

CHAPTER 233**(HB 501)**

AN ACT relating to anhydrous ammonia.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 250.482 is amended to read as follows:

As used in KRS 250.483 to 250.488:

- (1) "Department" means the Department of Insurance;
- (2) "Division" means the Division of Fire Prevention in the Department of Housing, Buildings and Construction.
- (3) "Anhydrous ammonia" refers to the compound formed by the combination of the two (2) gaseous elements, nitrogen and hydrogen, in the proportion of one (1) part nitrogen to three (3) parts of hydrogen by volume. Anhydrous ammonia is ammonia gas in compressed or liquefied form, and is not aqueous ammonia.
- (4) ***"Approved container" means a container for anhydrous ammonia which meets or exceeds the requirements of the Federal law or regulation for the storage and handling of anhydrous ammonia.***

Section 2. KRS 250.483 is amended to read as follows:

The Division of Fire Prevention in the Department of ***Housing, Buildings and Construction***~~Insurance~~ shall make, promulgate, and enforce ***administrative*** regulations setting forth minimum general standards covering the design, construction, location, installation, and operation of equipment for storing, handling, transporting by tank truck, tank trailer, and utilizing anhydrous ammonia. ***The administrative***~~Said~~ regulations shall be such as are reasonably necessary for the protection and safety of the public and persons using such materials, and shall be in substantial conformity with the generally-accepted standards of safety concerning the same subject matter.~~Such regulations shall be adopted by the division after a public hearing thereon.~~ ***Administrative*** regulations in substantial conformity with the published standards of the ***Fertilizer***~~Agricultural Ammonia~~ Institute and the Compressed Gas Association for the design, installation, and construction of containers and equipment for the storage and handling of anhydrous ammonia shall be deemed to be in substantial conformity with the generally-accepted standards of safety concerning the same subject matter.

Section 3. KRS 250.486 is amended to read as follows:

No person, firm or corporation other than the owner of the facility and those authorized by the owner so to do, shall sell, fill, refill, deliver or permit to be delivered, or use in any manner any anhydrous ammonia container or receptacle for any gas, compound, for any other purpose whatsoever. Any wholesaler, dealer, or handler of anhydrous ammonia or pressure liquid fertilizers that have a vapor pressure in excess of fifty (50) pounds at one hundred (100) degrees Fahrenheit shall ***be registered***~~register annually~~ with the division~~, and shall pay an annual license fee based on the volume of the previous year's business. The license fee shall be at least thirty five dollars (\$35); operators who have handled more than two hundred and fifty (250) tons during the previous year shall pay an additional amount equal to fifteen cents (\$0.15) for each ton handled in excess of two hundred and fifty (250). The application for license shall be accompanied by an affidavit stating~~

~~the applicant's volume of business. The division or its representative shall have the privilege of checking the validity of the information contained in the affidavit].~~

SECTION 4. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

- (1) *It shall be unlawful for any person to knowingly possess anhydrous ammonia in any container other than an approved container.*
- (2) *The provisions of this section shall not apply to trained chemists working in properly equipped research laboratories in education, government, or corporate settings.*
- (3) *It shall be an affirmative defense to prosecution under this section that the anhydrous ammonia is possessed for the sole purpose of agricultural use.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

- (1) *It shall be unlawful for any person to tamper with equipment, containers, or facilities used for the storage, handling, transporting, or application of anhydrous ammonia.*
- (2) *Tampering occurs when any person who, having no right to do so, or any reasonable ground to believe that he has the right for a legitimate or legal purpose, transfers or attempts to transfer anhydrous ammonia to another container, or intentionally or wantonly defaces, destroys, or damages the equipment, container, or facility containing anhydrous ammonia.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 250 IS CREATED TO READ AS FOLLOWS:

Any person tampering with anhydrous ammonia equipment, containers or storage facilities in violation of Section 5 of this Act shall not have a cause of action against the owner of the equipment, container, or facility; any person responsible for the installation, maintenance, or operation of the equipment, container or facility; any person lawfully selling anhydrous ammonia; or any person lawfully purchasing anhydrous ammonia for agricultural purposes for damages arising out of the tampering.

Section 7. KRS 250.991 is amended to read as follows:

- (1) *Except as provided in Section 4 or Section 5 of this Act, any person who violates any provision of KRS 250.482 to 250.488 shall be fined not more than five hundred dollars (\$500).*
- (2) *Any person who knowingly possesses anhydrous ammonia in a container other than an approved container in violation of Section 4 of this Act is guilty of a Class D felony unless it is proven that the person violated Section 4 of this Act with the intent to manufacture methamphetamine in violation of KRS 218A.1432, in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense.*
- (3) *A violation of Section 5 of this Act is a Class D felony unless it is proven that the person violated Section 5 of this Act with the intent to manufacture methamphetamine in violation of KRS 218A.1432, in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense.*

Section 8. KRS 514.030 is amended to read as follows:

- (1) Except as otherwise provided in KRS 217.181 or 218A.1418, a person is guilty of theft by unlawful taking or disposition when he unlawfully:
 - (a) Takes or exercises control over movable property of another with intent to deprive him thereof; or
 - (b) Obtains immovable property of another or any interest therein with intent to benefit himself or another not entitled thereto.
- (2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the value of the property is three hundred dollars (\$300) or more, ~~or unless the property is a firearm (regardless of the value of the firearm),~~ in which case it is a Class D felony; **or unless:**
 - (a) ***The property is a firearm (regardless of the value of the firearm), in which case it is a Class D felony; or***
 - (b) ***The property is anhydrous ammonia (regardless of the value of the ammonia), in which case it is a Class D felony unless it is proven that the person violated this section with the intent to manufacture methamphetamine in violation of KRS 218A.1432, in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense.***

Section 9. KRS 514.110 is amended to read as follows:

- (1) A person is guilty of receiving stolen property when he receives, retains, or disposes of movable property of another knowing that it has been stolen, unless the property is received, retained, or disposed of with intent to restore it to the owner.
- (2) The possession by any person of any recently stolen movable property shall be prima facie evidence that such person knew such property was stolen.
- (3) Receiving stolen property is a Class A misdemeanor unless the value of the property is three hundred dollars (\$300) or more, ~~or unless the property is a firearm (regardless of the value of the firearm),~~ in which case it is a Class D felony; **or unless:**
 - (a) ***The property is a firearm (regardless of the value of the firearm), in which case it is a Class D felony; or***
 - (b) ***The property is anhydrous ammonia (regardless of the value of the ammonia), in which case it is a Class D felony unless it is proven that the person violated this section with the intent to manufacture methamphetamine in violation of KRS 218A.1432 in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense.***

Section 10. The following KRS sections are repealed:

250.487 Disposition of license fees.

250.488 Order to correct violation -- Injunctive remedies.

Approved March 29, 2000