

ENROLLED SENATE  
BILL NO. 1594

By: Laster of the Senate

and

Winchester of the House

An Act relating to liquefied petroleum gas; amending 52 O.S. 2001, Section 420.2, as amended by Section 1, Chapter 202, O.S.L. 2002 (52 O.S. Supp. 2005, Section 420.2), which relates to the State Liquefied Petroleum Gas Administrator; modifying qualifications for certain employees; amending 52 O.S. 2001, Section 420.3A, which relates to liability; limiting liability for persons in certain liquefied petroleum gas businesses under certain circumstances; amending 52 O.S. 2001, Section 420.4, as last amended by Section 1, Chapter 395, O.S.L. 2003 (52 O.S. Supp. 2005, Section 420.4), which relates to registration permits and fees; authorizing Board to consider certain applications; amending 52 O.S. 2001, Section 420.5, as amended by Section 2, Chapter 395, O.S.L. 2003 (52 O.S. Supp. 2005, Section 420.5), which relates to fees; authorizing Administrator to credit certain fees; amending 52 O.S. 2001, Section 420.6, as amended by Section 3, Chapter 202, O.S.L. 2002 (52 O.S. Supp. 2005, Section 420.6), which relates to revocation of permits; changing deposit of certain administrative penalties from General Revenue Fund to the Liquefied Petroleum Gas Fund; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 52 O.S. 2001, Section 420.2, as amended by Section 1, Chapter 202, O.S.L. 2002 (52 O.S. Supp. 2005, Section 420.2), is amended to read as follows:

Section 420.2 A. There is hereby created a State Liquefied Petroleum Gas Administrator, to be appointed by the Governor from a list of nominees submitted by the Oklahoma Liquefied Petroleum Gas Board, hereinafter created. The appointment shall be subject to confirmation by the Senate. The Administrator shall:

1. Receive a salary to be established by the Oklahoma Liquefied Petroleum Gas Board;

2. Act in no other official or quasi-official capacity except as herein provided; and

3. Serve at the pleasure of the Governor.

B. The Administrator, subject to approval of the Board, shall appoint and fix the duties and compensation of employees necessary to perform the duties imposed upon the Oklahoma Liquefied Petroleum Gas Board by law.

C. 1. Persons appointed to the positions of Administrator, chief deputy administrator, deputy administrator or safety code enforcement officer shall:

- a. be citizens of the United States,
- b. be legal residents of this state,
- c. be physically, mentally and morally capable of performing the duties imposed upon them pursuant to the Oklahoma Liquefied Petroleum Gas Regulation Act,
- d. not have been convicted of a felony in this state or any other state as established by a national criminal history record check as defined in Section 150.9 of Title 74 of the Oklahoma Statutes, and
- e. after the date of their appointment, not be engaged in any business in this state related to the production, manufacture, distribution, sale, installation or transportation of any of the products or equipment covered by the Oklahoma Liquefied Petroleum Gas Regulation Act.

2. Each appointee shall, by education, training and experience, be qualified and competent to perform the duties imposed upon them pursuant to the Oklahoma Liquefied Petroleum Gas Regulation Act, which for:

- a. the Administrator shall include at least two (2) years' experience in positions of responsibility in or connected with the liquefied petroleum gas industry,
- b. the chief deputy administrator and deputy administrators shall include at least one and one-half (1 1/2) years of such experience, and
- c. the safety code enforcement officers shall include at least two (2) years' experience in actual physical installation or inspection of liquefied petroleum gas systems, containers, apparatus or appliances, or installations thereof.

3. Before entering upon their duties, appointees shall take the constitutional oath of office.

D. In the event of a vacancy in the office of Administrator, or in the event of the absence or disability of the Administrator, the chief deputy administrator is hereby empowered and authorized to

perform the duties of the Administrator during the time of such vacancy, absence or disability.

SECTION 2. AMENDATORY 52 O.S. 2001, Section 420.3A, is amended to read as follows:

Section 420.3A A. ~~A person is not liable for damages caused solely by a malfunction or improper operation of a liquefied petroleum gas (LPG) system that the person installed or serviced in a residential, commercial, or public building if and no legal action shall be commenced or maintained against such person engaged in this state in the business of selling at retail, supplying, handling, or transporting liquefied petroleum gas if the alleged injury, damage, or loss was caused by:~~

- ~~1. The person is registered pursuant to the Oklahoma Liquefied Petroleum Gas Regulation Act to perform the installation or service;~~
- ~~2. The person has no control over the operation of the LPG system;~~
- ~~3. The person was not negligent; and~~
- ~~4. The person did not supply a defective product which was a producing cause of harm~~

The alteration, modification, or repair of liquefied petroleum gas equipment, containers, or a liquefied petroleum gas appliance if the alteration, modification, or repair was done without the knowledge and consent of the liquefied petroleum gas seller, supplier, handler, or transporter; and

2. The liquefied petroleum gas equipment, containers, or a liquefied petroleum gas appliance being used in a manner or for a purpose other than that for which the equipment or appliance was intended.

B. ~~This section shall apply only to a cause of action for damages arising out of a malfunction or the improper operation of a liquefied petroleum gas system that occurs on or after June 8, 1994~~person who complies with the approved standards and rules as outlined in subsection E of Section 420.3 of this title and who has not acted in a grossly negligent or willful and wanton manner.

SECTION 3. AMENDATORY 52 O.S. 2001, Section 420.4, as last amended by Section 1, Chapter 395, O.S.L. 2003 (52 O.S. Supp. 2005, Section 420.4), is amended to read as follows:

Section 420.4 A. No person, firm, or corporation shall manufacture, fabricate, assemble, or install in this state any system, container, apparatus, or appliance used or to be used in this state in or for the transportation, storage, dispensing, or utilization of LPG, nor shall any transporter, distributor, or retailer of LPG store, dispense or transport over the highways of this state any LPG intended for use in this state in any such system, container, apparatus, or appliance, without having first applied for and obtained a registration permit to do so. A permit

shall not be required by any person, firm, or corporation engaged in the production or manufacture of LPG, or selling or reselling LPG to transporters, processors, distributors, or retailers, nor by any person, firm, or corporation selling or delivering motor vehicles or tractors which are factory equipped with an LPG system, container, apparatus, or appliance for the utilization of LPG as motor fuel. The provisions of this section shall not prevent an individual from installing in his own single-unit residence any system, container, apparatus, or appliance which uses or will utilize LPG, provided, that such individual has secured an inspection of such installation by the Administrator or someone designated by the Administrator or by a person duly licensed to make such an installation prior to the use of said system, container, apparatus or appliance. Applications for registration permits shall be in writing, on a form provided by the Board, and shall contain such pertinent information as is required by the Board. Upon approval of each said application and receipt of the certificates of insurance or securities required by the provisions of this section, the Administrator shall issue to the applicant a permit to engage in the phase of the liquefied petroleum gas industry in this state to which such permit applies. No permit other than the Class I Dealer Permit shall be transferable. The Board is authorized to establish a fee for the transfer of a Class I Permit. Nothing in Sections 420.1 through 420.15 of this title shall be construed to regulate the manufacturing, fabrication, assembling, selling, or installing of any system, container, apparatus, or appliance having a fuel container with a maximum individual water capacity of less than two and one-half (2 1/2) pounds.

B. 1. The Board is authorized to establish an annual permit fee for the issuance of each class of permit listed in subsection C of this section.

2. All such registration permits shall expire annually with no permit extending longer than one (1) calendar year. The expiration dates shall be set by the Board in the rules. The Administrator may issue a semiannual permit to applicants engaging in the business within six (6) months or less of the annual renewal date. A semiannual permit shall expire on the following annual expiration date. The fee for a semiannual permit shall be one-half (1/2) that of the fee of the annual permit. All registration permits required pursuant to the provisions of this section shall be renewed upon payment of the annual fees on or before the expiration of the registration permit, and upon fulfilling all insurance requirements. The Board is authorized to establish necessary penalty provisions required to ensure prompt payment of said annual fees.

3. The Board is authorized to establish specifications which set forth the scope of authority for each class of permits.

4. The Board is authorized to establish an initial permit fee for the issuance of Class I and Class II permits to any person, firm or corporation for the first time.

C. Persons, firms, and corporations required to be registered pursuant to the provisions of Sections 420.1 through 420.15 of this title, at the time of issuance of each permit, shall pay to the

Administrator the initial permit fee if applicable and any annual fee that is applicable to the following permit classes:

1. Class I - Dealer Permit;
2. Class II - Truck Transporter Permit;
3. Class III - DOT Cylinder Transporter Permit;
4. Class IV - Installer Permit;
5. Class IV-D - Driver/Installer Permit;
6. Class VI - DOT Cylinder and/or LPG Motor Fuel Station Operator;
7. Class VI-A - LPG Dispensing Permit;
8. Class VII - Cylinder Exchange Program Permit;
9. Class VIII - Appliance Dealer Permit;
10. Class IX - LPG Container Sales Permit;
11. Class IX-A - Manufactured Homes and Recreation Sales Permit; and
12. Class X - Manager's Permit.

D. 1. Each person, firm, or corporation holding a permit authorizing the use of an LPG bulk delivery truck or trailer shall pay at the time of inspection an annual inspection fee in an amount as established by the Board for each said delivery truck or trailer belonging to said person, firm, or corporation. Each person, firm, or corporation who does not hold a permit issued by the Board authorizing the use of an LPG bulk delivery truck or trailer in the state shall pay an annual inspection fee in an amount as established by the Board for each such truck or trailer belonging to said person, firm, or corporation being used to dispense or transport LPG in the state.

2. The inspection fee shall increase to an amount established by the Board per vehicle if said inspection is not completed within sixty (60) days of the expiration date, or at a later date at the discretion of the Administrator.

E. Any LPG bulk delivery truck or trailer failing to be approved at its annual inspection shall be assessed a fee in an amount as established by the Board at the time that it is reinspected.

F. The fees provided for in this section shall be applicable to residents and nonresidents of Oklahoma.

G. The Board is authorized to approve or disapprove applications for registration permits to distributors and retailers of LPG and managers of LPG establishments. The Administrator is

authorized to approve or disapprove all other applications for registration permits that may be issued pursuant to the provisions of this section.

1. No application shall be approved by the Administrator unless the Administrator is satisfied that the applicant by written examination has shown a working knowledge of the safety requirements provided by the rules of the Board.

2. No application shall be approved by the Board unless the Board is satisfied by adequate written examination of the applicant, or the individual who is or shall be directly responsible for actively supervising the operations of such applicant which is a partnership, firm, or corporation, that the applicant or such individual has a working knowledge of the safety requirements provided by the rules of the Board. The Board shall cause to be held public hearings on the second Monday in the months of January, April, July, and October of each year on all applications for new registration permits required by the provisions of this section, or upon such other occasions as the Board may deem necessary. Notice of each hearing shall be mailed to each such applicant and shall be posted in a conspicuous place in the Office of the Administrator in Oklahoma City, Oklahoma, at least thirty (30) days prior to the date of such hearing. Said notice shall include the name, address, permit class, and business location of each applicant whose application is to be considered at the hearing. Such applicant, or the individual who is or shall be directly responsible for and actively supervising the operations of such applicant, ~~shall~~ may be present at such hearing ~~before the application will be considered by the Board.~~ If, after the public hearing, an applicant is found by the Board to have a working knowledge of the safety requirements provided by the rules and regulations of the Board, the Board shall cause an order to that effect to be entered upon its records and the application shall be approved. In the event an applicant fails to qualify, said fact shall be entered upon the Board's records.

3. The Board shall charge a fee, in an amount established by the Board, for testing materials and the expense of holding the examinations provided for in this section. Said fee shall be paid upon filing an application for any permit.

H. A registration permit shall not be issued to any applicant unless the Administrator has received certificates of insurance or security as required by this section.

I. Except as otherwise provided for in this section, all persons, firms, or corporations engaged in the business of manufacturing, fabricating, assembling, or installing any LPG system, container, apparatus, or appliance in this state, and required to be registered pursuant to the provisions of Sections 420.1 through 420.15 of this title, shall file with the Administrator a certificate indicating liability insurance coverage for the manufacturer and contractor. The Board is authorized to establish coverage amounts for each class of permit, provided coverage shall be for an amount of not less than Twenty-five Thousand Dollars (\$25,000.00) to Fifty Thousand Dollars (\$50,000.00) for bodily injury and limits of not less than Twenty-five Thousand

Dollars (\$25,000.00) for property damage, and shall be in full force and effect, covering the plant, equipment, and motor vehicles used in such business, and the operations of the business.

J. Except as otherwise provided for in this section, all transporters, distributors, or retailers of LPG in this state, required to be registered pursuant to Sections 420.1 through 420.15 of this title, shall file with the Administrator a certificate indicating that public liability and property damage insurance coverage has been issued. The Board is authorized to establish coverage amounts for each class of permit, provided coverage shall be for an amount of not less than Twenty-five Thousand Dollars (\$25,000.00) to Fifty Thousand Dollars (\$50,000.00) for bodily injury and limits of not less than Twenty-five Thousand Dollars (\$25,000.00) for property damage has been issued, and is in full force and effect, covering the plant, equipment, and motor vehicles used in such business, and the operations of said business.

K. Insurance pursuant to the provisions of this section shall be maintained in full force and effect during the operation of the business for which the coverage was issued. Except as otherwise provided for in this section, no registration permit shall be issued until said certificate is filed with the Administrator. No insurance coverage shall be canceled or terminated without thirty (30) days prior written notice of cancellation or termination to the Administrator.

L. The Board is authorized, upon proof of or a satisfactory showing that any person, firm, or corporation is financially able to pay or satisfy any judgment, claim, or demand against such person, firm, or corporation, to waive the insurance coverage required by this section. The Board, in lieu of said certificate, may require the deposit, with the Administrator, of securities, or satisfactory indemnity bond, in an amount and of a kind designated by the Board, to secure the liability of such person, firm, or corporation to pay any judgment, claim, or demand. Such security shall not be in excess of the limits set forth in this section. If the Board deems the financial status of such person, firm, or corporation to be impaired so as to reduce the ability of such person, firm, or corporation to make payment or to satisfy any judgment, claim, or demand, the Board may revoke such waiver and require such person, firm, or corporation to file certificates required by this section within thirty (30) days' after written notice is sent by the Board to such person, firm, or corporation.

SECTION 4. AMENDATORY 52 O.S. 2001, Section 420.5, as amended by Section 2, Chapter 395, O.S.L. 2003 (52 O.S. Supp. 2005, Section 420.5), is amended to read as follows:

Section 420.5 A. The Board is authorized to establish a fee, to be paid to the Administrator, upon the sale, purchase, rental and/or use in this state of liquefied petroleum gas refillable cylinders and all other liquefied petroleum gas containers.

B. Each manufacturer of LP-Gas containers in Oklahoma, each vendor of containers manufactured without the state, and each person, firm or corporation placing any LPG container or cylinder in

use in this state shall pay the applicable fee. For vendors of containers manufactured without this state, the fee or fees shall apply and become due upon delivery to the vendors, or for their account, within the state, of containers or cylinders purchased without the state. In no event shall the fees herein levied be paid or become payable on any container or cylinder sold, rented, purchased or placed in use in this state prior to the effective date of this act, or more than once on any container or cylinder, or upon any container or cylinder resold, rerented, repurchased or reused in this state. The Administrator is authorized to refund or credit fees upon containers sold without the state upon which the fees have previously been paid, or any fees which have erroneously been paid, upon written application supported by affidavit setting forth the basis for such refund. The Administrator is authorized to adopt a system of identification of containers on which the fees herein levied have been paid.

C. No person, firm or corporation shall use or install in this state any container or cylinder upon which the applicable fee levied above applies and has not been paid. In case of failure to pay within the specified time, there shall be assessed a penalty of twenty-five percent (25%), which shall be added to the applicable fee.

SECTION 5. AMENDATORY 52 O.S. 2001, Section 420.6, as amended by Section 3, Chapter 202, O.S.L. 2002 (52 O.S. Supp. 2005, Section 420.6), is amended to read as follows:

Section 420.6 A. The State Liquefied Petroleum Gas Administrator is authorized to suspend or revoke any registration permit issued by the Oklahoma Liquefied Petroleum Gas Board or impose an administrative penalty, if it is found at a hearing on the matter, that the registrant has violated or is violating or has failed or is failing to comply with any provisions of the Oklahoma Liquefied Petroleum Gas Regulation Act, any rules or specifications promulgated or any order issued thereto, or has delivered a lesser quantity of gas than the registrant bills the customer for with intent to defraud.

B. 1. Upon the motion of the Administrator, or upon the receipt of written complaint from any member of the Board, or from any deputy administrator or safety code enforcement officer, that a registrant has violated or is violating or has failed or is failing to comply with any of the provisions of the Oklahoma Liquefied Petroleum Gas Regulation Act, the rules, or specifications promulgated or any order issued thereto, the Administrator is authorized and it shall be the duty of the Administrator to hold an administrative hearing pursuant to Article II of the Administrative Procedures Act to consider such complaint.

2. The Administrator shall have the power to conduct investigations; to summon and compel the attendance at such hearing of witnesses; to require the production of any records or documents pertinent to the subject matter of any investigation or hearing; and to provide for the taking of depositions of witnesses.

3. Notice of the date, time and place of any such hearing shall be given by registered mail not less than ten (10) days, exclusive of the date of mailing, before the date thereof, addressed to the registrant complained against and to any other parties involved, each of whom shall have the right to file answer, to appear and be heard in person and by counsel, and to present evidence at such hearing.

C. If the Administrator finds at the hearing that the registrant has violated or is violating or has failed or is failing to comply with any provision of the Oklahoma Liquefied Petroleum Gas Regulation Act or such rules, specifications or any order issued thereto, the Administrator, if the findings justify such action, shall issue an order suspending the registrant's registration permit for a period not to exceed ninety (90) days, revoking the registration permit, or imposing an administrative penalty of not more than Five Hundred Dollars (\$500.00) for each separate offense. Any administrative penalty imposed pursuant to this section shall be deposited ~~with the State Treasurer for credit to the General Revenue Fund~~ into the Liquefied Petroleum Gas Fund, created pursuant to Section 420.11 of this title.

D. 1. The Administrator's findings, judgment and order shall be reduced to writing and be recorded in a permanent public record to be retained in the office of the Administrator. Copies shall be furnished to the registrant complained against and to the Board.

2. Any registrant who has been assessed an administrative penalty or whose registration permit is suspended or revoked by the Administrator may, pursuant to Section 317 of Title 75 of the Oklahoma Statutes, file for a rehearing, reopening or reconsideration by the Board. The registrant shall be given the opportunity to request a de novo hearing by the Board. Such decision by the Board shall constitute final action by the Board.

3. Any registrant who has been assessed an administrative penalty or whose registration permit has been suspended or revoked upon review by the Board may, within thirty (30) days after such filing, suspension or revocation, file an appeal with the district court of Oklahoma County or in the county wherein the registrant resides or has its principal place of business in this state, pursuant to Article II of the Administrative Procedures Act.

E. 1. Except for an emergency as determined by the Board upon the filing of a request for a rehearing, reopening or reconsideration or as determined by the court upon an appeal for judicial review of the order, enforcement of the Administrator's order shall be stayed pending final disposition of such rehearing or appeal.

2. Upon affirmance, the order shall become final and conclusive and the stay of enforcement shall be vacated.

F. The Board shall promulgate reasonable rules governing the sale or transfer of business, facilities or a permit connected with or to be used in operations subject to regulation pursuant to the Oklahoma Liquefied Petroleum Gas Regulation Act.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 3rd day of May, 2006.

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Presiding Officer of the Senate

Passed the House of Representatives the 18th day of April, 2006.

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Presiding Officer of the House  
of Representatives