

1 HB386
2 164536-1
3 By Representative Wadsworth
4 RFD: Boards, Agencies and Commissions
5 First Read: 02-APR-15

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8 SYNOPSIS: Under existing law, liquefied petroleum gas
9 containers may be filled only by the owner or upon
10 authorization of the owner. Under existing law, the
11 Liquefied Petroleum Gas Board inspects all
12 liquefied petroleum gas containers, but the owner
13 of a liquefied petroleum gas container is
14 responsible for ensuring its suitability for
15 continued use and is subject to criminal penalties
16 for violating a directive of the board to
17 discontinue use.

18 This bill would delete the requirement that
19 the container be filled by the owner or with the
20 authorization of the owner. This bill would also
21 delete the language specifying that the owner of
22 the container is responsible for ensuring its
23 suitability for continued use. This bill would
24 retain language providing for inspections by the
25 board and authorizing criminal penalties for
26 failure to follow a directive of the board.
27

1 A BILL
2 TO BE ENTITLED
3 AN ACT
4

5 To amend Section 9-17-109, Code of Alabama 1975,
6 relating to liquefied petroleum gas containers; to delete the
7 requirement that the container be filled by the owner or with
8 the authorization of the owner and the requirement that the
9 owner of the container is responsible for ensuring its
10 suitability for continued use.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Section 9-17-109 of the Code of Alabama
13 1975, is amended to read as follows:

14 "§9-17-109.

15 "(a) Any person violating this article or any rule,
16 order, or regulation promulgated pursuant to this article
17 shall, on conviction thereof, be fined not more than one
18 thousand dollars (\$1,000) and may also be imprisoned in the
19 county jail or sentenced to hard labor for the county for not
20 more than six months. Every violation of this article or any
21 rule, order, or regulation promulgated pursuant to this
22 article shall constitute a separate offense.

23 "(b) Every person subject to the fees imposed by
24 Section 9-17-106 shall keep and preserve suitable records of
25 all liquefied petroleum gas transactions subject to fees and
26 any other books or accounts necessary to determine the amount
27 of fees for which the person is liable under this article.

1 Those records shall be retained for a period of not less than
2 three years, and shall include the name and address of the
3 seller and buyer, date of sale or purchase, amount of gallons
4 purchased or sold, and the amount of fees collected or paid
5 under Section 9-17-106. The board, the board administrator, or
6 employees of the board may inspect, review, and copy or detain
7 any original records, notes, or documents either written or
8 electronically transcribed that are required to be kept by
9 this article or that relate to the selling, purchasing,
10 storing, transporting, installing, servicing, testing,
11 inspecting, repairing, adjusting, and calibrating of LP-gas
12 meters, containers, tanks, or systems. Those records, notes,
13 or documents shall be turned over to the board at a location
14 designated by the board within 24 hours of the notice or
15 within a reasonable time in excess of 24 hours set by the
16 board or board administrator in cases of hardship.

17 "(1) If any person fails to report and remit fees
18 required in Section 9-17-106, the board shall issue a written
19 order by registered or certified mail to the person to report
20 and remit those fees. If the person fails or refuses to make
21 the report and remittance within 30 days following the order,
22 the board shall make the report based upon any information it
23 reasonably obtains, shall assess the fees due thereon, and
24 shall add a penalty of 25 percent of the fees due, as assessed
25 by the board, and interest at the rate of one and one-half
26 percent per month, or fraction thereof, from the date the fees
27 were originally due. If a good and sufficient reason is shown

1 for the delinquency, the board may waive or remit the 25
2 percent penalty or a portion thereof.

3 "(2) Any person who reports but fails to pay the
4 fees levied in Section 9-17-106 within the time required by
5 this article shall pay, in addition to the fees, a penalty of
6 10 percent of the amount of the fees due, together with
7 interest thereon at the rate of one and one-half percent per
8 month or fraction thereof from the date at which the fees
9 levied in this section became due and payable. The penalty and
10 interest shall be assessed and collected as part of the fee.
11 The board, for good cause shown, may waive or remit the 10
12 percent penalty or any portion thereof.

13 "(3) As soon as practicable after the report is
14 filed, the board shall examine and ascertain the proper amount
15 of the fee as shown by the report. Any excess shall be
16 refunded to the person who filed the report or credited on any
17 deficiency previously due. If the amount paid is deficient, as
18 shown by the report, the board shall immediately notify the
19 persons of the deficiency and shall add a penalty of 10
20 percent of the amount due. If the deficiency is not paid
21 within 30 days from the date of notice, interest shall accrue
22 on the deficiency at the rate of one and one-half percent per
23 month or fraction thereof, from the date the fee was due and
24 shall be collected as part of the fee. The board, for good
25 cause shown, may waive or remit the penalty or any portion
26 thereof.

1 "(4) When the board ascertains from examining and
2 auditing the records of a person who collects the fee or from
3 other information that the amount or amounts previously paid
4 by the person for any period or periods is incorrect, the
5 board shall compute the correct amount of fees due. If it
6 appears that the amount paid is excessive, the excess shall be
7 refunded or credited on any deficiency previously due by the
8 person as required by this article. If it appears that the
9 amount paid is deficient, the board shall notify the person,
10 and shall demand payment. If payment is not paid within 15
11 days from date of demand, the board shall add a penalty of one
12 and one-half percent per month from the date the fees, or any
13 part thereof, becomes due. If the board finds a willful or
14 fraudulent intent to evade the fees due, it may assess a
15 penalty of 25 percent of the fees. The penalty shall be
16 reviewable on appeal.

17 "(c) When the board makes an assessment as provided
18 in Section 9-17-106, the board shall notify the person by
19 registered or certified mail of the amount of the assessment
20 and shall notify the person to appear at a hearing of the
21 board at the board office on a day named not less than 20 days
22 from date of the notice to show cause why the assessment
23 should not be final. The appearance may be by an agent or
24 attorney. If no response is made on or before the date of the
25 hearing, or if the response is not sufficient in the judgment
26 of the board, the assessment shall be made final in the amount
27 originally fixed or in any amount determined by the board to

1 be correct. The board shall notify the person of the final
2 assessment. A notice by the United States mail, addressed to
3 the last known place of business, shall be sufficient.

4 "Any person who has duly appeared and protested an
5 assessment may appeal the final assessment of the board. A
6 hearing on the appeal shall be held at a time and place
7 designated by the board. No appeal shall lie in cases if the
8 person has failed to appear and protest.

9 "Any assessment made by the board shall be deemed
10 correct, prima facie, on appeal.

11 ~~"(d) Liquefied petroleum gas containers may be~~
12 ~~filled only by the owner or upon the owner's authorization.~~
13 ~~The owner of a liquefied petroleum gas container is~~
14 ~~responsible for its suitability for continual service. Any~~
15 ~~person who fills or refills any LP-gas container or who,~~
16 ~~without authorization, turns any liquefied petroleum gas~~
17 ~~system on after it has been inspected, shut down, and~~
18 ~~condemned for safety violations, or operates an LP-gas motor~~
19 ~~vehicle, transport, or delivery unit that has been condemned~~
20 ~~for safety purposes or mechanical defects and red-tagged under~~
21 ~~authority of the Liquefied Petroleum Gas Board, or removes any~~
22 ~~red tag without authorization from the board administrator, or~~
23 ~~any person who authorizes an unqualified person to install or~~
24 ~~replace gas piping or install, connect, repair, or service any~~
25 ~~LP-gas equipment is guilty of a Class B misdemeanor as defined~~
26 ~~in Title 13A, and, upon conviction, shall be punished as~~
27 ~~provided by law.~~

1 "(e) LP-dealers holding Class A or Class B-1 permits
2 have special knowledge and expertise in performing
3 installations, maintenance, repairs, adjustments, and services
4 to liquefied petroleum gas appliances, LP-gas systems, or any
5 component thereof. To ensure the safety of Alabama's consumers
6 of LP-gas services, any consumer who desires to install,
7 repair, maintain, adjust, or service any liquefied petroleum
8 gas appliance, LP-gas systems, or any component thereof, shall
9 notify the LP-gas dealer who regularly supplies such consumer
10 with LP-gas of his or her intention to employ an individual
11 other than the LP-gas dealer to perform such installation,
12 maintenance, repair, adjustment, or service being performed.
13 The consumer shall afford the LP-gas dealer with an
14 opportunity to first install, repair, maintain, adjust, or
15 service the LP-gas appliance before resorting to an individual
16 other than his or her LP-gas dealer who regularly supplies
17 LP-gas.

18 "(1) In the event the consumer suffers injury,
19 damage, or loss as a proximate consequence of a negligent
20 installation, repair, maintenance, adjustment, or service of
21 any LP-gas appliance, LP-gas system, or any component thereof,
22 and such consumer has not first notified and afforded the
23 opportunity to install, repair, maintain, adjust, or service
24 to the LP-gas dealer who regularly supplies his or her system
25 with LP-gas, no legal action shall be commenced against such
26 LP-gas dealer.

1 "(2) In the event the consumer suffers injury,
2 damage, or loss as a proximate consequence of the consumer
3 using his or her equipment or appliance in a manner or for a
4 purpose other than that for which the equipment or appliance
5 was intended, no legal action shall be commenced against his
6 or her LP-gas dealer.

7 "(3) All LP-gas dealers are required to document and
8 maintain in writing all notices received from consumers for a
9 period of not less than five years. Any LP-gas dealer who is
10 found not to have maintained such notices in writing as
11 required herein shall be guilty of a Class B misdemeanor.

12 "(f) No LP-gas dealer shall be subject to any award
13 of punitive or exemplary damages, except in those cases
14 falling within Sections 6-5-391 and 6-5-410, except upon a
15 showing by clear and convincing evidence of gross negligence
16 or willful or wanton misconduct."

17 Section 2. This act shall become effective on the
18 first day of the third month following its passage and
19 approval by the Governor, or its otherwise becoming law.