

SUBJECT: Regulating the sale of ammonium nitrate

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 6 ayes — Miller, Anderson, B. Brown, Gallego, Garcia, Heflin
0 nays
1 present not voting — Aycock

WITNESSES: None

DIGEST: HB 2546 would require a person to hold a certificate of registration issued by the Texas Feed and Fertilizer Control Service in order to sell ammonium nitrate or ammonium nitrate material. Ammonium nitrate material would include solid fertilizer that includes ammonium nitrate as a component, if at least 28 percent of the fertilizer's weight consisted of nitrogen from the ammonium nitrate.

An application to sell ammonium nitrate would be submitted on a form prescribed by the Texas Feed and Fertilizer Control Service with a fee sufficient to cover the service's cost. A certified seller of ammonium nitrate would have to display the registration in public view at the seller's place of business.

Certified ammonium nitrate sellers would be required to secure the ammonium nitrate at their facilities against vandalism, theft, or unauthorized access by:

- ensuring the storage facility was fenced or enclosed and locked when unattended;
- inspecting the storage facility daily for signs of vandalism and to verify its structural integrity; and
- establishing and maintaining inventory control procedures for the ammonium nitrate.

Before selling ammonium nitrate, a certified seller would have to ask for the buyer's driver's license or other form of photo identification and to request and record the following information:

- name of the buyer;
- date of the purchase;
- buyer's address, date of birth, and phone number;
- form of identification presented by the buyer;
- whether the purchase was being made on behalf of another person;
and
- amount and brand name of the ammonium nitrate.

The buyer also would be required to sign for the purchase.

The Texas Feed and Fertilizer Control Service would distribute forms to each registered seller to record the required information. The record would be maintained for two years after the purchase and would be available only on request to the Office of the Texas State Chemist, the Department of Public Safety (DPS), or a law enforcement agency of the United States.

The Texas Feed and Fertilizer Control Service would adopt rules to allow a person to refuse to sell ammonium nitrate based on the season or location of the sale. If the service discovered that a registered seller offered to sell ammonium nitrate in a manner conflicting with this bill, the service could suspend the seller's registration for 90 days for a first violation. Upon the second violation, the service could suspend the registration for 90 days or revoke the seller's registration.

The purchase of ammonium nitrate with the intent to manufacture an explosive device would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000)

These offenses would be Class A misdemeanors (up to one year in jail and/or a maximum fine of \$4,000):

- tampering with ammonium nitrate stored on another's property
- presenting false identification to purchase ammonium nitrate
- offering to sell ammonium nitrate without required registration

This bill would take effect September 1, 2007, and would only apply only to the sale of ammonium nitrate on or after that date. The provisions set forth by the bill would not be enforced until the Texas Feed and Fertilizer Control Service had adopted rules and distributed forms to affected businesses.

**SUPPORTERS
SAY:**

HB 2546 would increase security in Texas by establishing requirements for the sale of ammonium nitrate, a highly explosive material. The bill also would limit the sale and theft of ammonium nitrate by establishing certain penalties against its illegal sale and misuse. As a preventative measure, HB 2546 would create sales records that law enforcement officials could access to track individuals who could be engaged in criminal activities.

Although ammonium nitrate is widely used as a fertilizer for agricultural purposes, it is also an explosive substance and commonly used in improvised explosive devices. Timothy McVeigh used ammonium nitrate in the Oklahoma City bombing in 1995, in which 168 people died. Ammonium nitrate also holds devastating potential if used or stored incorrectly. For example, a 1947 explosion on a French fertilizer ship in Texas City ignited refineries that burned for six days.

Large purchases of ammonium nitrate could serve as a precursor to terrorist activities, given the substance's explosive potential. HB 2546 would enable law enforcement officials to track individuals making such purchases, and to track other indicators of terrorist planning, such as fraudulent driver's licenses. By requiring improved surveillance over ammonium nitrate storage facilities, the bill further would prevent terrorism given that stolen property can serve as a funding source for terror campaigns.

Other states have passed similar legislation, such as California, Iowa, Oklahoma, Michigan and New York. Like HB 2546, these laws require sellers of ammonium nitrate to obtain a license and maintain sales records. California and Iowa also give law enforcement access to sales records. Michigan and Iowa stipulate security measures for the storage of ammonium nitrate. This bill would include all such measures.

Already, the Texas Feed and Fertilizer Control Service informally monitors the sale of ammonium nitrate. The requirements and penalties stipulated in this bill would improve the service's and the state's ability to restrict its use.

At the federal level, H.R. 1680 is under consideration in the U.S. House Homeland Security Committee. This legislation would provide federal funding for the licensing of suppliers and the auditing of facility records to better ensure compliance. The bill is slightly more restrictive than

HB 2546, requiring the maintenance of sales records for three years and imposing a \$50,000 fine on facilities that fail to register.

OPPONENTS
SAY:

HB 2546 could reduce the availability of ammonium nitrate and negatively impact the agricultural industry. The nitrogen content in ammonium nitrate makes it popular for use as a fertilizer. Given the strict requirements imposed by this bill, retailers could be less likely to sell ammonium nitrate and could shift to the sale of alternative fertilizers. Already, ammonium nitrate is a growing target in break-ins. The increased liability associated with the sale of ammonium nitrate results in elevated insurance rates and the reduction in facilities willing to engage in its sale.