

HOUSE BILL REPORT

HB 2451

As Reported By House Committee On:
Criminal Justice & Corrections
Appropriations

Title: An act relating to anhydrous ammonia.

Brief Description: Creating penalties for crimes involving anhydrous ammonia.

Revised for 1st Substitute: Creating penalties for crimes involving anhydrous ammonia.

Sponsors: Representatives McDonald, Hurst, Ruderman, Dunn, Mielke, Sullivan, Kastama, Bush, O'Brien, Schoesler, Wolfe, Stensen and Keiser.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/25/00, 1/26/00 [DPS];

Appropriations: 2/7/00 [DP2S (CJC)].

Brief Summary of Bill

- Creates penalties for crimes involving anhydrous ammonia, a precursor substance used to manufacture methamphetamine.
- Theft of anhydrous ammonia is a seriousness level VIII, class C felony.
- Unlawful storage of anhydrous ammonia is a seriousness level VI, class C felony.
- Possession of anhydrous ammonia with intent to manufacture methamphetamine is a seriousness level VIII, class B felony.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Cairnes, Republican Vice Chair; Lovick, Democratic Vice Chair; B. Chandler; Constantine; Kagi and Koster.

Staff: Yvonne Walker (786-7841).

Background:

Methamphetamine is a controlled substance. It is unlawful to manufacture, deliver, or possess with intent to manufacture or deliver methamphetamine.

In addition, the possession of some methamphetamine precursors such as ephedrine or pseudoephedrine is a felony crime. Possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine is classified as a seriousness level VIII, class B felony under the sentencing guidelines. A first-time offender's presumptive range is 21 to 27 months in prison.

Other precursor substances used to make methamphetamine include: lithium found in lithium batteries, pseudoephedrine found in cold medicines such as Sudafed, and anhydrous ammonia which is most commonly used as a commercial fertilizer. Theft or possession of anhydrous ammonia is not a felony offense in Washington.

The maximum penalty for a class B felony is 10 years in prison, a \$20,000 fine, or both. The maximum penalty for a class C felony is five years in prison, a \$10,000 fine, or both.

Summary of Bill:

Several new sections are added to the Uniform Controlled Substance Act, creating three new crimes: theft of anhydrous ammonia, unlawful storage of anhydrous ammonia, and possession of anhydrous ammonia with intent to manufacture methamphetamine.

Theft of anhydrous ammonia is a seriousness level VIII, class C felony. A person who intentionally deprives an owner or an owner's agent by wrongfully obtaining anhydrous ammonia is guilty of theft of anhydrous ammonia. A first-time offender's presumptive range is 21 to 27 months in prison.

Unlawful storage of anhydrous ammonia is a seriousness level VI, class C felony. A person who possess anhydrous ammonia in a container that is not designed and manufactured to hold anhydrous ammonia is guilty of unlawful storage of anhydrous

ammonia. A first-time offender's presumptive range is 12 (plus one day) to 14 months in prison.

Possession of anhydrous ammonia with intent to manufacture methamphetamine is a seriousness level VIII, class B felony. A first-time offender's presumptive range is 21 to 27 months in prison.

Any damages arising out of the unlawful possession of, storage of, or tampering with anhydrous ammonia or anhydrous ammonia equipment is the sole responsibility of the unlawful possessor, storer, or tamperer. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with anhydrous ammonia or anhydrous ammonia equipment extend to the lawful owner, installer, maintainer, designer, manufacturer, or seller of the anhydrous ammonia or anhydrous ammonia equipment, unless the particular damages are due to such person's acts or omissions that constitute negligent misconduct regarding anhydrous ammonia possession and storage.

Substitute Bill Compared to Original Bill: A technical amendment is made to clarify language in the bill.

Appropriation: None.

Fiscal Note: Requested on January 19, 2000.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Pierce County is quickly becoming the methamphetamine capital of the state because the precursor items used to make methamphetamine are so easily obtainable. Items such as lithium found in regular batteries and pseudoephedrine found in many cold medicines can be found in just about any local store. Anhydrous ammonia which is a fertilizer, on the other hand, is only used on farms and hence there is a more limited use for this product.

Distributors from around the U.S. have been very helpful in working with law enforcement officers in this state in trying to reduce crime around anhydrous ammonia. However, the crimes for stolen anhydrous ammonia from the storage units around the state have increased. As a result, a liability clause has been added to the bill. Legitimate farmers who have anhydrous ammonia stolen from them will not be held liable for any damages arising out of the tampering of their tanks.

This bill is an attempt to make it more difficult for offenders to get the ingredients to make methamphetamine. This bill also gives prosecutors some extra prosecuting tools

when someone is caught with anhydrous ammonia knowing that they have a lab set up for the manufacturing of methamphetamine.

Testimony Against: None.

Testified: (In favor) Roger Clarke, Washington State Narcotics Association; and John Ladenburg, Washington Association of Prosecuting Attorneys.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Criminal Justice & Corrections. Signed by 32 members: Representatives Huff, Republican Co-Chair; H. Sommers, Democratic Co-Chair; Barlean, Republican Vice Chair; Doumit, Democratic Vice Chair; D. Schmidt, Republican Vice Chair; Alexander; Benson; Boldt; Clements; Cody; Crouse; Gombosky; Grant; Kagi; Keiser; Kenney; Kessler; Lambert; Linville; Lisk; Mastin; McIntire; McMorris; Mulliken; Parlette; Regala; Rockefeller; Ruderman; Sullivan; Sump; Tokuda and Wensman.

Staff: Dave Johnson (786-7154).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Criminal Justice & Corrections: A provision was added which makes the act null and void unless specific funding is provided in the biennial budget act.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Testimony For: In January the Department of Ecology disposed of 40 anhydrous ammonia containers. That chemical can be a very dangerous product. The provisions of the bill, especially the protection against liability when someone tries to steal the product and causes damages, are valuable.

Testimony Against: None.

Testified: Representative Joyce McDonald, prime sponsor; and Dan Coyne, Far West Fertilizer.