

To: All
 From: MHR
 Date: December 3, 2014
 Re: Limited Liability Statutes regarding **Liquefied Petroleum Gas**

This memo provides the statutory language for statutes limiting the liability for propane suppliers. Some of these statutes do not specifically relate to propane suppliers but limit liability or expressly provide a defense for alterations or modifications made to products. I have also noted if there is any case law applying the statutes or if we have filed any Motions for Summary Judgment based on these statutes that I was familiar with.

State	Statute
Alabama	Ala. Code 1975 § 9-17-109
Arizona	A.R.S. § 12-717
Arkansas	A.C.A. § 15-75-112
Colorado	C.R.S.A. § 8-20-415
Florida	F.S.A. § 527.067 F.S.A. § 527.06
Georgia	Ga. Code Ann. § 51-1-51(b)
Indiana	IN ST 34-20-6-5
Iowa	I.C.A. § 101.14
Kansas	K.S.A. § 55-1809
Kentucky	K.R.S. § 234.175
Louisiana	L.S.A. ó RS 40:1846
Mississippi	Miss. Code Ann. §75-57-47
Missouri	V.A.M.S. § 323.060
Nebraska	NE ST s 57-517

New Mexico	NM ST s 70-5-7
North Carolina	NC ST s 99B-3
Oklahoma	52 Okl.St.Ann. § 420.3A
Oregon	OR ST s 30.915
Rhode Island	RI ST s 9-1-32
South Dakota	SD ST s 20-9-10
Tennessee	T.C.A. §29-34-207
Texas	V.T.C.A., Natural Resources Code § 113.301 V.T.C.A., Natural Resources Code § 113.401
Utah	U.C.A. 1953 § 78-27-65
Wisconsin	WI ST 101.16

1. **Alabama – Ala. Code 1975 § 9-17-109:** There are no cases applying this statute on Westlaw. We filed a Motion for Summary Judgment based on this statute in FM/Barnwell (closed case).

Violations; records; fees; assessment and hearing; filling of containers; installation, maintenance, etc., of appliances; damages.

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(e) LP-dealers holding Class A or Class B-1 permits have special knowledge and expertise in performing installations, maintenance, repairs, adjustments, and services to liquefied petroleum gas appliances, including ranges, water heaters, heaters, containers, and LP-gas systems. To ensure the safety of Alabama's consumers of LP-gas services, any consumer who desires to install, repair, maintain, adjust, or service any liquefied petroleum gas appliance, including, but not limited to, ranges, water heaters, containers, heaters, and LP-gas systems, shall notify the LP-gas dealer who regularly supplies such consumer with LP-gas of his or her intention to employ an individual other than the LP-gas dealer to perform such installation, maintenance, repair, adjustment, or service being performed. The consumer shall afford the LP-gas dealer with an opportunity to first install, repair, maintain, adjust, or service the LP-gas appliance before resorting to an individual other than his or her LP-gas dealer who regularly supplies LP-gas.

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

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

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

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

2. **Arizona – A.R.S. § 12-717:** There are no cases applying this statute on Westlaw.

Liquefied petroleum gas provider; liability; definitions

A. In any civil action against a liquefied petroleum gas provider for civil or other damages, the liquefied petroleum gas provider is liable only for the amount of damages that are in proportion to the liquefied petroleum gas provider's percentage of fault and is not liable for the amount of damages allocated to fault attributed to either:

1. An alteration or modification of liquefied petroleum gas equipment that was not reasonably foreseeable, that was made by a person other than the liquefied petroleum gas provider and that could not have been discovered by the liquefied petroleum gas provider in the exercise of reasonable care.
2. The use of liquefied petroleum gas equipment in a manner or for a purpose other than that for which the liquefied petroleum gas equipment was intended to be used or could reasonably have been foreseen to be used, if the liquefied petroleum gas provider or the liquefied petroleum gas equipment manufacturer has taken reasonable steps to warn the ultimate consumer of the hazards associated with foreseeable misuses of the gas equipment.

B. This section does not affect, modify or eliminate the liability of a liquefied petroleum gas equipment manufacturer or its employees or agents under any legal

claim, including product liability claims.

C. For the purposes of this section:

1. "Liquefied petroleum gas equipment" means a liquefied petroleum gas appliance or other liquefied petroleum gas equipment.

2. "Liquefied petroleum gas provider" means any person or entity engaged in the business of supplying, handling, transporting or selling at retail liquefied petroleum gas, but does not include a liquefied petroleum gas equipment manufacturer.

3. **Arkansas – A.C.A. § 15-75-112:** There are no cases applying this statute on Westlaw.

Affirmative Defense

(a) As used in this section:

(1) "Liquefied petroleum gas equipment" means any appliance, equipment, or piping system that uses, stores, or transports liquefied petroleum gas; and

(2) "Liquefied petroleum gas provider" means any person or entity engaged in the business of supplying, handling, transporting, or selling liquefied petroleum gas.

(b) A liquefied petroleum gas provider shall have an affirmative defense to any action for civil liability for damage or injury caused by:

(1) An alteration or modification of liquefied petroleum gas equipment that was not reasonably foreseeable by the provider and caused the equipment to be unsafe for use in its altered or modified form; or

(2) The end-user's use of liquefied petroleum gas equipment:

(A) Was outside of the manner or purpose that could reasonably have been intended to be used or rendered the equipment unsafe; and

(B) The liquefied petroleum gas provider or the equipment's manufacturer provided a reasonable warning about the consequences of misusing the equipment.

4. **Colorado - C.R.S.A. § 8-20-415:** There are no cases applying this statute on Westlaw. We filed a Motion for Summary Judgment based on this statute in FM/Cato (closed case).

Limited Liability

(1) 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 not reasonably have been expected.

(2) A person who follows the applicable procedures established by the standards of the national fire code pursuant to [section 8-20-405](#) as adopted by the director of the division of oil and public safety and rules promulgated pursuant to [section 8-20-402](#) shall not be deemed to be grossly negligent or willful and wanton.

5. **Florida – F.S.A. § 527.067:** There are no cases applying this statute on Westlaw.

Responsibilities of persons engaged in servicing liquefied petroleum gas equipment and systems and consumers, end users, or owners of liquefied petroleum gas equipment or systems

(1) All persons engaged in the business of servicing, testing, repairing, maintaining, or installing liquefied petroleum gas equipment and systems shall initially present proof of licensure to consumers, owners, or end users prior to working on said equipment or system and shall subsequently present proof of licensure upon the request of consumers, owners, end users, or persons who have authorized such work.

(2) Any consumer, owner, end user, or person who alters or modifies his or her LP gas equipment or system in any way shall, for informational purposes, notify the licensed dealer who next fills or otherwise services his or her LP gas system that such work has been performed. The department may promulgate rules prescribing the method of notification. Such notification shall be made within a reasonable time prior to the date the liquefied petroleum gas equipment or system is next filled or otherwise serviced in order that the equipment or system may be serviced in a safe manner.

6. **Florida – F.S.A. § 527.06: Rules:** Sale of Liquefied Petroleum Gas

(1) The department may adopt rules necessary to effectuate any of the statutory duties of the department in the interest of public health, safety, and welfare and to promote the safe handling of **liquefied petroleum** gas and proper installation, storing, selling, utilizing, transporting, servicing, testing, repairing, and maintaining of **liquefied petroleum** gas equipment and systems. The department shall adopt rules reasonably necessary to assure the competence of persons to safely engage in the business of **liquefied petroleum** gas, including, but not limited to, the licensure, testing, and qualifying of such persons for the protection of the health, welfare, and safety of the public and persons using such materials. These rules shall be in substantial conformity with generally accepted standards of safety concerning the same subject matter and shall not extend, **modify**, or conflict with any laws of this state or the

reasonable implications of such laws.

(2) The department shall promulgate and enforce rules setting forth minimum general standards covering the design, construction, location, installation, and operation of equipment for storing; handling; transporting by tank truck, tank trailer, or pipeline; and utilizing liquefied petroleum gases and specifying the odorization of such gases and the degree thereof. The rules shall be such as are reasonably necessary for the protection of the health, welfare, and safety of the public and persons using such materials and shall be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.

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7. **Georgia –Ga. Code Ann. § 51-1-51(b):** There are no cases applying this statute on Westlaw.

Liquefied petroleum gas provider liability

(a) As used in this Code section, the term:

(1) "Liquefied petroleum gas equipment" means a liquefied petroleum gas appliance or liquefied petroleum gas equipment.

(2) "Liquefied petroleum gas provider" means any person or entity engaged in the business of supplying, handling, transporting, or selling at retail liquefied petroleum gas in this state.

(b) A liquefied petroleum gas provider shall be immune from civil liability if the proximate cause of the injury or damages was:

(1) An alteration, modification, or repair of liquefied petroleum gas equipment that could not have been discovered by the liquefied petroleum gas provider in the exercise of reasonable care; or

(2) The use of liquefied petroleum gas equipment in a manner or for a purpose other than that for which the liquefied petroleum gas equipment was intended to be used or for which could reasonably have been foreseen, provided that the liquefied petroleum gas provider or the manufacturer of the liquefied petroleum gas equipment has taken reasonable steps to warn the ultimate consumer of the hazards associated with foreseeable misuses of the liquefied petroleum gas equipment.

(c) Nothing in this Code section shall be construed as affecting, modifying, or eliminating the liability of a manufacturer of liquefied petroleum gas equipment or its employees or agents under any legal claim, including but not limited to product liability claims.

(d) This Code section shall apply to any cause of action arising on or after July 1, 2005.

8. **Indiana – IN ST 34-20-6-5:** Products Liability Actions, Defenses: Modification or alteration of product

Sec. 5. It is a defense to an action under this article (or IC 33-1-1.5 before its repeal) that a cause of the physical harm is a modification or alteration of the product made by any person after the product's delivery to the initial user or consumer if the modification or alteration is the proximate cause of physical harm where the modification or alteration is not reasonably expectable to the seller.

9. **Iowa - I.C.A. § 101.14:** There are no cases applying this statute on Westlaw.

Action for damages--evidence--user conduct

1. In any action or claim seeking damages for personal injuries or damage to property arising out of injuries or loss due to defects in a liquefied petroleum gas system, or arising out of the condition of any portion of that system, the negligence or other fault of the customer, owner, or other person in possession of or making use of that system relating to the installation, modification, maintenance, or repair of the system or damage incurred to the system shall be admissible in evidence and considered by the finder of fact if such conduct was a cause in fact of the accident or condition leading to the injuries or damages.

2. For purposes of this section, "liquefied petroleum gas system" means any container designed to hold liquefied petroleum gas and attached valves, regulators, piping, appliances, controls on appliances, and venting of appliances.

10. **Kansas – K.S.A. § 55-1809:** There are no cases applying this statute on Westlaw.

Damages; comparative negligence and liability.

(a) In any action brought against a liquefied petroleum gas marketer for personal injury or property damage, an end retail user's damages shall be reduced by the comparative negligence of the end retail user or any third party to the extent the action of the end retail user or the third party contributed to cause the personal injury or property damage, including, but not limited to, the end retail user's or third party's: (1) Modification, repair, service or alteration of the end retail user's liquefied petroleum gas system; or (2) failure to conduct a leak check or inspection of the liquefied petroleum gas system after any modification, repair, service or alteration of the end retail user's system.

(b) Nothing in this act is intended to limit any claim or defense that an act of an end retail user, third party, marketer or other person or entity contributed to cause the personal injury or property damage.

(c) In any action brought against a liquefied petroleum gas marketer for personal injury or property damage, evidence of the marketer's compliance or noncompliance

with this act shall be admissible as evidence to support a claim or defense to the extent such evidence is relevant to the cause of the personal injury or property damage.

(d) Nothing in this act is intended to limit the liability of any individual, licensee, or liquefied petroleum gas marketer for any damages that arise from any reckless or intentional act of such individual, licensee or liquefied petroleum marketer.

(e) The state fire marshal shall develop an information notice and distribute the same annually to all licensees. The notice shall include a reference to this section, a description of the law and any additional information that the state fire marshal deems necessary and appropriate.

(f) Every liquefied petroleum gas marketer in the state of Kansas shall maintain continuous general liability coverage of not less than \$1,000,000 and shall annually provide proof of insurance to the state fire marshal.

11. **Kentucky – K.R.S. § 234.175:** There are no cases applying this statute on Westlaw.

Certification of equipment installation; compliance with administrative regulations and manufacturer's instructions; immunity from liability; exception

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(3) A person shall not install gas-consuming appliances, equipment, or other components of a gas delivery system unless the installation is made in accordance with the instructions of the manufacturer of the appliance, equipment, or component and in compliance with the applicable administrative regulations promulgated by the Office of Housing, Buildings and Construction.

(4) A person shall not alter, modify, maintain, or repair gas-consuming appliances, equipment, or other components of a gas delivery system unless the alteration, modification, maintenance, or repair is made in accordance with the instructions of the manufacturer of the appliance, equipment, or component and in compliance with the applicable administrative regulations promulgated by the Office of Housing, Buildings and Construction.

(5) A person licensed under this chapter or an agent or employee of the person shall not be liable for civil damages for injury to persons or property that result from the installation, alteration, modification, maintenance, or repair of a gas-consuming appliance, equipment, or component by a person other than the licensee or the licensee's agent or employee.

(6) (a) Except as provided in paragraph (b) of this subsection, a person licensed under this chapter or the licensee's agent or employee who provides gas to an end user shall not be liable for civil damages for injury to persons or property that result from the

installation, alteration, modification, maintenance, or repair of the gas-consuming appliance, equipment, or component if the installation, alteration, modification, maintenance, or repair is done without the actual knowledge and consent of the licensee or the licensee's agent or employee.

(b) A person licensed under this chapter or his or her agent or employee shall not be exempt from liability for civil damages under paragraph (a) of this subsection if the person or his or her agent or employee is negligent or acts intentionally, and the negligence or intentional act causes or partially causes injury or damage.

12. **Louisiana – L.S.A. – RS 40:1846:** There are no cases applying this statute on Westlaw that are on point.

Rules and regulations of commission; exceptions; reporting; data sharing; permit requirements; penalties; liability

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B. In adopting rules and regulations, the commission shall be governed by the following provisions:

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(3) The rules and regulations shall provide that a dealer shall not serve any liquefied petroleum gas system which the dealer knows is improperly installed or in a dangerous condition. The rules and regulations shall require the following provisions relative to liquefied petroleum gas systems:

(a) In the interest of safety and for the protection of life and property, any end user who authorizes the maintenance and/or repair, installation, adjustment, and servicing of a liquefied petroleum gas system in the state of Louisiana shall insure that any person, firm, or corporation that may be employed and/or authorized to make such repairs has a current permit or registration and cards of competency from the Louisiana Liquefied Petroleum Gas Commission to perform maintenance and/or repair, installation, adjustment and/or servicing of that system.

(b) Any end user authorizing any action listed in R.S. 40:1846(B)(3)(a), where such actions are completed by any person, firm, or corporation other than the liquefied petroleum gas dealer who normally services the liquefied petroleum gas system, shall notify, as soon as possible, the servicing dealer authorized to service the affected liquefied petroleum gas system. This notification shall include:

(i) Name of the person, firm, or corporation that performed the service.

(ii) Actions taken to the affected liquefied petroleum gas systems such as adding piping, spaceheaters, and other such appliances. The end user shall make the

described notification within five working days after completion of the action or before the liquefied petroleum gas system is next serviced with liquefied petroleum gas, whichever occurs first.

(c) It is unlawful for any person, firm, or corporation to repair, install, adjust, and/or service any liquefied petroleum gas system without meeting the requirements of the Louisiana Liquefied Petroleum Gas Commission.

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H. It shall be an affirmative defense to an action against any person engaged in this state in the business of selling at retail, supplying, handling, or transporting liquefied petroleum gas that an alleged injury, damage, or loss was caused by either of the following:

(1) 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 of the liquefied petroleum gas seller, supplier, handler, or transporter.

(2) 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 purpose could not reasonably have been expected.

13. **Mississippi – Miss. Code Ann. §75-57-47:** There are no cases applying this statute on Westlaw.

Installation of systems

(1) From and after the effective date of this chapter, any installer or other person who shall install, connect, alter, extend, change or repair any liquefied compressed gas or compressed natural gas system, container or appliance whatsoever, or who shall install, connect, change, extend, alter or repair any piping or fitting connected with or attached to any liquefied compressed gas or compressed natural gas container, system or appliance shall, within fifteen (15) days after the completion thereof, give notice to the State Liquefied Compressed Gas Board, in writing, on forms to be provided by the State Liquefied Compressed Gas Board, that such installation, connection, alteration, extension, change or repair has been made, which notice shall give full details with reference thereto, and shall give the name of the person at whose order same was made, and the name of the installer, as provided in this chapter, under whose supervision the installation, alteration, etc., was made and the address of the premises upon which same was made. Any person who shall install, connect, alter, extend, change or repair any liquefied compressed gas or compressed natural gas system, container or appliance, or any piping or fitting connected or attached thereto, without giving notice to the State Liquefied Compressed Gas Board as provided herein shall be subject to the sanctions set out in this chapter.

(2) Upon receiving notice of any installation of a liquefied compressed gas system or natural gas fueling system other than a liquefied petroleum gas carburetion system, it shall be at the discretion of the Commissioner of Insurance to cause same to be inspected, and if he or she approves same after such inspection, he or she shall leave upon such premises a written certificate of approval. Upon receiving notice of any connection, alteration, extension, change or repair to any system required to be inspected at the time of installation under the provisions of this subsection, the Commissioner of Insurance may cause the system to be inspected if he or she believes that sufficient change or repair has been made so as to alter the system from its original installation.

If, after such inspection, the inspector finds that the installation or repair has not been properly made, he or she shall report such fact to the distributor or installer making the installation and request that corrections be made within seventy-two (72) hours after the time of such inspection, if the defects are such that can be corrected without the necessity of condemning the entire system. Any distributor or installer who fails or refuses to make the corrections after requested so to do by the inspector, after a hearing before the State Liquefied Compressed Gas Board, may have his authority or certificate of compliance suspended or revoked.

Installers, as defined in this chapter, are hereby authorized to issue temporary certificates of approval for use before inspection by the Commissioner of Insurance, but no certificate issued by an installer shall be valid for a period longer than one hundred twenty (120) days from date of completion or alteration, repair or installation covered by said certificate. The provisions of this paragraph shall not relieve the dealer, or other person, from the liability of having such installation inspected by the Commissioner of Insurance, as provided in this chapter.

All certificates of approval and permits issued by liquefied gas inspectors under the terms of this section shall be executed in duplicate, and the copy thereof shall be filed and preserved in the office of the State Liquefied Compressed Gas Board for not less than three (3) years from the date thereof.

(3) All liquefied petroleum gas carburetion systems and natural gas carburetion systems shall be installed by an installer, or automobile manufacturer, or be inspected by a representative of the State Liquefied Compressed Gas Board or Commissioner of Insurance when not installed by such qualified installer or manufacturer.

All liquefied petroleum or natural gas carburetion systems installed on vehicles, including school buses, used in public transportation shall be inspected by a field inspector. The State Liquefied Compressed Gas Board may cause to be inspected any installations of liquefied petroleum gas or natural gas carburetion systems on any other type vehicles as they deem necessary. All such installations shall comply with the rules and regulations promulgated by the State Liquefied Compressed Gas Board.

No person may, for a fee, install liquefied petroleum or natural gas carburetion systems unless such person holds a license as an installer issued by the State Liquefied Compressed Gas Board.

Any person who operates a vehicle on which a liquefied petroleum or natural gas carburetion system has been installed by a person other than an installer shall apply to the State Liquefied Compressed Gas Board for inspection of such installation within fifteen (15) days of such installation. No distributor of liquefied petroleum or natural gas, or any other person, shall fill or cause to be filled any such system which has not been inspected as required by this chapter.

Any person who violates any of the provisions of this subsection shall be subject to the penalties provided in this chapter.

(4) No distributor of liquefied compressed gas, or other person, shall fill, cause to be filled, or permit to be filled, any container or system unless the installation, alteration, extension, connection, change and repair thereof, and of all appliances connected and used therewith, and of all pipings and fittings connected or attached thereto, shall have first been inspected and approved by an inspector of the State Liquefied Compressed Gas Board or Commissioner of Insurance or installed or altered by an installer as described in this chapter, and unless there is exhibited to such distributor or other person the approval of the inspector or installer provided for in the foregoing paragraphs; nor shall any person turn on or use such systems, containers, appliances, piping or fittings until same have been so inspected and approved, and such approval is exhibited to him. Any person who shall violate the provisions of this subsection, after a duly called hearing before the State Liquefied Compressed Gas Board, may have his license suspended or revoked.

(5) Any liquefied compressed gas dealer, or other person, may apply to the State Liquefied Compressed Gas Board, for permission to take an examination to qualify as an installer, as defined under the provisions of this chapter. The State Liquefied Compressed Gas Board shall prepare an examination which is sufficient to test the knowledge of the applicant as to his qualifications for installing, repairing, altering, etc., equipment used in the handling of liquefied compressed gases and of his knowledge of the handling and storage of such gases. If, after examination, the applicant is found to be competent and to possess sufficient qualifications, the State Liquefied Compressed Gas Board shall issue to such applicant a license or certificate which shall designate the system or systems which the applicant is qualified to install. The State Liquefied Compressed Gas Board shall have the authority to establish different classes of installers. Should the holder of any such certificate perform his duties in an unworkmanlike manner or be guilty of negligence, carelessness, drunkenness on duty, or other good cause, then the State Liquefied Compressed Gas Board may cancel the certificate, good cause being shown; however, before the State Liquefied Compressed Gas Board shall cancel any such certificate it shall give the holder thereof five (5) days' written notice of its intention so to do, and shall grant to the person holding such certificate an opportunity to be heard before the State

Liquefied Compressed Gas Board at such time and place as shall be fixed in such notice, to show cause, if any he or she can, why the license or certificate should not be suspended or revoked. Upon application to the State Liquefied Compressed Gas Board, and upon reexamination of the applicant by the State Liquefied Compressed Gas Board, a new certificate may be issued, but no such renewal certificate shall be issued within sixty (60) days of the cancellation of the original certificate. The State Liquefied Compressed Gas Board shall have authority to conduct any type examination of applicants desiring renewal certificates which will, in its opinion, test applicant's qualifications for the issuance of a renewal certificate. Any installer's certificates heretofore issued and outstanding shall be valid until suspended or revoked.

(6) Any dealer or installer who shall alter or change any system, or bulk storage plant system, or who shall substitute or change any such fitting, after said system has been approved by an inspector of the Commissioner of Insurance, without first obtaining the permission of such an inspector so to do, may be enjoined from continuing in the business of a dealer or installer, as defined in this chapter, in the State of Mississippi for a period of not less than one (1) year, and any judge or chancellor authorized to grant injunctions may grant and issue the injunction herein authorized, but no such injunction shall be issued except upon notice of not less than five (5) days to the dealer or installer sought to be enjoined. It is expressly provided, however, that nothing herein shall prevent a dealer or an installer from making additional installations to any such system, provided that proper notice thereof is given to the Commissioner of Insurance on forms provided by him or her in the same manner as such notice is required to be given in cases of installations, repairs and alterations; nor shall anything herein prevent a dealer or an installer from making emergency repairs to any system or fitting when such repairs are made necessary by a mechanical defect, breakdown or injury to such system or fitting, but in the event of such emergency repairs, the dealer or installer making same shall, within fifteen (15) days after making such repairs, give the Commissioner of Insurance notice of the details and facts thereof in writing.

14. **Missouri – V.A.M.S. § 323.060:** There are no cases applying this statute on Westlaw that are on point. We filed a Motion for Summary Judgment based on this statute in FM/Home Service Oil (Grofe) (closed case).

Retail distributors to be registered--nonresidents to comply-- public utility company operations exempt

1. No person or company shall engage in this state in the business of selling at retail of liquefied petroleum gas or in the business of handling or transportation of liquefied petroleum gas over the highways of this state without having first registered with the commission. Registration must be in the appropriate class as determined by the director.

2. No person or company shall engage in this state in the business of installing,

modifying, repairing, or servicing equipment and appliances for use with liquefied petroleum gas without having first registered with the commission. Registration must be in the appropriate classes as determined by the director.

3. Nonresidents of the State of **Missouri** desiring to engage in the business of distribution of liquefied petroleum gases at retail, or the business of installing, repairing or servicing equipment and appliances for use of liquefied petroleum gases, shall comply with sections 323.005 to [323.110](#) and rules and regulations promulgated hereunder.

4. No person registered pursuant to this section and engaged in this state in the business of selling at retail of liquefied petroleum gas or in the business of handling or transportation of liquefied petroleum gas over the highways of this state shall be liable for actual or punitive civil damages for injury to persons or property that result from any occurrence caused by the installation, modification, repair, or servicing of equipment and appliances for use with liquefied petroleum gas by any other person unless such registered person had received written notification or had other actual knowledge of such installation, modification, repair, or servicing of equipment and appliances and failed to inspect such installation, modification, repair, or servicing of equipment and appliances within thirty days after receipt of such notice or actual knowledge.

5. Nothing in this section is intended to limit the liability of any person for any damages that arise directly from the gross negligence or willful or wanton acts of such person.

6. All utility operations of public utility companies subject to the safety jurisdiction of the public service commission are exempt from the provisions of this section.

7. Persons who only sell liquefied petroleum gas in containers having a capacity of fifty pounds or less that have been filled by another person registered under this chapter are exempt from the provisions of this chapter.

15. **Nebraska – 57-517.** There are no cases applying this statute on Westlaw.

Liquefied petroleum gas vapor service system; container warning label; affixed by provider; limitation on liability.

(1) The Legislature finds it is necessary that a leak check be performed following an interruption of service of a liquefied petroleum gas vapor service system to ensure safe and proper operation. Further, the Legislature finds that a leak check must be performed by a qualified service technician.

(2) It is the intent of the Legislature to create a mechanism that will educate users of liquefied petroleum gas of the requirements for a leak check when an interruption of service occurs.

(3) For purposes of this section:

- (a) Interruption of service means the gas supply to a liquefied petroleum gas vapor service system is turned off;
- (b) Leak check means an operation performed on a complete liquefied petroleum gas piping system and the connection equipment to verify that the liquefied petroleum gas vapor service system does not leak;
- (c) Liquefied petroleum gas provider means any person or entity engaged in the business of supplying, handling, transporting, or selling at retail liquefied petroleum gas in this state; and
- (d) Liquefied petroleum gas vapor service system means an installation with a maximum operating pressure of one hundred twenty-five pounds per square inch or less and includes, but is not limited to, the container assembly, pressure regulator or regulators, piping system, gas utilization equipment and components thereof, and venting system in residential, commercial, or institutional installations. Liquefied petroleum gas vapor service system does not include:
 - (i) Portable liquefied petroleum gas appliances and equipment of all types that are not connected to a fixed-fuel piping system;
 - (ii) Farm appliances and equipment in liquid service, including, but not limited to, brooders, dehydrators, dryers, and irrigation equipment;
 - (iii) Liquefied petroleum gas equipment for vaporization, gas mixing, and gas manufacturing;
 - (iv) Liquefied petroleum gas piping for buildings under construction or renovations that is not to become part of the permanent building piping system, such as temporary fixed piping for building heat; or
 - (v) Fuel gas system engines, including, but not limited to, tractors, mowers, trucks, and recreational vehicles.

(4) The liquefied petroleum gas provider shall affix a container warning label on each tank supplying liquefied petroleum gas to a liquefied petroleum gas vapor service system. The container warning label shall be affixed near the tank shutoff.

(5) The container warning label required by subsection (4) of this section shall include this warning:

WARNING: Do Not Open Container Shutoff 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 valve is turned back on. The leak check must be conducted by a qualified service 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.

The container warning label shall include the statutory reference to this section.

(6) If the container warning label is affixed near the tank shutoff as required by subsection (4) of this section and the liquefied petroleum gas vapor service system is turned on prior to a leak check by a qualified service technician approved by the liquefied petroleum gas provider, the liquefied petroleum gas provider shall not be

liable for any damage, injury, or death if the proximate cause of the damage, injury, or death was the negligence of a person or persons other than the liquefied petroleum gas provider.

Laws 2007, LB274 § 1; Effective July 1, 2008

16. New Mexico § 70-5-7. Requiring competent employees in transporting, dispensing, installation, service or repair

A. The bureau may require each person, firm or corporation that transports or dispenses LP gas or that installs, repairs or services appliances, containers, equipment or piping for the use of LP gas to have all persons who perform these activities pass an appropriate examination based on the safety requirements of the commission.

B. A trainee employee shall be exempt from such examination for a period of forty-five working days and until examined by a representative of the bureau. A trainee employee, during the forty-five day period, shall be under supervision of a qualified instructor. Any LP or CNG gas licensee hiring a trainee shall, within forty-five days of the commencement of employment, notify the bureau of this fact so that an examination may be scheduled. If the trainee fails to pass the examination, he may retake it after additional instruction.

C. The bureau shall set a reasonable fee for administering an examination.

17. North Carolina - NC ST s 99B-3: Products Liability: Alteration or modification of product

(a) No manufacturer or seller of a product shall be held liable in any product liability action where a proximate cause of the personal injury, death, or damage to property was either an alteration or modification of the product by a party other than the manufacturer or seller, which alteration or modification occurred after the product left the control of such manufacturer or such seller unless:

(1) The alteration or modification was in accordance with the instructions or specifications of such manufacturer or such seller; or

(2) The alteration or modification was made with the express consent of such manufacturer or such seller.

(b) For the purposes of this section, alteration or modification includes changes in the design, formula, function, or use of the product from that originally designed, tested, or intended by the manufacturer. It includes failure to observe routine care and maintenance, but does not include ordinary wear and tear.

Statute barring a manufacturer's liability in a product liability action where "a proximate cause" of the injury is the improper modification" of the product after the product left the manufacturer's control does not require that the modification be the

sole proximate cause. [Edmondson v. Macclesfield L-P Gas Co., Inc., 2007, 182 N.C.App. 381, 642 S.E.2d 265.](#)

Statute barring manufacturer's liability where a proximate cause of injury is improper modification of product after product left manufacturer's control precluded homeowner from recovering against heater manufacturer in product liability action arising from alleged carbon monoxide exposure; heater was manufactured for use with natural gas, manufacturer's instructions for modifying heater to use liquefied petroleum (LP) required installation of air shutter bracket, and no air shutter bracket was found on heater when it was examined after incident, which occurred when homeowner was using LP. [Edmondson v. Macclesfield L-P Gas Co., Inc., 2007, 182 N.C.App. 381, 642 S.E.2d 265.](#)

18. Oklahoma – 52 Okl.St. Ann. § 420.3A: There are no cases applying this statute on Westlaw.

Liability of sellers, suppliers, handlers, or transporters of liquefied petroleum gas

A. A person is not liable for damages and no legal action shall be commenced or maintained against such 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:

1. The alteration, modification, or repair of liquefied petroleum gas equipment, containers, 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; and
2. The liquefied petroleum gas equipment, containers, or a liquefied petroleum gas appliance being used in a manner or for a purpose other than that for which the equipment or appliance was intended.

B. This section shall apply only to a person who complies with the approved standards and rules as outlined in [subsection E of Section 420.3](#) of this title and who has not acted in a grossly negligent or willful and wanton manner.

19. Oregon - OR ST s 30.915: Product Liability Actions-Defenses

It shall be a defense to a product liability civil action that an alteration or modification of a product occurred under the following circumstances:

- (1) The alteration or modification was made without the consent of or was made not in accordance with the instructions or specifications of the manufacturer, distributor, seller or lessor;
- (2) The alteration or modification was a substantial contributing factor to the personal

injury, death or property damage; and

(3) If the alteration or modification was reasonably foreseeable, the manufacturer, distributor, seller or lessor gave adequate warning.

20. Rhode Island § 9-1-32. Effect of alteration of product after sale

(a) As used in this section:

(1) "Product liability damages" means damages because of personal injury, death, or property damage sustained by reason of an alleged defect in a product, or an alleged failure to warn or protect against a danger or hazard in the use or misuse of the product, or an alleged failure to instruct properly in the use of a product.

(2) "Subsequent alteration or modification" means an alteration or modification of a product made subsequent to the manufacture or sale by the manufacturer or seller which altered, modified, or changed the purpose, use, function, design, or manner of use of the product from that originally designed, tested, or intended by the manufacturer, or the purpose, use, function, design, or manner of use or intended use for which the product was originally designed, tested, or manufactured.

(b) No manufacturer or seller of a product shall be liable for product liability damages where a substantial cause of the injury, death, or damage was a subsequent alteration or modification.

21. South Dakota 20-9-10. Product's manufacturer, assembler, or seller immune from strict liability for injury caused by certain alterations or modifications

No manufacturer, assembler, or seller of a product may be held liable for damages for personal injury, death, or property damage sustained by reason of the doctrine of strict liability in tort based on a defect in a product, or failure to warn or protect against a danger or hazard in the use or misuse of such a product, or failure to properly instruct in the use or misuse of such product, where a proximate cause of the injury, death, or damage was an alteration or modification of such product made under all of the following circumstances:

(1) The alteration or modification was made subsequent to the manufacture, assembly, or sale of the product;

(2) The alteration or modification altered or modified the purpose, use, function, design, or manner of use of the product from that originally designed, tested, or intended by the manufacturer, assembler, or seller; and

(3) It was not foreseeable by the manufacturer, assembler, or seller of the product that the alteration or modification would be made, and, if made, that it would render the product unsafe.

22. **Tennessee – T.C.A. §29-34-207:** There are no cases applying this statute on Westlaw.

Liquefied petroleum gas; tort liability

(a) As used in this section, unless the context otherwise requires:

(1) "Liquefied petroleum gas equipment" means storage vessels, piping, liquefied petroleum gas appliances, or any other item that is installed by a liquefied petroleum gas provider; and

(2) "Liquefied petroleum gas provider" means any person or entity engaged in the business of supplying, handling, transporting, or selling at retail liquefied petroleum gas in this state.

(b) A liquefied petroleum gas provider shall be immune from civil liability, if the proximate cause of the injury or damages was caused by:

(1) An alteration, modification, or repair of liquefied petroleum gas equipment that could not have been discovered by the liquefied petroleum gas provider in the exercise of reasonable care; or

(2) The use of liquefied petroleum gas equipment in a manner or for a purpose other than that for which the liquefied petroleum gas equipment was intended to be used or could reasonably have been foreseen; provided, that the liquefied petroleum gas provider or the manufacturer of the liquefied petroleum gas equipment has taken reasonable steps to warn the ultimate consumer of the hazards associated with foreseeable misuses of the liquefied petroleum equipment.

(c) Nothing in this section shall be construed as affecting, modifying, or eliminating the liability of a manufacturer of liquefied petroleum gas equipment or its employees under any legal claim, including, but not limited to, product liability claims.

(d) No defendant may allege or prove that a person or entity caused or contributed to causing a plaintiff's injuries, death, or other losses, unless the plaintiff could have maintained an action against the person.

23. **Texas – V.T.C.A., Natural Resources Code § 113.301:** There are no cases applying this statute on Westlaw.

Limitation of Liability of Licensed Installer or Servicer

A person is not liable for damages caused solely by a malfunction or the installation, modification, or improper operation of an LPG system that the person delivered for installation, installed, or serviced in a residential, commercial, or public building or in a motor vehicle if:

- (1) the person was licensed by the commission to perform the installation or service or was a registrant;
- (2) the delivery, installation, or service was performed in compliance with the safety rules and standards adopted by the commission;
- (3) the person has no control over the operation or use of the LPG system;
- (4) the person was not negligent; and
- (5) the person did not supply a defective product which was a producing cause of harm.

24. Texas – V.T.C.A., Natural Resources Code § 113.401: Notice Required

(a) A person holding a license to install or repair an LPG system who sells, installs, or repairs an LPG system, piping or other equipment that is part of a system, or an appliance that is connected or attached to a system shall provide the following notice to the purchaser or owner of the system, piping or other equipment, or appliance:

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.

(b) The commission shall adopt rules relating to the notice required by Subsection (a).

25. Utah –U.C.A. 1953 § 78B-4-510: There are no cases applying this statute on Westlaw.

Affirmative defense for liquified petroleum gas industry

(1) In any action for damages for personal injury, death, or property damage in which a seller, supplier, installer, handler, or transporter of liquified petroleum gas is named as a defendant, it shall be an affirmative defense to liability that:

(a) the equipment or appliance which caused the damage was altered or modified without the consent or knowledge of the seller, supplier, installer, handler, or transporter; or

(b) the equipment or appliance was used in a manner or for a purpose other than that for which it was intended.

(2) There is a rebuttable presumption that a seller, supplier, installer, handler, or transporter of liquified petroleum gas and the necessary equipment and appliances, licensed in accordance with Title 53, Chapter 7, Part 3, Liquified Petroleum Gas Act,

has followed all applicable standards and procedures established by the Liquefied Petroleum Gas Board.

26. **Wisconsin: 101. 16.** Liquefied petroleum gas

* * *

(4) Requirements to provide information. (a) The person actually performing the work of installing equipment utilizing liquefied petroleum gas for fuel purposes shall furnish the user of the equipment a statement, the form of which shall be prescribed by the department, showing that the design, construction, location, and installation of the equipment conforms with the rules promulgated by the department under this section.

(b)1. A person who owns, leases, or uses a propane gas system and who is a customer of a retail supplier shall notify the retail supplier of propane gas for the propane gas system of any interruption in the operation of the propane gas system due to the replacement, modification, repair, or servicing of the propane gas system by any person other than the retail supplier. The customer shall provide the notice at least 7 days in advance of the interruption in the operation of the propane gas system, except as provided in subd. 2. The retail supplier, or the person replacing, modifying, repairing, or servicing the propane gas system, shall perform a check for leaks or other defects in the propane gas system before placing the propane gas system back into operation in the manner required by rule.

2. If the interruption of a propane gas system subject to subd. 1. is due to emergency repair or servicing, the customer shall provide the notice to the retail supplier as soon as possible and no later than 24 hours after the repair or servicing is completed.

(c) Each retail supplier filling a container that is part of a propane gas system shall provide written notice to each customer subject to par. (b) of the customer's duty under par. (b) before the retail supplier's first delivery of propane gas to that customer and shall provide subsequent notices on an annual basis. The notice shall include all of the following information concerning the duty to notify under par. (b):

1. The name, address, and telephone number of the retail supplier.
2. The purpose of giving the notification to the retail supplier.
3. A description of the type of propane gas system that is subject to the notification requirement.
4. A description of the types of activities that constitute a replacement, modification, repair, or servicing of a propane gas system.
5. A copy of the provisions under s. **101. 16(4)(b)**.

* * *

The following states have considered a limited liability statute but have not enacted one.

1. **Michigan**
2. **North Dakota**
3. **Idaho** ó HB 122: created the Liquefied Petroleum Gas Safety Board but the limited liability provision was removed before the bill was passed.
4. **Indiana** ó Bill died in committee.
5. **Washington** ó 2005 Regular Session and 2006 Regular Session (HB 1159; SB 5657) doesn't appear to have passed.