

LEGISLATIVE BILL 699

Approved by the Governor April 9, 1998

Introduced by Natural Resources Committee: Beutler, 28, Chairperson;
Bromm, 23; Elmer, 44; McKenzie, 34; Preister, 5; Schrock, 38;
Stuhr, 24

AN ACT relating to propane; to adopt the Propane Education and Research Act; to prescribe insurance and training requirements; and to provide civil penalties.

Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Propane Education and Research Act.

Sec. 2. The purposes of the Propane Education and Research Act are (1) to authorize the creation of an industry-financed entity which will enable the Nebraska propane industry to educate the public and industry employees about proper safety and procedures in the storage, handling, transportation, and use of propane in any of its traditional residential, commercial, recreational, or agricultural applications and (2) to support efforts to increase the efficiency and value of propane energy service to the industry and its customers.

Sec. 3. For purposes of the Propane Education and Research Act, the definitions found in sections 4 to 16 of this act shall be used.

Sec. 4. Bulk means quantities of more than five thousand gallons.

Sec. 5. Council means the Propane Education and Research Council established under sections 17 and 18 of this act.

Sec. 6. Education means any action which provides information, instruction, or safety guidelines about propane, propane equipment, mechanical and technical practices, and uses of propane to propane consumers or industry employees.

Sec. 7. Industry means those persons involved in the production, transportation, and sale of propane and in the manufacture and distribution of propane utilization equipment.

Sec. 8. Industry trade association means an organization which represents a segment of the industry and which is exempt from tax under section 501(c)(3) or (6) of the Internal Revenue Code.

Sec. 9. Manufacturer and distributor of liquified petroleum gas equipment means any person engaged in manufacturing, assembling, and marketing appliances, containers, and products used in the liquified petroleum gas industry and any person in the wholesale marketing of appliances, containers, and products used in the liquified petroleum gas industry.

Sec. 10. Odorized propane means propane with odorant added.

Sec. 11. Person means any: Individual; partnership; limited liability company; association; public or private corporation; trustee; receiver; assignee; agent; municipality or other governmental subdivision; public agency; other legal entity; or any officer or governing or managing body of any public or private corporation, municipality, governmental subdivision, public agency, or other legal entity.

Sec. 12. Propane means propane, butane, mixtures, and liquified petroleum gas as defined by the National Fire Protection Association Standard 58 for the Storage and Handling of Liquified Petroleum Gases the chemical composition of which is predominantly C3H8, whether recovered from natural gas or crude oil.

Sec. 13. Qualified industry organization means any organization or industry trade association the members of which are engaged in the sale or distribution of odorized propane to the ultimate consumer or the sale of propane utilization equipment to the ultimate consumer.

Sec. 14. 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, of enhancing the safety of propane and propane utilization equipment, or of furthering the development of such information and products.

Sec. 15. Retail marketer means any person with bulk propane storage engaged in the sale of odorized propane to the ultimate consumer or to retail propane dispensers within Nebraska.

Sec. 16. Wholesaler, supplier, or importer means the owner of the propane at the time it is first delivered into Nebraska regardless of the state where production occurs, with ownership of the propane determined by the

freight on board designation.

Sec. 17. (1) One or more qualified industry organizations, which in the aggregate represent at least thirty-five percent of the total volume of odorized propane sold at retail in the State of Nebraska, may conduct a referendum among retail marketers for the creation of the Propane Education and Research Council. The organization conducting the referendum shall pay the cost of the referendum. If the council is established, the council shall reimburse the organization for the costs incurred by the independent accounting firm under subsection (2) of this section and any other costs for the referendum incurred which the council finds reasonable and necessary.

(2) The referendum shall be conducted by an independent accounting firm selected by the qualified industry organization initiating the referendum. Each retail marketer voting in the referendum shall be allowed one vote for each gallon of retail odorized propane sold by such retail marketer within the State of Nebraska in the previous calendar year or other specified representative period. All persons voting in the referendum shall certify to the independent accounting firm the volume of odorized propane represented by their votes. This information shall be treated as confidential information. Only vote totals shall be made public.

(3) Upon approval by retail marketers representing a majority of the votes cast in the referendum, the qualified industry organization initiating the referendum shall certify the vote to the Governor, the Propane Education and Research Council shall be created, and its members shall be appointed by the Governor as provided in section 18 of this act.

Sec. 18. (1) The council shall be appointed by the Governor within sixty days after the date the vote is certified to the Governor pursuant to section 17 of this act. The council shall consist of nine members, including four members representing retail marketers, one member representing wholesalers, suppliers, and importers, one member representing manufacturers and distributors of liquefied petroleum gas equipment, one member representing the academic or propane research community, one propane user or consumer, and the State Fire Marshal or his or her designee. Other than the State Fire Marshal or his or her designee and the representatives of the research community and consumers, members shall be full-time employees or owners of businesses in the industry or representatives of agriculture cooperatives. Only one person from any company or an affiliated company may serve on the council at a time. All members shall be Nebraska residents, except that members representing wholesalers, suppliers, and importers may be residents of other states.

(2) 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. 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 seven consecutive years. Members filling unexpired terms shall be appointed in a manner consistent with this section. Former members may be reappointed if they have not been members for a period of two years.

Sec. 19. (1) The council shall provide rules and regulations to carry out its responsibilities under the Propane Education and Research Act.

(2) The council may enter into contracts with, use facilities and equipment of, or employ the personnel of a qualified industry organization in carrying out the council's responsibilities under the act.

(3) The council shall protect the handling of council funds through fidelity bonds.

(4) The administrative costs of operating the council shall not exceed twenty percent of the funds collected pursuant to section 21 of this act in any fiscal year.

(5) The council shall operate in accordance with sections 84-1408 to 84-1414.

(6) At the beginning of each fiscal year, the council shall prepare a budget plan which includes the estimated costs of all programs, projects, and contracts. 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 the costs related to the activities.

(7) 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 the audit shall be provided to the executive director, if one is appointed by the council, to all members of the council, to the Clerk of the Legislature,

and to any other member of the industry upon request.

(8) The council shall issue notice of meetings and shall require reports on the activities of the committees and subcommittees and on compliance, violations, and complaints regarding the implementation of the Propane Education and Research Act.

Sec. 20. The council shall develop programs and projects and enter into contracts or agreements for implementing the Propane Education and Research Act, including, but not limited to, 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 environmental and safety aspects of propane. At least seventy percent of the funds collected pursuant to section 21 of this act shall be used for education or for improvement of propane utilization safety equipment technology. No funds shall be used for the sole purpose of advertising propane or propane utilization equipment. Safety issues shall receive first priority in the development of all programs and projects funded by the council. The council shall provide for the payment of the costs for the programs and projects with funds collected pursuant to such section and shall coordinate its activities with qualified industry organizations to provide efficient delivery of services and to avoid unnecessary costs or duplication of activities.

Sec. 21. (1) The council may levy a propane education and research fee on odorized propane sold in Nebraska to fund the Propane Education and Research Act. The fee shall not exceed two-tenths of one cent per gallon. The fee shall be calculated by multiplying the fee rate by the number of net gallons of odorized propane on a bill of lading, an invoice, or a shipping document of the wholesaler, supplier, or importer who first sells or offers for sale odorized propane or uses odorized propane in this state, who shall pay the fee. If the quantity specified in the bill of lading, invoice, or shipping document is listed in units other than gallons, the wholesaler, supplier, or importer shall convert those units to gallons, using conversion tables approved by the council, prior to remitting the fee to the council.

Fee payments shall be remitted to the council on a regular basis as established by the council. Nonodorized propane shall not be subject to the fee until odorized. The council may establish a late payment charge and provide for interest, at a rate equal to the maximum rate of interest allowed per annum under section 45-104.01 as such rate may from time to time be adjusted by the Legislature, to be imposed on any person who fails to remit any amount due under the act.

(2) Any funds which are due to the State of Nebraska and collected from a national assessment levied on propane shall be designated and accrue to the benefit of the council and shall be spent in accordance with the federal Propane Education and Research Act of 1996.

(3) Funds collected by the council shall not be used in any manner for influencing legislation or for political campaign contributions.

Sec. 22. The Propane Education and Research Act does not preempt or supersede any other program relating to propane safety or education which has been organized and is operating under state law.

Sec. 23. All retail marketers of retail propane in Nebraska shall carry minimum liability insurance coverage of at least two million dollars, with proof of insurance provided to the State Fire Marshal. All persons employed in the installation or service of any propane system shall fully comply with training requirements provided in applicable sections governing the sale of propane as set forth by the National Fire Protection Association. Applicable requirements for guidelines as set forth by the National Fire Protection Association shall be enforced by the office of the State Fire Marshal.

Violation of this section shall subject the violator to a civil penalty of not less than one hundred dollars per day and not more than one thousand dollars per day. In case of a continuing violation, each day constitutes a separate offense. The amount of the penalty shall be based on the degree and extent of the violation. The Attorney General or each county attorney to whom the State Fire Marshal reports a violation shall institute appropriate proceedings without delay to assure compliance with this section.

Sec. 24. (1) The council may on its own initiative and shall upon the petition of retail marketers representing at least thirty-five percent, as determined by the council, of the total volume of odorized propane sold at retail in the State of Nebraska hold a referendum to be conducted by an independent accounting firm selected by the council to determine whether the council should be suspended or terminated. The council shall pay the costs of the referendum under this section.

(2) The council shall be suspended or terminated if suspension or

termination is approved by retail marketers representing more than fifty percent, as determined by the council, of the total volume of odorized propane sold at retail in the State of Nebraska.

Sec. 25. It is the intent of the Legislature that the price of propane shall always be determined by market forces. The council shall take no action to interfere in any manner with the free market process.

Sec. 26. Any person who unreasonably fails or refuses to pay any fee due under the Propane Education and Research Act may be subject to legal action by the council to recover the fees due, plus interest and costs.

Sec. 27. The district court or county court of the county in which the violation occurs or in which the person required to pay the fee under section 21 of this act resides shall have jurisdiction to enjoin violations of the Propane Education and Research Act or the rules and regulations provided for under the act, as well as jurisdiction for civil actions to recover fees due, plus interest and costs. If neither of the jurisdictional considerations in this section applies, the district court of Lancaster County shall have jurisdiction.