

MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Derek Schmidt at 8:30 a.m. on February 3, 2004 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Legislative Research
Lisa Montgomery, Office of the Revisor of Statutes
Robert Myers, Committee Secretary

Conferees appearing before the committee:

Chris Wilson - Kansas Building Industry Association
Greg Foley - Kansas Department of Agriculture
Doug Wareham - Kansas Grain & Feed Association; Kansas Agribusiness Retailers Association
Leslie Kaufman - Kansas Cooperative Council
Ron Pope - Kansas Trial Lawyers Association

Others attending:

See Attached List.

Chris Wilson appeared before the committee in order to request the introduction of a bill that would define the terms "direct impairment" and "substantial adverse impact on the area," with regard to the appropriation of water for beneficial use. She presented to the committee a copy of **HB 2079** for reference (Attachment 1).

Senator Lee moved to introduce the bill as requested, seconded by Senator Tyson. The motion carried.

Greg Foley appeared before the committee in order to request the introduction of a bill regarding water appropriations. Specifically, the bill would amend **SB 287** with regard to its July 1, 2004 deadline for certifications. With two-hundred of these certifications currently still incomplete, Mr. Foley stressed the need to amend the bill in order to require that action be taken on all pending cases, even after the July 2004 deadline.

Senator Huelskamp moved to introduce the bill as requested, seconded by Senator Morris. The motion carried.

Chairman Schmidt brought to the attention of the committee the need to take final action on **SB 353**. He asked the committee for any thoughts, concerns, or issues regarding the bill, but none were noted.

Senator Morris moved to report the bill favorably for passage, seconded by Senator Downey. The motion carried.

Chairman Schmidt brought to the attention of the committee the need to take final action on **SB 352**. He asked the committee for any thoughts, concerns, or issues regarding the bill, but none were noted.

Senator Downey moved to report the bill favorably for passage, seconded by Senator Lee. The motion carried.

Chairman Schmidt opened the continued hearing on **SB 335**.

Doug Wareham appeared before the committee as a proponent of **SB 335**. He stressed the importance of propane as both a source of heat and power for many, especially with regard to those in rural areas. He addressed the increasing reluctance faced by those in the propane business in finding insurance providers willing to write them, due to the industry's lack of regulation over licensing, insurance, etc. He thus showed support for the bills' establishment of permitting requirements, as well as its granting of authority

CONTINUATION SHEET

MINUTES OF THE SENATE AGRICULTURE COMMITTEE at 8:30 a.m. on February 3, 2004 in Room 423-S of the Capitol.

to the Office of the Kansas State Fire Marshall to adopt regulation over the handling and distribution of propane. Furthermore, he supported the finding of homeowners as liable for damage and injury in those cases of installation and/or repair of liquified petroleum gas devices without proper notification of their propane supplier. In ending, he pointed out that fertilizers, agricultural chemicals, and other agribusiness products are indeed regulated heavily in order to ensure overall safety, thus stressing his support for propane regulation as well (Attachment 2).

Doug Wareham also brought to the committee's attention the efforts being made to identify the smaller types of propane systems that would not be impacted by the bills' requirement to notify suppliers of alterations made by customers. He mentioned the example of the small systems used for gas cooking grills.

Leslie Kaufman appeared before the committee as a proponent of **SB 335**. She indicated that safety is of paramount concern for petroleum dealers in Kansas, and that she thus supports the implementation of a registry and/or licensing program in order to ensure the delivery of propane in a conscientious manner. Furthermore, she showed support for limiting the liability of those propane dealers meeting registration and/or licensing requirements, as well as in instances of accidents occurring through no fault of their own (Attachment 3).

Ron Pope appeared before the committee as an opponent of **SB 335** in its current state. His testimony revolved around the case of a Shawnee County man, Mr. Wayne Dick, whom he had personally represented in court. Mr. Dick installed a hot water heater in his home, connecting it to his propane line. Although the hot water heater lacked a "drip leg" and was later recalled, he never replaced it. Mr. Dick had been advised by an unregulated propane technician that the gas itself lacks any smell whatsoever, but that an odor is later added to it in order to allow for its detection upon a leak. The technician had further informed Mr. Dick that a propane distributor should be called upon smelling the odor, and that no appliances should be lit until the potential problem is addressed. According to Ron Pope, what the technician did not tell Mr. Dick though, was that the added odor may separate from the gas if left undisturbed for an unspecified period of time. Mr. Pope reported that the odor rises while the gas falls. Thus, upon not smelling the odor-free gas that had fallen into his basement, Mr. Dick lit his hot water heater and consequently blew up his house and severely injured both himself and his wife.

Ron Pope indicated that the sole issue of the Mr. Dick case was the exchange of inadequate information. He stressed that if a retailer or distributor is going to give information to a customer, it is necessary to give all of it (for example, that propane, although infused with an odor, may lose its smell if left undisturbed). He then pointed out to the committee that in the state of Oklahoma there are no caps placed on rewards given in cases such as that of Mr. Dick, unlike in Kansas where the cap is \$250, 000. Furthermore, with regard to practices in Oklahoma, Mr. Pope pointed out that both the propane industry and the information given to consumers are indeed regulated.

Ron Pope further indicated to the committee that **SB 335** is an immunity bill, in that it would make propane retailers and/or distributors immune from liability in such cases as that of Mr. Dick, regardless of whether or not they have awareness of a problem with a propane system. He challenged this proposed immunity by declaring it unconstitutional. Specifically, he claimed that it takes away from the ability of citizens to look at the circumstances of each case in order to determine fault. As a secondary consequence of the bills' intended immunity, he stated his belief that the insurance policies of farmers, ranchers, and rural homeowners would change. In closing, he showed his agreement for the bills' enablement of regulation and licensing within the propane industry, as well as its empowerment of the Office of the Kansas State Fire Marshal to oversee it. However, he expressed his opposition to the liability portion of the bill, stating that it should be stricken (Attachment 4).

On behalf of Scott Anderson of Kansas Farmers Service Association in Hutchinson, written testimony was submitted to the committee in support of **SB 335** (Attachment 5).

On behalf of Kevin Kelly of Two Rivers Coop in Arkansas City, written testimony was submitted to the committee in support of **SB 335** (Attachment 6).

CONTINUATION SHEET

MINUTES OF THE SENATE AGRICULTURE COMMITTEE at 8:30 a.m. on February 3, 2004 in Room 423-S of the Capitol.

Senator Corbin moved to approve the minutes of both the January 20 and 21 committee meetings, seconded by Senator Tyson. The motion carried.

Chairman Schmidt announced to the committee a second to-be-determined working meeting for all interested parties and committee members, regarding **SB 335**. The purpose of this meeting would be to again deal with technical difficulties with regard to the structure and language of the bill.

The next meeting is scheduled for Wednesday, February 4, 2004.

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 2-3-2004

NAME	REPRESENTING
Doug Wareham	KARA
Mark Hassman	KPCA
Diane Gruver	KS Co-op Council
Amy Campbell	Midwest Energy
Scott Heidner	AIA
Jessie Kaufman	Co-op Council
Dave Holtzhus	KFC
Bruce Graham	KEPC
Edward R. Morris	KAPA
BRAD HARRELSON	KFB
Etha Schickson	DOB
Twila Drybread	DOB
Mary Jane Stankiewicz	KCPA/KARA
Sue A. Doley	KDA
Dan McLaughlin	KSFM
Ken Rasche	Ks Policy Assn.
Lodd Johnson	KLA
Eric King	K-Fed
Ron Payne	KTLA

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 2-3-04

NAME	REPRESENTING
Tom Humphrey	KTLA
Justin Holstein	Propane Marketers of KS
Tom Tunnell	KS GRAIN/FEED ASSN

HOUSE BILL No. 2739

By Committee on Environment

1-29

CHRIS WILSON

AN ACT concerning appropriation of water for beneficial use; amending K.S.A. 82a-734 and repealing the existing section.

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

Section 1. K.S.A. 82a-734 is hereby amended to read as follows: 82a-734. (a) *As used in this section:*

(1) "Direct impairment" means a raising or lowering of the groundwater table, or raising or lowering of streamflow, in a manner which is directly attributable to the operation of sand and gravel pits.

(2) "Substantial adverse impact on the area" means exposing the groundwater table to evaporation that will cause a direct impairment to a groundwater or surface water right.

(b) An operator will notify the chief engineer of the division of water resources of the state board of agriculture of the location and area extent of any existing or proposed sand and gravel pit to be excavated, expanded or operated by the operator.

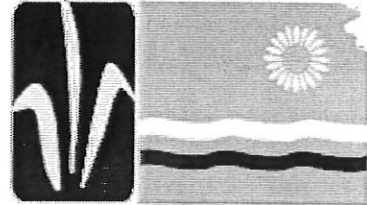
~~(b)~~ (c) Unless the chief engineer determines that it has a substantially adverse impact on the area groundwater supply, the evaporation of water exposed as the result of the opening or operation of sand and gravel pits shall not be construed to be a beneficial use or diversion of water for the purposes of the Kansas water appropriation act, K.S.A. 82a-701 *et seq.*, and amendments thereto.

~~(c)~~ (d) Evaporation from sand and gravel pits, as calculated by the chief engineer, will be reported as an industrial use to the director of taxation for the purpose of assessing the water protection fee pursuant to K.S.A. ~~92a-954~~ 82a-954, and amendments thereto.

Sec. 2. K.S.A. 82a-734 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Senate Agriculture
February 3, 2004
Attachment 1



STATEMENT OF THE
KANSAS GRAIN & FEED ASSOCIATION
AND
KANSAS AGRIBUSINESS RETAILERS ASSOCIATION

SUBMITTED TO THE
SENATE AGRICULTURE COMMITTEE
REGARDING SENATE BILL 335
SENATOR DEREK SCHMIDT, CHAIR

JANUARY 28, 2004

KGFA AND KARA MEMBERS ADVOCATE PUBLIC POLICIES THAT ADVANCE A SOUND ECONOMIC CLIMATE FOR AGRIBUSINESS TO GROW AND PROSPER SO THEY MAY CONTINUE THEIR INTEGRAL ROLE IN PROVIDING KANSANS AND THE WORLD THE SAFEST, MOST ABUNDANT FOOD SUPPLY.

Chairman Schmidt and members of the Senate Agriculture Committee, I am Doug Wareham appearing on behalf of the Kansas Grain and Feed Association (KGFA) and the Kansas Agribusiness Retailers Association (KARA). The KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. KGFA's membership includes over 950 Kansas business locations and represents 99% of the commercially licensed grain storage in the state. KARA's membership includes 730 agribusiness firms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry. Combined, KGFA and KARA have nearly 80 member firms with a direct investment in providing propane to their customers/patrons. I appear before you in support of SB 335.

Propane is a significant heat and power source for a number of people, especially in rural areas. As you have heard from other conferees, it is getting harder and harder to find insurance providers that are willing to write propane insurance. Our organizations believe one reason for reluctance on the part of insurance companies to offer policies for propane suppliers is the fact that in Kansas there is no license, insurance or other regulatory requirements in place to ensure the safe handling, storage and distribution of this product. S.B. 335

addresses that concern by establishing permitting requirements for propane suppliers and providing the Kansas Fire Marshall's office with the authority to adopt rules and regulations that will ensure the safe handling and distribution of propane, ensure the training of professionals in the propane industry and also advocate the protection of the many end-users that depend upon propane as a heating or fuel source in Kansas.

We also believe that if a homeowner installs or repairs their own liquefied petroleum gas device and does not notify their propane supplier, then the supplier should not be liable for any damages or injury caused by the homeowners actions. Propane suppliers should not be responsible for damages caused by the actions of someone else.

As you are aware, other products supplied by agribusiness in Kansas, such as fertilizers and agricultural chemicals are heavily regulated by our state to ensure environmental protection and public health and safety. Based on this experience, we believe that meaningful and well-reasoned regulation is good for the propane industry and will be ultimately good for the propane consumer. We hope this bill will provide the vehicle to assist in creating a safer and more knowledgeable propane industry and consumer base. Therefore, both KGFA and KARA requests your support of SB 335.



Leslie Kaufman, Director
Governmental Relations
Kansas Cooperative Council

SENATE COMMITTEE ON AGRICULTURE
January 28, 2004

RE: SB 335 – Implementing a registration and safety program for propane dealers.

Chairman Schmidt and members of the Senate Committee on Agriculture, thank you for the opportunity to appear today in support of the concepts embodied within SB 335. As you know, SB 335 would implement a registration and safety program for propane dealers. I am Leslie Kaufman and I serve the Kansas Cooperative Council as Governmental Relations Director. The Council includes 186 cooperative business members. Together, they have a combined membership of nearly 200,000 Kansans.

You have already heard first-hand from our members, Kevin Kelly and Scott Anderson. We certainly appreciate them taking the time to travel to Topeka and share with you how cooperatives can benefit from this proposal.

Safety is of paramount concern for liquefied petroleum dealers in Kansas. Many of our member cooperatives supply propane. As such, the Council supports efforts to implement a registration and/or licensing program to help ensure that those delivering propane do so in a conscientious manner. The KCC supports initiatives to limit liability for those meeting the registration and licensing requirements. The Council also encourages protections from liability for dealers if an accident occurs on a system through no fault of their own.

*Senate Agriculture
February 3, 2004
Attachment 3*

SB 335 embodies many of these concepts and we are pleased the bill has been slated for hearing. The overall themes within SB 335 are ones we can support. We do believe there are some refinements and clarifications that could be made to improve the bill, though. Our Legislative Committee has indicated a strong preference for housing this program in the Kansas Department of Agriculture.

Ultimately, the KCC wants to see this type of legislation pass this year. It is our hope that we can work with interested parties as the bill moves through the process to see that refinements are made. We stand ready to be of assistance in the process and ask for your favorable consideration of the concepts contained within SB 335.

Thank you!

TO: Members of the Senate Agriculture Committee

FROM: Ron Pope., Kansas Trial Lawyers Association

RE: SB 335

DATE: February 3, 2004

Chairman Schmidt and members of the Senate Agriculture Committee, I am Ron Pope. and I appear before you today on behalf of the Kansas Trial Lawyers Association. KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system. We appreciate the opportunity to present written and oral testimony in opposition to SB 335.

Specifically, we urge the committee to strike Sec. 3(a) and (b) which would require Kansas consumers to give notice to propane marketers when the consumer has had a new appliance installed, a new water heater installed or has otherwise serviced a liquefied petroleum gas system and would limit the propane marketers liability for injuries when such notice is not given. Such notice and limitation on liability is unprecedented under Kansas law. Under existing law, there is no requirement that a Kansas consumer give notice to a natural gas marketer when a new appliance or hot water heater is installed or to give notice to the electric company when electrical work is performed. Likewise, there is no limit of liability for failure to give such notice.

As noted by many of the conferees, the propane industry has gone largely unregulated in the State of Kansas and there have been a small minority of companies who have ignored safety requirements that do exist. Justin Holstin, who testified on

Senate Agriculture
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Attachment 4

behalf of the Propane Marketers Association of Kansas, in asking for regulation of the industry recognized:

“Those [propane companies] that currently abide by the regulations are at a disadvantage compared with those that ignore the safety requirements because there is no enforcement.”

Jim Brewer, owner of Jim’s Propane, likewise recognized that regulation of the propane industry will lead to safer operation when he stated:

“With registration and proof of insurance required of all propane marketers we hope to make a much safer industry. This will allow the Fire Marshal to provide the industry with inspectors to make sure all marketers are in compliance with the law.”

Mr. Brewer concluded that there “are very few insurance companies who will insure in our state, because of lack of enforcement.”

Those companies that ignore safety requirements, however, not only place responsible companies at a competitive disadvantage but also cost responsible companies profits through increased insurance premiums. Common sense tells us that companies that ignore safety requirements in the name of profit are also the companies that are causing injuries to Kansas families and leading to litigation.

Mr. Holstin also referred to a Shawnee County District Court case as an example of the propane industry being held liable for incidents over which it had no control. Although the case was not cited, he refers to the case of *Wayne Dick, et al. v. LC McClain, Inc.*, Case No. 95-CV-768. As we all know, there are two sides to every story. Mr. Holstin indicated that the injuries were caused due to the lack of a “drip leg” to catch impurities and this was one claim that was presented at trial by the propane retailer, LC McClain, Inc. After hearing all of the evidence, the jury rejected this claim and found that the injuries were **NOT** caused by the lack of a “drip leg” but were instead caused by LC McClain’s negligence. At trial, LC McClain also claimed that it had sent a warning notice to its customers that stratification of the odorant could occur and that customers should not light their water heaters because an explosion might occur. Mr. Dick and his family called several LC McClain customers to testify and all of them testified that they had **NOT** received a warning notice from LC McClain. Ultimately LC McClain’s insurer

paid a judgment of slightly more than 1 million dollars for a home that was destroyed, substantial burn injuries to Mr. Dick who underwent nearly numerous transplants of pig skin over his body, and for burn injuries to Mr. Dick's wife.

In trying to identify the Shawnee County case referred to in Mr. Holstin's testimony, I conducted an online review of 10 companies that sale propane in the Shawnee County area. Of these 10 companies, 9 had not been named as a defendant in any civil lawsuits and the other—LC McClain—had been a defendant in two civil lawsuits. The second case was a 1989 case styled *Ronald J. Henderson v. LC McClain, Inc.*, Case No. 89-CV-1716.

As Mr. Holstin noted “a few cents of the cost” of every gallon of propane purchased by a Kansas consumer cover the costs of insurance. As 1 of the 98,000 households using propane in the State of Kansas, I am willing to pay to ensure my wife, my children and my home are protected in an unfortunate occurrence involving a propane explosion caused by the negligence of a propane retailer. I am also willing to pay this cost to ensure that others are protected and do not have to go on public assistance due to a similar unfortunate occurrence.

SB 335 VIOLATES §18 OF THE KANSAS CONSTITUTION'S BILL OF RIGHTS

Enactment of SB 335 would violate §18 of the Kansas Constitution's Bill of Rights, which provides that: “All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay.” As the Kansas Supreme Court has explained, a statute challenged on due process/right to effective remedy grounds (§18) is “reviewed under a standard which is more stringent than the rational basis test” typically used to evaluate equal protection challenges—that is challenges brought under §1 of the Kansas Bill of Rights.¹ The Kansas Supreme Court will review the constitutionality of SB 335 under the *quid pro quo* test, which provides:

“If a remedy protected by due process is abrogated or restricted by the legislature, ‘such change is constitutional if “[1] the change is reasonably necessary in the public interest to promote the general welfare of the people of the state,” and [2] the legislature provides an adequate substitute remedy to replace the remedy’ which has been restricted.”²

¹ *Lemuz v. Fieser*, 261 Kan. 936, 947, 933 P.2d 134 (1997).

² *Id.*, 261 Kan. at 948 (internal cites omitted).

SB 335 would fail both parts of this stringent test that will be applied by the Kansas Supreme Court.

[1] SB 335 is not reasonably necessary to promote the general welfare of the people of the state of Kansas.

There is no evidence that enactment of SB 335, which confers immunity to propane marketers is reasonably necessary to promote the general welfare as opposed to merely being hypothetically desirable. Thus, aside from a few untested, unproven anecdotes from individuals who claim concern about liability or liability insurance, there is no evidence that a crisis exists at all in the propane industry—and certainly no substantial empirical evidence that any crisis exists or that SB 335 would cure such a crisis if it did exist.

While we do not know whether there is any crisis that SB 335 would cure, we can certainly be sure of who will assume the financial burden for injuries caused by—but no longer insured and paid for by propane marketers. Nothing should be done to remove the incentive to prevent injuries in the first place. If the Legislature believes it is necessary to promote the propane industry, there are more direct and undeniably constitutional ways of doing so, such as direct subsidies or tax credits. As U.S. Supreme Court Justice Oliver Wendell Holmes explained: “a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.” *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 416 (1922)(Holmes, J.).

Imposing liability—and personal responsibility—on the persons who can most appropriately avoid and prevent accidents involving propane is the most sensible way to reduce the overall number and cost of accidents. SB 335 would turn this formula on its head—removing all incentives to investigate hazards and repair dangerous conditions would insure that hazards will go undetected and dangers will be unrepaired. This policy hardly seems appropriate to promote the propane industry in the long run; to improve the state’s economy; or to enhance the state’s reputation. Such a policy hardly seems reasonably necessary to promote the general welfare and well-being of the State of Kansas.

[2] SB 335 does not provide injured persons with anything close to an effective or adequate *quid pro quo*:

Even if it could be proven that enactment of SB 335 would somehow be reasonably necessary to promote the general welfare and thus satisfy the first part of the due process right to remedy by due course of law standard, that is not where a §18 review stops. In order to ensure due process, the legislature is required to provide an adequate, substitute remedy when a common-law remedy is modified or abolished. As the *Lemuz* court explained, “[o]bviously, this test is more stringent than the rational basis test because it requires a substantive *quid pro quo* to replace any common-law remedy that has been extinguished by statute.”³ Clearly, SB 335 would flunk this more stringent test because the statute simply provides no *quid pro quo* at all and certainly nothing like the constitutionally requisite substantive, adequate or effective remedy for the common-law rights and remedies it would extinguish. In this respect, SB 335 is completely unprecedented and unique.

An example of a substantive adequate or effective *quid pro quo* is the Kansas Workers Compensation Act, which was enacted initially in 1911. As the Kansas Supreme Court explained in *Injured Workers of Kansas v. Franklin*, the Kansas legislature’s abolishing an employee’s common-law right to sue employers for personal injuries met a §18 challenge because the legislature simultaneously provided the employees with an adequate substitute remedy for the right abolished—the Workers Compensation Act. That act allowed employees to quickly receive a smaller set amount of money for injuries received at work regardless of whether the injuries were caused by negligence of the employer.⁴

SB 335 VIOLATES ARTICLE 2, §17, OF THE KANSAS CONSTITUTION

Unlike the historic common-law immunities provided to legislators, judges, police officers and state agencies—all of which are qualified or restricted in one respect or another—the immunities bestowed by SB 335 are limitless and unprecedented. No other business in this state enjoys anything remotely like it. The narrow number of “agritourism operators” who will benefit from the broad immunities both in absolute terms and in

³ *Id.*, 261 Kan. at 948.

⁴ *Injured Workers of Kansas v. Franklin*, 262 Kan. 840, 855, 942 P.2d 591 (1997).

comparison to their competitors bestowed by SB 335 are unique and historically unprecedented.

SB 335 is clearly impermissible “special legislation” in violation of Article 2, §17, of the Kansas Constitution, which mandates, in pertinent part, that: “All laws of a general nature shall have a uniform operation throughout the state.” Providing immunity from suit is manifestly a law of general nature and the business of selling propane to members of the public is likewise a general one throughout the state. It is difficult to conceive how SB 335 is anything but “special interest legislation” and thus difficult to imagine how it could survive a constitutional challenge.

Although obviously well-intentioned, SB 335 does not meet any demonstrated need and through the establishment of a new immunity not recognized at common-law, it clearly would be in violation of the Kansas Constitution and Bill of Rights. The Kansas Trial Lawyers Association urges that the legislature seek other ways to promote the propane industry throughout the State of Kansas. The grant of immunity is not sound public policy and does not enhance personal responsibility of all citizens of the State of Kansas, including propane marketers—personal responsibility that all Kansans are justifiably proud of and must continue to promote. Safe and responsible propane use is sound public policy.



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TESTIMONY PROVIDED TO KANSAS SENATE AGRICULTURAL COMMITTEE REGARDING SENATE BILL 335

**BY
SCOTT ANDERSON
KANSAS FARMERS SERVICE ASSOCIATION
HUTCHINSON, KANSAS**

Dedicated to Service

*Senate Agriculture
February 3, 2004
Attachment 5*

My name is Scott Anderson and I am the Director of Risk Management for Kansas Farmers Service Association. KFSA is a Regional Cooperative owned by Agricultural Cooperatives in Kansas. We provide insurance and risk management services to both cooperatives and independent agricultural firms based in Kansas. I am here to encourage this committee to support SB 335.

I am sure all of you are aware of the insurance hard market businesses have had to endure the past few years. No line of insurance other than workers compensation has received more scrutiny from the insurance companies we work with or has a greater potential for loss than propane. It is interesting to note that of all activities that our customers are involved with, propane is the one thing that does not require insurance, registration, licensing or an active regulatory body overseeing the operations of dealers. Insurance companies have placed standards in place but if and when these standards are not followed the potential for disaster is present.

The check-off program that was passed last year is a step in the right direction; however, the only way to truly improve the safety of all propane dealers is to identify who they are, regulate them just like ammonia dealers, fertilizer dealers, barbers, and even car dealers. For those companies already doing things the right way, they are at an economic disadvantage to dealers who have no insurance and fail to follow established industry standards. Allowing an effective regulatory body to impose penalties and oversee the propane industry would improve the current situation and it would make all Kansas propane users much safer.

Imagine for a minute a rural Kansas school that utilizes propane for heating has a tragic accident destroying part of the school. You may think this is an extreme example however a school did blow up in South Dakota a few years ago. Fortunately it was not full of children (a basketball game had just been completed and when someone smelled propane the building was evacuated). Sadly two

men still lost their lives. Shortly after this tragedy the insurance company for the propane dealer, exited the propane insurance marketplace.

The majority of dealers support this bill. These same dealers recognize that they are being held to a level of accountability that is unrealistic. Certainly if a dealer's actions or inactions cause an accident, there should be a level of accountability. How can a dealer be held responsible for changes that have occurred inside a home or business that they are unaware of? This bill places a level of responsibility back on the customer to notify their dealer of changes that occur inside their home or business. This part of the bill should improve the safety of all commercial and residential propane dealers by opening up communications and raising the level of awareness of the customer. It should also allow service work and customer systems to be checked and maintained in an efficient manner.

Our goal is to improve the safety of all users of propane and to accomplish this, we ask this body to be proactive and implement legislation that would assist in improving the safe handling of propane. It would also allow reasonable relief for propane liability to dealers for changes in systems that are out of their control.

Thank You

January 28, 2004

TO: Chairman Derek Schmidt and the
Senate Committee on Agriculture

FROM: Kevin Kelly, General Manager
Two Rivers Coop
Arkansas City, Kansas Cooperative Council

RE: SB 335 -- Kansas Propane Safety & Registration Act

My name is Kevin Kelly, General Manager of Two Rivers Coop located in Arkansas City, Ks. We are a full-service farmers cooperative incorporated in 1950, and have been an LP Gas Dealer since the early to mid 60's. We service 250 LP accounts in four counties in Kansas and Oklahoma.

Because we sell LP in Oklahoma, we are required to have a class 10 managers permit, a class 1 dealer permit, and our drivers are required to carry a 4-D drivers permit to prove they have had proper LP training. In addition to this Oklahoma requires a Form 4 (attached) on every customer we sell LP to. This form requires name, address, phone number, appliance information, general safety info and duty to warn notice with the customer's signature. Pressure testing of the system is also required anytime they run out of LP or an appliance is added or changed. LP regulators are required to be changed every fifteen years.

The system in Oklahoma has some natural checks and balances built in and it is easy for LP dealers to regulate themselves - follow the Oklahoma program and you're in compliance. Although not required, we have adopted the Oklahoma program method for all of our Kansas customers.

Our industry is changing. The product we sell does come with some potential hazards. That is why we have voluntarily adopted safety and training practices above and beyond what is required by Kansas law. But not every company does that. In this industry, one bad actor can put the rest of us at risk, particularly in terms of insurance availability and affordability. The safety and training mechanisms contained in this bill could help ensure that all, not just most, of the dealers are making sure safety is priority number one.

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Attachment 6

We shoulder a heavy burden of responsibility in delivering LP safely and dependably. But that can be threatened if a customer changes, alters, or repairs a system either by themselves or with another service provider and fails to tell us of those changes. The proposal before you now would require customers to notify us of changes on the system within a reasonable amount of time. Additionally, we, the industry, are required to provide the customer with information describing the customer's responsibility to inform us of changes on the system. If the customer fails to do this, we should not be responsible for an accident resulting from a change on their side of the system. This bill would provide us with fair, justifiable protections in these situations.

This is extremely important in this day and age when customer actions can result in accidents. For instance, it has come to my attention that a dealer has recently been told by his insurer that their entire business will be dropped if they do not leave the propane sector. This could potentially happen to Two Rivers Coop. In a worse case scenario, an accident could happen, claims could be filed even if we were not at fault, we run out of insurance, and then they come after the assets of the entire producer-owned company. Two Rivers Coop could be bankrupt even though we are doing everything correctly. Because of all of this, my board of directors and myself has been considering the possibility of getting out of the LP business. If we do that, we leave our 250 customers fewer options in the marketplace.

I believe the Kansas Propane & Registration Act helps ensure that all the LP dealers in Kansas are investing in safety and training and greatly enhances the chances of our cooperative remaining in the LP business. I believe all LP dealers in Kansas want to see our customers safe and are willing to do what it takes to achieve this. But, in the case of an accident, assignment of responsibility needs to have some common sense. As such, we ask for your support of this measure.

Kevin Kelley, General Manager
Two Rivers Co-op
P.O. Box 1087
Arkansas City, KS 67005
620-442-2360

LP GAS SYSTEM SAFETY CHECK

MAIL ORIGINAL TO:
 OKLAHOMA LP GAS ADMINISTRATION
 2101 N. Lincoln Blvd., Suite B-45
 Oklahoma City, Oklahoma 73105

FORM 4
 FORM 4A

DEALER: ADDRESS:	CUSTOMER: _____ ADDRESS: _____ _____ PHONE: _____
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COMPLETED WALK THROUGH VISUAL CHECK

(Check one) Building Home Mobile Home Other

Physical Location: _____

TANK:

Size	Manufacturer	Serial Number	Distance from Tank to Bldg.	OK Tag #

REGULATOR:

Type	Manufacturer	Model #	Code Date	Lock-up Pressure

APPLIANCES:

Type of Appliance	Manufacturer	Vented	Pilot Safety System	Manual Shut-Off	Capped Openings
					# _____ Locations: _____

SYSTEM LEAK CHECK:

Test Pressure: _____ Time Held: _____

PRESSURE CHECK: (If applicable)

Test Pressure: _____ Time Held: _____

DISCLAIMER: This inspection covers LP-Gas (Propane) piping, fittings and equipment visible and accessible to Dealer's Representative and reflects the conditions existing on the date of the inspection. It does not cover latent or manufacturing defects, the internal workings of sealed equipment, structural components, or LP-Gas (Propane) products and cannot be construed to cover future defects or unforeseen happenings.

I, _____ (print name here) hereby acknowledge that as the customer I am responsible for the system past the LP gas container service valve and throughout the building and that a pressure test and/or leak test has been performed and the system was found to be leak free.	_____ (Initial) I know how to turn off gas in case of emergency. _____ (Initial) I have smelled propane and can detect its odor. _____ (Initial) I have received "Duty to Warn" information. _____ (Initial) I certify the number of appliances above is complete.
X CUSTOMER SIGNATURE _____ DATE _____	COMMENTS: _____ _____ _____

I certify that a pressure test and / or leak test has been performed and the system was found to be leak free.

Signed: _____ Permit# _____ Date: _____
 Signed: _____ Permit# _____ Date: _____

SAFETY NOTICE

For your safety, propane has an odor added so you can detect leaks. You and each person using or handling propane of your household should know the smell of propane. Ask your propane supplier to demonstrate the odor. If anyone is unable to recognize the odor of propane, call your propane supplier immediately.

Propane is heavier than air; therefore, leaks will tend to settle to floor or ground levels. To check for propane, carefully smell in low spots.

Under some of the following conditions, you may not be able to smell a gas leak. For example:

- Age, colds, allergies, sinus congestion or the use of tobacco, alcohol or drugs may diminish your sense of smell.
- Cooking or other strong odors may cover up the smell of gas.
- In certain circumstances, propane gas may lose its distinctive smell—this is called “ODOR FADE.”
- Sometimes propane gas can lose odor if a leak occurs underground or if there is rust on the inside of the cylinder or piping.
- Some persons are physically unable to detect the smell of gas. If you are one of these people, call your propane supplier immediately.

For these reasons, it is recommended that you purchase and install propane gas detector(s) according to the manufacturer's instructions as a back-up warning device. If anyone using or handling propane is unable to recognize the odor of propane, you should not use it until you have purchased and installed gas detector(s).

WHAT TO DO IF YOU SMELL GAS

1. Put out all smoking materials and other open flames.
2. DO NOT operate a light switch, telephone, cigarette lighter, appliance or thermostat.
3. Get everyone out of the building immediately.
4. Shut off the gas supply at the tank or cylinder.
5. Call your propane supplier. Use another telephone if gas odor is in the building.
6. Have your propane service person locate and repair the leak. Have your service person air out the area and check and re-light your gas appliances. Do not return to the building until you are advised that all leaks have been repaired and it is safe to return.

RELIGHTING YOUR PILOTS

We strongly recommend that for safety reasons, you call a qualified propane service company to relight pilots. **However, if you do relight the pilots yourself:**

- Turn all appliance controls and manual shut-off valves to the “off” position.
- Slowly open the tank shut-off valve.
- Carefully smell for the presence of propane at floor level and in low spots before attempting to relight pilots.
- If gas is detected—STOP—See “What To Do If You Smell Gas.”
- Follow the manufacturer's instructions for pilot lighting. If you cannot find the instructions, do not attempt to light the pilot.

OTHER IMPORTANT SAFETY RULES

- Do not allow unqualified personnel to service your propane system or appliance.
- Do not let your system run out of propane.
- Do not enter an area where you suspect a gas leak. If you are in such an area leave immediately.
- Be alert for propane odor when working in areas where propane is used. Even a faint odor may indicate a hazardous situation.
- Do not try to judge for yourself the level of danger of a gas leak by trying to determine if the smell of gas is weak or strong. All gas leaks pose serious risk.
- Repeated pilot outages could indicate a hazardous condition. Don't attempt to relight the pilot, or service your equipment. Call your propane supplier or another qualified service company.
- If one of your gas appliances has been flooded, shut off the gas immediately at the tank. Do not use your gas system again until the flooded equipment has been checked and serviced.
- Improperly vented or defective appliances can cause potentially fatal carbon monoxide poisoning. Have your propane system and appliances periodically inspected by your propane service company.
- Don't tamper with or use tools to operate controls. If controls are difficult to operate by hand, call your propane service company immediately.
- Keep combustible products, like gasoline, kerosene or cleaners in separate areas from propane appliances. Your appliance pilot light could ignite fumes from these combustibles.
- Don't operate any gas appliance without reading the instructions carefully.

A Safety Reminder from:

Oklahoma L.P. Gas Research, Marketing and Safety Commission
601 N.W. Grand Blvd., Suite C • Oklahoma City, Oklahoma 73118
405/879-9828 • Fax 405/879-0304

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