*SESSION OF 2004*

**CONFERENCE COMMITTEE REPORT BRIEF**
**SUBSTITUTE FOR SENATE BILL NO. 335**

As Agreed to March 31, 2004

## Brief*

Sub. for SB 335 would enact the Kansas Propane Safety and Licensing Act and give the State Fire Marshal authority to establish programs relating to the regulation and licensing of the liquefied petroleum gas (LPG) industry in the state.

The State Fire Marshal would be required to establish rules and regulations consistent with the bill. Among other things, the rules and regulations would establish classes of licenses to be renewed annually. These classes would include, but not be limited to:

Class one dealer license where one is engaged in the retail distribution of liquefied petroleum gas;

Class two bulk storage site license which would require the holder to report all bulk storage facilities and locations;

Class three cylinder transport license where one operates a cylinder delivery service;

Class four cylinder filing license where one operates a cylinder filling facility;

Class five recreation vehicle fueling permit for those fueling recreation vehicles or mobile fuel containers;

Class six cylinder exchange cabinet license where one exchanges cylinders or participates in a cylinder program;

Class seven self-serve LPG dispensing license would be required to operate a LPG fueling facility;

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*****Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. The conference committee summary report may be accessed on the Internet at http://www.kslegislature.org

Class eight installation and service of LPG gas systems license would be required to install, maintain, or modify a residential or commercial LPG distribution and utilization system.

In addition, the State Fire Marshal would have the authority to charge and collect fees. The fees would be collected annually as follows:

Class one–not to exceed $250 per location;

Class two–not to exceed $50 per tank;

Class three–not to exceed $125 per truck;

Class four–not to exceed $75 per location;

Class five–not to exceed $75 per location;

Class six–not to exceed $15 per location;

Class seven–not to exceed $75 per location; and

Class eight–not to exceed $25 per individual.

In addition, the State Fire Marshal would establish education requirements for each class of license and establish inspection programs and requirements for all LPG facilities, operations, installations, and businesses.

Further, the bill would make it unlawful to engage in any activity relating to the retail distribution of LPG including the manufacturing, assembling, modifying, fabrication, installing, or selling of any system, container or apparatus used for the transportation, storing, dispensing, or utilization of LPG by an end retail user without first having obtained the proper license. The bill would not apply to vehicles or machinery using LPG, the filling of cylinders by owners for private use, LPG systems with a capacity of less than 20 gallons of LPG, or storage containers with a water capacity of 100 pounds or less.

The bill also would require that a plan and application for design, construction, major modification, and installation of a LPG facility with an aggregate water capacity exceeding 2,000 gallons be submitted to the State Fire Marshal for review and approval. The State Fire

Marshal would have 20 business days to approve the applications and plans unless additional documentation is needed and then an additional 20 business days would be granted to the agency to review and approve the plans.

Also, the bill would establish a nine-member Liquefied Petroleum Gas Advisory Board to be appointed by the Governor. Four of the members would represent retail marketers of LPG; one member would represent the insurance industry; one member would represent wholesalers, resellers, suppliers, and importers of LPG; one member would represent manufacturers and distributors of LPG equipment and transporters; and two members would come from the public. Terms would be for four years. The Board would review rules and regulations concerning LPG. Members of the Board would not receive compensation.

The bill also would create the State Fire Marshal Liquefied Petroleum Gas Fee Fund where the fees under the bill would be credited.

In addition, the bill would provide that in any action brought against a LPG marketer for personal injury or property damage, an end retail user's damages would be reduced by the comparative negligence of the customer or any third party to the extent the action of the customer 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 modification, repair, service, or alteration of the LPG system, or failure to conduct a leak check or inspection of the LPG system after any modification, repair, service, or alteration of the system. Nothing in the bill would be intended to limit any claim or defense that an act of an end user, third party, marketer, or other person or entity contributed to cause the personal injury or property damage. In any action, the bill would provide that evidence of the marketer's compliance or noncompliance with the provisions of the bill would be admissible as evidence to support a claim or defense to the extent the evidence is relevant to the cause of the injury or damage. The bill would provide that there is no intent to limit the liability of any individual, licensee, or LPG marketer for any damages that arise from any reckless or intentional act. Another provision of the bill would require that every LPG marketer maintain continuous general liability coverage of not less than $1,000,000 and provide proof annually to the State Fire Marshal that the liability insurance exists.

The bill would also establish fines for any person who violates the provisions of the bill or the rules and regulations adopted pursuant to the bill. The amount of the fine would be not less than $50 nor more than $1,000 for each violation. Every day would constitute a separate violation. These moneys would be deposited in the State General Fund.

The bill would take effect upon publication in the *Kansas Register.*

## Conference Committee Action

The Conference Committee agreed to eliminate a provision which would have provided that a LPG marketer would have full responsibility for maintenance of that portion of the LPG system which is outside of an up to the outer wall of residential premises. The Conference Committee also agreed to restore the provision which would require LPG marketers to have at least $1,000,000 in general liability coverage and to provide proof of that coverage to the State Fire Marshal.

## Background

This bill was proposed by the Propane Marketers Association of Kansas. At the hearing on the bill, a spokesperson from this association stated that the propane industry in Kansas is facing a crisis that stems from a lack of insurability and large court judgments and settlements. The conferee explained that a part of the problem stems from the lack of rules and regulations and registration which occurs in other states. Lack of regulation has made it difficult for people in the industry to obtain liability insurance. A representative of the State Fire Marshal's Office appeared in support of the bill. Also appearing in support of the bill were representatives of the Kansas Agribusiness Retailers Association, the Kansas Cooperative Council, and the Petroleum Marketers & Convenience Store Association, who appeared or provided written testimony in support of the bill. In addition, several individuals from the propane industry appeared in support of the bill. A spokesperson from the Kansas Trial Lawyers Association appeared in opposition to the bill. This conferee urged the Committee to strike provisions in the bill 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 had otherwise serviced a LPG system and would limit the propane marketers liability for injuries when the notice is not given. The spokesperson also stated that the original bill would violate Section 18 of the *Kansas Constitution's Bill of Rights.*

The Chairperson of the Senate Agriculture Committee assigned the bill to a subcommittee. The subcommittee's recommendation was the substitute bill.

The House Agriculture Committee amendments to the bill were technical in nature.

The fiscal note on the original bill indicates that the State Fire Marshal estimates that $200,226 would be needed to implement this act in FY 2005. Included in the total is funding for the salary of an Administrative Specialist ($35,608), two Fire Prevention Inspectors ($90,657), a half-time Fire Protection Specialist ($25,686), and other operating expenses ($48,275). These positions would provide field inspections, administrative coordination, and perform facility plan reviews. The note indicates that the bill would authorize fees to be charged for permit and gas facilities plan reviews and stipulates that moneys collected from these fees would be expended only for the purposes of this act. The note states that the State Fire Marshal estimates these fees would generate $42,975. The net fiscal effect of $157,251 would be paid from the Fire Marshal Fee Fund. Any fiscal effect resulting from this bill would be in addition to amounts included in the *FY 2005 Governor's Budget Report.*