

# MICROFILM DIVIDER

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DESCRIPTION

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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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*Dennis Holloway*  
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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 Aasnundstad, 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 NH<sub>3</sub>, 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.



