

## CHAPTER 111

Substitute for SENATE BILL No. 335\*

AN ACT concerning liquefied petroleum gas; relating to the regulation thereof; prescribing certain prohibited and unlawful acts and providing penalties therefor.

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

Section 1. (a) This act shall be referred to as the Kansas propane safety and licensing act.

(b) The state fire marshal shall establish programs relating to the regulation and licensing of the liquefied petroleum gas industry in Kansas.

(c) For the purpose of this act:

(1) "Liquefied petroleum gas marketer" or "marketer" means any person, firm, corporation, association or other entity engaged directly in the retail sale or retail transport delivery of liquefied petroleum gas;

(2) "retail distribution of liquefied petroleum gas" means the delivery, sale or transportation of liquefied petroleum gas to an end retail user;

(3) "liquefied petroleum gas" means any material which is composed predominantly of any of the following hydrocarbons or mixtures of the same: propane, propylene, butanes, including, but not limited to, normal butane and isobutane and butylenes;

(4) "end retail user" means any consumer, person, firm or corporation who utilizes liquefied petroleum gas in Kansas;

(5) "liquefied petroleum gas system" or "system" means any equipment utilizing liquefied petroleum gas including a storage container, end point or points of combustion, appliances and all attachments utilizing or transporting liquefied petroleum gas;

(6) "returned to service" means the time at which liquefied petroleum gas is reintroduced into the liquefied petroleum gas system, any part of the liquefied petroleum gas system is repressurized, or at the completion of any installation, modification, repair or service of a system;

(7) "interruption of service" means (A) an event which causes a liquefied petroleum gas system to become, in total or in part, depressurized due to any installation, modification, repair, service; or (B) a change in occupancy or ownership of the location utilizing the liquefied petroleum gas system;

(8) "state fire marshal" means the fire marshal of the state of Kansas; and

(9) "liquefied petroleum gas facilities" means any liquefied petroleum gas facility with an aggregate water capacity exceeding 2,000 gallons.

Sec. 2. (a) No person, firm, corporation, association or other entity shall engage in any activity relating to the retail distribution of liquefied petroleum gas, including, but not limited to, the manufacturing, assembling, modifying, fabrication, installing or selling of any system, container or apparatus to be used in the state of Kansas for the transportation, storing, dispensing or utilization of liquefied petroleum gas by an end retail user without first having obtained the proper license to do so as provided in this act.

(b) This act shall not apply to vehicles utilizing or machinery utilizing liquefied petroleum gas, the filling of cylinders by owners for private use, liquefied petroleum gas systems with a capacity of less than 20 gallons of liquefied petroleum gas or storage containers with a water capacity of 100 lbs or less unless otherwise stated in this act.

(c) Systems of liquefied petroleum gas with multiple storage containers serving different purposes or different geographical locations shall be treated as individual and separate systems.

Sec. 3. (a) In any action brought against a liquefied petroleum gas marketer for personal injury or property damage, an end retail user's damages shall be reduced by the comparative negligence of the end retail user or any third party to the extent the action of the end retail user or the third party contributed to cause the personal injury or property damage, including, but not limited to, the end retail user's or third party's: (1) Modification, repair, service or alteration of the end retail user's liquefied petroleum gas system; or (2) failure to conduct a leak check or inspection of the liquefied petroleum gas system after any modification, repair, service or alteration of the end retail user's system.

(b) Nothing in this act is intended to limit any claim or defense that an act of an end retail user, third party, marketer or other person or entity

contributed to cause the personal injury or property damage.

(c) In any action brought against a liquefied petroleum gas marketer for personal injury or property damage, evidence of the marketer's compliance or noncompliance with this act shall be admissible as evidence to support a claim or defense to the extent such evidence is relevant to the cause of the personal injury or property damage.

(d) Nothing in this act is intended to limit the liability of any individual, licensee, or liquefied petroleum gas marketer for any damages that arise from any reckless or intentional act of such individual, licensee or liquefied petroleum marketer.

(e) The state fire marshal shall develop an information notice and distribute the same annually to all licensees. The notice shall include a reference to this section, a description of the law and any additional information that the state fire marshal deems necessary and appropriate.

(f) Every liquefied petroleum gas marketer in the state of Kansas shall maintain continuous general liability coverage of not less than \$1,000,000 and shall annually provide proof of insurance to the state fire marshal.

Sec. 4. (a) An application and plan for design, construction, major modification and installation of all liquefied petroleum gas facilities shall be submitted to the state fire marshal. Construction, major modification and installation of all liquefied petroleum gas facilities owned or operated by a liquefied petroleum gas marketer shall not commence until such application and plan is reviewed and approved by the state fire marshal in accordance with rules and regulations.

(b) The state fire marshal shall approve or deny the submitted applications and plans within 20 business days upon receipt of all necessary documentation as provided for in rules and regulations. If the state fire marshal requests additional information from the applicant, the state fire marshal shall have an additional 20 business days from the day of receipt of such information to approve or deny the submitted application and plan.

Sec. 5. (a) A liquefied petroleum gas advisory board shall be created within and as part of the state fire marshal's office.

(b) The advisory board shall serve in an advisory capacity to the governor and the state fire marshal. The advisory board shall review and make recommendations on proposed rules and regulations or proposed revisions to current rules and regulations concerning liquefied petroleum gas prior to the submission of such rules and regulations to the secretary of administration pursuant to K.S.A. 77-420, and amendments thereto. Personnel matters of the state fire marshal shall not be reviewed by the advisory board. The advisory board shall not have any powers, duties or functions concerning the day-to-day operations of the office of the state fire marshal.

(c) The board shall be composed of nine members who shall be appointed by the governor. Four members shall represent retail marketers of liquefied petroleum gas; one member shall represent the insurance industry; one member shall represent wholesalers, resellers, suppliers and importers of liquefied petroleum gas; one member shall represent manufacturers and distributors of liquefied petroleum gas equipment and transporters of liquefied petroleum gas; and two members shall come from the public. At no time shall more than five members of the advisory board be members of the same political party.

(d) The regular term of office of members of the advisory board shall be four years. Regular terms shall commence on the second Monday in January following the appointment of a board member.

(e) Of the members of the board appointed in the year 2004:

(1) Four members shall have terms ending on the second Monday in January 2008 and no more than two such members shall be members of the same political party; and

(2) five members shall have terms ending on the second Monday in January 2007 and no more than three such members shall be members of the same political party.

(f) Any member appointed subsequent to 2004 shall be appointed for a four-year term, unless such appointment is to fill the unexpired term where a vacancy has occurred on the advisory board, in which case the member shall be appointed for the remainder of the unexpired term.

(g) Members of any such advisory committee shall serve without compensation. The membership shall be selected based on the individual's knowledge regarding liquefied petroleum gas, insurance or other

relevant expertise.

Sec. 6. (a) The state fire marshal shall promulgate rules and regulations to carry out the provisions of this act. Any rules and regulations of the state fire marshal adopted pursuant to this section may incorporate by reference specific editions, or portions thereof, of nationally recognized fire prevention codes. Such rules and regulations shall include but not be limited to the following:

(1) The establishment of classes of licenses which shall be renewed on an annual basis, including, but not limited to:

(A) Class one dealer license which is required to engage in the retail distribution of liquefied petroleum gas;

(B) class two bulk storage site license which requires the holder to report all bulk storage facilities and locations within their operations;

(C) class three cylinder transport license which is required to operate a cylinder delivery service;

(D) class four cylinder filling license which is required to operate a cylinder filling facility, including liquefied petroleum gas cylinder filling and the sale of cylinder valves, and the operation of a liquefied petroleum gas filling station;

(E) class five recreational vehicle fueling license which is required to fuel recreational vehicles or mobile fuel containers;

(F) class six cylinder exchange cabinet license which is required to establish a cylinder exchange cabinet or participate in a cylinder program;

(G) class seven self-serve liquefied petroleum gas dispensing license which is required to operate a liquefied petroleum gas fueling facility; and

(H) class eight installation and service of liquefied petroleum gas systems license which is required to install, maintain, or modify a residential or commercial liquefied petroleum gas distribution and utilization system.

(2) the establishment of educational requirements for each class of licenses;

(3) the establishment of inspection programs and inspection requirements for all liquefied petroleum gas facilities, operations, installations and businesses, including, but not limited to, bulk storage areas, safety information and customer records, educational requirements of liquefied petroleum gas employees and commercial establishments and places of public gathering that are end retail users for compliance with rules and regulations; and

(4) the establishment of codes which the state fire marshal has determined provide adequate protection and guidance to the liquefied petroleum gas industry and public relating to the handling, installation, modification, delivery and use of liquefied petroleum gas and liquefied petroleum gas systems.

(b) The state fire marshal shall have the authority to charge and collect fees as provided in this subsection:

(1) The annual license fee for a class one dealer license shall not exceed \$250 per location;

(2) the annual class two bulk storage site license fee shall not exceed \$50 per tank;

(3) the annual class three cylinder transport license fee per vehicle shall not exceed \$125 per truck;

(4) the annual class four cylinder filling license fee per facility shall not exceed \$75 per location;

(5) the annual class five recreational vehicle fueling license fee per facility shall not exceed \$75 per location;

(6) the annual class six cylinder exchange cabinet license fee per facility shall not exceed \$15 per location;

(7) the annual class seven self-serve liquefied petroleum gas dispensing license fee per facility shall not exceed \$75 per location; and

(8) the annual class eight installation and service of liquefied petroleum gas systems license fee shall not exceed \$25 per individual.

(c) In addition to any other penalty provided by law, any person violating the provisions of this act and amendments thereto or the rules and regulations adopted pursuant to this act may incur fines in the amount not less than \$50 nor more than \$1,000 for each such violation. In the case of a continuing violation, every day such violation continues is a separate violation. Such fines shall be imposed pursuant to the procedures provided in the administrative procedure act. Any fines recovered shall be remitted to the state treasurer and deposited to the credit of the state

general fund.

(d) The state fire marshal shall create uniform safety information which shall be distributed on, at least an annual basis, to all licensees.

(e) (1) The fire marshal may suspend, revoke or refuse to issue or renew a license of any liquefied petroleum gas marketer or individual licensee as created by this act and rules and regulations upon proof that the licensee has violated any provision of this act or amendments thereto, any rules and regulations or amendments thereto, or provision regarding a class of license as established by the state fire marshal.

(2) Proceedings to consider the suspension, revocation or refusal to renew a license shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

Sec. 7. There is hereby created the state fire marshal liquefied petroleum gas fee fund. The state fire marshal shall remit all moneys received by or for it from fees or charges pursuant to the provisions of section 1 et seq., and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state fire marshal liquefied petroleum gas fee fund. All expenditures from the state fire marshal liquefied petroleum gas fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the fire marshal or by a person or persons designated by the state fire marshal.

Sec. 8. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 16, 2004.

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