

Legislative Analysis



LIMIT LIABILITY FOR PROPANE RETAILERS

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House Bill 5994 (Substitute H-1)

Sponsor: Rep. Michael Sak

Committee: Judiciary

First Analysis (10-27-08)

BRIEF SUMMARY: The bill would limit lawsuits against propane marketers under certain conditions.

FISCAL IMPACT: To the extent that House Bill 5994 reduces the number of claims for damages, it would have a positive fiscal impact on the judiciary through a reduction in caseloads.

THE APPARENT PROBLEM:

Propane is used safely by tens of millions of people across the country, but, due to the flammable nature of the gas, accidents occasionally happen. According to the Michigan Propane Gas Association, accidents involving propane explosions are increasingly the result of consumers' attempts to do self-repairs or to alter a propane container. For instance, according to media sources, an 18-year-old man was injured in 2006 by flying shrapnel when the small camping-sized propane tank he was trying to turn into a cutting torch exploded. Others have been injured or killed when disconnecting and then reconnecting propane appliances, digging into buried propane lines, or improperly storing small propane containers (i.e., containers for gas grills).

Since propane-related accidents often result in explosions and/or fire, injuries to victims may be severe or fatal. The business that sold or serviced the victim is often sued by the victim or by survivors –whether or not the injuries resulted from negligence on the part of the propane marketer. Even when a propane marketer is not at fault, the business may settle the lawsuit just to reduce overall legal expenses. These costs are later passed on to consumers in the form of higher prices for propane services.

Accidents also happen when a propane marketer improperly installs a propane line or fails to notice a leak in propane equipment, and industry members agree that propane marketers should be held responsible for any act of negligence on their part that results in a person being injured or killed. However, since consumer tampering is associated with many accidents, the industry is seeking protection from liability for propane marketers when the marketer was not at fault.

THE CONTENT OF THE BILL:

The bill would add a new section to the Revised Judicature Act (MCL 600.2977) to limit an action for damages for personal injury, death, or property damage against a person

engaged in the liquefied petroleum gas (LPG or propane) business. “Liquefied petroleum gas business” would mean selling at retail, supplying, handling, or transporting liquefied petroleum gas. The bill would take effect July 1, 2009.

Under the bill, an action could not be brought against a person engaged in the propane business if both of the following applied:

- The person engaged in the LPG business was, at the time of the injury, death, or property damage, in compliance with rules promulgated under Section 3c of the Fire Prevention Code (MCL 29.3c); Section 2 of PA 241 of 1959, which pertains to the regulation of liquid petroleum or carbonic gas containers (MCL 429.112); and rules promulgated under the Stille-DeRossett-Hale Single State Construction Code Act (MCL 125.1501-125.1531).
- The injury, death, or property damage had been caused by either 1) the alteration, modification, or repair of LPG equipment or an appliance unless the alteration, modification, or repair had been made with the knowledge and consent of the propane retailer; or, 2) the use of an LPG equipment or appliance in a manner or for a purpose other than that for which it was intended unless the use could reasonably have been expected by the person engaged in the propane business.

BACKGROUND INFORMATION:

Propane is stored under pressure as a liquid but used as a gas. Propane vapors are heavier than air and so tend to pool in the lowest place (e.g., a basement, even if the stove is in the kitchen). Because it is odorless, a sulphur smell is added to help consumers detect leaks. Experts recommend that all homes containing propane appliances, whether a water heater, stove, or furnace, have gas detectors installed because not all people can detect the sulphur smell and the smell may dissipate under certain conditions. Many accidents and injuries are the result of customers not being aware of or following safe practices. Important safety guidelines, including the safe storage of portable or small propane containers, can be found at www.usepropane.com (click on the consumer safety button) and at www.usemichiganpropane.com (click on the consumer button for a drop-down menu). In addition, consumers can direct questions to propane marketers.

ARGUMENTS:

For:

Propane industry representatives say when propane gas-related accidents occur, it is usually because a consumer or a friend or relative tries a do-it-yourself repair or alteration, such as replacing a propane water heater, or tampers with or otherwise altered propane equipment. Propane is safe and is used safely by millions of people. However, under certain circumstances, propane can be extremely dangerous and can explode. When that happens, people are often injured severely or killed and a lawsuit is often filed against the propane business that sold or serviced the equipment, regardless of whether or not the business was at fault for the accident.

Frivolous lawsuits against propane marketers – those who sell, supply, handle, or transport LP gas – only serve to drive up costs for other propane customers. The bill would address the problem by limiting civil actions that could be brought against these business owners. If an accident involving propane was caused by a consumer's actions, then the bill would protect the propane marketer from being liable for any damages or injuries sustained by the consumer. A lawsuit could still be brought if the LPG business had authorized the repairs or alterations or if such a use of the propane equipment could have been reasonably expected.

According to industry members, there is no dispute that victims should be able to seek remedies if the negligence of an LPG business or employee caused property damage or personal injury. The bill is not expected to impact a cause of action based on a propane marketer's conduct.

Against:

Restrictions on tort actions should be avoided. Certain elements must be met before a civil action can go forward, and these elements are well established in statute and case law. Moreover, judges have the authority to grant a motion dismissing a lawsuit if it is without merit, thus guarding against frivolous suits, and victims have a right to plead their case before a jury which – as the trier of fact – has the responsibility to determine if an LPG business was culpable in the accident.

POSITIONS:

The Michigan Propane Gas Association supports the bill. (6-25-08)

The Michigan Association for Justice is neutral on the substitute version of the bill. (6-25-08)

The Negligence Law Section/State Bar of Michigan opposes the bill. (10-21-08)

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