



Senate Fiscal Agency  
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BILL ANALYSIS



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Senate Bill 927 (Substitute S-1 as reported)  
Senate Bill 928 (Substitute S-2 as reported)  
Sponsor: Senator Jason E. Allen  
Committee: Economic Development, Small Business and Regulatory Reform

(as enrolled)

Date Completed: 4-11-06

### **RATIONALE**

The handling of liquefied petroleum gas is governed both by Public Act 241 of 1959 and by rules promulgated under the Fire Prevention Code. Public Act 241 generally prohibits a person from filling a liquefied petroleum gas or carbonic gas container without the container owner's consent, and requires a container to be marked with the owner's name. The administrative rules adopt standards of the National Fire Protection Association for the handling and storage of liquefied petroleum gas and, among other things, prescribe training requirements for people who transfer liquefied petroleum gas, as well as provide that only qualified personnel may transfer liquefied petroleum gas out of or into a stationary container. Since individuals who handle liquefied petroleum gas are subject to these rules, it has been suggested Public Act 241 should include a requirement to comply with them, and otherwise reflect language of the rules.

In addition, there is a concern that the penalty under Public Act 241 is not adequate to deter violators, particularly propane gas marketers that sell gas to a customer who does not own the tank on his or her property. Currently, a violation of the Act is a misdemeanor punishable by up to 90 days imprisonment and/or a maximum fine of \$500. Some people believe that the Act also should allow a civil action against someone who transfers gas without the container owner's consent.

### **CONTENT**

**The bills would amend Public Act 241 of 1959 to do the following:**

- **Require a person transferring any gas or compound out of or into a stationary liquefied petroleum gas or carbonic gas (LPG) container to comply with rules promulgated by the Department of Environmental Quality.**
- **Revise current prohibitions against filling or refilling an LPG container without the container owner's authorization; buying, selling, or delivering an unmarked container; or defacing, removing, or concealing a name or device on a container.**
- **Allow a person to bring a civil action against someone who transferred gas or a compound into or out of an LPG container without the owner's authorization.**
- **Require a person to prove that he or she complied with the requirement for the owner's authorization, when bringing an action to collect payment for transferring gas.**

The bills would take effect on July 1, 2006, and are tie-barred to each other.

### **Senate Bill 927 (S-1)**

The bill provides that an individual transferring liquefied petroleum or carbonic gas, or any other gas or compound, out of or into a stationary LPG container would have to comply with any rules promulgated by the Department of Environmental Quality under Section 3c(2) of the Fire Prevention Code. (That section requires the promulgation of rules for the storage,

transportation, and handling of liquefied petroleum gas.)

Section 2(1) of the Act prohibits a person from filling or refilling an LPG container with liquefied petroleum gas or carbonic gas, or any other gas or compound, unless he or she is the container owner or has the owner's written authorization. Under the bill, the prohibition would apply to transferring gas or a compound into or out of a container, rather than filling or refilling a container.

The Act also prohibits a person from buying, selling, offering for sale, giving, taking, loaning, delivering, permitting to be delivered, or otherwise disposing of or trafficking in LPG containers unless their surface is legibly marked with the owner's name, initials, mark, or other device. The bill would delete reference to buying unmarked containers or permitting them to be delivered.

In addition, the Act prohibits a person from defacing, erasing, obliterating, covering up, or otherwise removing or concealing any name, mark, initial, or device on an LPG container unless the person is the owner or has the owner's written authorization.

The bill would refer to a "stationary" liquefied petroleum or carbonic gas container in these provisions.

### **Senate Bill 928 (S-2)**

The bill would allow a person to bring a civil action for damages or equitable relief against a person who violated Section 2(1) of the Act. In an action for damages, the person could recover actual damages or \$2,000, whichever was greater, for each violation, as well as costs and reasonable attorney fees.

Also, under the bill, a person bringing an action in court to collect payment for transferring liquefied petroleum or carbonic gas into or out of a stationary LPG container would have to allege and prove that the person complied with Section 2(1) in the transfer of the gas, in order to prevail in the action.

MCL 429.112 (S.B. 927)  
429.113 (S.B. 928)

## **BACKGROUND**

Section 3c(2) of the Fire Prevention Code requires the State Fire Safety Board to promulgate rules for the storage, transportation, and handling of liquefied petroleum gas (as well as other hazardous materials). Executive Order 1998-2 transferred to the Department of Environmental Quality the responsibility for promulgating rules pertaining to the storage and handling of liquefied petroleum gas. The applicable rules are found in R 29.4001 through R. 29.4035.

Subject to certain modifications and additions, the rules adopt by reference the National Fire Protection Association's publication entitled, "NFPA 58 LP-Gas Code 1998 Edition", pertaining to the storage and handling, but not the transportation, of liquefied petroleum gas.

Under the rules, a person who transfers liquefied petroleum gas must complete a training program and receive certification from the National Propane Gas Association's employee training certification program that includes handling, operating, and certified testing of liquefied petroleum gas.

The rules also provide that the transfer of liquefied petroleum gas out of or into a stationary container may be accomplished only with authorization from the container owner, and the transfer may be conducted only by qualified personnel trained in proper handling and operating procedures.

Other subjects covered by the rules include container marking, installation, and location; protection against tampering; corrosive protection; and storage outside of buildings.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Senate Bill 927 (S-1) would make Public Act 241 consistent with the Fire Protection Code, and the Michigan Administrative Code, by requiring individuals who transfer gas out of or into an LPG container to comply with the rules that govern the storage and handling of liquefied petroleum gas. Since those individuals are subject to the rules, there

should be a statutory requirement that they comply with the rules promulgated under the Code. This would enhance the enforceability of the provisions. Also, by helping to ensure that people conducting transfers were properly trained, the bill would decrease the likelihood of accidents.

In addition, the bill would require an owner's authorization for the removal of gas from an LPG container, while the Act requires authorization only for filling or refilling a container. This amendment and other changes in terminology would bring Public Act 241 into conformity with the rules.

### **Supporting Argument**

Although it is illegal to fill an LPG container without the owner's authorization, some propane gas marketers evidently sell gas to residential customers without determining whether the homeowner owns the tank. Apparently, most tanks on residential property are owned by propane companies, which stay in business by filling the tanks. Customers are not locked into buying gas from one company, however: They can change suppliers by contacting another company, which will install its own tank at no charge.

Senate Bill 928 (S-2) would accomplish several things by allowing a person to bring a civil action and recover at least \$2,000 in damages for each unauthorized transfer into or out of an LPG container, plus costs and attorney fees. Compared with the current criminal penalty, the amount of potential civil damages would create a greater deterrent to would-be violators and provide more severe consequences to offenders. In addition, since a violation of the Act is a misdemeanor with a relatively light penalty, it may be reasonable to assume that prosecutors do not vigorously pursue violators. Tank owners, on the other hand, have an incentive to bring an action because violations mean lost business.

The bill also would prevent propane marketers from recovering in court for gas that was sold without the tank owner's authorization.

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

### **Senate Bill 927 (S-1)**

The bill would have an indeterminate fiscal impact on State and local government. A violation of the Act is a misdemeanor punishable by imprisonment for up to 90 days and/or a maximum fine of \$500. There are no data to indicate how many offenders are convicted of violating the Act. To the extent that the bill would result in more convictions, local governments would incur increased costs of incarceration, which vary by county. Additional penal fine revenue would benefit public libraries.

### **Senate Bill 928 (S-2)**

The bill would have a minimal impact on court costs.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.