

PROPANE

55-1801. Citation of act. This act shall be known and may be cited as the Kansas propane education and research act.

History: L. 2003, ch. 102, § 1; July 1.

55-1802. Definitions. As used in this act: (a) "Council" means the Kansas propane education and research council established in K.S.A. 55-1803, and amendments thereto;

(b) "education" means any action that provides information, instruction or safety guidelines about propane, propane equipment, mechanical and technical practices and uses of propane to propane consumers or industry employees;

(c) "awareness" means any action that provides information or safety guidelines about propane, propane equipment, mechanical and technical practices and uses of propane to propane consumers or industry employees;

(d) "industry" means those persons involved in the production, transportation and sale of propane gas and in the manufacture and distribution of propane utilization equipment;

(e) "industry trade association" means an organization that represents a segment of the industry and which is exempt from tax under section 501 (c) (3) or (c) (6) of the federal internal revenue code of 1986, as in effect on July 1, 2002;

(f) "manufacturer and distributor of propane gas equipment" means any person engaged in the manufacturing, assembling and marketing of appliances, containers and products used in the propane gas industry and any person in the wholesale marketing of appliances, containers and products used in the propane gas industry;

(g) "odorized propane" means propane to which odorant has been added;

(h) "person" means any individual, group of individuals, partnership, association, cooperative, corporation or other legal entity;

(i) "placed into commerce" means delivered, transported for storage or sold within the state of Kansas;

(j) "propane" means propane, butane, mixtures and liquefied petroleum gas as defined by the national fire protection association standard, liquefied petroleum gas code, the chemical composition of which is predominantly C₃H₈, whether recovered from natural gas or from crude oil;

(k) "public member" means a member of the council selected from among users of odorized propane, organizations representing users of odorized propane, public safety officials or state propane gas regulatory officials;

(l) "qualified industry organization" means the propane marketers association of Kansas, a successor association or any other propane industry organization or industry trade association the members of which are engaged in the sale or distribution of odorized propane, or the sale of propane utilization equipment, to the ultimate consumer;

(m) "research" means any type of study, investigation or other activity performed by a qualified public or private research group for the purpose of advancing and improving the existing technology related to the propane industry, including the development of increased efficiency of propane use, enhancing the safety of propane and propane utilization equipment and furthering the development of such information and products;

(n) "retail marketer" means any person engaged in the sale of odorized propane to the ultimate consumer or to retail propane dispensers within Kansas;

(o) "transporter" means any person involved in the commercial transportation of propane by pipeline, truck, rail or water; and

(p) "wholesaler, reseller, supplier or importer" means the owner of the propane at the time it is first sold to a retail marketer in Kansas regardless of the state where production occurs, with ownership of the propane determined by the freight on board designation.

History: L. 2003, ch. 102, § 2; July 1.

55-1803. Creation of council; membership; chairperson and committees; employees; duties. (a) The Kansas propane education and research council is hereby created. Members of the council shall be appointed by the governor from a list of nominees submitted by qualified industry organizations within 60 days after the effective date of this act. The council shall consist of 10 members, including four members representing retail marketers of propane; two members representing wholesalers, resellers, suppliers and importers of propane; two members representing manufacturers and distributors of propane gas equipment and transporters of propane; one public member; and the state fire marshal or the state fire marshal's designee who shall serve as an ex officio member.

(b) Members of the council shall serve terms of three years, except that, of the initial members, three shall be appointed for terms of one year and three shall be appointed for terms of two years, as designated by the governor. Members filling unexpired terms shall be appointed in a manner consistent with this section. Members may serve a maximum of two consecutive full terms, except that members filling unexpired terms may serve a maximum of eight consecutive years. Former members may be reappointed if they have not been members for a period of two years.

(c) The council shall select from among the council's members a chairperson and other officers as necessary, establish committees and subcommittees of the council and adopt rules and regulations and bylaws for the conduct of business. The council may establish advisory committees of persons other than council members.

(d) The council may employ an executive director to serve as chief executive officer and such other employees as it deems necessary. The council shall determine the compensation and duties of each and shall protect the handling of council funds through fidelity bonds.

(e) The administrative costs of operating the council shall not exceed 10% of the funds collected in any fiscal year.

(f) At the beginning of each fiscal year, the council shall prepare a budget plan that includes the estimated costs of all programs, projects and contracts of the council. The council shall provide an opportunity for public comment on the budget. The council shall prepare and make available to the public an annual report detailing the activities of the council in the previous year, those planned for the coming year and costs related to the activities.

(g) The council shall keep minutes, books and records that clearly reflect all of the acts and transactions of the council. The books of the council shall be audited by a certified public accountant at least once each fiscal year and at such other times as the council may designate. Copies of audits shall be provided to the executive director, to all members of the council and to any other member of the industry upon request.

(h) The council shall be subject to the Kansas open meetings act and shall require reports on the activities of the committees and subcommittees and on compliance, violations and complaints regarding the implementation of this act.

(i) The council shall develop programs and projects and enter into contracts or agreements for implementing this act, including programs to enhance consumer and employee safety and training, programs to provide research and development to improve existing propane technology, programs to increase efficiency of propane use and any other programs to educate the public about the safety and environmental aspects of propane. Safety issues shall receive first priority in the development of all programs and projects funded by the council. The funds collected for the council shall not be used to promote one energy source over another. In developing programs and projects and entering into contracts or agreements for implementing the provisions of this act, the council shall not use any funds collected by the council to provide for or assist the purchase of equipment related to such programs and projects by or for a private, for profit corporation or other business association or entity. The council shall not use any funds collected by the council to purchase propane products and equipment or replace propane products and equipment for Kansas consumers, including through cost-share programs, except that the council may use such funds for the purchase of propane products and equipment for displays in such programs or projects. The council shall provide for the payment of the costs of the programs and projects with funds collected pursuant to K.S.A. 55-1804, and amendments thereto, and shall coordinate the council's activities with qualified industry organizations to provide efficient delivery of services and to avoid unnecessary costs of duplication of activities.

(j) The council shall report annually to the house and senate committees on agriculture. Such report shall include details of council programs, projects and activities as provided pursuant to this act. The report provided in

2004 shall include a review of propane safety policies, statutes, rules and regulations in Kansas and adjoining states and shall include recommendations the council deems appropriate for policy, statutory or regulatory changes in Kansas to improve propane safety.

History: L. 2003, ch. 102, § 3; July 1.

55-1804. Assessment on odorized propane; method; payment to council; investment of funds; failure to pay.

(a) Except as otherwise provided by law, there shall be an assessment as provided in this section on odorized propane. The council shall set the initial assessment at no greater than 2/10 of one cent per gallon of odorized propane. Thereafter, annual assessments shall be sufficient to cover the costs of plans and programs developed by the council. The assessment shall not be greater than 3/10 of one cent per gallon of odorized propane. In no case may the assessment be raised by more than 1/10 of one cent per gallon of odorized propane annually.

(b) The owner of propane at the time of odorization, or the time of import of odorized propane, shall make the assessment based on the volume of odorized propane sold and placed into commerce. The assessment, when made, shall be listed as a separate line item on the bill labeled "Kansas propane education and research assessment" or "KanPERC." Assessments collected from purchasers of propane are payable to the council on a monthly basis by the 25th of the month following the month of collection. If payment is not made to the council by the due date under this subsection, an interest penalty of 1% of any amount unpaid shall be added for each month or fraction of a month after the due date, until final payment is made. The council may establish an alternative means of collecting the assessment if another means is found to be more efficient and effective. The council may establish a late payment charge and rate of interest to be imposed on any person who fails to remit or pay to the council any amount due under this act.

(c) Pending disbursement pursuant to a program, plan or project, the council shall invest funds collected through assessments, and any other funds received by the council, only in obligations of the United States or any agency thereof, in general obligations of any state or political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the federal reserve system, or in obligations fully guaranteed as to principal and interest by the United States.

(d) The price of propane shall be determined by market forces consistent with antitrust laws and no provision of this act shall be interpreted as allowing a pass through to consumers of the assessment determined by the council pursuant to subsection (a).

(e) Any rebate funds received from the national propane education and research council from assessments collected on odorized propane distributed from Kansas shall be the property of the Kansas propane education and research council and the use of such funds shall be deter-

mined by the Kansas council for the intended purposes of this act.

(f) Any person who unreasonably fails or refuses to pay any assessments due under this act may be subject to legal action by the council to recover the assessments due, plus interest and costs.

History: L. 2003, ch. 102, § 4; July 1.

55-1805. Expenditure of moneys collected by council, limitations. Except as provided in subsection (j) of K.S.A. 55-1803, moneys collected by the council shall be expended only for the purposes of this act and shall not be used in any manner for influencing legislation or for political campaign contributions.

History: L. 2003, ch. 102, § 5; July 1.

55-1806. Act does not preempt other propane safety or education programs. The provisions of this act do not preempt or supersede any other program relating to propane safety or education which has been organized and is operating under the laws of this state.

History: L. 2003, ch. 102, § 6; July 1.

55-1807. Citation of act; establishment of programs for regulation and licensing; definitions. (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.

History: L. 2004, ch. 111, § 1; Apr. 22.

55-1808. Application of act. (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.

History: L. 2004, ch. 111, § 2; Apr. 22.

55-1809. Damages; comparative negligence and liability. (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.

History: L. 2004, ch. 111, § 3; Apr. 22.

55-1810. Liquefied petroleum gas facilities; application and plan; review by state fire marshal. (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.

History: L. 2004, ch. 111, § 4; Apr. 22.

55-1811. Liquefied petroleum gas advisory board; composition and functions. (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.

History: L. 2004, ch. 111, § 5; Apr. 22.

55-1812. Licensure; training, inspection and safety regulation; fees; exemption; violations; penalties. (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) A person who has earned a certificate pursuant to K.S.A. 12-1508 et seq. or 12-1541 et seq., and amendments thereto, shall be exempt from all licensure and training provisions of this act and all licensure and training rules and regulations adopted pursuant to this act. Upon written request of the state fire marshal, a certificate holder shall furnish proof of certification.

(d) 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.

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

(f) (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.

History: L. 2004, ch. 111, § 6; L. 2007, ch. 67, § 1; July 1.

55-1813. State fire marshal liquefied petroleum gas fee fund; creation. 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 K.S.A. 55-1807 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.

History: L. 2004, ch. 111, § 7; Apr. 22.