

SUBJECT: Limiting liability in liquefied petroleum gas-related activities

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 6 ayes — Hardcastle, Crownover, Chisum, Corte, Crabb, Gonzalez  
Tourelles

0 nays

1 absent — Farabee

WITNESSES: For — Tony Dale, Ferrell Gas; Tim Jander, TPGA - STAR-TEX Propane;  
Ted Terry, Mission Gas Company; Bill Van Hoy, Texas Propane Gas  
Association; (*Registered, but did not testify*: Linda Sickels, Trinity IND,  
Inc.)

Against — Jay Harvey, Texas Trial Lawyers Association

On — (*Registered, but did not testify*: Jim Osterhaus, Railroad  
Commission of Texas)

BACKGROUND: Natural Resources Code, sec. 113.002 defines:

- “Liquefied petroleum gas (LPG)” as any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylenes; and
- “Registrant” as any person exempt from the licensing requirements who is required to register with the Railroad Commission (RRC); any person qualified by examination by the RRC; or any person who applies for registration with the RRC.

Natural Resources Code, sec. 113.301 provides liability protection for damages caused solely by a malfunction or improper operation of an LPG system that the person installed or serviced in a residential, commercial, or public building or in a motor vehicle if:

- the person was licensed to perform the installation or service;
- the installation or service was performed in compliance with the safety rules and standards adopted by the commission;
- the person has no control over the operation of the LPG system;
- the person was not negligent; and
- the person did not supply a defective product which was a producing cause of harm.

**DIGEST:**

CSHB 1170 would amend Natural Resources Code, sec. 113.301 to immunize a person from being liable for damages caused solely by the installation and modification of an LPG system if the delivery was performed in compliance with RRC safety rules and standards, the person was licensed by the RRC or a registrant to perform the installation or service, and the person had no control over the use of the LPG system.

CSHB 1170 would require a licensed person who sold, installed, or repaired an LPG system, piping or other equipment that was part of an LPG system, or an appliance that was connected or attached to an LPG system, to provide the following notice to the purchaser or owner:

"WARNING: Flammable Gas. The installation, modification, or repair of an LPG system by a person who is not licensed or registered to install, modify, or repair an LPG system may cause injury, harm, or loss. Contact a person licensed or registered to install, modify, or repair an LPG system. A person licensed to install or repair an LPG system may not be liable for damages caused by the modification of an LPG system by an unlicensed person except as otherwise provided by applicable law."

The bill would require the Railroad Commission (RRC) to adopt rules related to this notice.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

CSHB 1170 would provide greater protections for consumers. Texas is the largest user of propane in the United States and has a great need for its citizens to be better educated about the dangers of modifying a propane system. Because many accidents occur as a result of unlicensed installation or repairs of LPG equipment, this bill would institute a label

on such products to warn consumers of the dangers associated with installing or modifying a propane system. The bill would not prevent an unlicensed person from working on an LPG system, but would encourage the buyer to beware by instituting an industry-wide label notice.

Requiring this safety warning would not be a hardship for businesses as this kind of label has been in use for many years on other household products, such as hairdryers. The bill would not shield the propane industry at the peril of consumers. If there were a functional defect or the installation, modification, or repair by a licensed technician was not properly performed, a consumer still could hold the propane company liable.

CSHB 1170 also would provide greater protections for the propane industry. When there is a lawsuit for damages due to an LPG system, the propane industry is the first to be blamed. This represents a tremendous cost in time and money for propane companies, which are very often small, family-owned businesses. Further, propane companies often are drawn into a lawsuit when someone gets injured, even if the company was not at fault. For example, a customer purchased a water heater through a home improvement store and allowed an unlicensed friend to install it. Because it was installed improperly, there was an accident and a fire. The victim could not realize damages from his unlicensed and uninsured friend and chose to sue his propane provider instead, which resulted in \$125,000 in legal fees, even though the company had no involvement and was not found at fault. While the bill would require propane companies to label all products, ultimately this effort would save the propane industry money because it would make people responsible for their own negligence and not make propane companies bear the burden of irresponsible behavior.

**OPPONENTS  
SAY:**

This bill would not prevent anyone from improperly installing, repairing, or modifying propane systems. It would protect the propane industry from being liable when propane systems malfunctioned by issuing an ineffective warning label. A safety warning should have four parts: it should be conspicuous, advise a user of danger, advise a user of how to avoid that danger, and explain the consequences of failing to follow the warning. This bill instead would create a warning that would be wordy, would not address the legal ramifications for misconduct, and would discuss the legal rights of the person or company who installed or manufactured the product. Safety warnings have not historically addressed legal liability, but this bill would create such a warning so that a propane company could submit it as evidence during a legal proceeding.

This bill should protect the integrity of product labels by keeping them a protection for consumers and find some more effective method of keeping propane companies from being sued unfairly.

NOTES:

The committee substitute differs from the original by stating in the warning that harm could be caused by the installation or repair of an LPG system, recommending contacting someone who is registered to modify a system, and stating that a licensed person would not be liable for damages, except as otherwise provided by applicable law.

The companion bill, SB 1140 by Deuell, has been referred to the Senate State Affairs Committee.