

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on April 2, 2002 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Department of Legislative Research
Jill Wolters, Department of Revisor of Statutes
Sherman Parks, Department of Revisor of Statutes
Cindy O'Neal, Committee Secretary

HB 2135 - Undocumented Workers

Committee discussion took place with regards to providing one year temporary permits to undocumented workers, as the Department of Motor Vehicles currently does. The committee liked the requirement of making it mandatory for the undocumented workers to submit some biometric identification and would go into effect July 2003. The biometric portion of the bill would be permissive for any United States citizen. The committee also supported allowing an increase in the costs licenses to cover training, personnel and equipment.

HB 3010 - Placement in court services or community corrections in JO County

Representative Long made the motion to report HB 3010 favorably for passage. Representative Pauls seconded the motion.

Representative Loyd made the motion have the bill subject to the receipt of funding. Representative Long seconded the motion. The motion carried.

Representative Long made the motion to report HB 3010 favorably for passage, as amended. Representative Lloyd seconded the motion. The motion carried.

HB 2851 - Miscreants & Delinquents; decaying juvenile adjudications

Representative Owens made the motion to adopt the balloon handed out at the committee meeting during the hearing. Representative Morrison seconded the motion.

Some members of the committee were not thrilled about moving backwards statewide when the problem seems to only be happening in Johnson County. They attributed the problem to the zero tolerance of the school district, an overzealous prosecutor and the fact that juvenile crimes are becoming more violent.

Representative Owens understood the views of committee members but did not see any other option than legislation. Members suggested that both the school board and district attorney are elected offices and maybe they should mount a campaign against those who support such measures.

The motion failed 5-13.

Other committee members were concerned that all juvenile crimes would be expunged and would not be considered for criminal history worksheets purposes. They believed that this provision in the bill would have far reaching effects and would give prosecutors a reason to try the juvenile as a adult, so the crime could be considered for criminal history purposed.

Representative Owens made the motion to report HB 2851 favorably for passage. Representative Morrison seconded the motion.

Representative DeCastro made the substitute motion to table the bill and refer it to interim study. Representative Loyd seconded the motion. The motion carried 12-7.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on April 4, 2002 in Room 313-S of the Capitol.

With the committees permission the Chairman can request that Judicial Council study the issue if no interim committees are approved.

SB 489 - Immunity from liability for certain owners of anhydrous ammonia from acts of tampers and civil penalties related to certain acts of custom blenders of fertilizers

Representative Lloyd made the motion to report SB 489 favorably for passage. Representative Long seconded the motion.

Representative Lloyd made the substitute motion to adopt the balloon amendment (Attachment 1). Representative Long seconded the motion.

Representative Swenson demonstrated how a lock tank works and suggested that the requirement of every tank having one would help deter the theft of anhydrous. Representative Lloyd commented that it doesn't matter what a person does, the criminal will find a way around the lock tank.

Members of the committee did not have a problem with giving immunity to farmers from those who tamper with their tanks and get injured, but believed that they should be held responsible when it came to 3rd party injuries.

The motion failed 5-12.

Representative Patterson made the motion to strike on page 2, lines 6-12. Representative Ruff seconded the motion. The motion carried.

Representative Loyd made the motion to amend (c) to read "owners shall not be liable for injuries sustained by a tamperer or any 3rd party caused by the acts of the tamperer". Representative Long seconded the motion. Representative Rehorn opposed the motion because he believed that it did not change current law or give immunity. Representative Shriver commented that the county he represents is second in meth manufacturing and they usually cut the hose to get at the anhydrous. The motion failed 8-12.

Representative Dillmore made the motion to strike subsection (d) on page 2. Representative DiVita seconded the motion. The motion failed.

Representative Loyd made the motion to report SB 489 favorably for passage, as amended. Representative Shriver seconded the motion. The motion carried.

The committee meeting adjourned at 6:30 p.m. The next committee meeting was scheduled for April 4, 2002.

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4 **SENATE BILL No. 489**

5
6 By Committee on Judiciary

7
8 2-1
9

10 AN ACT concerning **fertilizers; relating to** civil actions and civil pen-
11 alties; ~~relating to certain fertilizers;~~ owners of anhydrous ammonia,
12 immunity from liability; civil penalty for certain persons or custom
13 blenders of fertilizer; **mobile containers;** amending K.S.A. 2-1201b
14 and repealing the existing section.
15

16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. As used in this act:

18 (a) (1) "Owner" means:

19 (A) Any person who lawfully owns anhydrous ammonia;

20 (B) any person who lawfully owns a container, equipment or storage
21 facility containing anhydrous ammonia;

22 (C) any person responsible for the installation or operation of such
23 containers, equipment or storage facilities;

24 (D) any person lawfully selling anhydrous ammonia;

25 (E) any person lawfully purchasing anhydrous ammonia for agricul-
26 tural purposes; or

27 (F) any person who operates or uses anhydrous ammonia containers,
28 equipment or storage facilities when lawfully applying anhydrous am-
29 monia for agricultural purposes.

30 (2) "Tamperer" means a person who commits or assists in the com-
31 mission of tampering.

32 (3) "Tampering" means **illegally** transferring or attempting to trans-
33 fer anhydrous ammonia from its present container, equipment or storage
34 facility to another container, equipment or storage facility, ~~without prior~~
35 ~~authorization from the owners.~~

36 (b) A tamperer assumes the risk of any personal injury, death and
37 other economic and noneconomic loss **to such tamperer or any third**
38 **party** arising from such tamperer's participation in the act of tampering.
39 A tamperer shall not commence a direct or derivative action against any
40 owner relating to the act of tampering. ~~Owners are immune from suit by~~
41 ~~a tamperer or any third party suit based on the tamperer's actions.~~

42 (c) Owners shall not be held liable **or subject to a lawsuit** for any
43 negligent act or omission which may cause personal injury, death or other

Owners are immune from suit by a
tamperer or any third party suit
based on the tamperer's actions.

1 economic or noneconomic loss to a tamperer or any third party relating
2 to the act of tampering.

or any third party

3 ~~(e)~~ (d) The immunity from liability and suit authorized by this section
4 is expressly waived for owners whose acts or omissions constitute willful,
5 wanton, reckless or intentional conduct.

6 (e) *If any third party brings an action against an owner claim-*
7 *ing that the owner's negligent acts or omissions caused or contrib-*
8 *uted to personal injury, death or other economic or noneconomic*
9 *loss to the tamperer or to any third party relating to the act of*
10 *tampering, and if the owner prevails, the court may order the plain-*
11 *tiff to pay the reasonable attorney fees incurred by the owner in*
12 *defending against the action.*

(f) On July 1, 2006, the immunity by owners from lawsuits as set forth in in (c) shall expire.

13 Sec. 2. K.S.A. 2-1201b is hereby amended to read as follows: 2-
14 1201b. (a) It shall be deemed a violation of this act K.S.A. 2-1201 and 2-
15 1201a, and amendments thereto, for any person to: (1) Sell or distribute
16 in this state any custom blended fertilizer ~~who~~ when such person does
17 not hold a valid license as required by this act; or ~~to~~ (2) fail to comply
18 with the requirements of K.S.A. 2-1201a hereof, and amendments thereto,
19 and, except as otherwise provided, the provisions of K.S.A. 2-1208, except
20 subsection (1) (a), and amendments thereto. Failure to comply with
21 the provisions of subsection (1)(a) of K.S.A. 2-1208, and amendments
22 thereto, shall not be deemed a violation of this section. The penalties as
23 provided therein in K.S.A. 2-1208, and amendments thereto shall apply
24 to persons as described in this section who fail to comply with the pro-
25 visions of K.S.A. 2-1208, and amendments thereto.

26 (b) ~~Any~~ On and after July 1, 2003, any person or custom blender
27 who violates any provision of article 12 of chapter 2 of Kansas Statutes
28 Annotated, and amendments thereto or the rules and regulations adopted
29 pursuant thereto, may incur a civil penalty in an amount not more than
30 \$5,000 per violation. In the case of a continuing violation, every day such
31 violation continues may be deemed a separate violation. Such civil penalty
32 may be assessed in addition to any other penalty provided by law. Any
33 civil penalty assessed pursuant to this subsection is subject to review in
34 accordance with the act for judicial review and civil enforcement of
35 agency actions. The secretary shall remit any civil penalty collected pur-
36 suant to this act to the state treasurer in accordance with the provisions
37 of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
38 remittance, the state treasurer shall deposit the entire amount in the state
39 treasury to the credit of the state general fund.

40 New Sec. 3. If the secretary of agriculture does not adopt a re-
41 vised regulation related to storage of liquid fertilizer in mobile con-
42 tainers prior to February 1, 2003, then the requirements provided
43 in K.A.R. 4-4-900 et seq. shall be applicable to each mobile container

1 *or combination of mobile containers which has a combined capacity*
2 *of 2,000 gallons or more which is used to store liquid fertilizer for*
3 *more than 60 consecutive days.*

4 Sec. ~~4~~. K.S.A. 2-1201b is hereby repealed.

5 Sec. ~~4~~ 5. This act shall take effect and be in force from and after its
6 publication in the statute book.

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