

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

Reduce Government

HB 1815 does not reduce government because it broadens the ability of law enforcement to arrest and prosecute persons suspected of possessing, manufacturing, and transporting methamphetamines.

B. EFFECT OF PROPOSED CHANGES:

Background on methamphetamine

Once most common in the West and Southwest, methamphetamine is a highly addictive nerve stimulant found in virtually every metropolitan area of the country, according to the U.S. Drug Enforcement Agency (DEA). Commonly called "speed," "crank," "crystal," or "zip," methamphetamine can be smoked, injected, snorted, or taken orally. It produces an initial "high," lasting between 15 and 30 minutes, that is difficult if not impossible for the user to repeat, leading the user to ingest more and more of the drug and go on longer binges.

Methamphetamine's psychological side-effects include paranoia, hallucinations and delusions of insects or parasites crawling under the skin. Long-time use results in a decline in physical health, as well.

In the United States, methamphetamines are either imported by drug traffickers or manufactured in small "clandestine" laboratories (usually household kitchens) using recipes involving commonly available chemicals derived from cold medicines, drain cleaners, over-the-counter diet pills, battery acid, and matches. The problem is magnified by the ease with which these materials can be purchased in retail stores. In one common technique, anhydrous ammonia siphoned by tanks on farms and lithium extracted from batteries are used to convert ephedrine from over-the-counter cold remedies to make methamphetamine.

DEA's National Clandestine Laboratory Seizure System indicates that, based on reports from the 50 states, methamphetamine lab and dumpsite seizures in 2003 totaled 13,131, and the seizure of chemicals and equipment used to make the drug totaled 3,098. These numbers are nearly a 30-percent increase over seizures in 2001.

According to a December 15, 2003, news release posted on the Florida Department of Law Enforcement website, Florida ranked sixth nationwide last year for methamphetamine seizures. In 2002, law enforcement officers seized 127 clandestine methamphetamine labs, compared to 229 seizures in 2003. The rapidity of the spread of clandestine labs in Florida is reflected in the DEA statistics that prior to 1999, only seven labs had been seized in Florida.

Background on legal and illegal uses of anhydrous ammonia

What is anhydrous ammonia?

According to a 2003 report by the Washington, D.C.-based Fertilizer Institute, ammonia is one of several nitrogen fertilizer products. It serves two roles in the fertilizer industry. First, it is a basic building

block in the manufacture of other types of nitrogen fertilizer. Second, it is directly applied to farmland as fertilizer. Nitrogen from ammonia plays an especially important role as a constituent of chlorophyll, which is necessary for photosynthesis and plant growth. It is popular with farmers because it is the lowest-cost form of nitrogen fertilizer available.

Ammonia can be stored in either refrigerated or pressurized tanks. Ammonia stored under pressure is in a liquid form, but converts to a gas when released into the air. "Anhydrous ammonia" is the gaseous form of ammonia. Anhydrous ammonia has a strong attraction to water and can cause severe burns and can dehydrate skin. As a result, strict engineering codes exist for all equipment designed to store and transport anhydrous equipment; propane tanks, gasoline cans, and other common containers typically used by thieves and methamphetamine manufacturers are inadequate.

How is ammonia used in making illegal drugs?

Methamphetamine can be manufactured in several different ways. Essentially, each production method requires raw materials, also called "precursor chemicals," which are combined with a substance that reacts chemically with the precursors. The method used depends upon the availability of precursor chemicals and the reactor chemicals.

The common method for small-scale illegal production is the use of precursor chemicals obtained from readily available cold medicines. The reaction can be accomplished using either sodium or lithium metal, both readily available from chemical supply companies. Clandestine lab operators also have obtained lithium from batteries. The other material needed in this process is anhydrous ammonia. Clandestine drug makers typically obtain the small amounts of anhydrous ammonia needed by draining it from tanks used by fertilizer dealers who deliver the product to farms.

The U. S. Environmental Protection Agency (EPA) in March 2000 issued a chemical safety alert on anhydrous ammonia theft, explaining the health dangers if the chemical is improperly handled. According to EPA's safety alert, anhydrous ammonia can be harmful to people who come into contact with it or inhale airborne concentrations of the gas. Theft of anhydrous ammonia and its illegal use in the manufacture of methamphetamine may increase the likelihood of dangerous discharges of anhydrous ammonia or explosions. Anhydrous ammonia is especially attractive to operators of illegal methamphetamine labs because it shortens the normal manufacture time for methamphetamine by about a third.

Because of its wide commercial use, anhydrous ammonia can be stolen from a number of sources. In addition to the previously noted theft of anhydrous ammonia from agriculture feeder tanks, the substance has been stolen from refrigeration systems, underground pipelines carrying ammonia, and rail cars transporting anhydrous ammonia, according to the EPA. The substance can be as inexpensive as \$200 a ton for agricultural purposes, but can sell for as much as \$300 per gallon on the black market. Very small amounts of anhydrous ammonia are needed to make a batch of methamphetamine.

According to an April 2000 FBI bulletin on clandestine labs, persons who steal anhydrous ammonia or use it in the manufacture of methamphetamine are not particularly knowledgeable about the chemical properties of the substance and its storage and handling. Yet, unlike many other synthetic-based illegal drugs, it does not take a chemist to produce methamphetamine. In fact, the FBI report indicates that many illegal manufacturers learn the formula while in prison or from the Internet.

The use of "makeshift containers" by anhydrous ammonia thieves and illegal methamphetamine manufacturers increases the chances of dangerous discharges or explosions because of improper handling. Commercial storage of anhydrous ammonia is regulated through container specifications required by the U.S. Department of Transportation. For example, some storage containers for anhydrous ammonia must have rated pressure relief devices to reduce the likelihood of over-pressurization. Because anhydrous ammonia is corrosive, specific valves and hoses that do not readily corrode have to be used.

Impact of clandestine lab operations on children

As seizures of clandestine methamphetamine labs have increased, so have the concerns by law enforcement and child-care agencies about the children of the people operating the clandestine labs, which often are in homes, sheds, or hotel rooms. The number of children present at clandestine labs seized by law enforcement more than doubled from 1999 to 2001, according to the National Drug Intelligence Center.

According to the DEA's National Drug Intelligence Center, chemicals used in methamphetamine production are extremely hazardous, particularly for small children, who may have greater exposure to the chemicals because they tend to play on floors and tabletops, and put contaminated objects in their mouths. Common household items, like kitchen utensils, dishes, appliances, and sheets, are often used in clandestine labs, and come in contact with children. Toxic chemicals also frequently are stored or discarded outdoors near areas where children play. A child's developing brain and other organs are more susceptible to damage, and children may be less able to process and eliminate chemicals than adults. A child exposed to toxic chemicals may develop acute or chronic diseases such as cancer and organ damage. In addition, children who have lived in a home where methamphetamine was produced often exhibit emotional and behavioral problems that may persist indefinitely.

Law enforcement agents in Georgia, California, Louisiana, Washington, and other states have reported instances where children were living and playing in proximity to clandestine methamphetamine labs. These children typically were placed in foster homes, and their parents or other adults operating the labs were charged with child endangerment and similar violations in addition to drug violations. However, few areas of the country have programs in place to coordinate the social, medical, and legal needs of children removed from homes that served as clandestine methamphetamine labs, although California and nine other, mostly western, states have developed programs that are serving as national models.

Current laws and initiatives

Methamphetamine is a Schedule II controlled substance under s. 893.03(2)(c)4., F.S., and under federal law, s. 21 U.S.C. § 812. Schedule II drugs have a severely restricted medical use and can be obtained only by a prescription that can not be refilled without a physician's permission. Methamphetamine's medicinal uses include treatment in certain cases of narcolepsy, obesity, and attention deficit disorder.

The Legislature in 2003 passed SB 1080 (Chapter 2003-15, Laws of Florida) to toughen state laws on methamphetamine manufacture, and make them more consistent with the laws in other states and the federal government. The 2003 legislation amended s. 812.014(1)(c), F.S., to define theft of anhydrous ammonia as a grand theft of the third degree, a third-degree felony. A third-degree felony is punishable by a maximum five years in prison and/or a \$5,000 fine.

The new law also amended s. 893.033, F.S., to add anhydrous ammonia to the list of precursor chemicals, which is a chemical that may be used in the manufacture of a controlled substance.

Finally, the legislation re-enacted s. 893.149, F.S., which provides that it is a second-degree felony for any person to knowingly and intentionally possess a listed chemical with the intent to unlawfully manufacture a controlled substance, or possess or distribute a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance. The re-enactment was necessary so that a person charged with illegal possession of anhydrous ammonia with the intent to manufacture a controlled substance (such as methamphetamine), can be charged with a second-degree felony under s. 893.149, F.S. A second-degree felony is punishable by a maximum 15 years in prison and/or a \$10,000 fine.

In December 2003, the Governor approved the "Florida Statewide Methamphetamine Strategy, which created a partnership with the U.S. Drug Enforcement Agency, the Florida Department of Law

Enforcement, and the state Office of Drug Control to improve safe and efficient response to clandestine methamphetamine labs. Six regional teams of law enforcement officers are being trained and equipped to respond to reports of clandestine labs, and to help clean them up. Previously, specially trained DEA agents and chemists were the only law enforcement personnel trained in how to respond to clandestine methamphetamine labs.

Effect of HB 1815

This legislation is intended to close loopholes in the laws related to manufacture of methamphetamine and use of precursor chemicals such as anhydrous ammonia, and make Florida's existing law more consistent with federal regulations on illegal drugs. The bill makes the following changes:

1. Amends s. 893.033(1), F.S., to add benzaldehyde, hydriodic acid and nitroethane to the list of "precursor chemicals" and to delete benzyl chloride and anhydrous ammonia from the list of "precursor chemicals." Subsection (2) is amended to add anhydrous ammonia, benzyl chloride and hydrochloric gas to the list of "essential chemicals," which are chemicals that may be used as a solvent, reagent, or catalyst in the manufacture of a controlled substance, such as methamphetamine.

These changes: close a legal loophole pertaining to when a person's possession of anhydrous ammonia is for an illegal purpose; properly define anhydrous ammonia as an essential chemical, and not a precursor chemical, in the illegal manufacture of methamphetamine; and make Florida law consistent with federal controlled substances' chemical lists.

2. Amends s. 893.13, F.S., to;
 - a. Make it illegal for any person to manufacture, or possess with intent to manufacture, methamphetamine or phencyclidine, or any other listed chemical, in a structure or conveyance where any child under the age of 16 is present. The penalty is a first-degree felony, with a minimum prison term of five calendar years. In addition, if a child suffers "great bodily harm" because of the defendant's actions, the minimum prison term is 10 calendar years.

This change is in response to the number of children that law enforcement officers are finding in or around clandestine labs in Florida.
 - b. Make it a third-degree felony to store anhydrous ammonia in a container that is not approved by the U.S. Department of Transportation or is not constructed in accordance with sound engineering, agricultural, or commercial practices.

This change closes a loophole about whether a person is in possession of anhydrous ammonia for unlawful purposes. It also protects farmers, chemical companies, and others who have a legal reason for storing anhydrous ammonia.
 - c. Make it a third-degree felony for a person who, when violating a provision of chapter 893 F.S., causes serious injury to a federal, state, or local law-enforcement officer. If the law enforcement officer dies or suffers great bodily harm, the penalty is a second-degree felony.
3. Amends s. 893.135(1), F.S., to add pseudoephedrine to the list of chemicals, in certain quantities, that can be construed by law enforcement to mean the person in possession of such chemicals is trafficking in amphetamines, or who could be charged with a capital felony. The amounts and penalties are
 - a. Possession of at least 14 grams of any mixture containing crushed or powdered pseudoephedrine or ephedrine, or at least 300 pills, capsules, or tablets containing

any mixture of pseudoephedrine or ephedrine, constitutes "trafficking in amphetamine," a first-degree felony.

- b. Possession of at least 300 but fewer than 600 pills, tablets, or capsules, carries a mandatory minimum prison term of three years and a fine of \$50,000.
 - c. Possession of at least 600 but fewer than 5,000 pills, tablets, or capsules, carries a mandatory minimum prison term of seven years and a \$100,000 fine.
 - d. Possession of at least 5,000 pills, tablets, or capsules carries a mandatory minimum prison term of 15 calendar years and a fine of \$250,000.
 - e. Possession of at least 400 grams or more of any mixture containing crushed or powdered pseudoephedrine or ephedrine, or at least 10,000 pills, capsules, or tablets containing any mixture of pseudoephedrine or ephedrine, with the knowledge that the probable result of such manufacture or importation would be the death of any person, is a capital felony.
4. Amends s. 893.149, F.S., to exempt from the provisions of criminal drug possession public employees or private contract employees authorized to dispose of toxic or hazardous substances pursuant to chapter 893, F.S.

The section also is amended to specify that any damages arising from the unlawful possession of, storage of, or tampering with listed chemicals as defined in s. 893.033, F.S., shall be the sole responsibility of the person or persons engaged in the unlawful activity. No liability for damages arising out of the unlawful activity shall extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor, or seller of the listed chemical, unless such damages arise out of the acts of omissions of the owner, installer, maintainer, designer, manufacturer, possessor, or seller that constitute negligent misconduct or failure to abide by the laws on possession or storage of a listed chemical.

5. Re-enacts the offense severity ranking chart in s. 921.0022, F.S. to incorporate the penalty changes and new violations established earlier in HB 1815 so that they can be when the legislation becomes law.

HB 1815 takes effect July 1, 2004, and applies to offenses committed on or after that date.

C. SECTION DIRECTORY:

Section 1: Amends s. 893.033, F.S., to make the Florida lists of "precursor chemicals" and "essential chemicals" consistent with the federal lists of these chemicals. Deletes anhydrous ammonia and benzyl chloride from the state list of precursor chemicals and adds benzaldehyde, hydriolic acid and nitroethane to the list. Add anhydrous ammonia, hydrochloric gas, and iodine to the list of "essential chemicals."

Section 2: Amends s. 893.13, F.S., to add to the list of drug-related offenses the act of any person to manufacture, or possess with intent to manufacture, methamphetamine or phenylcyclidine, or any other chemical listed in s. 893.033, F.S., when possessed in violation of s. 893.149, F.S. A person who violates that provision in a structure or conveyance where any child under the age of 16 is present, commits a first-degree felony, and sets the minimum jail time at five years. If a child under the age of 16 suffers great bodily harm because of the specified criminal activity, the violator's minimum sentence shall be 10 years. Provides that any person who stores anhydrous ammonia in unapproved containers commits a third-degree felony. Provides that any person who violates any provision of chapter 893, F.S., and that such violation results in serious injury to a federal, state, or local law-enforcement officer, then that person commits a third-degree felony. If the injury results in great bodily harm or death, the violation is a second-degree felony.

Section 3: Amends s. 893.135, F.S., to specify certain quantities of pseudoephedrine or ephedrine that constitute drug offenses and to specify the penalties.

Section 4: Amends s. 893.149, F.S., to exempt from the law on illegal possession of listed chemicals public employees or private contractors authorized to clean up or dispose of hazardous waste or toxic substances pursuant to the provisions of chapter 893, F.S. Specifies that any damages arising from the unlawful possession of, storage of, or tampering with listed chemicals as defined in s. 893.033, F.S., shall be the sole responsibility of the person or persons engaged in the unlawful activity. Specifies no liability shall be for damages arising out of the unlawful activity shall extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor, or seller of the listed chemical, unless such damages arise out of the acts of omissions of the owner, installer, maintainer, designer, manufacturer, possessor, or seller that constitute negligent misconduct or failure to abide by the laws on possession or storage of a listed chemical.

Sections 5-23: Re-enacts ss. 311.12, 397.451, 414.095, 435.07, 772.12, 775.087, 782.04, 893.02, 893.1351, 903.133, 907.041, 921.0022, 921.0024, 921.142, 921.187, 938.25, 943.0585, 943.059, and 948.034, F.S., as they relate to penalties, sentencing guidelines, or other requirements. These reenactments reflect the impact of substantive law changes in Sections 1-4 of this bill.

Section 24: Specifies this act shall take effect July 1, 2004. Specifies its provisions shall apply to persons who commit offenses on or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

At its April 8, 2004 meeting, the Criminal Justice Impact Conference decided that the bill will have an indeterminate but expected minimal prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to HB 1815 because the legislation does not require counties or municipalities to expend local funds or to raise local funds, nor does it reduce their state revenue-sharing.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

At its March 15, 2004, meeting, the House Transportation Committee adopted one amendment to HB 1815 (then PCB TR 04-06) to delete a bill drafter's parenthetical note about agricultural use of anhydrous ammonia. The committee then voted 18-0 to report the legislation as favorable.