

HOUSE BILL REPORT

HB 1159

As Reported by House Committee On:
Judiciary

Title: An act relating to limiting liability for persons who work with liquefied petroleum gas.

Brief Description: Limiting liability for persons working with liquefied petroleum gas.

Sponsors: Representatives Kirby and Priest.

Brief History:

Committee Activity:

Judiciary: 2/18/05, 3/2/05 [DPS].

Brief Summary of Substitute Bill

- Provides certain persons immunity from civil liability for damages caused by the use of liquefied petroleum gas equipment or a liquefied petroleum gas appliance when the equipment or appliance was being used in a manner or for a purpose other than for its intended use or in way that was not foreseeable and the use was without the person's actual or constructive knowledge.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Trudes Tango Hutcheson (786-7384).

Background:

Liquefied petroleum gas includes propane, propylene, butane, and butylene or mixes of these gases. The most commonly used of these gases, commercially and residentially, is propane.

In negligence actions involving propane, courts have recognized that certain substances, such as gas, are dangerous, and that the degree of care to be exercised in its use should be commensurate with its harmful nature. *Reeder v. Western Gas & Power Co.*, 42 Wn.2d 542 (1953). Courts have also found that although a supplier of gas does not have the duty to inspect equipment belonging to the homeowner/customer absent a contractual duty, if the company has actual or constructive knowledge of a leak or defect, then the duty to investigate may arise and breach of that duty may result in liability.

A person will be found to have constructive knowledge of a fact if, by exercising reasonable care, the person should have known of the fact. Whether a person has constructive knowledge is fact-specific and depends essentially on the situation at the time.

Summary of Substitute Bill:

A person who sells at retail, supplies, handles, or transports liquefied petroleum gas is not liable for civil damages for injury, wrongful death, or loss of property caused by the use of equipment or an appliance when: (a) the equipment or appliance was being used in a manner or for a purpose that was not intended or foreseeable and could not have been expected; and (b) the use was without the person's actual or constructive knowledge.

Substitute Bill Compared to Original Bill:

The substitute bill: (a) adds wrongful death actions to the actions from which a person is immune; (b) grants immunity from damages caused by the use of equipment when the equipment is being used in a manner that was not foreseeable and when the use was without the actual or constructive knowledge of the person seeking immunity; and (c) removes the provisions in the bill regarding immunity for persons following the National Fire Protection Association standards and immunity regarding the installation, modification, and repair of propane equipment.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Civil liability creates an unfair burden on people who deal with propane. The bill removes propane handlers from liability when another person fails to follow gas code requirements or does repairs without the propane handler's knowledge.

(With concerns) The blanket immunity granted for anyone who follows the National Fire Protection Association code should be removed. Product liability laws cover some of these issues. The bill should be amended to include a propane handler having constructive knowledge, not just actual knowledge.

Testimony Against: None.

Persons Testifying: (In support) Representative Kirby, prime sponsor; and Tim Layton, Northwest Propane Gas Association.

(With concerns) Michael Temple, Washington State Trial Lawyers' Association.

Persons Signed In To Testify But Not Testifying: None.