PROPANE LIMITED LIABILITY PACKAGE

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Urgent Legislative Alert

[Rep./Sen. ____ (D/R)] has introduced legislation [(H.B./S.B. ___)] designed to offer simple and clear legal reform to help the propane industry survive in [Your State]. Specifically, [(H.B./S.B. ___)] would protect propane businesses and their employees from lawsuits where injury, loss, or property damage occurred because propane gas equipment or appliances were modified, repaired or used in an inappropriate fashion without their knowledge or consent.

[(H.B./S.B. ___)] Will Help Protect [Your State’s] Propane Industry in the Following Ways

- [(H.B./S.B. ___)] will ensure propane companies and their employees that no legal action can be taken against them if an alleged injury, damage or loss was caused by an alteration, modification, or repair of a propane system or appliance that was done without their knowledge or consent.

- [(H.B./S.B. ___)] will ensure propane companies and their employees that no legal action can be taken against them if an alleged injury, damage or loss was caused by use of a propane system or appliance in a manner or for a purpose other than that for which the equipment or appliance was intended or could reasonably have been expected.

- [(H.B./S.B. ___)] offers [Your State’s] propane marketers and our employees simple and clear legal reform designed specifically to help us stay in business by avoiding frivolous lawsuits.

- [(H.B./S.B. ___)] will help protect my customers – the very people who rely on propane to heat their homes and help operate their businesses – from price hikes that propane companies are forced to pass along in order to keep up with ever-increasing liability insurance rates.

[State Association Members]: Please write, call or fax your [State Representative(s)] and urge them to support [(H.B./S.B. ___)] Please feel free to use the bullet points provided above, as well as any other remarks you may have on behalf of your own business as the basis of your communications with your elected officials. [(H.B./S.B. ___)] promises much needed legal liability relief to the propane industry in [Your State]. Please act now on behalf of your business, your industry, your employees and your customers.
Draft Testimony

Limitation of Liability for Businesses and Employees Who Work With Liquefied Petroleum Gas [S.B./H.B. ___]

Presented By

[Name & Title]

[Date]

Presented to:

[Legislative Committee Chairman]
[Address]

On behalf of the [Your State Propane Gas Association], we are offering this testimony in support of [H.B./S.B. ___], a bill designed to create fair and reasonable legal liability standards for propane companies and their employees in the state of [Your State].

[THE 2ND PARAGRAPH IS SPECIFIC TO YOUR STATE ASSOCIATION:] Describe the Association, the sizes and types of businesses that are membership, how many customers they serve, how many employees the association represents across the state, and how long many of these businesses have been in operation. Consider telling state legislators about the breadth of your membership, your regional businesses, franchises, family-owned shops, suppliers, etc. Provide examples where possible. Let the legislators know that the association, your businesses, and your employees are vital parts of the community.

Thankfully, [Your State’s] propane related legal issues are a very solvable microcosm of a much larger problem found in America's runaway legal system. Our legal system’s flaws now regularly impose burdensome costs on small businesses, workers and consumers nationwide. The incredible cost of America's lawsuit-happy culture now totals an astonishing $233 billion a year, or $800 per person, according the U.S. Chamber of Commerce’s Institute for Legal Reform (ILR). According to a 2004 study commissioned by the ILR, small businesses alone pay $88
billion a year to cover the cost of America's civil court system, money that could be used by propane marketers to hire additional workers, expand productivity and improve employee benefits such as health care.

Exactly who pays for these excessive liability claims or “litigation taxes”? Everybody loses in this current litigious climate, but it’s the “little guy,” the unprotected small business, that has the most to lose. While claims may be collected from a company or individual, these new costs will ultimately be passed along to individuals through job losses, workers via wage reductions, consumers through price hikes, and business owners because of reductions in profits. The same arguments on legal liability reform at the national macro level can be made at the micro level for the propane industry right here in the state of [Your State] and the solution is [H.B./S.B. __]

In our industry, the cost of propane marketer liability is seen in increased insurance premiums that are passed along to consumers as higher energy costs. In some cases, these ever-increasing premium costs result in the inability of a company to remain in business. Propane underwriting involves a certain degree of predictability. Underwriters can generally predict the degree of exposure they might face when they offer to insure a propane marketer. Their premiums are based on experience with other marketers in similar situations, inspection of a company’s operations, the training of its personnel, and prior case law or jury decisions. But when unpredictability is introduced by outrageous jury awards and new and unusual plaintiff theories of liability, insurance carriers begin to reexamine their premiums and even whether they will continue to underwrite propane companies at all.

Propane is a versatile, environmentally friendly fuel. It is used safely by residential, industrial/commercial and agricultural customers throughout [Your State]. Although safe, it can become hazardous if handled improperly. When a propane marketer is responsible for an incident, it should be held responsible for its negligence. However, the vast majority of incidents involving propane result from actions, inactions, mistakes or misuse by consumers.
Because of this situation, propane marketers remain an easy target for plaintiffs’ attorneys whenever there is an incident. Currently, the liability nature of propane incidents is low frequency/high severity. Because of the product’s inherent safety, there may be few incidents, but when they do occur, the consequences can be severe. And, if an incident involving the storage or handling of propane results in property damage or personal injury, anyone involved in that incident, even tangentially, is likely to be named in a subsequent lawsuit. This problem appears to be getting worse as the public typically cries out for someone, indeed anyone other than the aggrieved party, to pay regardless of cause or responsibility.

[H.B./S.B. ___] is necessary because accidents involving propane overwhelmingly occur as a result of customers tampering with a propane accessory or system of which a propane retailer or employee had no prior knowledge. In fact, a large percentage of the claims and lawsuits filed against propane retailers involve incidents clearly caused by changes to a propane system or appliance made by "do-it-yourselfers." Typically they are customers of a propane company (or a customer’s friend/relative) who are unqualified to work on the propane system. The result can be catastrophic, not only to the residents, but also to the propane retailer who may face the costs of ensuing litigation.

A FEW EXAMPLES [Please use examples from your state if possible]

Below are a just a few examples of unfair litigation that propane companies are seeking to eliminate. We are confident this Committee will find each of these accounts outrageous and/or tragic, as well as solid evidence for the reforms called for in [H.B./S.B. ___].

Midwest

In 1999, six people died in a propane-related house fire in the Midwest. The lawsuit filed on behalf of the deceased against the propane retailer alleged that the fire started because an unqualified relative installed a propane heater in the garage by tapping into the existing propane
system running to the house. The propane retailer had nothing to do with the installation of the heater and did not know it had been installed, which the plaintiff admitted.

However, because the state where this incident occurred does not have a commonsense propane liability protection law, the propane retailer had to defend claims that they should have better inspected the propane system, found the problem heater (despite having not installed it) and provided better up-front customer safety information. Fortunately, the propane retailer eventually won his case, though, not after going through the uncertainty and expense of a legal challenge.

South

Another recent example comes from a southern state where a long-time customer of a propane marketer decided to have her nephew crawl under her house to do some undetermined repairs. While under the house, the nephew discovered what he believed to be a propane leak coming from what was thought to be the propane-powered water heater. As a consequence, he set about “fixing” the problem. Unfortunately, while performing the “repairs,” the nephew left open the gas fittings to the cook stove in the kitchen and the room filled up with gas. The resulting explosion and fire killed the woman who owned the house and injured the nephew.

No question, sadness and tragedy surround this incident, indeed any accidental loss of life. However, legal liability should be placed where it is deserved. In this case, the propane company was sued for nearly 6 million dollars and accused of gross negligence in open court. In the end, the court ordered the propane company to pay the property owner’s funeral costs, the nephew’s medical expenses and to replace a car that burned in the fire. While the small propane company managed to avoid the millions in punitive damages, it still ended up paying over $300,000 dollars for an incident they had no responsibility for.

Northeast

A northeastern state propane company recently sent two service technicians to one of their residential heating customers on a “no heat” call. When the technicians arrived and began
to work, they discovered a bad control device replaced it. However, while switching out the controls, one of the technicians discovered that one of the propane heating system pipes had rotted out. He informed the customer of the problem and told him that he was going back to the shop for materials to either repair or replace the pipe. The customer responded that he was a maintenance supervisor for an apartment complex and that, rather than pay the expense of having them repair or replace the pipe, he would change the pipe himself since he does this work for a living. After discussing the situation, the technicians agreed to let the homeowner do the work himself. They left the propane system off when they left the jobsite.

At 2:00 am the next day, the same customer called 911 to report that he and his family were all sick. They were rushed to the hospital but all released within 90 minutes with no long-term effects. Subsequently, the fire department found where he disassembled the pipe to the propane system and had apparently turned the heating system back on.

The same two technicians returned in the morning after the customer called again. When they arrived, the customer apologized and admitted that he had not finished the job and should have let them do it the prior day. The technicians then fixed the pipe and everything was fine when they left.

A month later, the propane company received a subpoena for a $1 million lawsuit claiming that the customer and his wife were now in terrible physical shape because of exposure to propane fumes. The propane company is now embroiled in a legal battle with an uncertain conclusion in spite of the fact that the customer: (1) stopped the technicians from doing their job; (2) said he would do the work, didn’t complete the repair and then acknowledged that he messed up; and (3) spent a mere 90 minutes in the hospital emergency room with no lingering injuries.

Clearly, homeowners and others not qualified to make changes to a propane system or appliance should hire a qualified person or company. The average homeowner or tenant is generally not aware of the extensive propane code requirements which are in place to ensure the safety of the propane system or appliance. Unfortunately, as in the previous examples, these
people are also painfully unaware of the danger they are placing themselves and their loved ones in by working around propane without proper training, tools or experience.

Conclusions

When a propane marketer is responsible for a propane-related incident, it should be held legally responsible. We would never argue otherwise. However, we believe that propane marketers are becoming an easy target for plaintiffs’ attorneys whenever there is an incident, regardless of evidence of fault. Our industry does not expect blanket exemption from legal liability; we are simply looking for an equal footing with plaintiffs when propane-related incidents result in property damage, personal injury or death.

[H.B./S.B. ___] is not a radical idea. Rather, it offers simple and clear legal reform designed specifically to help the propane industry survive by avoiding frivolous lawsuits in [Your State]. The legislation would protect large and small propane businesses and their employees from lawsuits where injury, loss or property damage occurred because propane gas equipment or appliances were modified, repaired or used in an inappropriate manner without their knowledge or consent. In addition, this legislation would help protect [Your State’s] propane consumers – the very people who rely on propane to heat their homes and help operate their businesses – from price hikes that propane companies are forced to pass along to afford ever-increasing costs for liability insurance.

[Mr/ Ms./ Mrs. Chairman Chairwoman,____ and Ranking Member________], we appreciate the opportunity to testify on behalf of the propane industry in [YOUR STATE]. Your leadership is needed to help enact this common sense legal liability reform. On behalf of the [STATE Propane Gas Association], our businesses, our employees and our customers statewide, we ask for your support of [H.B./S.B. ____].
Sample Limited Liability Legislation

Limitation of Liability for Businesses and Employees Who Work With Liquefied Petroleum (Propane) Gas

(1) Liability Limited. No legal action shall be commenced or maintained against any person engaged in this state in the business of selling at retail, supplying, handling, or transporting liquefied petroleum gas if the alleged injury, damage or loss was caused by:

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

(b) the use of liquefied petroleum gas equipment or a liquefied petroleum gas appliance in a manner or for a purpose other than that for which the equipment or appliance was intended and that could reasonably have been expected.

(2) Effective Date. This act shall take effect [specify when the law should begin]. The provisions of this act shall apply to actions occurring on or after the applicable effective date of this act.
Limitation of Liability for Businesses and Employees Who Work with Liquefied Petroleum (Propane) Gas.

This law limits the liability of marketers, transporters, handlers and sellers, of propane gas for actual or punitive damages related to the installation, modification, repair, or servicing of propane gas systems or appliances by any other person(s).

Specifically, the law has two sections related to limiting liability for propane companies. The first ensures propane companies and their employees that no legal action can be taken against them if an alleged injury, damage or loss was caused by an alteration, modification, or repair of a propane system or appliance that was done without their knowledge or consent.

The second section ensures propane companies and their employees that no legal action can be taken against them if an alleged injury, damage or loss was caused by use of a propane system or appliance in a manner or for a purpose other than that for which the equipment or appliance was intended or could reasonably have been expected.

SAMPLE EMPLOYEE LETTER

Date

The Honorable [STATE LEGISLATOR NAME]
Dear [State Senator/Representative’s Name ________]:

I am writing to encourage your support for [H.B./S.B. _____], a bill designed to create fair and reasonable legal liability standards for propane companies and their employees in the state of _____.

THE 2ND PARAGRAPH IS PERSONAL: Consider describing the company you work for, the community it serves, how many fellow employees you work alongside of, and how long you have been employed there. Let your legislators know that you, your family, and your job are vital parts of the community.

This legislation is not a radical idea. Rather, it offers simple and clear legal reform designed specifically to help the propane industry protect jobs like mine by avoiding frivolous lawsuits in (YOUR STATE). Specifically, the legislation would protect propane businesses and their employees from lawsuits where injury, loss, or property damage occurred because propane gas equipment or appliances were modified, repaired or used in an inappropriate fashion without their knowledge or consent.

H.B./S.B. _____ would protect myself and my employer [feel free to name employer/town] from unreasonable and frivolous lawsuits. In addition, this bill would help customers – the very people who rely on propane to heat their homes and help operate their businesses – from the sort of price hikes that propane companies are forced to pass along due to ever-increasing liability insurance rates.

[State Senator/Representative’s Name ________], your leadership is needed to help enact this common sense legal liability reform. I ask for your support of [H.B./S.B. _____].

Sincerely,

Name, Title

(Include street address, city, and zip code)
SAMPLE MARKETER LETTER
PLACE ON COMPANY LETTERHEAD

Date

The Honorable [STATE LEGISLATOR NAME]
Office Address
City, State, Zip

Dear [State Senator/Representative’s Name _______]:

I am writing to encourage your support for [H.B./S.B. ____], a bill designed to create fair and reasonable legal liability standards for propane companies and their employees in the state of _________.

**THE 2ND PARAGRAPH IS PERSONAL:** Consider describing your business and who it serves, how many employees you have, and how long you have been in business. You might consider telling them if you are a regional business, a franchise, family-owned, etc. Let your legislators know that you, your employees and your business are vital parts of the community.

This legislation is not a radical idea. Rather, it offers simple and clear legal reform designed specifically to help the propane industry survive by avoiding frivolous lawsuits in (YOUR STATE). Specifically, the legislation would protect propane businesses and their employees from lawsuits where injury, loss, or property damage occurred because propane gas equipment or appliances were modified, repaired or used in an inappropriate fashion without their knowledge or consent.

H.B./S.B. ____] would protect my business and my employees from unreasonable and frivolous lawsuits. In addition, this legislation would help protect my customers – the very people who rely on propane to heat their homes and help operate their businesses – from price hikes that propane companies may be forced to pass along in order to keep up with ever-increasing liability insurance rates.

[State Senator/Representative’s Name ________], your leadership is needed to help enact this common sense legal liability reform. On behalf of my business, my employees and my customers, I ask for your support of [H.B./S.B. ____].

Sincerely,

Name, Title
*(Include street address, city, and zip code)*
SAMPLE SUPPLIER LETTER
PLACE ON COMPANY LETTERHEAD

Date

The Honorable [STATE LEGISLATOR NAME]
Office Address
City, State, Zip

Dear [State Senator/Representative’s Name ________]:

I am writing to encourage your support for [H.B./S.B. ____], a bill designed to create fair and reasonable legal liability standards for propane companies and their employees in the state of __________.

**THE 2ND PARAGRAPH IS PERSONAL:** Consider describing your business and how it serves the propane industry, how many employees you have, and how long you have been in business. Consider telling them if you are a regional business, a franchise, family-owned, etc. Let your legislators know that you, your employees and your business are vital parts of the community.

This legislation is not a radical idea. Rather, it offers simple and clear legal reform designed specifically to help the propane industry survive by avoiding frivolous lawsuits and keeping liability insurance costs low in the state of (YOUR STATE). Specifically, the legislation would protect propane businesses and their employees from lawsuits where injury, loss, or property damage occurred because propane gas equipment or appliances were modified, repaired or used in an inappropriate fashion without their knowledge or consent.

Not coincidentally, [H.B./S.B. ____] would also serve the broader supply community which supplies the propane industry with tools and materials (i.e. valves, piping, fittings, controls, gauges) necessary to do their job safely and effectively. The current legal climate in (YOUR STATE) not only threatens propane businesses with business-breaking lawsuits, it also threatens propane business suppliers with a corresponding loss of business which can result in layoffs and bankruptcies. In fact, [H.B./S.B. ____] would go a long way toward protecting the entire propane industry supply chain from unfair legal liability standards.

[State Senator/Representative’s Name ________], your leadership is needed to help enact common sense legal liability reform. On behalf of my business, my employees and my customers, I ask for your support of [H.B./S.B. ____].

Sincerely,

Name, Title

(Include street address, city, and zip code)
SAMPLE STATE NEWSLETTER ARTICLE

(Because every State Association is different, please feel free to add/subtract text to this article that is germane to your own particular association and how it operates. NPGA does, however, encourage State Associations to inform their memberships of the opportunity the limited liability reform package presents nationwide.)

Limited legal liability reform for the propane industry has been on the top of the industry agenda for some time now. Well-publicized reforms have passed in Kansas and Colorado over the last several years, delivering reforms to the marketers in those states. Now, thanks to [Your State Association’s] continuing partnership with National Propane Gas Association (NPGA), we are one step closer to realizing the prized goal of easing nuisance lawsuits and lowering our liability insurance premiums on our industry.

[Your State Association] has received a sample limited liability reform package from NPGA which includes virtually everything needed to start an active campaign to get positive pro-propane limited liability reform legislation passed in [your state]. The package includes everything from sample legislation and testimony to suggested language for grassroots letters and calls to action.

Passing limited liability reform for the propane industry in [your state] will be a long process. We will need to find and develop advocates in the state legislature, lobby, negotiate, apply grassroots pressure and stay on top of all the details necessary to get the job done. The good news is, the fight is worth winning and we have the tools to do the job.