

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1419

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1419
January 25, 2011
Job # 13407

☐ Conference Committee

Committee Clerk Signature

DeMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to immunity from civil liability for liquefied petroleum gas dealers; and provide for application

Minutes:

Vice Chairman Kasper, Co-Sponsor, District 46: Introduces HB 1419. Last session we had a bill that dealt with this very issue. There were a lot of concerns about the liability that the liquid petroleum gas dealers face based upon what individual citizens do once they put their product on the property of individual citizens. We had a bill that was defeated. This time the bill does have some modifications from last session.

Chairman Keiser: Those in support of HB1419:

Mike Rud~Executive Director of the North Dakota Propane Gas Association: (see attached testimony #1).

There is a housekeeping amendment I would propose. On line 19 the word "vesting" should be "venting."

Chairman Keiser: How do we determine who did what to the system?

Mike Rud: We are trying to promote responsibility.

Chairman Keiser: If there was an explosion, how do we know whether it was the owner or the dealer who caused the malfunction?

Mike Rud: Our marketers go to great lengths to document what they have done on a site and our people are certified. We would base it off of the information we got from the fire marshal and the insurance agent as we move forward to determine who is responsible. What we are asking is if our guys have done the work properly, that we are not drug into it if somebody modifies or alters.

Representative Nathe: When your marketers install, do they have paperwork that they go through with the customer?

Mike Rud: I will let the marketers answer that.

Ken Astrup~General Manager of the Dakota Plains Cooperative in Valley City: (see attached testimony #2).

Representative Nathe: Does your company have a procedure or a check list.

Ken Astrup: Yes we do. After the installation they sit down and go over with the homeowner or farmer what we did. We annually send them a duty-to-warn letter that explains the responsibilities.

Chairman Keiser: You do the inspection before you take on the customer and the system is appropriate. If you see something that goes wrong, then I assume you stop doing service until there is a correction. You fill up the tank and a week later there is an explosion. How do we determine who is at fault if we pass this?

Ken Astrup: We retain records that show what we did at the time of the installation. We would rely heavily on the fire marshal and insurance adjusters.

Representative Nathe: Has there been a lot of claims to this effect?

Ken Astrup: Not many. But every time there is a claim, it gets to be very expensive. There is an attorney in Iowa that specializes in these claims. In North Dakota the number of claims has been minimal.

Ken Kornkuen, Manager of Farmers Union Oil in Portland, ND: We are a locally owned cooperative. Propane is a good part of our business. Our employees are highly trained. We have a duty-to-warn. We give every new customer a folder with a check list of all their equipment. We write down the model number and manufacturer of every piece of equipment run by propane. We go through this with the customer. We do a duty-to-warn mailing every year. We do everything we can to make what we do safe. What keeps me up at night are the things that I've seen that we don't have any control over. For example, I had a family that came up to our station with a 100 pound cylinder to fill it but they had a car. It had to be hauled upright. So I put it in my pickup, strapped it in, and hauled it, no charge. As I was backing up in the yard to where it goes, there was no stand or regulator. Only a piece of copper coming out of the house. The table in the kitchen had a hanging heater with no chimney. They were going to hook that to it to heat their house. I gave their money back, took my cylinder and left. If they would have come with a pickup, we could have done everything right, they could have all died. Either carbon monoxide, fire or an explosion would have got them. We would be responsible because we filled that cylinder. We are asking that in incidences like that, it is very hard to prove. We are asking for some relief.

Paul Mutch, Mutch Oil Co., Larimore: I stand in support of HB 1419 for a Do Pass. Relating to Ken, we had a customer about 15 years ago that needed temporary heat in his home. The power was out and he brought a 100 pound cylinder in the basement of his house and left a torch unattended. It depleted all the oxygen. He went back down after there was no heat, lit a match, and boom!. We are down to about two insurance

businesses that will insure us. It's low frequency, high impact. I don't know anything about electricity. If I harm myself because of my lack of knowledge, I shouldn't be able to sue the electrician.

Representative N Johnson: The annual of duty-to-warn. Is that something you do as a business? Or do you keep track when somebody has a system installed and go from a year of that installation?

Paul Mutch: When we get a new customer, they get the packet of information and then they are put into our system. On an annual basis we send out a letter and safety brochure.

Representative Boe: How much do you see the price of propane dropping because of the passage of this bill?

Paul Mutch: I will defer that question to somebody else.

Steve Becher~Executive Director of the Professional Insurance Agents of North Dakota: (see attached testimony #3).

Representative Amerman: Section 2 says it applies only to "fixed liquefied petroleum gas fuel systems" and goes on to explain what that is. Will you explain that to me?

Steve Becher: The propane dealers could speak more to the technical part of the system. My understanding is we are talking fixed fuel systems for commercial buildings, homes. That is not the gas grill or grain dryers.

Representative Nathe: Insurance for the gas premiums, do they increase from year to year?

Steve Becher: A propane dealer told me that in the last ten years their premiums on LPG have increased three or four times.

Chairman Keiser: Are those run through surplus lines or PNC?

Steve Becher: Those are all standard markets not surplus lines.

Evan Mandigo~State Executive for North Dakota Association of Independent Insurance Agents: (see attached testimony #4).

Vice Chairman Kasper: What would the dealers say to an amendment that said "in order to maintain your immunity the dealer must inspect the premises at least once a year and show proof of inspection and maintain a record." Is that a reasonable request or do they do it anyway?

Ken Astrup: How do we force that homeowner to allow us inside his house to do the inspection?

Vice Chairman Kasper: If you show up and inspect the outside and ask to go into the inside, and you are refused, I would say that your immunity would continue. But if you don't go in, you would have to keep a record. Would that work?

Ken Astrup: It would work as long as you could get that homeowner to certify that we tried and they refused to allow us.

Vice Chairman Kasper: They may not even certify. They may refuse to let you in but at least you could put in your remarks, "I attempted to enter the home and the homeowner refused."

Ken Astrup: That would be better than what we have now.

Representative Boe: Who has burden of proof that it was modified?

Evan Mandigo: I would think the burden of proof would rest with the homeowner that they did not modify the system. I'll caveat that with me not being an attorney.

Steve Becher: The burden of proof is going to be on the ones saying we are immune. It will not be cut and dried. When it is determined that the propane dealer didn't do anything, the direct cause of loss was the modification they are out of it. But it has to be direct cause of loss. It can't be just a contributing factor.

Chris Friez~Crowley Fleck Law Firm on behalf of the North Dakota Grain Dealers Association: (see attached testimony #5).

Chairman Keiser: Anyone else here in support or in opposition of HB 1419.

Opposition:

Allen Austad, ND Assn. for Justice: Our members are trial lawyers that work throughout the state of North Dakota. Providing testimony for our organization is Rod Pagel.

Rodney Pagel~Attorney from Bismarck: (see attached testimony #6).

Mr Mandigo commented that this bill is about not being responsible for your own actions. To me that is the opposite. Right now that is what our current system is. Our current system is that you are responsible for your own actions.

Nobody in support of this bill has said "In June of 2008 I was sued for this irresponsible and frivolous lawsuit and because of that I had to pay damages or attorney's fees. Why are we putting in an immunity statute when we don't have a problem?"

If we are holding LP gas dealers immune, any time there's an alteration by a homeowner to a system, shouldn't the vise verse of that apply if there hasn't been an alteration? Shouldn't the LP dealer be strictly liable for that? Let's leave the system as it is. Everybody is responsible for their own actions. The burden of proof is on me and my

clients to establish that there is a claim. Any time there is a claim brought, I have a duty to evaluate that claim.

A person buying a house has no idea if the gas line is hooked up properly. Now because there is an alteration to the system I have no right to bring a claim against anybody.

Representative Frantsvog: One of the first things a financial institution will do is get a home inspection when purchasing a home. Do those inspections include gas?

Rodney Pagel: Yes, they will say in some capacity but the homeowner doesn't have to change that.

Vice Chairman Kasper: Let's say a client calls you and they've had an explosion. They tell you they are 100% at fault but I want to sue these guys anyway to get money from them. What does your code of ethics require you to do?

Rodney Pagel: My code of ethics would require me to not bring that claim. The minute that client lies under oath, I have an obligation to advise court and counsel that my client has just lied under oath.

Representative Kreun: Even though they knew of the alteration and possible problem in your testimony but in the bill it says done without knowledge. If they assume knowledge of it, then they become responsible. It seems to me they are opposite.

Rodney Pagel: Under my reading of the bill, if there is an alteration of the system and I don't notify the LP dealer then they have immunity. My concern about knowledge is that if I have a purchaser who doesn't know about that but the first person who made the alteration didn't notify them then the LP dealer still has immunity. The purchaser who didn't know about it didn't know that alteration was causing a problem. I don't have that right to bring a claim.

Representative Kreun: I don't think that is the way it is addressed. It says "without knowledge." When they come and replace the cylinder and they gain knowledge of some default, if the homeowner doesn't notify them they would not have the ability to make that determination. If they don't go out and fill it they would not have the knowledge either. As soon as they make that determination and knowledge, they have the responsibility to make the notification. It doesn't alleviate them just because they didn't get notified.

Rodney Pagel: As I read the bill, if the alteration modification repair was done without the knowledge or consent of the LP gas dealer, then immunity applies. If the injury is caused by the alteration without the LP dealer's knowledge, they have immunity.

Representative Nathe: As far as second or third homeowner, with Rep. Kasper's idea with an inspection amendment, would that help alleviate it if they come in and inspected once a year and document it?

Rodney Pagel: That would be a step in the right direction to help alleviate that problem. It puts some degree of responsibility there. I think you are going to end up with the ongoing

issue of who does the certification. What if the homeowner is not home? If the easy answer is that if it hasn't been inspected, don't fill the tank. If there is a problem with the system, don't fill the tank.

Representative N Johnson: In your testimony you used the term "alternation" several times. Is that a typo or does "alternation" mean something different in law?

Rodney Pagel: It's a typo.

Representative N Johnson: Last comment you made about setting up that time, and if it is not checked you just don't fill it. Would that open another lawsuit if pipes freeze and now you blame the LP dealer?

Rodney Pagel: In thinking of my contract, it's my obligation for me to advise them to fill the tank. They are usually out there filling beforehand. I think the obligation is for me to advise them when the tank needs to be filled. If your tank is getting low, contact the propane dealer.

Jim Chyle~Owner of Heartland Gas Company, Park River, North Dakota: (see attached testimony #7)

My wife is a real estate agent. Not all financing requires inspections. They always want an appraisal but less than 50% of the time an inspection.

(Holds up a gas pipe.) This is called CSST. Corrugated Stainless Steel Tubing. It is a flexible neat little pipe. It is nice for running it inside of homes. Since 2008 this pipe has been recognized by the manufacturer that this is hazardous. The problem comes when there is a lightning strike, this will be energized and it will short out to duct work or a water pipe and it will make a leak. There have been homes burned down because of this. There is a cure for this. My customers all know this. If this passes tomorrow, I don't have to tell them this anymore. I wouldn't be responsible because I didn't put it in there.

(Refers to invoice and two safety brochures)

When you do a gas check, take pictures and keep on file.

I have been sued. Everybody wants new accounts. We get a phone call in January. Send the driver out to fill the tank. There is a fire in April. The cause of it was the gas water heater. I went to court. This would be one of those frivolous lawsuits. We won because the homeowner did all the work himself. However, my company could have prevented that had we gone out and done inspection. We didn't. Now we do.

Representative Nathe: I find it odd that you belong to the association yet you oppose what is their bill. Have you talked to the association to come to an agreement on this bill?

Jim Chyle: We simply don't agree. There is no in-between. I feel very comfortable being responsible for what is in my customer's house. I am the expert.

Representative Nathe: These are ticking time bombs for your industry. I see in your testimony "but if the suppliers take responsibility for their work and make sure the system is safe there is no reason for this legislation." I agree with you for their work. But if somebody moves or alters it, it is no longer their work. I fail to see how that is their responsibility.

Jim Chyle: We shouldn't be responsible for a customer that decides to move his furnace to a different corner of the basement. But we should have some documentation that we told him not to do it. We should have a paper trail. I'm confident that I would win that case if it goes that far.

Representative Frantsvog: If I'm your customer and ask to do an inspection will you come and do it?

Jim Chyle: Yes.

Representative Frantsvog: Will you charge for it?

Jim Chyle: No, we only charge if we are doing something. We don't charge because I don't want to discourage them from calling. If the furnace breaks and we fix it, they will be charged for that.

Representative Kreun: On your system check sheet where the customer is suppose to sign, it says it does not cover "unforeseen happenings." Wouldn't that be an unforeseen happening if they made that switch from one side to the other? You are still having them sign that so that is technically trying to leave you not responsible.

Jim Chyle: I suppose that is true.

No other opposition or neutral testimony.

Chairman Keiser: Closed the hearing.

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1419
February, 1, 2011
13767

☐ Conference Committee

Committee Clerk Signature

Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Relating to immunity from civil liability for liquefied petroleum gas dealers.

Work Committee Session Minutes:

Chairman Keiser: Opens the work session on HB 1419

Representative Nathe: This bill has to do with the liability for the petroleum gas dealers. What it boils down to is it would harmless the petroleum gas dealers if the LP has been moved or modified by the owner not installed by the LP dealer.

Representative Boe: My question in the bill, I would like some assurance that I ask for some inspection, that they have to provide that inspection, I need it verified.

Representative Nathe: According to the testimony, they don't have to inspect it, is sounds like it's an industry standard that if they have a chance, they will go into house, that they will look over the system to make sure it's properly installed.

Chairman Keiser: Would it be appropriate to have an amendment that incorporates those 2 elements that if a customer requests an inspection of their system, it will be done and at no charge. The 2nd part, on the initiation of a contract, an inspection of system is required at no charge.

Representative Ruby: They could check the line for leaks, are they trained to work on the heating systems? Do they have to have a trained heating and cooling expert that is also their truck driver? It seems to be 2 different professions.

Mike Rud~Executive Director of ND Propane Gas Association: Some of our guys are certified, but I won't say everyone has someone on staff that is certified to inspect, some are just delivery people.

Representative Ruby: They can check for leaks or a regulator or don't they do that?

Mike Rud: Yes.

Representative Clark: Could we mandate a service at no cost?

Mike Rud: Our guys are in the \$35-\$50 range to come and inspect, doing it free, may be stretching it. I would have to take that back to them.

Representative Boe: We heard from one gentleman that he does it for free now. We are being asked to remove liability because of modification and somewhere along the line we have to make sure that the supplier has the opportunity to do this. He will get a lot more calls if it's at no cost.

Representative Nathe: Is this something that the companies could do when they fill the tank?

Mike Rud: If it was asked for by a customer, I don't think it will be a problem and they would do it at that time, free of charge, because they are on the site and it wouldn't be an extra trip.

Representative Nathe: How often do they go and refill a tank?

Mike Rud: Probably 4 to 5 times a year would be the average for a home owner.

Representative Nathe: I would think financially that it would make sense for them to do that versus leaving it as is.

Mike Rud: I would agree with that.

Chairman Keiser: They shouldn't be required to inspect the furnace, whoever installed the furnace should do that. What could these people inspect; the liability is outside the furnace?

Mike Rud: For the most part some of them are qualified to inspect everything but as far as inspecting a furnace that would be questionable.

Representative Amerman: However, in the bill they get immunity if it happens to a liquefied petroleum gas appliance. If I work with an appliance, I would have to get an inspection tag. You are going to have to have people who know all of this, would you agree?

Mike Rud: I agree with you, but they are going to check the line into the appliance and that would be the extent of that.

Representative Clark: Have there been some claims that brought this bill over?

Mike Rud: There are far and few between, but when they do, they are quite substantial.

Representative Nathe: As far as the inspection for your dealers, they would be responsible the gas pipeline and stops at the appliance?

Mike Rud: That's pretty much the case what our guys are experienced with.

Representative Nathe: As far as this bill is concerned that's what the bill covers.

Mike Rud: That would be correct.

Representative Boe: As it sits today, where does your liability end? You are liable for anything that is in the house right now. The idea was that if everything was inspected and ok, you will still be liable, right?

Mike Rud: That's correct.

Representative Boe: But, now we are differentiating where it hooks on the appliance. Everything needs to be inspected because where it leaks it will be a bomb.

Mike Rud: You are correct. We are trained in those areas but we are not all trained in the intricacies of a water heater, furnace or gas stove.

Representative Boe: We talked about an amendment that gives me relief that says, I want an inspection, are you ok with an amendment?

Mike Rud: I would be ok with the amendment but I don't know if our association would be ok with the free of charge. If we could work it in to a delivery process, then there would be some grounds we could work there.

Representative Boe: So you wanted some language that this request of inspection would coincide with a delivery?

Mike Rud: I think the language is fine and our guys would respond to that language.

Representative Sukut: If we were to do this and needing an inspection, but we are looking at the next time they fill it and he created a leak, where do we go then. Now we are sitting with a gas leak and that's like a time bomb. It really should be inspected promptly. How can we address the time frame?

Mike Rud: I think they will be more than willing to look at the site to check in a timely fashion.

Chairman Keiser: This bill reminds me of a bill yesterday on the floor in terms of strict and negligent liability, which went down. What currently exists is the dealers are assuming the 100% liability. What this bill does says, if the home or business owner manipulates the system without informing the supplier, then there is a leak, the bomb goes off, then suddenly the person responsible for that becomes negligent and the homeowner get the liability. Is that appropriate when it goes to the same bill we had yesterday? Should the people who caused the liability be responsible for the liability? This is the basic issue. If I were the homeowner and manipulated the system, I would be willing to pay for the inspection to transfer the liability back to the supplier, if we pass this bill.

Representative Boe: Along the lines of Representative Sukut, when does the liability transfer? Does it transfer when I make my phone call requesting the inspection or when the inspection actually has been done? With the 10 day time lapse in-between, where are we at?

Chairman Keiser: When the inspection is done and it transfers back to the propane dealer.

Representative Ruby: We are over thinking this bill. If I change the heater, I assume the liability. If I change that, why should they be liable?

Chairman Keiser: Further questions?

Representative N Johnson: Moves the amendment to change on line 19, vesting to venting.

Representative Amerman: Second.

Chairman Keiser: Further discussion.

Voice vote, motion carried.

Representative Ruby: Do pass as Amended.

Representative Sukut: Second.

Chairman Keiser: Further discussion?

Representative Amerman: Good point, if he has trouble with a propane furnace he calls the furnace man, furnace man is not in the business of handling petroleum, so if he comes out and still no inspection, is the furnace man also caught up in the lawsuit?

Chairman Keiser: Absolutely, they will list everyone in a lawsuit.

Representative Boe: I would like some amendment that assured us that the inspection would be preformed upon on request. I'm not going to support the Do Pass as Amended without the amendment.

Chairman Keiser: Further discussion.

Roll call was taken for a Do Pass as Amended on HB 1419 with 9 yeas, 2 nays, 3 absent and Representative Nathe is the carrier.

February 1, 2011

Y/C
2/1/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1419

Page 1, line 19, replace "vesting" with "venting"

Renumber accordingly

Date: Feb 1, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1419

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

Motion Made By Rep Johnson Seconded By Rep Amerman

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

line 19, vesting is venting

Date: Feb 1, 2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1419

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

Motion Made By Rep Ruby Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman		✓
Vice Chairman Kasper	AB		Representative Boe		✓
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	AB	
Representative N Johnson	✓				
Representative Kreun	AB				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 9 No 2

Absent 3

Floor Assignment Rep Nathe

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1419: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (9 YEAS, 2 NAYS, 3 ABSENT AND NOT VOTING). HB 1419 was placed
on the Sixth order on the calendar.

Page 1, line 19, replace "vesting" with "venting"

Renumber accordingly

2011 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1419

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1419
March 15, 2011
Job Number 15470

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to immunity from civil liability for liquefied petroleum gas dealers

Minutes:

Testimony Attached

Chairman Klein: Opened the hearing.

Representative Kasper: Said that this bill deals with the petroleum gas dealers and immunity from civil liability as far as how they perform their duties. He said currently if a dealer brings a propane tank to a person's home and leaves it in good standing and does all the things needed to properly install that piece of equipment and leaves the current law says if someone tampers with the tank and something happens the petroleum dealer still has liability.

Senator Laffen: You said there was something wrong with the existing law that says they are liable, is there existing law that says they are actually liable for that or are we just creating a new section that says they aren't?

Rep. Kasper: He said under current law they are liable.

Senator Andrist: Said that if the petroleum company installs the tank then someone tampers with the system inside the house but there was a problem with the tank and it was clear it was not the tampering that caused the problem, that wouldn't dismiss the liability from the installer would it?

Rep. Kasper: I would assume not.

Mike Rud, Executive Director of the North Dakota Propane Gas Association:
Testimony Attached (1).

Senator Schneider: Asked if this was a result of a law suit.

Mike: They are seeing different cases across the country and it is not the frequency of them as much as the expense. He said they are doing a great job with the training but

someone is looking for deep pockets in this process. He said the deep pockets are either the propane dealer or the insurance company.

Senator Schneider: Said that you mentioned that are state, propane dealers have to spend time and money on these suits, is there any evidence that this is happening in the state?

Mike: He said there are people who have been directly impacted.

Senator Schneider: Asked if he could give him a number.

Mike: Said that there were three or four in the process of being reviewed.

Senator Schneider: Asked if there has been a judgment against one of his people.

Mike: Yes there has been.

Senator Andrist: Asked if the other issue is liability insurance and if it would impact all the dealers.

Mike: He said it is tough to find people to insure a propane dealer and right now across the state and the nation there are only three or four.

Senator Nodland: Asked who regulates the industry now and what the standards are.

Mike: Said they are regulated by the national fire code. They also have rules in pamphlets that they use for the propane industry on how people are trained to do the certified work to maintain consumer safety.

Chairman Klein: Asked if everyone was required on the deliveries to be trained.

Mike: Everyone who is delivering propane needs to be trained.

Chairman Klein: Has to go through class?

Mike: Said that for insurance purposes you don't find many insurers that will take anybody on that does not have the certified and trained employees.

Chairman Klein: The issue here is if someone has tampered or modified their system we don't want to hold the delivery guy responsible for something he did not do?

Mike: That is correct.

Ken Astrup, General Manger of Dakota Plains Cooperative: Testimony Attached (2).

Senator Murphy: Said they he has heard concerns from people in the industry that not everyone has the same policies and is not doing due diligence.

Ken: He said there is no way of knowing if that is true.

Senator Andrist: He said that he hopes this is a standard for the industry and he has never had anyone tell him he couldn't fill his propane tank without checking his system. He said it would appear to him that not everyone is as careful as you are.

Ken: The national propane gas association along with our state agency has done a lot to try to inform the dealers of what their responsibilities are. He said there are numerous laws and federal regulations that they have to comply with, one is annually that have to send a letter out to everyone that they provide service to explaining the dangerous of propane and what they should do if they smell a leak. They also have to do regular checks of the regulators and the line going up to the facility. He said the concern comes in when someone wants to replace a heater and does the insulation himself and they don't get everything tight and there is a gas leak and they are held liable as the supplier of that product.

Steve Becher, Executive Director of Professional Insurance Agents of ND: Testimony Attached (3).

Senator Nodland: Asked about the propane tanks for gas grills.

Steve: He said that the people who take an elbow off the main line and put a valve on there going up to their grill, they don't have the dealer do that. He said what this bill would do if the dealer did something inside the house he would be liable and take care of it but if it was the consumer who made the changes the consumer would be held responsible.

Chairman Klein: Asked who would determine who was responsible.

Steve: Said that his understanding is that it would be the fire marshal.

Senator Schneider: Said that he fully supports the notion that if you didn't cause any injury you shouldn't be held liable. He asked if the dealer is unaware of the alteration and the alteration is a direct cause of the loss you would still have to potentially litigate the direct cause of the loss.

Steve: Absolutely unless there is a cut and dry case where the fire marshal said that he knows where it happened then they could walk away right away but there will be cases where it ends up in litigation.

Senator Andrist: Said that he wonders how active the insurance companies are in establishing rules for their insurance coverage.

Steve: He said absolutely and from an insurance companies stand point they give guidelines to their dealers but they have to rely on the dealer to do those things. There is no way the insurance company can go out and follow behind them to make sure they are following through with the recommendations. They do have strict guidelines.

Senator Andrist: Asked if there were immunity laws in place for natural gas.

Steve: He said he doesn't know if that is the case. He knows that there are industries out there that have immunity in certain cases.

Dale Beck, Dakota Ag Coop: He is in support of the bill. He spoke in regards to the natural gas issue. He said the natural gas company's deal under a different set of codes. They work under the national pipeline safety codes and the propane industry works under the national fire protection association 54 and 58. He said they are the adopted pamphlets by the North Dakota fire marshal's office and part of the code. There are codes that they work under. He said they can't control which dealers comply with these codes but they are not asking that those dealers be immune from liability. He said they are asking for the people who are doing it the right way. He said the average litigation cost is two million dollars.

Chairman Klein: Asked what the CETP, Certified Employee Training Program was.

Dale: He said in order to become a fully certified and trained employee it will take you three weeks of training with refresher training every three years.

Christopher Friez, North Dakota Grain Dealers Association: Testimony Attached (4).

Alan Alstad, ND Association of Justice: In opposition of the bill and he gave an example of what happened to him.

Rod Pagel, ND Association of Justice: Testimony Attached and Proposed Amendment. (5).

Senator Nodland: Asked if the amendments were trying to take the immunity from the propane and putting it to the person who is breaking the law.

Rod: Said absolutely not. He said the immunity provisions will still apply, it will still provide that if the propane dealer is reasonable in his actions and they have someone certified to look at the system and they go out there on an annual bases.

Senator Andrist: Said that he doesn't think that most of these provisions are ownerless but better than to put them in the code, he would like the insurance agency to have composed some of these conditions on the people for whom they write insurance. That is where he would like to see it done by the private sector because ultimately they are concerned about the safety of people.

Rod: He said he would hope that everyone is concerned. He said he doesn't doubt that the LP dealers in this room are responsible in how they handle their business. The problem is your going to have some individuals who won't be responsible. He said there needs to be something that would make sure everyone is responsible who is able to claim that immunity provision. He also said he doesn't believe this will save any litigation costs. This will come down to what was the direct cause of the loss.

Jim Chyle, Owner of Heartland Gas Company: Testimony and pamphlets and pictures attached (6). He talked about the services he offers to his customers.

Senator Larsen: Asked if he felt that he was liable if a regulator went bad that no one had modified, for a faulty part do you think you are liable for that.

Jim: No I am not responsible for that. He said the inspection does not cover manufacturer defects or internal workings of sealed combustion. If it is a problem with the regulator it goes back to the manufacturer.

Chairman Klein: Said that after he leaves the house and the home owner makes a modification and something happens this law is saying you are not liable. He asked if he feels comfortable that because of his inspection he will be off the hook.

Jim: Very much. He said if he did the inspection and the customer signed a document that says he is not to touch anything.

Senator Murphy: Asked if his concern that there are too many in your industry that are not doing this.

Jim: He said his biggest concern is there will be more accidents. He said they can police it themselves.

Senator Murphy: Stated that everyone is certified.

Jim: No one is requiring them to be certified.

Senator Murphy: So aren't you really concerned with that everyone isn't certified or licensed.

Rod: He said yes it would be nice but doesn't know how they would get there.

Chairman Klein: Closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1419
March 16, 2011
Job Number 15527

☐ Conference Committee

Committee Clerk Signature

Eva Luetelt

Explanation or reason for introduction of bill/resolution:

Relating to civil liability for liquefied petroleum gas dealers

Minutes:

Discussion

Chairman Klein: Discussion on House Bill 1419. He asked if they needed to gather any more information.

Senator Schneider: Said that he had spoke with Mike with providing that court case where there was a judgment. He said he doesn't know the scope of the problem. He said having a real life example would be good.

Senator Laffen: said he doesn't have his mind made up. He has asked the bill sponsor if there was a specific law that says they do have liability for that system. He was told that there is and he could not find it anywhere in the statute.

Senator Schneider: He said that they all owe a duty of reasonable care to each other, just walking down the street. He said that certainly someone who is installing propane accessories owe that duty as well, it is a tort based remedy. Said he wasn't sure if there was a statute which gives rise to tort liability in the state but it is a long established law that we all owe this duty to each of each other to reasonable care. You could obviously make someone immune from suit when the y don't exercise reasonable care, we can do that as a legislature but there is no statute that says you are liable under these circumstances. That is just something that would be determined by a judge.

Senator Laffen: He gave an example of a building he built and stated what he would be liable in the inside of the building for seven years. He said they carry insurance to protect them from that liability. If the owner made some modifications to the inside of the building that violated building code and it caused a problem they would win that every time. He said he is questioning the need for this, aren't there things we are liable for or not liable for. Do we try to put it all into code?

Senator Schneider: He said he doesn't think this bill changes much. If there is a massive explosion and someone made alterations there is going to be a very expensive battle of the

experts as to if that alteration caused the injury that resulted. You would have to do that under current law today. He said this provides immunity in name only.

Chairman Klein: Said he believes that Steve Becher from the insurance industry made the point he was looking for, nothing is going to change if there is a big explosion, the battle starts to who is liable. He said that for the insurance industry it provides another layer to help with giving coverage, a little bit of immunity.

Senator Schneider: Said that they will still get dragged in because you have to still find out if the alteration was a direct cause of the injury. He said from the public policy standpoint it is probably dangerous if propane sellers think they have immunity when they actually may not. He thinks they would relax a little bit.

Senator Nodland: Said that he thinks the bill is about the cost of insurance. He said Steve Becher had said the insurance costs are ten times higher than other flammable liquid dealers. That is what prompted most of this bill and to obtain it there are only four insurance companies that will insure these dealers.

Senator Andrist: She said if you are drawn into a lawsuit you have costs. If there is any doubt they will draw them into a lawsuit anyway. He said if it is clear that you have immunity if it doesn't prevent you from getting driven into a lawsuit it will help you get out of it a little quicker.

Senator Larsen: Said he has put in hundreds of washers and dryers and hot water heaters and there is not certification to do it. When he was told he couldn't light his own pilot light, there is no reason the propane dealer should be liable for me doing something in my house or other people's homes. He said to have them liable for the piping system or what is in the house is wrong.

Senator Schneider: He said that if you alter it, they wouldn't be liable under current law if the person's alteration is fifty percent or more of the cause of their own injury.

Senator Murphy: He said that is what Jim was saying if he does things right he won't have to pay. He said he knows a lot of people who want this bill. He didn't get any quotes saying this would lessen the insurance or even keep it even. He doesn't know if they think this is worth anything. He asked if they got any quotes from insurance people.

Chairman Klein: Said that Steve Becher from PIA, as an insurance guy seemed to imply that this is helpful to their industry. He was supportive of the bill.

Senator Schneider: He said a couple of points, if someone brings a frivolous lawsuit against you in North Dakota under rule eleven you are entitled to your attorney fees and costs. He said that Jim did a good job making that point. He said he has to pay malpractice insurance and if he had immunity from malpractice he wouldn't have to pay very much for insurance.

Senator Nodland: Said when you have an industry where you are down to four companies that provide insurance in your state, there is a problem with this industry and the price is

going to get prohibited where propane will get prohibited in price. He said they need to address that issue here in this committee.

Senator Andrist: He said everyone carries liability to protect themselves from their own negligence they are only asking to be responsible for their own negligence and not someone else's.

Senator Schneider: Said that under current law that is all they are responsible for.

Senator Andrist: Said that they are responsible for defending themselves and for paying their insurance premiums.

Senator Schneider: He said the aspect of insurance is important and they don't want people going out of business because of high insurance rates that is an important concern. He said that potentially licensing these guys or assuring they are all trained would certainly lower insurance cost and feels that is something that the committee could look at, if they are looking at reducing insurance premiums.

Senator Laffen: Said he finds it odd that you don't have to have a license to install gas piping.

Senator Larsen: Said that they do have training in that. He wasn't certified but he was trained. He made the comment that you can do things yourself but they just have to be inspected by the right professional.

Chairman Klein: Said they would wait on this and he closed the meeting.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1419
March 21, 2011
Job Number 15739

☐ Conference Committee.

Committee Clerk Signature

Eva Lubett

Explanation or reason for introduction of bill/resolution:

Relating to civil liability for liquefied petroleum gas dealers

Minutes:

Discussion, Handout and Vote

Chairman Klein: Opened the meeting on House Bill 1419. He said they would be getting some additional information from Dale Beck.

Senator Schneider: Said he was looking for a case that resulted in a two million dollar judgment and wanted to base his vote on what has actually happened in a court of law or on a settlement. He said he would like to read that and see if it addresses some of the problems identified by the proponents of the bill.

Chairman Klein: Asked if that later paragraph in there describe the issue.

Senator Schneider: Said that 11.6 million paid out in claims or any of those associated with injuries that arise directly from alterations that is what I want to see from a case. He said he doubts that you would see a case where injuries were directly caused by alterations that ended up in a substantial judgment against the propane dealer.

Mike Rud, North Dakota Propane Gas Association: Handout (1). He said he tried to get that information and the best he can do is the information that is in the handout.

Senator Schneider: Said he can't wrap his head around if the injury was not directly caused by alterations why would there be a settlement for two million dollars. He is not sure even this legislation would address something like this.

Mike: He said he thinks that case does point out what happened there in the case involving the little girl; it talks about the line that was left uncapped. That would be similar to what we are looking for coverage on here is a case like that, where the marketer was not at fault.

Senator Schneider: He said the question would be then if the marketer was not at fault why would there be a two million dollar settlement. That is very rare in North Dakota.

Mike: Said that goes to speak to the concerns we have in this issue, these folks are looking for deep pockets. He said they got the wholesaler for fifteen million dollars. So the two million pales in comparison to the fifteen million and all the other pockets they go after in these cases. There are people who specialize in going after propane cases where they think they might be able to put a case up against a marketer.

Senator Schneider: Said in rebuttal to that deep pockets have good attorneys typically and if there was no fault they would have not settle for two million dollars.

Senator Andrist: Said he can't see a down side to saying someone isn't responsible for someone else's negligence. He talked about other bills where there is no way they could of possibly had control over those loses.

Chairman Klein: Said that he forwarded Paul Munches letter where during the storm someone bought a tank, took it downstairs and installed it, the house blew up and his company was on the hook for selling them that tank. He said he doesn't know if they will get to the answers to the questions that Senator Schneider is asking.

Senator Schneider: He said that as long as everybody realizes there will still be a dispute about direct fault here. He said the insurance company or the plaintiff's attorney will still have to prove direct fault or direct cause. He said he is not sure this legislation does much beyond existing law.

Chairman Klein: He said it provides a statement to whether you are a propane dealer trying to get insurance for his company, the cost continue to go up and they pass those costs along.

Senator Schneider: He said he believes propane marketers or dealers should not be held liable where the direct result is because of an alteration but he doesn't believe they are now.

Senator Murphy: He said in regards to what Jim had said, some of these guys aren't certified and if they have the idea, if we pass this bill, that they are not liable they will get even laxer. That is the downside he sees.

Chairman Klein: Asked if everyone that delivers propane is certified.

Mike: Said he can't say that everybody is certified but it is almost impossible to get insured if you are not certified. He said there are not many carriers out there; it has gone down to four or five state wide that will even offer insurance. He said they have trained about three hundred and eighty people over the course of the last four or five years each year. He believes they are doing all they can to be on board and be prudent operators.

Chairman Klein: He commented about someone he knows getting trained and said everybody has a little bit of knowledge.

Mike: Said that most people if they are going to go out on a route, if they are going to be delivering propane they will ride in the truck for sixty days and watch how it is done and in

that time process they will have taken their basic training and principles for propane delivery as well as basic principles of propane itself and they will also have to take a hazmat course before they can deliver that propane by themselves they are going to need to be certified and that is what their training programs are for.

Senator Nodland: Moved a do pass on engrossed bill 1419.

Senator Larsen: Seconded the motion.

Senator Schneider: Stated that he was asking legislative counsel to draft an amendment at the request of Jim Chyle's but I don't think that will change the committee's consideration of this. He said that if there is any interest from the committee he would be happy to bring that down from legislative counsel. He explained what the amendment would do. It would add a third element. He said Jim's point being that there is no incentive to inspect these appliances to even see if they have been altered in an unsafe way.

Senator Andrist: Said he talked to him about that to, thought it was a good amendment at first but then thought who is responsible for that inspection if a guy buys from three or four suppliers. He said it doesn't make sense for them all to inspect it.

Senator Schneider: Said you wouldn't be on the hook for anything unless you delivered gas or made an alteration to the purchaser. So on your first contact with the customer you make that inspection and then you are clear for the duration. He said he does understand those concerns.

Senator Nodland: Asked who would do the inspection.

Senator Schneider: The propane seller, marketer, handler who wanted to claim immunity. He explains the process and how it would work.

Senator Nodland: Asked why this would make it stronger.

Senator Schneider: Said it would make it stronger only because it would encourage individuals to do that inspection. He said right now you don't have to inspect at all. If someone has altered their propane devise you can just let it be and still claim immunity as long as though alterations were made without the knowledge or consent of the petroleum dealer, handler or seller. He stated that if you had performed an inspection in the last five years you would be good to go.

Senator Andrist: Asked if you could be sued on the bases of that inspection.

Senator Schneider: Said you could be sued on the bases of anything but if the dealer has inspected the appliance and meets the other two elements, he is free of liability for the next five years.

Chairman Klein: He said they need to establish a whole new inspection agency because that isn't happening out there. He said he is looking for the price and doesn't want them to

come into his house and he is satisfied that everything has been hooked up properly. He said they have had this discussion about the five years.

Senator Murphy: He said he is concerned about the wording on the amendment and likes the idea of the five years. He knows a lot don't and some are doing it. He feels they should be responsible for the connections to the appliances and not the appliances themselves, as the amendment seems to intimate.

Chairman Klein: He said their responsibility ends at the tank.

Senator Schneider: He would think all the people that testified would do that and this encourages the others to do the right thing. He thinks that there are some that wouldn't inspect.

Senator Laffen: Said he doesn't believe they would fill a tank when they see something is wrong. This bill just gives them immunity from something they didn't do. He said he doesn't think they should be responsible for something someone else is doing to their system, doesn't feel that five years even covers it, anybody could do anything inside of five years in their house.

Senator Nodland: Said that there is a motion on the floor and call for a question.

Chairman Klein: Said that a question has been called on a do pass on engrossed House Bill 1419.

Roll Call Vote: Yes-6 No-1

Senator Nodland to carry the bill

Date: 3/21/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. Engrossed HB 1419

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Nodland Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider		✓
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Nodland

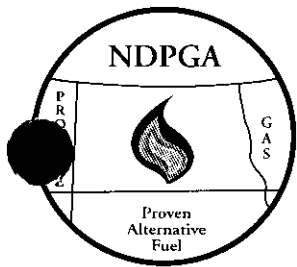
If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1419, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1419 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1419



North Dakota Propane Gas Association
1025 North 3rd Street • PO Box 1956
Bismarck, ND 58502 • www.ndpropane.org
701-223-3370 Fax 701-223-5004

Testimony HB 1419
January 25, 2011 – House IBL

Chairman Keiser and members of the Committee:

For the record, my name is Mike Rud. I'm the Executive Director of the North Dakota Propane Gas Association. NDPGA represents over 100 propane retailers and another 100 propane equipment vendors from across the state and Upper Midwest. On behalf of our association, I'm here urging you to recommend a "DO PASS" on HB 1419.

The idea of being guilty until proven innocent doesn't really have much of a ring to it when you live in this great nation and state we call home. However, for years now, this is the spot many propane marketers have found themselves in when a mishap involving the product they sell and service occurs. A "DO PASS" recommendation on HB 1419 will go a long way towards changing this scenario by doing away with uncalled for lawsuits and court cases that needlessly cost our state's propane dealers time and money.

HB 1419 is a very simple bill. HB 1419 has several goals:

- It takes the propane marketer out of a lawsuit if the propane system was modified without his knowledge and the direct cause of the loss and/or damages is the modification or alteration.
- The bill does not require consumers to notify the propane dealer when modifications or repairs are made.
- Farmers and home improvement enthusiasts can still do what they wish if they feel capable of their skills. The bill does not prevent that, it simply says the dealer is not liable if the modifications cause problems.

Seventeen other states currently have limited liability laws protecting propane dealers. As former state representative Francis Wald, who appeared in front of House IBL committees many times on behalf of business was so fond of saying, "If they weren't responsible for breaking it, they shouldn't have to pay to fix it." That sentiment sums up the purpose of HB 1419.

Again, NDPGA members urge a "DO PASS" on HB 1419.

Thank you for your time and consideration.

States with Limited Liability Legislation

As of April 2008

- Alabama
- Arizona
- Arkansas
- Colorado
- Georgia
- Iowa
- Kansas
- Kentucky
- Louisiana
- Missouri
- Nebraska
- New Jersey
- North Carolina
- South Dakota
- Tennessee
- Texas
- Utah

Testimony 2
1/25/11

Testimony on HB 1419

Chairman Keiser and members of the committee. My name is Ken Astrup. I currently serve as General Manager of Dakota Plains Cooperative, headquartered in Valley City. I appear here today, in support of HB 1419.

Our cooperative does a large volume of business in propane. We have an excellent safety record. We have a policy that says we will not take on any new propane customers, unless we are allowed to do an inspection of the propane installation, including the line and hook ups in the house or building. If we are denied the opportunity to do the inspection, we refuse to provide service.

We have employees that are well trained to do the installation of a new propane tank and line. Once the installation has been completed, we annually send out a letter to the customer, reminding them of the dangers of propane and what they should do if they smell propane or suspect they have a leak.

We regularly do the inspection and replacement of regulators as the law requires.

We can do everything possible to ensure the installation was done correctly and everything is functioning properly.

Yet the property owner can make changes to the system, inside the building and unless they notify us, we have no idea they have altered the properly installed system.

As suppliers, we continue to fill the tank, check the line to the building, & replace regulators. Doing everything the law requires to make sure the installation remains safe.

Yet, unknown to us, the owner has made changes to the system, that are

unsafe and can cause a fire or explosion. And when it does occur, we, as suppliers are told the accident was our fault.

People say, that is why we carry insurance. Yes, it is, but ultimately, it is the customer that has to pay that increased insurance cost.

With this bill, we are asking that the consumer that made the un-approved changes to the system and failed to notify the supplier of those changes, so we have the chance to correct them, be held liable for their actions.

I urge you to support HB 1419.

Ken Astrup, General Manager
Dakota Plains Cooperative

Testimony 3
1/25/11

Testimony for HB 1419 – ND House IBL Committee

Chairman Keiser and members of the House Industry, Business, and Labor Committee for the record my name is Steve Becher and I am Executive Director of the Professional Insurance Agents of ND. PIA of ND represents over 300 main street insurance agencies with over 1000 agents across the state of North Dakota. I am here representing our association lending support and asking for a "Do Pass" recommendation on House Bill **1419**.

LPG dealers are put in a difficult position in that they are delivering a highly volatile product that requires a complete understanding of the safety features of the equipment used to store and disperse the product and once they leave the delivery site they have no control over modifications or repairs to the system made by the customer or a third party. When there is a claim, the LPG dealer is immediately pulled in even when the loss is caused by modifications or repairs that were not completed by the dealer. The opponents of this bill will say that it will be worked out by the courts system, but the LPG dealer will still incur costs with the time and effort required to defend a lawsuit. The LPG dealer's insurance company will also incur costs sometimes into the tens of thousands of dollars in the defense of these claims even when it is obvious that the loss was caused by the actions of others. These costs are then passed on to the dealers through the insurance premiums that they pay and eventually to the consumer through the price of fuel.

I recently spoke with a ND insurance company that is one of the main writers of LPG insurance and asked them about premiums compared to other flammable products as well as availability of coverage in the market. I was told that there are only 4 companies that are active in writing LPG accounts due to the volatility of the product and the severity of claims. Most companies also have strict underwriting guidelines on whether or not they will write an LPG dealer such as limited number of gallons sold, certain percentage of LPG sales in relation to other products, and many loss control inspection requirements for the dealer.

The insurance companies, however, have no way to inspect any modifications or repairs made by the customer or third party and are made to incur defense costs for the LPG dealer when the loss occurs. According to the insurance company underwriter that I spoke to, all of these factors together make the product liability premiums for an LPG dealer about 10 times the premiums for other flammable liquid dealers such as gas or fuel oil.

LPG dealers have enough risk in their businesses with the volatility of the product they sell, the strict certification training they provide for their employees, and the safety measures they employ to protect their customers without the added risk of incurring costs for losses that totally beyond their control. In the interest of fairness, I would encourage a “Do Pass” recommendation on HB **1419**.

Testimony 4
1/25/11

Testimony for HB 1419

Chairman Keiser and members of the House Industry Business & Labor Committee, my name is Evan Mandigo and I am the State Executive for the North Dakota Association of Independent Insurance Agents.


I am here today to testify in favor of House Bill 1419. It is a simpler version of similar legislation introduced in the 2009 session dealing with the same subject. Our Association supported the bill in the 2009 session and is pleased to do so again.

This bill is about being responsible for your own actions. I live in an area just outside Bismarck served by a local propane dealer and I am grateful they are around on the rare occasion something needs fixing. Part of the cost of supplying propane for my home's heating needs is their expertise and knowledge about the installation of my system. I expect them to be responsible if they repair something incorrectly because the consequence of a mistake on their part can be dramatic.

I would never attempt to alter, modify, or repair the system because I depend on their expertise and I know less than nothing about liquefied petroleum gas fuel systems. I understand some customers feel they know enough to attempt to safely alter, modify, or repair their propane system. Under current statute, those folks now can hold the dealer responsible for civil liability even if the dealer knew nothing about nor consented to the changes that could lead directly to an event hurts someone or damages property.

Whether these customers are qualified to safely make the changes is not the subject of the bill. They can continue to make the changes, but the liquefied petroleum dealers want immunity from civil liability if the changes cause an event. I think that is a reasonable request. They should not be held responsible for changes they knew nothing about nor obviously had no chance to examine to be sure the installation remained in compliance with all relevant code requirements.

Mr. Chairman and members of the committee, this is a narrowly crafted bill designed to protect the liquid petroleum gas dealers from unquantifiable liabilities created by unknown modifications done without their knowledge by their customers. As I indicted earlier, this bill is about personal responsibility. If you want to change a propane system and that change causes damage, don't expect your propane dealer to be responsible. Propane dealers invest heavily in safe practices and equipment to do their best to prevent accidents. Folks who modify their systems for unintended and unknown uses do not. They should not enjoy the



current almost absolute liability imposed on liquid petroleum gas dealers but rather be responsible for their own actions.

Chairman Keiser and members of the committee, for these reasons we urge a do pass recommendation from the House Industry Business and Labor Committee and I will be happy to answer your questions.

TESTIMONY ON HB 1419
HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

January 25, 2011

Presented by Christopher Friez, on behalf of the
North Dakota Grain Dealers Association

Good afternoon Mr. Chairman and members of the Committee. My name is Christopher Friez from the Crowley Fleck law firm and I'm here on behalf of the North Dakota Grain Dealers Association.

The North Dakota Grain Dealers association is in support of HB 1419.

The Grain Dealers feel that it is common sense that an innocent supplier of a legal product should not be held liable for the negligent acts of another after the product is sold.

We're told by an agent who writes coverage on many ND grain elevators that some insurance carriers automatically charge an extra \$5000 premium for a business handling LP gas, and that there is a \$25,000 LP deductible for bodily injury or property damage. These costs and liabilities discourage businesses from even handling the product for their customers. We're not saying HB 1419 will eliminate all of that, but it would decrease exposure for the carrier and that can only help with the premium and deductible challenges.

On the back side of this testimony is a Resolution adopted by the North Dakota Grain Dealers Association at their convention held on January 18, 2011 in Fargo. In sum, the resolution provides that the Grain Dealers Association supports legislation, such as HB 1419, because it is unreasonable to hold an LP gas dealer responsible when the dealer has no control over the modification and repair to equipment, which is done without the dealer's knowledge and consent, after LP gas equipment leaves the dealer and is in the hands of the user.

The North Dakota Grain Dealers Association stands in support of HB 1419 and urges a Do Pass.

Thank you.

Resolution on LP gas dealer liability
January 18, 2011 – NDGDA convention in Fargo

Whereas, after LP gas equipment leaves the LP gas dealer and is in the hands of the consumer/user the dealer has no control over modification or repair to the equipment done without the dealer's knowledge and consent, and

Whereas, legislation is being proposed to relieve the dealer of civil liability for accidents caused by such modifications and repair beyond his control, and

Whereas, it is unreasonable to hold a dealer responsible in such situations,

Therefore Be it Resolved the North Dakota Grain Dealers Association supports the legislation to relieve the LP gas dealer of civil liability.

*
Testimony 6
1/25/11

Testimony in Opposition to House Bill No. 1419

Respectfully Submitted by:

Rodney E. Pagel
Pagel Weikum, PLLP
1715 Burnt Boat Drive
Madison Suite
Bismarck, ND 58503
701-250-1369

Mr. Chairman and members of the Committee:

Thank you for allowing me to speak with you this morning. I am an attorney from Bismarck and I have been practicing in North Dakota for eighteen (18) years. I am here in opposition to House Bill No. 1419

North Dakota law both statutory and through the use of jury instructions already addresses the issues that House Bill No. 1419 attempts to address. Attached for your convenience is a sample of a few of the North Dakota Pattern Jury Instructions dealing with these issues:

- 1) Fault
- 2) Proximate Cause
- 3) Comparative Fault
- 4) Assumption of Risk

The statutes and the jury instructions provide an appropriate framework within which the Courts can determine responsibility in all cases, including matter involving liquefied petroleum gas.

This bill provides immunity even if the dealer knew about the alternation and kept filling the tank; even though they knew of the alternation and possible problem. The proposed legislation provides no relief for thousands of people who purchase homes ever year heated by LP Gas and who do not have the expertise to understand what modifications have, or have not been, made by prior owners. The persons who are in the best position to be aware of these inappropriate modifications are the dealers themselves.

Last, I would suggest that if we are going to implement immunity, should we also not implement strict liability? If there was no alternation at all and there is an incident which occurs, should not the LP dealer be strictly liability for any and all damages which occurred? Why indeed are businesses given the benefit over citizens?

I would ask that you vote "no" on House Bill No. 1419.

Thank you again for your time. If you have any questions, please feel free to contact me.

Definition of "Fault"

2000- Tort Liability

C - 2.80

The term "fault" as used in these instructions means [strict liability for product defect] [breach of warranty] [negligence] [assumption of risk] [misuse of a product for which the Defendant otherwise would be liable] [dram shop liability] [failure to exercise reasonable care to avoid an injury or to mitigate damages].

NDCC 32-03.2-01, NDCC 32-03.2-03 (7/8/87 - 4/30/93)

Proximate Cause

2008- Tort Liability

C - 2.15

A proximate cause is a cause which, in natural and continuous sequence, produces the injury, and without which, the injury would not have occurred. It is a cause which had a substantial part in bringing about the injury either immediately or through events which follow one another.

[There may be more than one proximate cause of the injury. The fault of two or more persons may contribute to cause the injury, and in such case, each person's fault is regarded as a proximate cause.]

Beilke by Beilke v. Coryell, 524 NW2d 607 (ND 1994)

Andrews v. O'Hearn, 387 NW2d 716 (ND 1986)

Knorr v. K-Mart Corp., 300 NW2d 47 (ND 1980)

Froemke v. Otter Tail Power Co., 276 NW 146 (ND 1937)

Comparative Fault
2002- Tort Liability

C - 2.82

You will return a special verdict in which you will make special findings of fact determining:

- 1) who was at fault, if anyone;
- 2) whether such fault was a proximate cause of damages;
- 3) the respective percentages of fault allocated to the Defendant[s], the Plaintiff, or anyone else who contributed to proximately cause any damages;
- 4) the amount of Plaintiff's [or Defendant's[s']] damages without reduction for fault.

[Any damages awarded will be reduced by any percentage of fault allocated to the Plaintiff. However, if you allocate 50% or more of fault to the Plaintiff, the Plaintiff will not recover any damages.]

The court will reduce the damages by any percentage of fault allocated to the Plaintiff. You are not to reduce any damage amounts.

This instruction is not meant to suggest that you should find anyone at fault. It is to explain the relationship between the allocation of fault and damages.

NDCC 32-03.2-02

Sollin v. Wangler, 2001 ND 104, 627 N.W.2d 159

Assumption of Risk

2002- Tort Liability

C - 2.75

A person assumes the risk of [injury] [loss] if the person 1) has actual knowledge of a risk of [injury] [loss], 2) has freedom of choice to avoid the risk, 3) voluntarily encounters the risk, and 4) [injury] [loss] is proximately caused by the encounter. If you find that a person has assumed the risk of [injury] [loss] you may consider that as evidence of fault.

NDCC 32-03.2-02

Rodenberg v. Fargo-Moorhead Young Men's Christian Ass'n, 2001 ND 139, 632 NW2d 407

Spieker v. Westgo, Inc., 479 NW2d 837 (ND 1992)

Olson v. Chesterton, 256 NW2d 530 (ND 1977)

Testimony 7
1/25/11

Heartland Gas Company
13209 Highway 17
Park River, ND 58270-9603
Phone 701-284-7480 Fax 701-284-7492
Email: heartlandgas@polarcomm.com

Jim Chyle, Owner of Heartland Gas Company, Park River, North Dakota
In business for 24 years

With this legislation the propane company is not responsible for anything inside the home.

So who is responsible? The furnace man, the plumber for installing the water heater, the department store for selling the gas range and gas clothes dryer?

No, these people all deal in the individual parts of the gas system and have very little knowledge of gas code and in many instances haven't even read the installation manual.

Who is the expert for the complete gas system? It should be the gas supplier. If he has time to do it, many companies when winter is over the propane man is hauling fertilizer, diesel fuel or in the tire shop. Propane should be a full time position.

The gas supplier is trained to not only deliver propane but also trained to:

- Inspect the gas system in the home (make sure the system is safe and efficient)
- Perform a GAS check (the industry standard evaluation)
- Take pictures of entire gas system
- Instruct and educate the homeowner on the safety of the gas system in their home and if any changes are made the gas company must be notified
- Continually have a relationship with the customer via safety brochures, decals, newsletters, gas bills, websites, etc. All of these forms of safety media all contain

information on the importance of having a trained professional for all service and modifications to the gas system.

- Company must establish what they feel is a reasonable amount of time to repeat inspection my company is comfortable with 5 years.
and
- Most importantly, the propane supplier has the ability to interrupt the gas supply when the system is not in compliance with current gas codes and safety standards

Propane can be a dangerous product, but if the suppliers take responsibility for their work and make sure the system is safe there is no reason for this piece of legislation. We will never eliminate all lawsuits, nor should we. We can hope that Attorneys, Insurance Companies, Judges and Juries are all made up of reasonable people; if a propane company is liable they should be sued.

This bill protects approximately 100 propane companies in the State of North Dakota.

Who is protecting the 640,000 residents?

RESIDENTIAL



GAS APPLIANCE SYSTEM CHECK

© NPGA 1985
#5610

Number _____

Name _____

Address _____

Company/Location _____

Call Date _____ Date ☒ Requested _____

Call Taker _____

Name _____

Instructions: _____

Telephone: Office _____ Home _____

Performance Check: Item	Central Heating 1	Space Heater 2	Water Heater 3	Range 4	Clothes Dryer 5	6	7
Manufacturer							
Model No.							
Serial No.							
Fuel							
BTU	000	000	000	N/A	N/A	000	000
Age							
Manual Shutoff (Installed/Existing)							
Sediment Trap (Installed/Existing)							
Control Mfr/Model No.							
Pilot(s)							
Ignition System(s) Mfr/Model No.							
Thermostat(s) Mfr/Model No.							
Pilot Safety System							
Burner(s)							
Combustion Chamber				N/A	N/A		
Filters			N/A	N/A			
Motor/Blower/Pump			N/A	N/A			
Return Air			N/A	N/A	N/A		
venting							
Combustion Air							
Red Tag (Removed from Service)							

TANK/CYLINDER (Add'l Serial #'s):

SIZE	SERIAL NUMBER	MFR.	MFR. DATE	LAST TEST DATE	LOCATION	TANK COND.	PAINT COND.	PIGTAIL COND.	FITTINGS COND.	GAUGE COND.	RELIEF VALVE			FITTINGS LEAK TEST
											COND.	DATE	CAP	

PIPING/REGULATOR OPERATION/CONDITION

SINGLE STAGE	PIPING		REGULATOR DATE CODE	REGULATOR CONDITION	MFR.	MODEL	REG. VENT POSITION	HOW PROTECTED	FLOW PRESSURE	LOCK UP PRESSURE
	MATERIAL	SIZE								
									IN. WC	IN. WC
TWO STAGE	1ST								PSIG	PSIG
	2ND								IN. WC	IN. WC

SYSTEM LEAK TEST

SINGLE STAGE		START PRESSURE	END PRESSURE	TIME HELD	SYSTEM OK
		(INCHES W.C.)	(INCHES W.C.)		
TWO STAGE	1ST	(PSIG)	(PSIG)		
	2ND	(INCHES W.C.)	(INCHES W.C.)		

Comments: _____

Reference Invoice No. _____ Date _____ (Mo., Day, Yr.)

I, _____

(Please Print)

Certify that I have completed the System Check as prescribed.

Performed Odor Test ☐ YesPerformed Pressure Test ☐ YesPlaced Safety Decal ☐ YesLeft Consumer Safety Info ☐ Yes

and material

- Know how to turn off gas in case of emergency.
- Have smelled propane and can detect its odor.
- Have received the Consumer Safety Information and material.
- Had gas system deficiencies and/or corrections, if any, clearly explained to me.
- Am satisfied with the service work performed.

Customer's Signature

Service Technician's Signature

CERTIFIED METER DELIVERY

N^o 022228

PREVIOUS SALE NO. CODE GALLON READING - START 10ths

YOUR SALE NO. GALLON READING-FINISH

FLAMMABLE COMPRESSED - TEMPERATURE COMPENSATED AT 60° F.

Heartland Gas Company

13209 Highway 17
Park River, ND 58270-9603
(701) 284-7480

C.O.D. ☐ CHARGE ☐ DATE _____

SOLD TO _____

ADDRESS _____

CITY _____

PRODUCT	GALLONS	PRICE	AMOUNT
L.P. GAS			

BEGINNING %	ENDING %	ODORIZATION VERIFIED BY	SALES TAX

TANK NO. _____

THIS IS YOUR INVOICE

TOTAL →

RECEIVED
ABOVE GALLONS

CUSTOMER SIGNATURE

RECEIVED
PAYMENT \$ ☐ CASH
☐ CHECK DRIVER

LIQUEFIED PETROLEUM GAS
2.1/FLAMMABLE GAS/UN 1075 (PROPANE NON-CORROSIVE)
SEE REVERSE SIDE FOR PROPANE SAFETY INFORMATION

IMPORTANT INFORMATION ON PROPANE SAFETY

YOU GET CONVENIENCES AND ENERGY COST SAVINGS WITH PROPANE . . .

That's why millions of homes, farms and businesses choose it for heating, water heating, motor fuel and other uses.

And, as a valued customer, we want you to know how to properly use propane. It's a flammable gas, a fuel that may explode if not properly handled.

FOR YOUR SAFETY, PROPANE HAS AN ODOR ADDED SO YOU CAN DETECT LEAKS.

You and each member of your family must know the smell of propane. Ask your serviceman to demonstrate its odor. If anyone in your household cannot smell propane, call us immediately. Propane is heavier than air and will collect at floor level. Carefully smell at floor level in low spots to check for propane.

WHAT TO DO IF YOU SMELL GAS OR SUSPECT A LEAK.

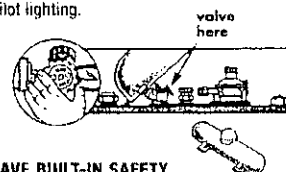
1. Put out all smoking materials and any other open flames.
2. Do not operate any appliances, switches or thermostats.
3. Get everyone outside and away from gas equipment.
4. Shut off the gas supply, using the shutoff valve at the tank or cylinder.
5. Call your propane supplier - use your neighbor's phone - if gas smell is in the house.
6. Stay outside and leave the gas off until the leak has been found and fixed.

RELIGHTING YOUR PILOTS.

We strongly recommend that for safety reasons, you call our qualified technician to relight your pilots. However, if you relight the pilots yourself:

- Turn all appliance controls and manual shut-off valves to the "OFF" position.
- Slowly open the tank shut-off valve.
- Carefully smell for the presence of propane at floor level and low spots before attempting to relight the pilot.
- If gas is detected - STOP - See "What To Do If You Smell Gas" above.
- Follow the manufacturer's instructions for pilot lighting.

To close the valve, turn wheelhandle clockwise to the right. If you are unable to close the valve, advise your propane service representative immediately.



YOUR PROPANE SYSTEM AND APPLIANCES HAVE BUILT-IN SAFETY

FEATURES . . . to help keep them working.

- Don't allow unqualified personnel to service your propane system or appliance.
- Don't tamper with gas controls on appliances.
- Don't let your system run out of propane.
- Have wet or flooded appliances and controls serviced immediately.
- Understand that propane odor can fade or be covered up by other strong odors.
- Do not light pilot light in areas where there are strong odors - completely ventilate the area first.
- Call a qualified technician to relight pilots or carefully follow the equipment manufacturer's instructions.
- Repeated pilot outages could indicate a hazardous condition - Don't attempt to relight the pilot call your serviceman.

IF YOU RUN OUT OF GAS

- Turn off all appliance control valves.
- Turn off the propane service valve on the propane tank.
- Call your propane supplier and advise him that you are "OUT OF GAS". Your supplier will arrange to meet you for a safety leak test inspection and propane delivery.
- Don't attempt to turn the gas back on yourself. Your propane supplier must first conduct a safety leak test before he can refill your tank. When you schedule your propane delivery, be sure you will be at home, so the propane supplier can conduct a safety leak test, check your appliances and the gas system and then re-light your appliances to assure that they are operating properly and are leak free.

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.

⚠ WARNING



DO NOT OPEN CONTAINER SHUT-OFF VALVE!

If this valve is turned off for any reason, the National Fuel Gas Code (NFPA 54) requires a leak check of the system serviced by the container at the time the gas valve is turned back on.

The leak check must be conducted by a qualified technician.

DO NOT ATTEMPT TO OPEN THE VALVE YOURSELF! Failure to follow this warning may result in the ignition of leaking gas, causing serious and potentially fatal injury, fire, or explosion.

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carbon monoxide safety information

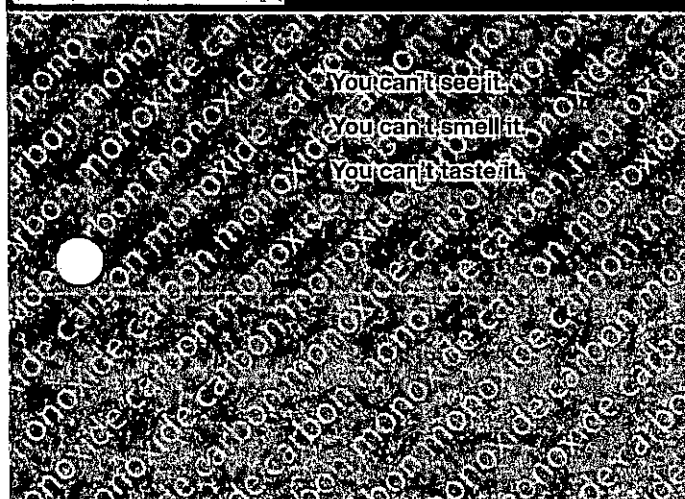
PRO

PROPANE
EXCEPTIONAL ENERGY®

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Spend a few moments
for your family's safety.





Carbon Monoxide

- > colorless
- > odorless
- > tasteless
- > toxic
- > headache
- > dizziness
- > fatigue
- > shortness of breath
- > nausea

Heartland Gas Company

13209 Highway 17
Park River, ND 58270
701-284-7480

If you suspect carbon monoxide is present,

ACT IMMEDIATELY!



If you or a family member shows physical symptoms of carbon monoxide poisoning, **get everyone out of the building and CALL 911 OR YOUR LOCAL FIRE DEPARTMENT.**

If it is safe to do so, open windows to allow entry of fresh air, and turn off any appliances you suspect may be releasing the carbon monoxide.



If no one has physical symptoms of carbon monoxide poisoning, but you suspect that carbon monoxide is present, **call your propane retailer or a qualified service technician** to check carbon monoxide levels and your propane equipment.

IMPORTANT CONTACTS

POLICE

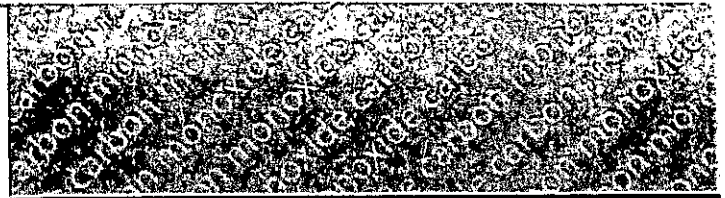
FIRE DEPARTMENT

PROPANE RETAILER

SERVICE TECHNICIAN



carbon monoxide safety information



Carbon Monoxide Can Be Deadly!



Every year, hundreds of Americans die from unintentional carbon monoxide poisoning and thousands seek medical attention. Some of these fatalities are caused by improper operation of appliances.

Everyone in your family is at risk if dangerous levels of carbon monoxide are present in your home. Unborn babies, infants, those with medical conditions, and the elderly are the most susceptible to its effects. Carbon monoxide can strike quickly...people who are sleeping can die from carbon monoxide poisoning before ever experiencing symptoms.

Please take a few minutes to read this brochure to learn about the dangers of carbon monoxide and simple precautions you can take to reduce the risk of accidental poisoning. Share this information with your family members to help ensure that everyone stays safe.

Carbon Monoxide Facts



WHAT IS CARBON MONOXIDE?

Carbon monoxide is a colorless, odorless, tasteless, and toxic gas. Smoking a cigarette; running an internal combustion engine; and burning candles, fuel oil, wood, kerosene, natural gas, and propane may produce carbon monoxide. High levels of carbon monoxide can be produced when fuels are burned incompletely.

WHERE DO HIGH LEVELS OF CARBON MONOXIDE COME FROM?

High levels of carbon monoxide can be generated by internal combustion engines or by appliances that are defective or improperly installed or maintained. Carbon monoxide can also enter a home if an appliance venting system or chimney becomes blocked (for example, by a bird's nest).

CARBON MONOXIDE CAN BE DEADLY!

High levels of carbon monoxide can make you dizzy, give you headaches, or cause flu-like symptoms (see "Poisoning Symptoms" on reverse side). In extreme cases, high levels of or extended exposure to carbon monoxide can result in brain damage or death. Young children; the elderly; people with heart disease; and those under the influence of alcohol, drugs, or medication are particularly susceptible to carbon monoxide poisoning.



Reduce the Risk of Carbon Monoxide Poisoning



The best way to reduce the risk of carbon monoxide poisoning is to have a qualified service technician check your appliances and venting systems annually, preferably before the heating season begins. Other important measures include:



- Keep chimneys, flues, and vents free of debris such as leaves and animal nests.
- Keep chimneys, flues, and vents free of snow and ice.
- Consider installing a UL-listed carbon monoxide detector on every level of your home.
- Never use a gas oven or range-top burners to provide space heating.
- Never use portable heaters indoors, unless they are designed and approved for indoor use.
- Never use a barbecue grill (propane or charcoal) indoors for cooking or heating.
- Regularly check your appliance exhaust vents for blockage.
- Always open the chimney flue damper when you use your fireplace.
- Always follow the manufacturer's instructions for placement and use of vent-free appliances, including fireplaces and logs.
- Never run an internal combustion engine such as your car, lawn mower, generator, or snow blower in enclosed areas such as your garage.



Carbon Monoxide Detectors Can Improve Safety



Carbon monoxide detectors are designed to sound an alarm when they sense excessive levels of carbon monoxide in the air. For an extra measure of safety, we recommend that you consider installing a UL-listed carbon monoxide detector on each level of your home. Be sure to follow the manufacturer's instructions regarding installation, location, and maintenance.

Some Signs of Improper Appliance Operation That Can Generate High Carbon Monoxide Levels:

- Sooting, especially on appliances, vents, and warm air registers
- Unfamiliar or burning odor
- Increased moisture inside of windows



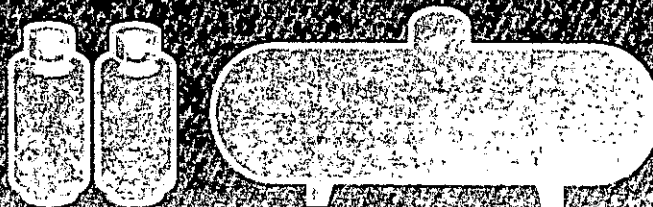
IMPORTANT PROPANE SAFETY INFORMATION

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Important Propane Safety Information

for you and your family



Please read and follow the safety rules in this brochure. Share this information with your family to help keep everyone safe and to reduce the risk of serious and potentially fatal injury, fire, or explosion.

PROPANE
EXCEPTIONAL ENERGY®



LIGHTING PILOT LIGHTS

IF A PILOT LIGHT REPEATEDLY GOES OUT or is very difficult to light, there may be a safety problem. **DO NOT** try to fix the problem yourself. It is strongly recommended that only a **QUALIFIED SERVICE TECHNICIAN** light any pilot light that has gone out.

YOU ARE TAKING THE RISK of starting a fire or an explosion if you light a pilot light yourself. Carefully follow all of the manufacturer's instructions and warnings concerning the appliance before attempting to light the pilot.



APPLIANCE MAINTENANCE

LEAVE IT TO THE EXPERTS. Only a qualified service technician has the training to install, inspect, service, maintain, and repair your appliances. Have your appliances and propane system inspected just before the start of each heating season.

HELP YOUR APPLIANCES "BREATHE." Check the vents of your appliances to be sure that flue gases can flow easily to the outdoors; clear away any insect or bird nests or other debris. Also, clear the area around your appliances so plenty of air can reach the burner for proper combustion.

DO NOT TRY TO MODIFY OR REPAIR valves, regulators, connectors, controls, or other appliance and cylinder/tank parts. Doing so creates the risk of a gas leak that can result in property damage, serious injury, or death.

HAVE OLDER APPLIANCE CONNECTORS INSPECTED. Certain older appliance connectors may crack or break, causing a gas leak. If you have an appliance that is more than 20 years old, have a qualified service technician inspect the connector. Do not do this yourself, as movement of the appliance might damage the connector and cause a leak.



FLAMMABLE VAPORS ARE A SAFETY HAZARD. The pilot light on your propane appliance can ignite vapors from gasoline, paint thinners, and other flammable liquids. Be sure to store and use flammable liquids outdoors or in an area of the building containing no propane appliances.



DON'T RISK IT! If you cannot operate any part of your propane system, or if you think an appliance or other device is not working right, call your propane retailer or a qualified service technician for assistance.



RUNNING OUT OF GAS

DON'T RUN OUT OF GAS. SERIOUS SAFETY HAZARDS, INCLUDING FIRE OR EXPLOSION, CAN RESULT.

- If an appliance valve or a gas line is left open, a leak could occur when the system is recharged with propane.
- If your propane tank runs out of gas, any pilot lights on your appliances will go out. This can be extremely dangerous.
- **A LEAK CHECK IS REQUIRED.** In many states, a propane retailer or a qualified service technician must perform a leak check of your propane system before turning on the gas.

IMPORTANT CONTACTS

POLICE:

FIRE DEPARTMENT:

Heartland Gas Company

13209 Highway 17
Park River, ND 58270-9603
701-284-7480

For more information, please visit:
www.usepropane.com

IF YOU SMELL GAS



1. **NO FLAMES OR SPARKS!** Immediately put out all smoking materials and other open flames. Do not operate lights, appliances, telephones, or cell phones. Flames or sparks from these sources can trigger an explosion or a fire.



2. **LEAVE THE AREA IMMEDIATELY!** Get everyone out of the building or area where you suspect gas is leaking.



3. **SHUT OFF THE GAS.** Turn off the main gas supply valve on your propane tank if it is safe to do so. To close the valve, turn it to the right (clockwise).



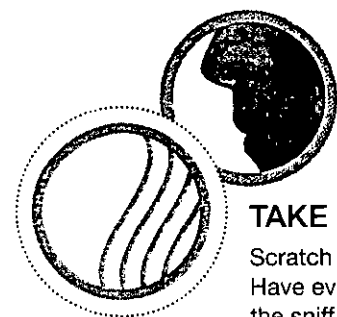
4. **REPORT THE LEAK.** From a neighbor's home or other nearby building away from the gas leak, call your propane retailer right away. If you can't reach your propane retailer, call 911 or your local fire department.



5. **DO NOT RETURN TO THE BUILDING OR AREA** until your propane retailer determines that it is safe to do so.



6. **GET YOUR SYSTEM CHECKED.** Before you attempt to use any of your propane appliances, your propane retailer or a qualified service technician must check your entire system to ensure that it is leak-free.



TAKE THE SNIFF TEST

Scratch and sniff the blue circle.
Have everyone in your family take the sniff test to learn what propane smells like.



CAN YOU SMELL IT?

Propane smells like rotten eggs, a skunk's spray, or a dead animal. Some people may have difficulty smelling propane due to their age (older people may have a less sensitive sense of smell); a medical condition; or the effects of medication, alcohol, tobacco, or drugs. Consider purchasing a propane gas detector as an additional measure of security.

ODOR FADE is an unintended reduction in the concentration of the odor of propane, making it more difficult to smell. Although rare, several situations can cause odor fade:

- The presence of air, water, or rust in a propane tank or cylinder
- The passage of leaking propane through the soil



Since there is a possibility of odor fade or problems with your sense of smell, you should respond immediately to even a faint odor of gas.

PROPANE GAS DETECTORS

Propane gas detectors sound an alarm if they sense propane in the air. They can provide an additional measure of security in homes with little-used areas or with occupants who have difficulty smelling propane.



GUIDELINES regarding propane gas detectors:

- Buy only units that are listed by Underwriters Laboratories (UL).
- Follow the manufacturer's instructions regarding installation and maintenance.
- Never ignore the smell of propane, even if no detector is sounding an alarm.



CARBON MONOXIDE AND YOUR SAFETY

WHAT IS CARBON MONOXIDE (CO)?

You can't taste or smell CO, but it is a very dangerous gas, produced when any fuel burns. High levels of CO can come from appliances that are not operating correctly, or from a venting system or chimney that becomes blocked.

CO CAN BE DEADLY! High levels of CO can make you dizzy or sick (see below). In extreme cases, CO can cause brain damage or death.

Symptoms of CO poisoning include:

- Headache
- Shortness of breath
- Dizziness
- Nausea
- Fatigue

IF YOU SUSPECT CO IS PRESENT, ACT IMMEDIATELY!



1. If you or a family member shows physical symptoms of CO poisoning, get everyone out of the building and call 911 or your local fire department.
2. If it is safe to do so, open windows to allow entry of fresh air, and turn off any appliances you suspect may be releasing CO.
3. If no one has symptoms, but you suspect that CO is present, call your propane retailer or a qualified service technician to check CO levels and your propane equipment.

TO HELP REDUCE THE RISK OF CO POISONING:

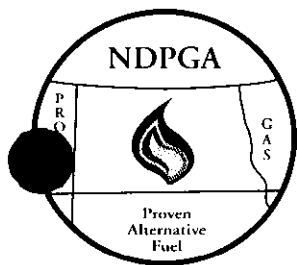
- Have a qualified service technician check your propane appliances and related venting systems annually, preferably before the heating season begins.
- Install UL-listed CO detectors on every level of your home.
- Never use a gas oven or range-top burners to provide space heating.
- Never use portable heaters indoors unless they are designed and approved for indoor use.
- Never use a barbecue grill (propane or charcoal) indoors for cooking or heating.
- Regularly check your appliance exhaust vents for blockage.

SIGNS OF IMPROPER APPLIANCE OPERATION THAT CAN GENERATE HIGH CO LEVELS:

- Sooting, especially on appliances and vents
- Unfamiliar or burning odor
- Increased moisture inside of windows

WHAT IS PROPANE?

Propane (also called LPG—liquefied petroleum gas—or LP gas) is a liquid fuel stored under pressure. In most systems, propane is vaporized to a gas before it leaves the tank. Propane is flammable when mixed with air (oxygen) and can be ignited by many sources, including open flames, smoking materials, electrical sparks, and static electricity. Severe "freeze burn" or frostbite can result if propane liquid comes in contact with your skin.



North Dakota Propane Gas Association

1025 North 3rd Street • PO Box 1956

Bismarck, ND 58502 • www.ndpropane.org

701-223-3370

Fax 701-223-5004

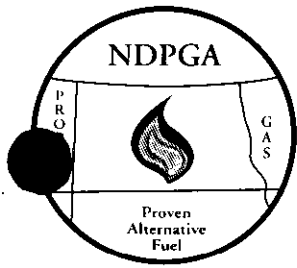
Testimony HB 1419

March 15, 2011 –Senate IBL

Chairman Klein and members of the Committee:

For the record, my name is Mike Rud. I'm the Executive Director of the North Dakota Propane Gas Association. NDPGA represents over 100 propane retailers and another 100 propane equipment vendors from across the state and Upper Midwest. On behalf of our association, I'm here urging you to recommend a "DO PASS" on HB 1419.

The idea of being guilty until proven innocent doesn't really have much of a ring to it when you live in this great nation and state we call home. However, for years now, this is the spot many propane marketers have found themselves in when a mishap involving the product they sell and service occurs. A "DO PASS" recommendation on HB 1419 will go a long way towards changing this scenario by doing away with uncalled for lawsuits and court cases that needlessly cost our state's propane dealers time and money.



North Dakota Propane Gas Association

1025 North 3rd Street • PO Box 1956

Bismarck, ND 58502 • www.ndpropane.org

701-223-3370

Fax 701-223-5004

HB 1419 is a very simple bill. HB 1419 has several goals:

- It takes the propane marketer out of a lawsuit if the propane system was modified without his knowledge and the direct cause of the loss and/or damages is the modification or alteration.
- The bill does not require consumers to notify the propane dealer when modifications or repairs are made.
- Farmers and home improvement enthusiasts can still do what they wish if they feel capable of their skills. The bill does not prevent that, it simply says the dealer is not liable if the modifications cause problems.

Seventeen other states currently have limited liability laws protecting propane dealers. As former state representative Francis Wald, who appeared in front of Senate IBL committees many times on behalf of business was so fond of saying, "If they weren't responsible for breaking it, they shouldn't have to pay to fix it." That sentiment sums up the purpose of HB 1419.

Again, NDPGA members urge a "DO PASS" on HB 1419.

Thank you for your time and consideration.

As of April 2008

- Alabama
- Arizona
- Arkansas
- Colorado
- Georgia
- Iowa
- Kansas
- Kentucky
- Louisiana
- Missouri
- Nebraska
- New Jersey
- North Carolina
- South Dakota
- Tennessee
- Texas
- Utah

Testimony on HB 1419

Chairman Klein and members of the committee. My name is Ken Astrup. I currently serve as General Manager of Dakota Plains Cooperative, headquartered in Valley City. I appear here today, in support of HB 1419.

Our cooperative does a large volume of business in propane. We have an excellent safety record. We have a policy that says we will not take on any new propane customers, unless we are allowed to do an inspection of the propane installation, including the line and hook ups in the house or building. If we are denied the opportunity to do the inspection, we refuse to provide service.

We have employees that are well trained to do the installation of a new propane tank and line. Once the installation has been completed, we annually send out a letter to the customer, reminding them of the dangers of propane and what they should do if they smell propane or suspect they have a leak.

We regularly do the inspection and replacement of regulators as the law requires.

We can do everything possible to ensure the installation was done correctly and everything is functioning properly.

Yet the property owner can make changes to the system, inside the building and unless they notify us, we have no idea they have altered the properly installed system.

As suppliers, we continue to fill the tank, check the line to the building, & replace regulators. Doing everything the law requires to make sure the installation remains safe.

Yet, unknown to us, the owner has made changes to the system, that are

unsafe and can cause a fire or explosion. And when it does occur, we, as suppliers are told the accident was our fault.

In North Dakota, we have been fortunate that there have not been a lot of propane explosions. Even one is too many. I think this good record is due to the care and expertise of propane suppliers and installers in our state.

People say, the potential of an explosion or a problem is why we carry insurance. Yes, it is, but ultimately, it is the customer that has to pay that increased insurance cost.

With this bill, we are asking that the consumer that made the un-approved changes to the system and failed to notify the supplier of those changes, so we have the chance to correct them, be held liable for their actions.

I urge you to support HB 1419.

Ken Astrup, General Manager
Dakota Plains Cooperative

Testimony for HB 1419 – ND Senate IBL Committee

Chairman Klein and members of the Senate Industry, Business, and Labor Committee for the record my name is Steve Becher and I am Executive Director of the Professional Insurance Agents of ND. PIA of ND represents over 300 main street insurance agencies with well over 1,000 agents across the state of North Dakota. I am here representing our association lending support and asking for a "Do Pass" recommendation on House Bill **1419**.

LPG dealers are put in a difficult position in that they are delivering a highly volatile product that requires a complete understanding of the safety features of the equipment used to store and disperse the product. Once they leave the installation or delivery site these dealers have no control over modifications or repairs to the system made by the customer or a third party that can lead to a loss. When there is a claim, the LPG dealer is immediately pulled in even when the loss is caused by modifications or repairs that were not completed by the dealer and of which they had no knowledge.

The opponents of this bill will say that it will be worked out by the courts system which is true, but the LPG dealer will still incur significant costs with the time and effort required to defend such a lawsuit. The LPG dealer's insurance company will also incur costs sometimes into the tens of thousands of dollars in the defense of these claims even when it is obvious that the loss was caused by the actions of others. These costs are then passed on to the dealers through the insurance premiums that they pay and eventually to the consumer through the price of propane.

I recently spoke with a ND insurance company that is one of the main writers of LPG insurance and asked them about availability of coverage in the market as well as premiums compared to other flammable products. I was told that there are only 4 companies that are active in writing LPG accounts due to the volatility of the product and the severity of claims. Most companies also have strict underwriting guidelines on whether or not they will write an LPG dealer such as

PIAND Testimony – HB 1419 (page 2)

limited number of gallons sold, certain percentage of LPG sales in relation to other products, and many loss control inspection requirements for the dealer. The insurance companies, however, have no way to inspect any modifications or repairs made by the customer or third party and are made to incur defense costs for the LPG dealer when these losses occur. According to the insurance company underwriter that I spoke to, all of these factors together make the product liability premiums for an LPG dealer about 10 times the premiums for other flammable liquid dealers such as gas or fuel oil.

HB 1419 does **not** grant immunity to the LPG dealer just because an alteration or repair was made nor does it make the dealer immune for anything that happens inside the home, it only grants immunity if the dealer is unaware of the alteration and that alteration is the direct cause of the loss. HB 1419 also does **not** change any of the duty owed by the LPG dealer to its customers such as educating them on safety issues with propane, periodic inspections of the system, or correcting issues with regulators and piping that becomes outdated. The problem without this bill is that the LPG dealer can do all of these things to protect their customer and still incur thousands of dollars in costs and his insurance company can incur tens of thousands of dollars in defense costs when a customer chooses to ignore the advice and modifies or repairs the system on his own incorrectly and a loss occurs because of this modification.

LPG dealers have enough risk in their businesses with the volatility of the product they sell, the strict certification training they provide for their employees, and the safety measures they employ to protect their customers without the added risk of incurring costs for losses that are totally beyond their control. In the interest of fairness, I would encourage a “Do Pass” recommendation on HB **1419**.

TESTIMONY ON HB 1419
SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
March 15, 2011

Presented by Christopher Friez, on behalf of the
North Dakota Grain Dealers Association

Good afternoon Mr. Chairman and members of the Committee. My name is Christopher Friez from the Crowley Fleck law firm and I'm here on behalf of the North Dakota Grain Dealers Association.

The North Dakota Grain Dealers association is in support of HB 1419.

The Grain Dealers feel that it is common sense that an innocent supplier of a legal product should not be held liable for the negligent acts of another after the product is sold.

We're told by an agent who writes coverage on many ND grain elevators that some insurance carriers automatically charge an extra \$5000 premium for a business handling LP gas, and that there is a \$25,000 LP deductible for bodily injury or property damage. These costs and liabilities discourage businesses from even handling the product for their customers. We're not saying HB 1419 will eliminate all of that, but it would decrease exposure for the carrier and that can only help with the premium and deductible challenges.

On the back side of this testimony is a Resolution adopted by the North Dakota Grain Dealers Association at their convention held on January 18, 2011 in Fargo. In sum, the resolution provides that the Grain Dealers Association supports legislation, such as HB 1419, because it is unreasonable to hold an LP gas dealer responsible when the dealer has no control over the modification and repair to equipment, which is done without the dealer's knowledge and consent, after LP gas equipment leaves the dealer and is in the hands of the user.

The North Dakota Grain Dealers Association stands in support of HB 1419 and urges a Do Pass.

Thank you.

HOW THE AMENDED HB 1419 WOULD READ:

- 1) Any person engaged in this state in the business of selling at retail, supplying, handling, or transporting liquefied petroleum gas is immune from civil liability if the direct cause of any loss, damage or injury was caused by the alteration, modification, or repair of liquefied petroleum gas equipment or a liquefied petroleum gas appliance if the alteration, modification, or repair was done by the person claiming to be injured and was done without the knowledge and consent of the liquefied petroleum gas seller, supplier, handler or transporter or was completed by a person not certified to repair the equipment or appliance.
- 2) This section applies only to fixed liquefied petroleum gas fuel systems. "fixed liquefied petroleum gas fuel systems" means an installation with a maximum operating pressure of one hundred twenty-five pounds per square inch [56.70 kilograms per 6.45 square centimeters] or less and includes the container assembly, pressure regulator, piping system, gas utilization equipment and components, and venting system in residential, commercial or institutional installations.
- 3) For the immunity protections of this section to apply, the person seeking the immunity protections has the responsibility of:
 - a) Informing all current owners and each subsequent owner of fixed liquefied petroleum gas fuel systems of the requirements of this section and obtaining such owner's written acknowledgement of the requirements of this section.
 - b) Performing an examination of the liquefied petroleum gas equipment and appliances for all owners of fixed liquefied petroleum gas fuel systems, annually and upon change of ownership, unless such examination is refused by the owner,
 - c) Responding to any owner's requests for inspection and consent to any alteration, modification, or repair of liquefied petroleum gas equipment or a liquefied petroleum gas appliance within 24 hours of such request, and
 - d) Maintaining, personally or through an employee, certification to install or repair liquefied petroleum gas equipment and appliances such that customers have a certified person available for installation or repair of such equipment or appliances.

I. Is this bill necessary? NDAJ would ask this committee to first consider the need for is bill:

- 1) Is there a need to create immunity for LP dealers?

Not one person / dealer who testified on the bill in front of the house actually cited one case or one instance in which they had actually been sued in this State for the events they are seeking immunity from.

If there is no actual litigation, what is the need for this immunity?

- 2) The current laws in ND allow persons to bring claims against the LP dealers if they can prove their case.

The person / attorney bringing the claim must prove that:

- a) The LP dealer owed them a duty;
- b) The LP dealer breached that duty;
- c) The LP dealer's breach of that duty was a proximate cause of damages, and
- d) That the suffered damages.

If the party bringing the claim fails to prove this, then there is no recovery.

The LP dealer also has other defenses already built into ND's legal system. These include:

- a) Assumption of Risk
- b) Comparative Fault

- 3) Is there justification for allowing LP dealers to be immune when other businesses are responsible for their actions?

- 4) Virtually everybody who makes arguments that immunity provisions to laws should apply cite the fact that there was some unjust case somewhere and/or that we have a runaway jury system which needs to be corrected.

- A) The fact is that ND does not have a runaway jury system.
- B) Ask the LP dealers:

When is the last time a ND jury gave an unjust award against an LP dealer because of some alteration to the LP system which is the reason you are seeking immunity?

I believe the LP dealer will not be able to point out a single case.

II. If there is a need for this bill, then NDAJ would ask this committee to consider amendments to the bill to address flaws within the blanket immunity provisions.

1) This current bill is entirely unjust as it relates to innocent, subsequent purchasers of homes / businesses. It provides immunity even if the home / business owner did not actually make the alteration / repair.

A. **Amendment in subsection (1):** This modification allows the immunity to apply towards any person who actually made the alteration, repair, etc. without the knowledge and consent of the LP gas dealer. Innocent third parties, including subsequent owners of the property, who had no knowledge of the alteration or repair, would not be limited by the immunity provisions but would still have the same legal obligation which currently exists under ND law to prove that the LP gas dealer was negligent.

2) The current bill provides no reasonable limitation on the immunity provisions. This is sought to be addressed in the addition of subsection (3).

A. Since the LP dealers are pushing this bill, there should be a requirement that they notify their current customers. This can occur via the course of the next fill up on LP Gas, a general mailing, etc. Customers should be aware that they need to get written acknowledgement for changes, etc. This is the reason for adding (3)(a), which states as follows:

3) **For the immunity protections of this section to apply, the person seeking the immunity protections has the responsibility of:**

a) **Informing all current owners and each subsequent owner of fixed liquefied petroleum gas fuel systems of the requirements of this section and obtaining such owner's written acknowledgement of the requirements of this section.**

B. Immunity should not apply if the LP dealers have no responsibility to actually check the systems. We are dealing with dangerous products here. In order for LP dealers to be able to assert immunity because there was a change to an LP appliance, etc. that they did not approve of, there should be the obligation to make an annual inspection of the property and/or an inspection upon change of ownership. Certainly, there are subsequent owners who will not know if their LP fed Stove or Dryer is hooked up properly or not and / or there are owners who have Sears representatives or who personally hook up LP appliances, etc. and don't have certification, etc. As such, annual inspections should be an option to allow customers to make sure their system is properly hooked up and maintained. This is the reason for adding (3)(b). Note: This was raised as an option by house committee members but was never implemented. Part of the concern of the LP dealers was addressing the circumstance where the LP dealer was not permitted into the home. This section also addresses that concern. This is the reason for adding (3)(b), which states as follows:

3) **For the immunity protections of this section to apply, the person seeking the immunity protections has the responsibility of:**

- b) Performing an examination of the liquefied petroleum gas equipment and appliances for all owners of fixed liquefied petroleum gas fuel systems, annually and upon change of ownership, unless such examination is refused by the owner.

C. Under the current bill, if the customer makes a repair “without the knowledge and consent” of the LP dealer, then immunity applies. This begs the question as to what happens when the customer asks the LP dealer to acknowledge and consent to the change in the LP system (i.e. a new dryer, furnace, stove, etc. being hooked up). When does the LP dealer have to inspect the system and give their consent? This provides that the LP dealer must get out to the customer and perform an inspection and provide a repair within 24 hours of notice. Considering that this applies to things like home furnaces being changed out in the middle of a ND winter, grain dryers which are needed for harvest, cooking appliances, etc. 24 hours is a reasonable time frame. This is the reason for adding (3)(c), which states as follows:

- 3) For the immunity protections of this section to apply, the person seeking the immunity protections has the responsibility of:
 - c) Responding to any owner’s requests for inspection and consent to any alteration, modification, or repair of liquefied petroleum gas equipment or a liquefied petroleum gas appliance within 24 hours of such request.

D. Under the current bill, the LP dealers have immunity if a “person not certified to repair the equipment or appliance” came into the home to make the repair, etc. To NDAJ’s knowledge there is no legal standard in ND which has been implemented to establish who is or is not “certified”. The problem is that if the Sears repairman, etc. brings out a new propane stove, is he certified or not? The customer should be able to contact somebody (i.e. the LP dealer who will be asserting they are immune because the appliance was not hooked up right) to get a certified person into their home to install the appliance, make the repair, etc. This is the reason for adding (3)(d), which states as follows:

- 3) For the immunity protections of this section to apply, the person seeking the immunity protections has the responsibility of:
 - d) Maintaining, personally or through an employee, certification to install or repair liquefied petroleum gas equipment and appliances such that customers have a certified person available for installation or repair of such equipment or appliances.

As a final note, NDAJ would ask this committee to consider an amendment requiring that ANY person who is in the business of installing or repairing LP equipment or appliances MUST be certified to do the same. Also, there should be specific language on what is required for a certification. It would be a significant financial burden upon customers if Sears was going to install the appliance for free or minimal cost (which is typical) but then the customer is required to hire some separate person to hook up the appliance to ensure certification.

***Heartland* Gas Company**
13209 Highway 17
Park River, ND 58270-9603
Phone 701-284-7480 Fax 701-284-7492
Email: heartlandgas@polarcomm.com

Jim Chyle, Owner of Heartland Gas Company, Park River, North Dakota
In business for 24 years

With this legislation the propane company is not responsible for anything inside the home.

So who is responsible? The furnace man, the plumber for installing the water heater, the department store for selling the gas range and gas clothes dryer?

No, these people all deal in the individual parts of the gas system and have very little knowledge of gas code and in many instances haven't even read the installation manual.

Who is the expert for the complete gas system? It should be the gas supplier-if he has time to do it. For many companies, when winter is over the propane man is hauling fertilizer, diesel fuel or is in the tire shop. Propane should be a full time position.

The gas supplier is trained to not only deliver propane but also trained to:

- Inspect the gas system in the home (make sure the system is safe and efficient)
- Perform a GAS check (the industry standard evaluation)
- Take pictures of entire gas system
- Instruct and educate the homeowner on the safety of the gas system in their home and if any changes are made the gas company must be notified
- Continually have a relationship with the customer via safety brochures, decals, newsletters, gas bills, websites, etc. All of these forms of safety media contain

information on the importance of having a trained professional for all service and modifications to the gas system.

- Company must establish what they feel is a reasonable amount of time to repeat inspections -my company is comfortable with 5 years
and
- Most importantly, the propane supplier has the ability to interrupt the gas supply when the system is not in compliance with current gas codes and safety standards

Propane can be a dangerous product, but if the suppliers take responsibility for their work and make sure the system is safe there is no reason for this piece of legislation. We will never eliminate all lawsuits, nor should we. We can hope that Attorneys, Insurance Companies, Judges and Juries are all made up of reasonable people; if a propane company is liable they should be sued.

When the Propane Gas Association was asked for examples of lawsuits in North Dakota, they could not come up with any. If this is not a problem, why are we here?

If this bill passes, the safety of the customer will be left in the hands of the plumber, heating contractor or appliance repairman. In most instances, these people have very little knowledge of the complete gas system.

If you have one fire, or one loss of life is this bill worth it? Gas inspections must not be allowed to stop.

This bill protects approximately 100 propane companies in the State of North Dakota.

Who is protecting the 640,000 residents?

If you have any questions, please feel free to contact me at 701-331-1284.

RESIDENTIAL



GAS APPLIANCE SYSTEM CHECK

© NPGA 1985
#5610

Account Number _____

Name _____

Address _____

Telephone: Office _____ Home _____

Company/Location _____

Call Date _____ Date Requested _____

Call Taker _____

Name _____

Instructions: _____

Performance Check: Item	Central Heating 1	Space Heater 2	Water Heater 3	Range 4	Clothes Dryer 5	6	7
Manufacturer							
Model No.							
Serial No.							
Fuel							
BTU	000	000	000	N/A	N/A	000	000
Age							
Manual Shutoff (Installed/Existing)							
Sediment Trap (Installed/Existing)							
Control Mfr/Model No.							
Pilot(s)							
Ignition System(s) Mfr/Model No.							
Thermostat(s) Mfr/Model No.							
Pilot Safety System							
Burner(s)							
Combustion Chamber				N/A	N/A		
Filters			N/A	N/A			
Motor/Blower/Pump			N/A	N/A			
Exhaust Return Air			N/A	N/A	N/A		
Diverter							
Venting							
Combustion Air							
Red Tag (Removed from Service)							

TANK/CYLINDER (Add'l Serial #'s):

SIZE	SERIAL NUMBER	MFR.	MFR. DATE	LAST TEST DATE	LOCATION	TANK COND.	PAINT COND.	PIGTAIL COND.	FITTINGS COND.	GAUGE COND.	RELIEF VALVE COND.	DATE	CAP	FITTINGS LEAK TEST

PIPING/REGULATOR OPERATION/CONDITION

SINGLE STAGE	PIPING		REGULATOR DATE CODE	REGULATOR CONDITION	MFR.	MODEL	REG. VENT POSITION	HOW PROTECTED	FLOW PRESSURE	LOCK UP PRESSURE
	MATERIAL	SIZE								
									IN. WC	IN. WC
TWO STAGE	1ST								PSIG	PSIG
	2ND								IN. WC	IN. WC

SYSTEM LEAK TEST

SINGLE STAGE	START PRESSURE	END PRESSURE	TIME HELD	SYSTEM OK
	(INCHES W.C.)	(INCHES W.C.)		
TWO STAGE	1ST (PSIG)	(PSIG)		
	2ND (INCHES W.C.)	(INCHES W.C.)		

Comments: _____

Reference Invoice No. _____ Date _____

(Mo, Day, Yr)

I, _____

(Please Print)

Certify that I have completed the System Check as prescribed.

Performed Odor Test ☐ YesPerformed Pressure Test ☐ YesPlaced Safety Decal ☐ YesLeft Consumer Safety Info and material ☐ Yes

- (Please Print)
- Know how to turn off gas in case of emergency.
 - Have smelled propane and can detect its odor.
 - Have received the Consumer Safety Information and material.
 - Had gas system deficiencies and/or corrections, if any, clearly explained to me.
 - Am satisfied with the service work performed.

Customer's Signature

Service Technician's Signature





Keeping your family safe

Important information about
propane safety and

FLOODS

PROPANE
EXCEPTIONAL ENERGY[®]

The purpose of this brochure is to provide information you need to know about propane safety and how to **keep your family safe** during and after a flood. By taking a few simple propane-related safety precautions and discussing them with your family, you can **reduce the potential for property loss, personal injury, and even death.**

BEFORE

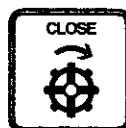
Be prepared for a flood

- Have an adequate supply of propane in your tank. During and after a major flood, propane and other types of fuel may not be readily available and roads leading to your home or farm might not be accessible for delivery.
- Know how and where to shut off the outdoor propane supply and indoor propane appliances. For more information, contact your propane retailer.
- In flood zone areas, the National Fire Protection Agency (NFPA) requires that large above-ground and underground propane tanks be anchored securely to avoid potentially dangerous situations. Contact your propane retailer for more information.
- **MAKE SURE THAT YOU AND YOUR FAMILY KNOW WHAT PROPANE SMELLS LIKE.** Propane has a strong, unpleasant smell like rotten eggs, a skunk's spray, or a dead animal.
- **NEVER** store or place a propane cylinder indoors or in an enclosed area such as a basement, garage, shed, or tent.
- It is recommended that you consider installing a carbon monoxide (CO) detector listed by Underwriters Laboratories (UL) on every level of your home. Be sure to follow the manufacturer's instructions regarding installation, location, and maintenance.
- Propane gas detectors provide an additional measure of security. It is recommended that you consider installing one or more propane gas detectors listed by UL. Be sure to follow the manufacturer's instructions regarding installation, location, and maintenance.
- Have a list of instructions on how to turn off electricity, propane, and water. Review suggested preparations for natural disasters such as floods with your propane retailer as well as other utility suppliers. Advise them of any special needs you may have.
- Create an emergency preparedness plan and review it regularly with your family in order to keep them safe during a potential disaster.

DURING

What to do if a flood threatens your safety

In the event that a flood threatens your safety, you may have to decide whether or not it is necessary to evacuate your home or farm. In some cases, it may not be safe for you to leave. Listen to your local authorities, or television and radio stations, for instructions on the appropriate course of action to take. If it is determined that you should stay, you may have to move to a higher level within your home. Whether it is determined that you should stay or leave, you



Shut off the gas!

1. Turn off the main gas supply valve on your propane tank, if it is safe to do so. To close the valve, turn it to the right (clockwise).
2. Turn off the gas supply valves located near individual indoor appliances. Consult your propane retailer to make sure you know where the actual valves are

on the appropriate course of action to take. If it is determined that you should stay, you may have to move to a higher level within your home. Whether it is determined that you should stay or leave, you should shut off your gas.

indoor appliances. Consult your propane retailer to make sure you know where the actual valves are located and how to shut them off.

If your gas comes from a metered pipe system, consult your propane retailer on how to shut off the gas.

AFTER

What to do after a flood

Floods can damage your propane equipment. A large propane tank can become dislodged from its service line and float away, striking trees, vehicles, or other heavy objects along its path. Also, water and debris can find their way inside regulators and controls, causing potential safety issues. In addition, fallen trees and power lines can create extra safety concerns.

Use caution when returning to your home or farm. If you have any doubts about your safety, leave the area immediately and have your property inspected by a qualified building inspector or structural engineer before re-entering. Take the time to carefully evaluate the condition of all the structures on your property. If it is dark, use flashlights, not candles.

Look carefully around the entire area. Check for downed power lines; they can create major safety hazards. Floods can move, shift, or damage gas lines and tanks. Immediately call your local utility company or propane retailer if any of these hazards exist.

If you find a propane tank on your property that is not yours, or if your propane tank has become dislodged or is missing, contact your propane retailer or your local fire department immediately.

Follow these general safety rules

Floods can cause power outages or other events requiring you to take additional safety measures. To help reduce the potential for injury or death, there are general safety rules that you should observe at all times:

- **NEVER** use outdoor propane appliances indoors or in enclosed areas. This could result in CO poisoning or death. These include outdoor portable heaters, barbecue grills, and portable generators. Only use appliances indoors that are designed and approved for indoor use.
- **NEVER** store or place a propane cylinder indoors or in an enclosed area such as a basement, garage, shed, or tent.
- **NEVER** use a gas oven or range-top burners to provide space heating.
- **DO NOT UNDER ANY CIRCUMSTANCES TRY TO MODIFY OR REPAIR VALVES, REGULATORS, OR OTHER APPLIANCE PARTS.**
- **NEVER** turn on a light switch, use any power source, or inspect your household appliances while standing in water. This can result in electrocution.
- **DO** inspect chimneys, flue pipes, and vent connectors for damage, blockage, or debris.
- **DO** inspect your propane appliances for water or other damage, if it is safe to do so. If the appliances have electric components and have been exposed to water, they can create a fire hazard.



If you suspect any of your propane appliances, equipment, or vehicles have been under water or they have been damaged, or you have turned off your gas supply:

- **DO** schedule a time for a qualified service technician to perform a complete inspection of your propane system. The technician can also perform a leak test on the system and re-light your pilot lights.
- **DO NOT** use or operate appliances, equipment, or vehicles, or turn on the gas supply, until your system has been inspected by a qualified service technician.

AT ANY TIME

If you smell gas inside or outside of your home:



1. **NO FLAMES OR SPARKS!** Immediately put out all smoking materials and other open flames. Do not operate lights, appliances, telephones, or cell phones. Flames or sparks from these sources can trigger an explosion or a fire.



2. **LEAVE THE AREA IMMEDIATELY!** Get everyone out of the building or area where you suspect gas is leaking.



3. **SHUT OFF THE GAS.** Turn off the main gas supply valve on your propane tank, if it is safe to do so. To close the valve, turn it to the right (clockwise).



4. **REPORT THE LEAK.** From a neighbor's home or other building away from the gas leak, call your propane retailer right away. If you can't reach your propane retailer, call 911 or your local fire department.



5. **DO NOT RETURN TO THE BUILDING OR AREA** until your propane retailer determines that it is safe to do so.



6. **GET YOUR SYSTEM CHECKED.** Before you attempt to use any of your propane appliances, your propane retailer or a qualified service technician must check your entire system to ensure that it is leak-free.

IMPORTANT CONTACTS

Police:

Fire Department:

Propane Retailer:

*Heartland*Gas Company
13209 Highway 17
Park River, ND 58270
701-284-7480

For additional information about propane safety and emergency preparedness, please visit usepropane.com.



IMPORTANT PROPANE SAFETY INFORMATION

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3/21/11

Mike Rud

From: CO-Kindred, Dale Beck <Dale.Beck@chsinc.com>
Sent: Monday, March 21, 2011 12:25 PM
To: Mike Rud
Subject: Info

Please forward this to the appropriate list of Senators for me. Thank you

Dale Beck, Energy Dept. Mgr.
Dakota Ag Cooperative
5324 165th Ave SE
Kindred, ND 58051
Ph. 701-428-3134
1-800-427-3134
Cell 701-361-2031
Fax 701-428-3137

Good Morning Dale!

Based upon the data that I was able to pull back to CHS' fiscal year 1999 (9/1/1998 and forward), we have had 49 claimants for a total of \$11.6 million paid out in propane claims. That averages just over \$237,000 per claimant. I can't find specific details on fault nor whether the claim went to court or was settled out of court. The highest paid out in that time frame was just under \$3.5 million to one claimant and the lowest paid out was \$26.00, so there is a wide range.

As far as a specific case to reference, I would suggest that you provide the Tara Groenewald v. Propane Continental Case, which was an accident where an appliance was removed from a building and the line left uncapped and open upon a tenant change. The new tenants moved into the place, and turned the gas on. As you can imagine, gas escaped from the open line and found an ignition source which severely injured a young girl in an explosion. In that claim, the retailer paid \$2 million, the wholesaler paid \$15 million and some upstream suppliers paid \$20K-\$50K each for a claim that was caused by something unknown to the retailer, wholesaler, etc.

Let me know if that information is helpful.

Have a great week,
Bryan Lewis
Manager-Propane Risk Management
CHS Propane



5500 Cenex Drive | Inver Grove Heights, MN 55077
P 651-355-8425 | F 651-355-8499 | C 612-799-5480
bryan.lewis@chsinc.com | Visit us at www.chsinc.com

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1419

Page 1, line 12, after "repair was done" add "by the person claiming to be injured and was done"

Page 1

Add new subsection 3.

- 3) For the immunity protections of this section to apply, the person seeking the immunity protections has the responsibility of:
- a) Informing all current owners and each subsequent owner of fixed liquefied petroleum gas fuel systems of the requirements of this section and obtaining such owner's written acknowledgement of the requirements of this section.
 - b) Performing an examination of the liquefied petroleum gas equipment and appliances for all owners of fixed liquefied petroleum gas fuel systems, annually and upon change of ownership, unless such examination is refused by the owner.
 - c) Responding to any owner's requests for inspection and consent to any alteration, modification, or repair of liquefied petroleum gas equipment or a liquefied petroleum gas appliance within 24 hours of such request, and
 - d) Maintaining, personally or through an employee, certification to install or repair liquefied petroleum gas equipment and appliances such that customers have a certified person available for installation or repair of such equipment or appliances.

Renumber accordingly