undertake under HB 1352, and would be technical expert that I will refer to for any of your questions. My overriding message to you today, is that the Insurance Department stands eager and able to take on whatever responsibilities you wish to place with us. The inspection program for anhydrous ammonia facilities, was first assigned to the ND Insurance Dept. in 1995. The Department

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inspects approx. 1,380 nurse tanks each year. There is a typographical error in the bill, it refers to nursing tanks, and these are actually called nurse tanks. Section 1 of HB 1352, requires the Insurance Commissioner adopt rules prohibiting anhydrous ammonia storage tank facilities from filling nurse tanks that do not have locking devices. Our goal in such a process, would be to reach a consensus as to best practices. Our objective would be practical, appropriate, and effective regulations arising from the input of everyone who would be affected. Section 2 of the bill provides immunity from civil liability for tank owners who comply with the law. This is an appropriate legal benefit for tank owners, and might provide the additional benefit of potentially lower insurance liability premiums for those tank owners. We appreciate your consideration of this entire legislative package, and we believe that HB 1352 is an important component of that.

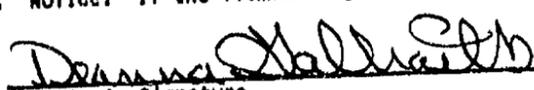
Rep. Kretschmar: Under Section 1 where the department would be given authority to make rules, what rules are you thinking about sanctions for violations if someone does fill a tank without a lock?

Mr. Holloway: I believe that under the current rules, the Agriculture Department would be charged with enforcement, and therefore, it would not fall under these rules.

Rep. Delmore: I am not very familiar with these tanks, are there all kinds of sizes, and we're saying that every one of them will have to have a lock. Do they vary in size, or are they pretty much the same size.

Bob Rietz, Chief, Boiler Inspector for the ND Insurance Dept., we also do the Anhydrous Ammonia inspections for the ND Ag Dept.: In answer to your question, the situation with the nurse tanks, the smallest ones are 1,000 gallon, the largest ones are about 2,000 gallon. The type

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of locking devices put on there would probably be a little different for each different brand and type of tank. One common device would not fit all tanks, it might take a variety of them.

Rep. Delmore: You are the person who does the inspections, or a number of them in a given year.

Mr. Rietz: We actually have around 6,500 nurse tanks assigned to about 390 facilities. We try to do 1/5 of them every year. The law provides for inspections at least once every five years.

Rep. Klemin: What about the tanks that you fill the nurse tanks from.

Mr. Rietz: The main storage tanks vary from 6,000 gallons all the way up to 45,000 gallons, and those tanks, under current Century Code do have to be locked.

Rep. Onstad: A typical situation in locking the tank, it is probably a good idea, but in the operation of staying in the field, you bring in the nurse tank, it has the lock on, you drop it off and go back or maybe they deliver it and move it back and forth. What about the keys needed to open the locks on all the different tanks, he could have over 100 tanks in his yard to fill up, do you see a problem with who is holding all of these keys.

Mr. Rietz: The situation with most dealers that are locking them now, they are all custom keyed. The way the law is written now, it would simply require the dealer to make sure it is locked after he fills it. What happens after that, isn't addressed in the legislation. It is the intent that they are always be locked, but at the facility itself where it is filled, the dealer would have to lock it. The bill doesn't address whether the dealer would have to be there when a person picked up the nurse tanks.

Rep. Onstad: You also have the farmers who rent or own their own tanks. What is going to happen with all the keys.

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Mr. Rietz: That is a problem. All of those areas would have to be addressed.

Rep. Klemin: Just a few weeks ago, I saw something on television, on a news program that talked about how easy it was to buy some sort of device that's supposed to be able to open any lock, including car locks, etc. and they demonstrated how it is very simple to use. Is that going to be a way to get around locking these.

Mr. Rietz: The problem out there with any lock is that given enough time and opportunity, any lock can be opened by any thief. The lock is only to keep honest people honest.

Rep. Klemin: The lock that was passed around looked to me like it could be handled by a bolt cutter, pretty easy. How is that going to help.

Mr. Rietz: I guess that is a good question. Some of them you cannot open them with the bolt cutter, they have a padlock which is circular in design, and when it is locked together there is no place for bolt cutter to actually get on there. No lock out there that you cannot defeat by some way or another, by damage, etc.

Chairman DeKrey: Thank you for testifying. Anyone else in support.

Kevin Hanson, General Manager for Porter Brothers in Minot: We are the ones that manufacturer the lock that Mr. Stenehjem passed around this morning. That locking device that's out there is not the only locking device on the market. There are several other locking devices that are on the market out there. We support this bill. The devices cost between \$60-70 a piece, depending on how many you purchase. After we got involved with this, I've learned a lot about the meth. problem and as a parent, it bothers me. We have sold about 400 locks in the state so far, and we have had positive response back to us from those customers. Like the AG said, it is an inconvenience for everybody, the meth problem is an inconvenience as well.

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Rep. Galvin: I wondered about if you have the tanks locked up, what about the farm equipment, are those completely emptied out all the time, how do you handle that.

Mr. Hanson: They are supposed to drain the hoses after they are done in the field. We call the locks a theft deterrent.

Sen. Bercier: Since you have been selling these locks, have you had anyone pop any of them.

Mr. Hanson: Not that we know of. In answer to the bolt cutter, we did try to cut one of the locks on our own, and it was very hard to even try. It's not impossible, but it is a special lock.

Sen. Bercier: It looked like it was stainless steel and probably a high tensile, grade A bolt. Did you ever try to pop it right through.

Mr. Hanson: Originally we did some work on that. We used the stainless design for one reason that anhydrous ammonia is highly corrosive, and also being out in the elements. The other reason we used stainless steel is so that you can lift fingerprints off of it quite easily. It's also hard to cut through with a hack saw, or a cutting torch.

Chairman DeKrey: Thank you for appearing before the committee. Any further testimony in support of HB 1352? We will take testimony in opposition to HB 1352.

Eric Aasundstad, President of ND Farm Bureau: Opposed. We discussed the anhydrous ammonia locks, as a deterrent to the theft of anhydrous for the manufacture of meth. At all 50 of our county annual meetings, this was discussed, and almost unanimously our members came back and said no. They didn't speak from the position that it would be inconvenient or that it would be expensive, they don't think it will be a deterrent. It will to a point; but the bottom of every tank has a drain plug, so that when they are empty, you can drain the water out because they do condensate water in them, but every now and then you do have to drain them; or to keep

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the product from rusting, and sometimes pilot holes are being drilled in the tank to let the product drain slowly, under minimal pressure to drain into a container and just let the tank drain out over night, and the concern we got from that, is that if it's near a residence, what if the wind switches, or do these people even care how it affects someone else. We understand the gravity of the situation and certainly appreciate the fact that something needs to be done, but what is it that we do. Where do we go.

Rep. Klemin: I heard about the lock technology they are trying to add to the pills. Is there anything like this happening, where something could be added to the anhydrous ammonia which could make it useless for meth. production?

Mr. Aasmundstad: I don't know anything about the manufacture of meth., but as I understand it, the anhydrous is being used as a dryer to get the product out faster. Could you do anything to change the chemical composition of NH₃, so that it would not attract moisture, I don't know.

Chairman DeKrey: I attended a meth conference with the National Governor's Association down in Iowa and the Univ of Iowa is doing research on doing just that, on trying to make anhydrous ammonia so that it would be ineffective for the usage of meth.

Mr. Stenehjem: Only limited success, we wouldn't be here if they had had success. It doesn't look very promising.

Rep. Delmore: Quite a few people have come forward and have said that this is a serious enough problem, we want to do something about it. I appreciate the fact that people can get the product in another way, beside the common way they would prevent with the locks. How often did they bypass the easiest way of getting it out. I see the lock as a deterrent, so I think that just trying the locks as much as we can, it may be worth the effort.

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Mr. Aasmundstad: You can't disagree with what you are saying. For every deterrent, there is a way to do other things; but nationwide, only a small percentage of anhydrous ammonia is manufactured for agricultural purposes. The vast majority of anhydrous ammonia of it is used as industrial coolant. Is there anything being done to curb theft from an industrial site, which wouldn't be that hard.

Rep. Kingsbury: Were there any ideas brought up at the meetings to try instead of the locks to use as a deterrent.

Mr. Aasmundstad: One of the things we heard most of all, is that maybe a better deterrent than locking each and every tank, would be to locking anhydrous yards. I guess there are some public health and safety concerns when you talk about that; what if something went wrong, how would emergency vehicles get to an emergency. How about surveillance equipment, this tells me that the farmers aren't concerned about costs, because they would have to pay for these measures. Would this be a better way to do it. If we could think of something that would work better, certainly would, but it is hard to know what that is.

Chairman DeKrey: Thank you. Any further testimony in opposition to HB 1352.

Roger Johnson, Commissioner of Agriculture: Opposed. We all want to find a solution. (see attached testimony). The question is, what's the most appropriate thing for you to do. Is there going to be a fiscal note attached to the bill to pay for the Ag. Dept to enforce the rules. Have to look at some issues: safety to the operator, cost, will this work and be effective, I suspect that you will have some real difficulty there. Also the question about the keys, who is handling all of the keys. At what point does this master key become the easiest point of access for a thief to get into a tank. What happens when you can't find a key, don't have access to a key, what sort of issues

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does that raise if you develop a problem with the tank. I just don't think that as this bill is drafted, it begins to address this problem in a substantive way.

Rep. Wrangham: As far as other parts of the country, do other states have as many anhydrous users and do they use the nurse tanks like they do in ND. In your meetings with other states, do you know how they dealt with that problem in other areas.

Mr. Johnson: Anhydrous ammonia is used widely across the country, the corn belt, wheat country. This is a relatively new issue in terms of theft of anhydrous. Around three or four years ago, I did the first brochure advising farmers to be careful. The issue of locking tanks has never been raised to my knowledge among other Ag Commissioners around the country. It may be coming to the surface right now.

Sen. Trenbeath: It just seems to me that this is the logical thing to do. Why are the tanks just sitting there, I wonder why there aren't locks on them, why farmers haven't come forward and started putting locks on them from the liability perspective. I have heard no one here suggest that this is the fix to the solution. This is just one part of an attack against the problem in our society now.

Mr. Johnson: I am more than willing to sit down and talk about solutions to this. This bill did not come through our office, it wasn't never vetted through anyone in our office, we never saw it until it was introduced.

Sen. Trenbeath: There is another solution to the anhydrous tank problem, make it unlawful to have the nurse tank sitting out on the property. At sunset, they would put them in a locked facility.

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Mr. Johnson: We have been a part of trying to get the word out about farmers bringing the tanks in to the farm, putting informational brochures out, etc. I know the Insurance Commissioner's office, the AG's office has been a part of that information campaign as well. The law doesn't say they have to bring them in. I think you would create some problems that weren't contemplated as this bill was drafted, such as those we have already talked about.

Rep. Klemin: Enforcement, the overlapping jurisdiction. As I understand it, the Ins. Dept. would make the rules and Mr. Rietz does the inspections, could the jurisdiction be resolved by having the Ins. Dept. do the enforcement.

Mr. Johnson: The issue I raised is how ought the rules be promulgated; having two departments of government that might be issuing rules for the same chapter of the Century Code, that you just ought to think about what happens in the event that you have conflicting rules. We would try to work together and try to avoid that, and we do work together closely with the Ins. Comm. I think the insurance industry, the ag. community has come together.

Rep. Klemin: Why does this new section have to be in that particular chapter.

Mr. Johnson: I'm not saying you can't put it there, I am saying just be aware, you've got two different agencies with rulemaking authority as this bill would be drafted.

Rep. Klemin: Couldn't this provision be in the Insurance code?

Mr. Johnson: Sure.

Rep. Kingsbury: I am shocked at how awful the meth problem is from seeing the program put on the AG. After people are seeing this program, they are saying how shocked they are at how awful it is. When the Farm Bureau went around to all their annual meetings, I am wondering if

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the people were really so informed, if they saw how horrible this problem was, I think many of them would be willing to lock up and go the extra mile to contribute to this cause.

Mr. Johnson: It may well be, that the smartest thing we could do is to more fully engage the ag. community in understanding the nature of the problem as you've just described it and as you heard and experienced it here, and then to sit down with them collectively makes sense to do to solve this problem. I don't think they've been engaged.

Rep. Boehning: Are you formulating any regulations as to when tanks could be brought in from the fields. I understand that they are used during Spring and Fall. Why is anhydrous left in the tanks in the non-season. So why can't the tanks be emptied, and what kind of laws or regulations is your office working on for that.

Mr. Johnson: You are right, the principal use seasons are spring and fall. I don't know any reason why they would be left partially filled. I suppose that in the off-season they may be filled as a means for storage.

Rep. Boehning: Can you make rules that say during the season they are not being used, that the tank has to be emptied.

Chairman DeKrey: Thank you, but we need to cut you off, since you are available during the week. We need to keep moving. As we continue to take testimony on the opposition, I would ask that you offer only new information and not reiterate the opposition already heard.

Steve Strege, ND Grain Dealers Association: We support the immunity section in Section 2; but we are opposed to the requirement for locking. Our members are concerned, but aren't sure that the requirements in this bill are going to be effective. We don't believe that locking devices are the answer.

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Chairman DeKrey: Thank you. Anyone else wishing to testify in opposition to HB 1352.

Mark Sitz, ND Farmers Union: Opposed.

Chairman DeKrey: Thank you. Any further testimony in opposition?

Gary Knutson, ND Agricultural Association: We are promoting the safety, security, and education on handling the product and communication with our farmer customers. We've scheduled those things again this winter. We're concerned with the research efforts, about developing a compound to make the product pretty much useless to the manufacturers, the possibility of increased liability that it might expose our dealers, too; what if the lock didn't work, breakage, not being to escape a problem. It's difficult now to get liability insurance and I expect that this will add to that problem. Opposed.

Chairman DeKrey: Thank you. Any further testimony? We will close the hearing.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1352

House Judiciary Committee

Conference Committee

Hearing Date 1-28-03

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1	xx		48-end
1		xx	0-15

Committee Clerk Signature

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Minutes: 12 members present, 1 member absent (Rep. Maragos)

Chairman DeKrey: We will begin committee work on HB 1352.

Sandi Tabor, Deputy AG: The Attorney General is so very concerned about access to anhydrous ammonia nurse tank and how we go about trying to curb the theft of anhydrous ammonia from those tanks. While we recognize that the original bill requiring locking nurse tanks, perhaps not the only answer, we believe that somehow we need to address this issue. Our amendments would still provide the Insurance Commissioner adopt rules, and what we have added to it, and I guess our idea of compromise the overall issue with the concerns raised by the various farm groups and still trying to figure out to do something. What we are proposing is to provide the authority to the Insurance Commissioner to create what we call "critical meth use zone", and in that zone they will run a pilot project, where the Insurance Commissioner would be allowed to develop some rules regarding security measures, and I can't say what all those might be, certainly locking anhydrous ammonia nurse tanks, could be one that they could consider. In

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addition to that, they might want to look at bringing the nurse tanks into the yard or to create some kind of secured area. (see attached amendments).

Rep. Onstad: Since this deals with agricultural issues, why is the Insurance Commissioner vs. Ag Commissioner?

Ms. Tabor: The Insurance Commissioner is responsible for the inspections. There are issues involved, what happens when an inspection gets to the Ag Commissioner's office, and how they are dealt with. That is an issue between the Ag Commissioner and the Insurance Commissioner. We put it into the Insurance, because Bob Rietz works in the Insurance Commission Dept., as an inspector.

Chairman DeKrey: Has the AG considered the implications of this program, if in 2 years we find that the numbers have gone up, instead of down with the locking program. Every group is going to be in here, see it didn't work.

Ms. Tabor: It's always possible that they may raise, but our point is in all of these bills, is not that tomorrow there aren't going to be anymore meth labs. What we want to say is that tomorrow it's going to be a lot harder to start a lab. This is a comprehensive program.

Rep. Klemin: In the amendments, it states that the Insurance Commissioner will establish the duration of the pilot project, no time limit? Do you know how long this will go on. This could go on indefinitely. I know on other bills we put a sunset clause, do we have anything anywhere else where we've given somebody authority to continue on with a program indefinitely like this, like the pilot project.

Ms. Tabor: Not off the top of my head. I don't want to suggest that it doesn't happen, depending on the nature of the project, the legislature can have the agency report back to them.

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In this instance, we thought maybe we should have some kind of report back to the legislature at the end of biennium. It takes about 5-6 months for administrative rules, pilot project for a year, not long enough time.

Rep. Klemin: Is there a fiscal note required for this bill.

Ms. Tabor: Not really, we're the conduit between private money to different farm organizations that will be participating.

Rep. Onstad: I guess it's probably more common in implementing programs, you're absolutely right, anhydrous ammonia is one thing needed, but for those who use it in farming, I really don't know how much time is actually spent at some of these feeders, at the nurse tank, how it is used on farms, and how easy and accessible it is for getting at. I rather doubt that they will lock these up, because if they are being used during the day. No very practical. I think the Ag Commissioner not the Insurance Commissioner that deals with these issues. Who is going to pay the expense of the pilot program.

Ms. Tabor: The AG is talking to several different groups that may well fund that, I don't know exactly who would receive the money.

Rep. Wrangham: What are we looking at as far as enforcement of the policy, if they are ordered to put on locks and they don't, is there a penalty.

Ms. Tabor: I assume that this is something we address in administrative rules and regulations.'

Rep. Klemin: Looking at the section on enforcement, there is a combination of authority, with agriculture and insurance cooperating. It says in a couple of spots that the Ag. Commissioner does the enforcement and suspend licenses, if the Insurance Commissioner finds there has been a violation. You stated earlier that you assumed the enforcement would be decided through the

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rules, but yet the statutes on these other conditions, that the Commissioner of Agriculture may revoke or suspend the license of any facility violating this chapter or rules adopted under this chapter. We have a provision here requiring the Comm. of Agriculture to enforce rules adopted under this chapter, which would include rules adopted by the Ins. Commissioner under this chapter. So would the Ag. Commissioner be the one to enforce it?

Ms. Tabor: Sounds like it.

Rep. Grande: Over the past year, we saw an extreme increase with the meth. problem, and it was according to the current law that it was the Ag. Commissioner's job to enforce them, what type of enforcement was done in the past to help out.

Ms. Tabor: I don't know of any actions with enforcement. Ag. Commissioner does have authority to enforce.

Rep. Klemin: Who's doing enforcement? If the intent here is that the Insurance Commissioner is going to do the enforcing on this particular thing, then I think we ought to say that, so that there is no issue raised later that the Ag. Commissioner should be enforcing it because that's what it says now in the Inspection section.

Ms. Tabor: If that is an issue, the existing law creates contradictions.

Rep. Klemin: It does, it seems to me that we've got a Commissioner of Agriculture out here saying that there is a problem with overlapping jurisdiction and that it doesn't really say clearly who's doing what, I think we do need to say it clearly as to what the intent is.

Ms. Tabor: We could add a sentence to the end of this amendment to clear that up.

Rep. Eckre: Hold this amendment until we talk to some other people and see what we can come up and see what can be worked out here.

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Chairman DeKrey: We will hold off. There are several bills related to anhydrous ammonia.

Ms. Tabor: If I can make one other clarification of the amendment, in the original bill we tied the civil liability to the locking program and we have taken that language out, so now the bill just provides actually the same language.

Discussion continued about the locking devices.

Rep. Onstad: The tanks that are being inspected are the dealer's tank, not the private person, all I've ever had checked were to make sure the hoses are legal, the valves are legal, etc.

Ms. Tabor: Bob Rietz does inspections.

Chairman DeKrey: Thank you. We will close the hearing.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1352

House Judiciary Committee

Conference Committee

Hearing Date 2-3-03

Tape Number	Side A	Side B	Meter #
3	x		2-13

Committee Clerk Signature *D. Penrose*

Minutes: 12 members present, 1 member absent (Rep. Bernstein)

Chairman DeKrey: What are the committee's wishes in regard to HB 1352.

Rep. Maragos: I move the A.G.'s amendments.

Rep. Grande: Seconded.

Voice vote: Carried.

Rep. Onstad: Move to amend from Insurance Commissioner to Ag Commissioner.

Rep. Eckre: Seconded.

Voice vote: Failed.

Rep. Grande: Move the second set of amendments from the A.G.

Rep. Boehning: Seconded.

Voice vote: Carried.

Rep. Maragos: Move a Do Pass as amended.

Rep. Kingsbury: Seconded.

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Dennis Hall
Operator's Signature

10/3/03
Date

Page 2
House Judiciary Committee
Bill/Resolution Number HB 1352
Hearing Date 2-3-03

11 YES 1 NO 1 ABSENT DO PASS AS AMENDED

CARRIER: Rep. Kingsbury

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Deanna Halliwell
Operator's Signature

10/3/03
Date

Proposed Amendments to House Bill 1352

January 28, 2003

Presented by the Office of Attorney General

Page 1, line 3, remove "locking" and insert "security"

Page 1, line 3, remove "nursing" and insert "nurse"

Page 1, line 7, remove "locking nursing tanks" and insert "security measures for nurse tanks"

Page 1, line 8, after "rules" remove the remainder of the line

Page 1, line 9, replace "nursing tank if the tank does not have a locking device" with "identifying a critical methamphetamine use zone in the state and establishing appropriate security measures to be implemented by the owners and users of anhydrous ammonia nurse tanks located within the zone as a pilot project. The insurance commissioner may establish the duration of the pilot project, and may require the locking of anhydrous ammonia nurse tanks or other security measures as are deemed necessary to curb the illegal theft of anhydrous ammonia within the zone."

Page 1, line 12, after the second "ammonia" remove "who is"

Page 1, line 13, remove "in compliance with rules regarding the locking of anhydrous ammonia nursing tanks"

Renumber accordingly

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Dennis Hall
Operator's Signature

10/3/03
Date

38297.0101
Title.0200

Adopted by the Judiciary Committee
February 3, 2003

VR
2/4/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1352 JUD 2-04-03

Page 1, line 3, replace "locking" with "security" and replace "nursing" with "nurse"

Page 1, line 7, replace "locking nursing tanks" with "security measures for nurse tanks"

Page 1, line 8, replace "prohibiting an anhydrous ammonia storage facility from filling an anhydrous ammonia" with "identifying a critical methamphetamine use zone in the state and establishing appropriate security measures to be implemented by the owners and users of anhydrous ammonia nurse tanks located within the zone as a pilot project. The insurance commissioner may establish the duration of the pilot project, and may require the locking of anhydrous ammonia nurse tanks or other security measures as are deemed necessary to curb the illegal theft of anhydrous ammonia within the zone. The insurance commissioner shall enforce any rules adopted pursuant to this section."

Page 1, remove line 9

Page 1, line 12, remove "who is"

Page 1, line 13, remove "in compliance with rules regarding the locking of anhydrous ammonia nursing tanks"

Renumber accordingly

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Dorinda Hallworth
Operator's Signature

10/3/03
Date

Date: 2/3/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1352

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 38297.0101 .0200

Action Taken Do Pass as Amended

Motion Made By Rep Maragos Seconded By Rep Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	AB		Rep. Onstad		✓
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	✓				

Total (Yes) 11 No 1

Absent 1

Floor Assignment Rep. Kingsbury

If the vote is on an amendment, briefly indicate intent:

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Dennis Hollenbach
Operator's Signature

10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
February 4, 2003 5:19 p.m.

Module No: HR-21-1664
Carrier: Kingsbury
Insert LC: 38297.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1352: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1352 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "locking" with "security" and replace "nursing" with "nurse"

Page 1, line 7, replace "locking nursing tanks" with "security measures for nurse tanks"

Page 1, line 8, replace "prohibiting an anhydrous ammonia storage facility from filling an anhydrous ammonia" with "identifying a critical methamphetamine use zone in the state and establishing appropriate security measures to be implemented by the owners and users of anhydrous ammonia nurse tanks located within the zone as a pilot project. The insurance commissioner may establish the duration of the pilot project, and may require the locking of anhydrous ammonia nurse tanks or other security measures as are deemed necessary to curb the illegal theft of anhydrous ammonia within the zone. The insurance commissioner shall enforce any rules adopted pursuant to this section."

Page 1, remove line 9

Page 1, line 12, remove "who is"

Page 1, line 13, remove "in compliance with rules regarding the locking of anhydrous ammonia nursing tanks"

Renumber accordingly

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Donna Hall
Operator's Signature

10/3/03
Date

2003 SENATE JUDICIARY

HB 1352

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Deanna Hall
Operator's Signature

10/3/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1352

Senate Judiciary Committee

Conference Committee

Hearing Date 03/04/03

Tape Number	Side A	Side B	Meter #
1	X		
Committee Clerk Signature <i>Miriam L. Solberg</i>			

Minutes: **Senator John T. Traynor, Chairman**, called the meeting to order. Roll call was taken and not all committee members present. Sen. Traynor requested meeting starts with committee work on the bill:

The original hearing on this bill was heard in a joint session, January 22, 2003 Attachment #1 are the notes to the joint session.

Sandy Taber - Deputy to the Attorney General, Reintroduced the bill. Handed out Attachment #2 and reviewed the bill and its change in the house.

Senator Carolyn Nelson reviewed why this is being done by the Insurance Commission.

Discussion was do to the fact they were out in the farm yards it would be easier for them to add this item to the things they were already doing.

Testimony in opposition of HB 1352

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Dorinda Hallworth
Operator's Signature

10/3/03
Date

Page 2
Senate Judiciary Committee
Bill/Resolution Number HB 1352
Hearing Date 03/04/03

Garry Knutson, Ag Association - Discussed the amendment leave to many questions wide open and the need for more details. Suggested a two year sunset clause to see if this is an effective avenue.

Senator John T. Traynor, Chairman stated that the public can comment at the public hearing on the rule process.

Sen. Dever asked the Ag Association that if this is successful would he support a state wide mandate? Yes only if it were successful.

Steve Stringer, National Grain Growers Association and representing Farmers and Implement Dealerships. I do not like the vagueness of this bill.

Mark Sits - Representing Farmers Union. While we commend the Attorney General's office on there fight against Meth we are very concerned with section 1 and the broadness of it. We are by meetings and education making the farmers more aware of these problems we do not have to mandate laws to do this.

Brian Kramer, Farm Bureau - I am in opposition to locks. At our annual meeting this was discussed and our members are against. A big concern is that the locks would cause a greater risk with thief's drilling holes or opening drain plugs etc. What about lost keys?

Wayne Stenjehim -Attorney General discussed that after a meth lab bust, the majority of the farmers were not even aware that there chemical had been stolen. The locks would at least make them aware that someone is tampering with there property. Reviewed some of the comment above.

Senator John T. Traynor, Chairman closed the hearing

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10/3/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1352

Senate Judiciary Committee

Conference Committee

Hearing Date 03/06/03

Tape Number	Side A	Side B	Meter #
2	X		22 - 23.1
Committee Clerk Signature <i>Morgan K. Salter</i>			

Minutes: **Senator John T. Traynor, Chairman**, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with committee work on the bill:

Motion Made to DO PASS Engrossed HB1352 by Senator Thomas L. Trenbeath and seconded by Senator Stanley W. Lyson, Vice Chairman

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Passed

Floor Assignment: Sen. Dever

Senator John T. Traynor, Chairman closed the hearing

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Thomas L. Trenbeath
Operator's Signature

10/3/03
Date

Date: March 5, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1352

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS Engrossed Bill

Motion Made By Sen. Trenbeath Seconded By Sen. Lyson

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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Dennis Bercier
Operator's Signature

10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
March 6, 2003 9:05 a.m.

Module No: SR-40-4082
Carrier: Dever
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1352, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends DO
PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1352 was
placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-40-4082

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Deanna Hallworth
Operator's Signature

10/3/03
Date

2003 TESTIMONY

HB 1352

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10/3/03
Date

HOUSE BILL NO. 1352

Presented by: Douglas L. Holloway
Deputy Commissioner
North Dakota Insurance Department

Before: House Judiciary Committee
Representative Duane DeKrey, Chairman
Senate Judiciary Committee
Senator John T. Traynor, Chairman

Date: January 22, 2003

TESTIMONY

Mr. Chairman and members of the committee:

Good afternoon. My name is Doug Holloway, Deputy Commissioner with the North Dakota Insurance Department. I stand before you today on behalf of Commissioner Jim Poolman to introduce House Bill No. 1352. It is my pleasure to do so.

During the 1995 Legislative Session, the inspection program for anhydrous ammonia facilities was assigned to the Insurance Department. Each year, the Department inspects approximately 1380 nurse tanks. In total, there are approximately 10,000 nurse tanks located in the State.

Section 1 of House Bill 1352 requires that the Insurance Commissioner adopt rules prohibiting anhydrous ammonia storage facilities from filling nurse tanks that do not have locking devices. In coordination with the Attorney General's office, we in the Insurance Department will be pleased to do so. We would engage in a rulemaking process in which input from all affected and interested parties would be gathered and welcomed. Our goal would be to reach consensus on practical, appropriate and effective regulations.

Section 2 of the Bill provides immunity from civil liability for tank owners who comply with the rules governing the locking of tanks. We believe tank owners who lock their tanks and comply with the applicable laws and regulations should be entitled to the security of statutory immunity. Certainly, we believe, such immunity could benefit these owners through stabilized or reduced commercial liability insurance premiums.

We appreciate your consideration of this most important legislative package, of which House Bill 1352 is an important part.

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Douglas L. Holloway
Operator's Signature

10/3/03
Date

N.D. Cent. Code, § 19-20.2-07

HB1352

NORTH DAKOTA CENTURY CODE
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*** STATUTES CURRENT THROUGH THE 2001 GENERAL AND SPECIAL SESSIONS. ***
*** ANNOTATIONS CURRENT THROUGH AUGUST 30, 2002. ***

TITLE 19. FOODS, DRUGS, OILS, AND COMPOUNDS
CHAPTER 19-20.2. ANHYDROUS AMMONIA FACILITIES

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

N.D. Cent. Code, § 19-20.2-07 (2002)

§ 19-20.2-07. Inspection

1. The chief boiler inspector and the commissioner of Insurance shall cooperate with the commissioner of agriculture to develop and implement an initial and periodic inspection program for anhydrous ammonia storage facilities. The chief boiler inspector shall inform the commissioner of agriculture of any violation of this chapter that may arise in the course of an inspection of an anhydrous ammonia storage facility.

2. The commissioner of Insurance shall inspect each anhydrous ammonia storage facility at least once every five years and may inspect any farm transportation wagon or vehicle designed to apply anhydrous ammonia which is in the vicinity of an anhydrous ammonia storage facility.

3. The commissioner of Insurance may inspect any anhydrous ammonia storage facility where the commissioner has reason to believe violations of the safety standards under this chapter exist.

4. The commissioner of agriculture may revoke or suspend the license of any anhydrous ammonia storage facility violating this chapter or the rules adopted under this chapter. The commissioner may order the discontinuance of use of any farm transportation wagon or implement of husbandry which is found unsafe or hazardous.

HISTORY: SOURCE: S.L. 1985, ch. 269, § 7; 1995, ch. 223, § 9.

NOTES:

NOTE.

Section 1 of chapter 714, S.L. 1991, would have amended this section effective July 1, 1993; however, section 5 of chapter 613, S.L. 1993, repealed section 1 of chapter 714, S.L. 1991, effective April 2, 1993. Therefore, the amendment of this section by section 1 of chapter 714, S.L. 1991, never went into effect.

Service: Get by LEXSTAT®

TOC: North Dakota Century Code > TITLE 19. FOODS, DRUGS, OILS, AND COMPOUNDS > CHAPTER 19-20.2. ANHYDROUS AMMONIA FACILITIES > § 19-20.2-07. Inspection

Citation: NDCC 19-20.2-07

View: Full

Date/Time: Tuesday, January 28, 2003 - 10:43 AM EST

.../retrieve?_m=c6d51e304a1c2f2a3e2dd0fd6b022e1c&_browseType=TEXTONLY&docnum=1/28/2003

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Dennis Hallworth
Operator's Signature

10/3/03
Date

Roger Johnson
Agriculture Commissioner
www.agdepartment.com



Phone (701) 328-2231
Toll Free (800) 242-7535
Fax (701) 328-4567

600 E Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020

**NORTH DAKOTA DEPARTMENT OF AGRICULTURE
LEGISLATIVE TESTIMONY**

Testimony of Roger Johnson
House Bill 1352
January 22, 2003
9:00 a.m.
House Judiciary Committee
Prairie Room

Chairman DeKrey and members of the committee. My name is Roger Johnson, ND Commissioner of Agriculture. I am here to testify in opposition of HB 1352 dealing with administrative rule making for locking of anhydrous ammonia nurse tanks.

First of all, the tanks referred to in this bill should be referred to as "nurse tanks" and not "nursing tanks". Section 1 of this bill gives rule making authority for chapter 19-20.2 to the Insurance Commissioner. Section 19-20.2-01 already gives this authority to the Agriculture Commissioner. Having two agencies with rule making authority over one chapter of the Century Code will lead to confusion with the constituents that are regulated under this chapter. Under the current statute, the Insurance Department is charged with the inspection of anhydrous ammonia facilities and equipment while the Agriculture Department is charged with enforcing the chapter.

Section 2 of the bill deals with immunity for theft of anhydrous ammonia. This section states that an owner of anhydrous ammonia must have a locking system in place to be immune from civil liability but does not state who has the responsibility to obtain and maintain locks on the nurse tanks. The financial impact this will have on farmers will be significant. Locking mechanisms range in price from \$80 to \$300 per tank, the cost of which will likely be passed to the end user (see attached pictures). The Insurance Department estimates about 10,000 nurse tanks in the state (6,500 dealers and 3,500 private). This

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Handwritten signature of Deanna Hallworth.
Operator's Signature

10/3/03
Date

could amount to a cost of \$1 to \$3 million dollars of investment that neither farmers nor anhydrous ammonia dealers can afford and does not include the maintenance nor replacement costs of these locks.

These locks will not guarantee the security of the product. Most locks will not allow the tank to be transported without removal because of causing further damage to the tank and its valves. Locking mechanisms can also be unintentionally detrimental to the end user of the tank. If a leak were to develop while being transported or parked, unlocking the lock and shutting off the valve could prove to be cumbersome and dangerous.

Enforcement of this bill will be very cumbersome as the Agriculture Department does not have enough staff to fulfill the legal requirements of this bill. N.D.C.C. 19-20.2-09 states that the Commissioner of Agriculture shall enforce the requirements of this chapter and any rules (whether by the Agriculture Department or the Insurance Department) issued under it. N.D.C.C. 19-20.2-07 instructs the Commissioner of Insurance to cooperate with the Commissioner of Agriculture to develop and implement the inspection program (Insurance) and enforcement program (Agriculture).

I believe that methamphetamines are a very large problem in North Dakota and something needs to be done to stop the increasing use of this drug. However, farmers and agricultural suppliers should not be burdened by exorbitant costs for a less than perfect remedy that will not prevent further theft. My office is more than willing to work with other agencies to coordinate efforts to address this subject. As of today, my office has not been consulted or asked to participate in any of these discussions.

Thank you for the opportunity to testify. I would be happy to answer any questions?

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10/3/03
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Anhydrous Ammonia Theft A Problem?

CONTINENTAL NH3 HAS YOUR SOLUTION!

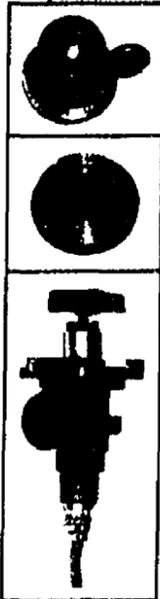
High Flow Locking Tank Valve



A-1406-FLK
(1-1/4" MNPT)

A-1407-FLK
(1-1/2" MNPT)

Lock Not Included



This new valve design incorporates a stainless steel cap that completely covers the handwheel assembly, making it virtually impossible to steal ammonia from the tank. In addition, this valve allows standard 1-1/4" withdrawal connections to achieve flow increases of 17% or better. (Equivalent to existing 1-1/2" tank valves). Also available is a dual purpose cap hanger adaptor. This device allows a convenient storage place for the locking cap and ACME dust and spare cap gasket.

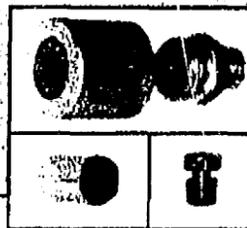
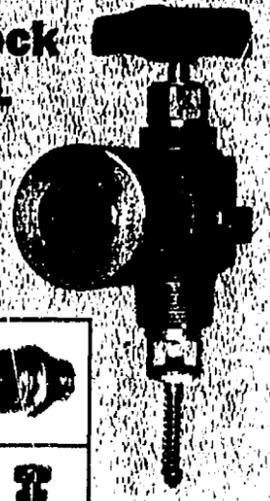
SO WHY NOT HAVE YOUR FLOW AND LOCK IT TOO?!

FEATURES:

- Rugged stainless steel locking cap.
- Works with most padlocks.
- Special Discus Lock available upon request.
- Flow increases of 17% or better on standard 1-1/4" connections.
- Quick acting handwheel.
- Available in 1-1/4" & 1-1/2" tank connections.
- Dual purpose cap hanger adaptor available upon request.

Plug-Lock

A-CVPL



The CONTINENTAL NH3 Plug-Lock is designed to deter and befuddle the most persistent thief. The free spinning, hardened shroud makes removal by wrench or hammer nearly impossible. The unique key pattern grants access only to the owner of the key. There are no external parts that can be cut with bolt cutters. The plug-lock easily inserts and removes from the special ACME adaptor (supplied at no additional cost).

FEATURES:

- Stainless Locking Mechanism.
- Case hardened shroud that spins freely.
- Quick installation and removal.
- Comes with its own special ACME adaptor. (1" or 1-1/4").
- Unique pattern lock makes bolt cutters useless.

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Deanna Hall
Operator's Signature

10/3/03
Date

ATTENTION



Facts about **METH**: A guide to preventing anhydrous ammonia theft

Effects

Methamphetamine is an extremely powerful stimulant that affects the central nervous system. Referred to as "meth" or by the street names of "crank," "ice," "chalk," "glass" or "yaba," the drug is a bitter-tasting, white crystalline powder that can be smoked, injected, snorted or taken orally. The use of meth alters the chemistry of the brain and causes severe damage to internal organs. Current research indicates the use of methamphetamine causes long-term and possibly permanent damage to the brain and other organs because meth can cause the temperature of the human body to rise to 108 F.

Where

The growth of clandestine, or hidden, labs for making meth has spread across many sections of the United States and the problem is most severe in the West and Midwest. Labs are usually set up in occupied or abandoned homes, hotel rooms, rent-

ed storage spaces, abandoned structures, automobile trunks and secluded areas.

Hazards

The making of meth creates significant public health risks, including contamination of soil and water from the toxic waste generated from these labs. There is also a danger of explosion in areas where meth is being produced. Clandestine labs and the toxic materials require

Hazardous Materials clean up in accordance with Environmental Protection Agency regulations.

Contents

Surprisingly, a lot of ordinary products are used to make meth. These products include drain cleaner, pseudoephedrine, ether, battery acid, acetone, brake cleaner and gasoline additive. The predominant method for making meth in the U.S. is "ephedrine reduction." Ephedrine reduction produces "Nazi" or

Research indicates the use of meth causes long-term and possibly permanent damage to the brain and other organs.

ATTENTION

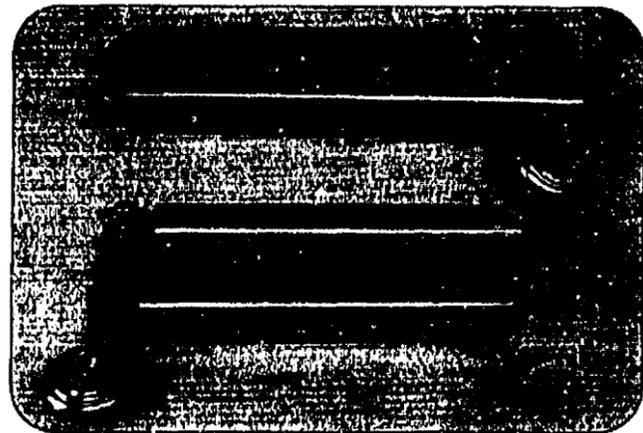
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Deanna K. Hall
Operator's Signature

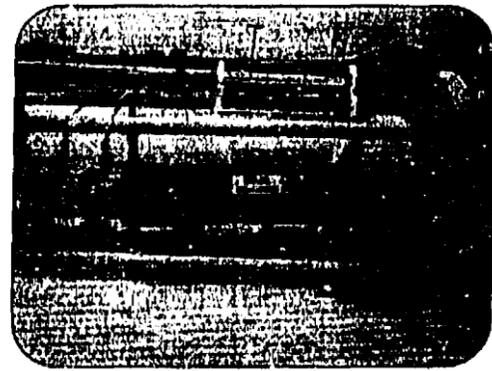
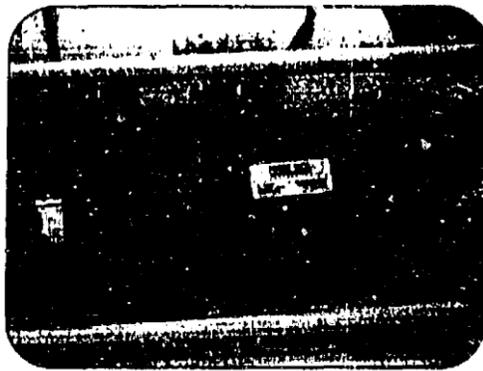
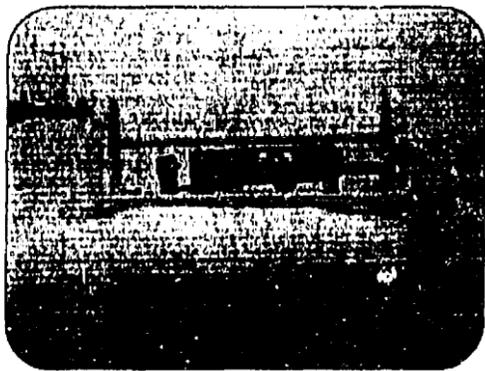
10/3/03
Date

AnHydrous Ammonia Nursetank Theft Deterrent

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- Designed and built from stainless steel
- Non-corrosive material
- Stainless steel construction makes it difficult to bend, torch, or cut with a saw
- Stainless steel allows fingerprints to be lifted
- Simple and efficient use of this product tried and tested on all brand's and sizes of current AnHydrous Ammonia Nursetanks in use today!



“A unique locking device to help protect your valuable product and our precious future generations.”

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Donna Hallmark
Operator's Signature

10/3/03
Date

Att #2

ENGROSSED HB 1352

- ▶ This bill was introduced as a part of the Attorney General's strategy to fight the escalation of the production of methamphetamine.
- ▶ Anhydrous ammonia is a key ingredient in the manufacture of methamphetamine ... and it is obtained by theft from nurse tanks located on farms or from distribution facilities
- ▶ To address concerns raised by members of the farm community, the bill was amended by the House and now calls for the insurance commissioner to adopt rules which do three things:
 - 1) identify a critical methamphetamine use zone in the state;
 - 2) establish appropriate security measures to be implemented by the owners and users of anhydrous ammonia nurse tanks located within the zone; and
 - 3) define the duration of the pilot project.
- ▶ The Insurance Commissioner is also charged with enforcing the rules adopted pursuant to pilot project.
- ▶ The idea behind the amended bill is to allow the insurance commissioner to work with farmers and distributors within the zone to determine which security measures work, and which do not.
- ▶ Section 2 of the bill includes language providing immunity from civil liability for anyone injured when attempting to steal anhydrous ammonia. The language in section 2 is identical to that found in House Bill 1222.

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Demetrius Hall
Operator's Signature

10/3/03
Date

HB 1352
Rulemaking Authority Regarding the Locking
of Anhydrous Ammonia Nurse Tanks

The bill calls for the insurance commissioner to adopt rules prohibiting an anhydrous ammonia storage facility from filling an anhydrous ammonia nurse tank if the tank does not have a locking device.

To address the issue of possible civil liability of the owners of nurse tanks, storage facilities, etc., section 2 of the bill provides immunity for an owner from any loss, damage or injury resulting from the theft of anhydrous ammonia provided the owner is in compliance with the rules related to the locking of nurse tanks.

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Deanna Halliwell
Operator's Signature

10/3/03
Date