

Legislative Analysis



LIMIT CIVIL LIABILITY FOR PROPANE RETAILERS

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House Bill 4859 (Substitute H-2)

Sponsor: Rep. David Agema

Committee: Judiciary

First Analysis (2-13-12)

BRIEF SUMMARY: The bill would limit lawsuits for damages for injuries or property damage against propane retailers under certain conditions.

FISCAL IMPACT: This bill would not have a significant fiscal impact on state and local governments. The number of actions for damages that could be pursued in court is decreased, potentially leading to savings for local courts due to a reduced caseload. The number of cases currently pursued for the reasons outlined in House Bill 4859 are not known, but are likely minimal.

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 their own 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 (e.g., containers for gas grills or camp stoves).

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 LPG equipment or LPG appliance is often sued by the victim or by survivors – whether or not the injuries resulted from negligence on the part of the propane retailer. Even when a propane retailer 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 retailer improperly installs a propane line or fails to notice a leak in propane equipment, and industry members agree that propane retailers 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 retailers when the business 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 the liability of a liquefied petroleum gas (LPG) business. Under the bill, a LPG business would not be liable for damages for personal injury, death, or property damage arising from the sale, supplying, handling, transportation, or delivery of LPG if both of the following applied:

- The sale, supplying, handling, transportation, or delivery of the LPG was either 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); or, was not in compliance with these regulations but the failure to comply was not a proximate cause of the personal injury, death, or property damage.
- The injury, death, or property damage had been caused by either (1) the alteration, modification, or repair of LPG equipment or appliance unless the alteration, modification, or repair had been made with the knowledge or consent of the LPG business; or, (2) the use of 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 LPG business.

"Liquefied petroleum gas business" would mean a person who is engaged primarily in the business of selling at retail, supplying, handling, or transporting liquefied petroleum gas. "Person" would mean an individual, partnership, corporation, association, governmental entity, or other legal entity.

The bill would take effect July 1, 2012.

BACKGROUND INFORMATION:

Legislative history. The bill is a reintroduction of House Bill 5994 and House Bill 5204 of the 2007-2008 and 2009-2010 legislative sessions, respectively. The former was reported from committee but died on the House floor and the latter did not get reported from committee.

Propane gas. 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 (e.g., used in campers, grills, and camp stoves), can be found at www.propane101.com/propanecylinderstorage.htm, as well as at www.usemichiganpropane.com and www.usepropane.com. In addition, consumers can direct questions to propane retailers.

ARGUMENTS:

For:

According to liquefied petroleum gas (LPG) industry representatives, when a propane-related accident occurs, it is usually because a consumer or a friend or relative tries a do-it-yourself repair or alteration, such as replacing an LPG water heater, or tampering with or otherwise altering LPG 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 LPG business that sold or serviced the equipment, regardless of whether or not the business was at fault for the accident.

Frivolous lawsuits against LPG businesses – those who sell, supply, handle, or transport LP gas – only serve to drive up costs for other LPG 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 LPG business 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 an LPG business' 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.

Against:

Some feel that mechanical contractors may be disadvantaged under the bill. These licensed professionals provide services for LPG appliances like gas furnaces. As such, some of the work they do could be considered an alteration or repair under the bill. Would they be expected to notify or obtain consent from the LPG business supplying the home with propane before undertaking the repair? In order to protect their right to sue, would a homeowner have to call their LPG supplier to tell them that a repair person was

coming to fix a stove or furnace? If so, this could act as a disincentive to hire a mechanical contractor unless he or she was also a propane business. Therefore, the bill stands to unfairly influence a consumer's choice of repair companies. At a minimum, the bill should be amended to clarify that alterations, modifications, or repairs made to propane equipment or appliances by a mechanical contractor licensed under the Forbes Mechanical Contractors Act that is within the scope of the license would not be considered repairs, etc. that would prohibit a civil action against a propane business. It would seem that such a clarification would fit within the stated intent of protecting propane businesses from do-it-yourself repairs made by unlicensed, untrained persons.

Against:

The bill is silent about what happens if the LPG business goes out of business, or if the house is sold, how the owner would find out who installed the propane tank.

Response:

That is true now of any problem discovered in a home. Someone buying a 40-year-old house would be hard-pressed to locate any of the original contractors. Plus, depending on the defect or problem, actions could be limited by statute of limitations provisions. The focus of the bill seems to be clear that it is trying to protect propane businesses from liability in those cases in which the damage was caused by a non-propane professional doing something for which he or she was not trained or licensed to do.

POSITIONS:

A representative of the Michigan Propane Gas Association testified in support of the bill. (1-26-12)

The Michigan Association for Justice (which represents trial lawyers) indicated a neutral position on the bill. (2-2-12)

A representative of the Michigan Plumbing & Mechanical Contractors Association testified in opposition to the bill. (2-2-12)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.