

# STATE OF NEW YORK

1975

2017-2018 Regular Sessions

## IN ASSEMBLY

January 17, 2017

Introduced by M. of A. PAULIN, GALEF, LUPARDO, OTIS, SCHIMMINGER,  
CROUCH, SKOUFIS, McDONALD -- Multi-Sponsored by -- M. of A. LUPINACCI,  
McDONOUGH, RIVERA, SKARTADOS, THIELE -- read once and referred to the  
Committee on Energy

AN ACT to amend the energy law, in relation to implementing the New York  
propane education and safety act; and to amend the general business  
law, in relation to consumer protections for liquefied petroleum gas  
systems

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. The energy law is amended by adding a new article 14 to  
2 read as follows:

### ARTICLE 14

#### NEW YORK PROPANE EDUCATION AND SAFETY ACT

##### Section 14-101. Short title.

##### 14-102. Definitions.

##### 14-103. Referendum; creation and termination of a program.

##### 14-104. New York propane education and safety council.

##### 14-105. Assessments.

##### 14-106. Compliance.

##### 14-107. Lobbying restrictions.

##### 14-108. Pricing.

##### 14-109. Relation to other programs.

14 § 14-101. Short title. This article shall be known and may be cited as  
15 the New York propane education and safety act.

16 § 14-102. Definitions. For purposes of this article, unless the  
17 context otherwise requires:

18 1. "Council" means a New York propane education and safety council  
19 created pursuant to section 14-104 of this article;

20 2. "President" means the chairman of NYSERDA or his or her designee;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD06290-01-7

1 3. "Education" means any action to provide information regarding  
2 propane, propane equipment, mechanical and technical practices, and  
3 propane uses to consumers, and members of the propane industry;

4 4. "Industry" means those persons involved in the production, trans-  
5 portation, and sale of propane, and the manufacture and distribution of  
6 propane utilization equipment;

7 5. "Industry trade association" means an organization exempt from tax,  
8 under Section 501(c)(3) or 501(c)(6) of the Internal Revenue Code of  
9 1986, representing the propane industry;

10 6. "NYSERDA" means the New York state energy and research development  
11 authority;

12 7. "Odorized propane" means propane which has an odorant added to it;

13 8. "Producer" means the owner of propane at the time it is recovered  
14 at a gas processing plant or refinery; irrespective of the state where  
15 production occurs;

16 9. "Propane" means a hydrocarbon whose chemical composition is predo-  
17 minately C<sub>3</sub>H<sub>8</sub>, whether recovered from natural gas or crude oil, and  
18 includes liquified petroleum gases and mixtures thereof;

19 10. "Public member" means a designee of the president of the New York  
20 state energy research and development authority;

21 11. "Qualified industry organization" means the New York propane gas  
22 association, the national propane gas association, a successor associ-  
23 ation of these associations, or any other propane industry organization;

24 12. "Research" means any type of study, investigation or other activ-  
25 ities designed to advance the image, desirability, usage, marketability,  
26 efficiency, and safety of propane and to further the development of such  
27 information;

28 13. "Retail marketer" means a person engaged primarily in the sale of  
29 odorized propane to the ultimate consumer or to retail propane dispen-  
30 sers; and

31 14. "Retail propane dispenser" means a person who sells odorized  
32 propane to the ultimate consumer but is not engaged primarily in the  
33 business of such sales.

34 § 14-103. Referendum; creation and termination of a program. 1. Qual-  
35 ified industry organizations shall conduct at their own expense, a  
36 referendum among producers and retail marketers for the creation of a  
37 New York propane education and safety council. The council, if estab-  
38 lished, shall reimburse the qualified industry organizations for the  
39 cost of the referendum accounting and documentation. The referendum  
40 shall be conducted by an independent auditing firm agreed to by the  
41 qualified industry organizations. The results, as certified by an inde-  
42 pendent auditing firm, shall be submitted to the president within thirty  
43 days of certification. Voting rights in the referendum shall be based on  
44 the volume of propane produced or odorized propane sold in the previous  
45 calendar year. Upon approval of those persons representing two-thirds of  
46 the total value of propane voted in the retail marketer class and two-  
47 thirds of all propane voted in the producer class, the council shall be  
48 established, and shall be authorized to levy an assessment on odorized  
49 propane in accordance with section 14-105 of this article. All persons  
50 voting in the referendum shall certify to the independent auditing firm  
51 the volume of propane represented by their vote.

52 2. On the council's own initiative, or on petition to the council by  
53 producers and retail marketers representing thirty-five percent of the  
54 volume of propane in each class, the council shall, at its own expense,  
55 hold a referendum to be conducted by an independent auditing firm  
56 selected by the council, to determine whether the industry favors termi-

1 nation or suspension of the council. Termination or suspension shall not  
2 take effect unless it is approved by persons representing more than  
3 one-half of the total volume of odorized propane in the retail marketer  
4 class and more than one-half the total volume of propane in the producer  
5 class.

6 § 14-104. New York propane education and safety council. 1. The quali-  
7 fied industry organizations shall select all retail marketers members  
8 and producer members of the council. The president shall designate one  
9 public member. Vacancies in the unfinished terms of council members  
10 shall be filled in the same manner as were the original appointments.

11 2. In selecting members of the council, the qualified industry organ-  
12 izations shall give due regard to selecting a council that is represen-  
13 tative of the industry, including representation of:

14 (a) gas processors and oil refiners among producers;

15 (b) interstate and intrastate operators among retail marketers;

16 (c) large and small companies among producers and retail marketers,  
17 including agricultural cooperatives; and

18 (d) diverse geographic regions of the state.

19 3. The council shall consist of no less than five and up to seven  
20 members, with no less than four and up to six members representing  
21 retail marketers and producers, and one public member. Other than the  
22 public member, council members shall be full-time employees or owners of  
23 businesses in the industry or representatives of agricultural cooper-  
24 atives. No employee of a qualified industry organization shall serve as  
25 a member of the council, and no member of the council may serve concur-  
26 rently as an officer of the board of directors of a qualified industry  
27 organization or other trade association. Only one person at a time from  
28 any company or its affiliate may serve on the council. The president may  
29 serve as an ex-officio non-voting member of the council.

30 4. Council members shall receive no compensation for their services,  
31 nor shall council members be reimbursed for expenses relating to their  
32 service, except that public members, upon request, may be reimbursed for  
33 reasonable expenses directly related to their participation in council  
34 meetings.

35 5. Council members shall serve terms of three years and may not serve  
36 more than two full consecutive terms. Members filling unexpired terms  
37 may serve not more than a total of seven consecutive years. Former  
38 members of the council may be returned to the council if they have not  
39 been members for a period of two years. Initial appointments to the  
40 council shall be for terms of one, two, and three years staggered to  
41 provide for the selection of four members each year. The council shall  
42 notify the president of the name, address, and propane-related affil-  
43 iation, if any, of a council member within thirty days after the  
44 appointment of the member to the council.

45 6. The council shall develop programs and projects and enter into  
46 contracts or agreements for implementing this article, including  
47 programs to enhance consumer and employee safety and training, which may  
48 include the training required by section three hundred ninety-one-aa of  
49 the general business law, to provide for research and development of  
50 clean and efficient propane utilization equipment, to inform and educate  
51 the public about safety and other issues associated with the use of  
52 propane, and to provide for the payment of the costs thereof with funds  
53 collected pursuant to this article. The council shall coordinate its  
54 activities with industry trade associations, Hudson Valley community  
55 college, other community colleges and others as appropriate to provide

1 efficient delivery of services and to avoid unnecessary duplication of  
2 activities.

3 7. Issues related to research and development, safety, education, and  
4 training shall be given priority by the council in the development of  
5 its programs and projects.

6 8. The council shall select from among its members a chairperson and  
7 other officers as necessary, may establish committees and subcommittees  
8 of the council, and shall adopt rules and bylaws for the conduct of  
9 business and the implementation of this article. The council shall  
10 establish procedures for the solicitation of industry comment and recom-  
11 mendations on any significant plans, programs, and projects to be funded  
12 by the council. The council may establish advisory committees of persons  
13 other than council members.

14 9. At the beginning of each fiscal period, the council shall prepare a  
15 budget plan for the next fiscal period, including the probable cost of  
16 all programs, projects, and contracts and a recommended rate of assess-  
17 ment sufficient to cover such costs. The council shall submit the  
18 proposed budget to the president for review and comment. The president  
19 may recommend programs and activities considered appropriate.

20 10. The council shall keep minutes, books, and records that clearly  
21 reflect all of the acts and transactions of the council and make public  
22 such information. The books of the council shall be audited by a certi-  
23 fied public accountant at least once each fiscal year and at such other  
24 times as the council may designate. The expense of the audit shall be  
25 the responsibility of the council. Copies of such audit shall be  
26 provided to all members of the council, all qualified industry organiza-  
27 tions, and to other members of the industry upon request.

28 § 14-105. Assessments. 1. The council shall set the assessment at no  
29 greater than one-tenth of one cent per gallon of odorized propane.

30 2. The owner of odorized propane at the time of odorization, or the  
31 time of import of odorized propane shall make the assessment based on  
32 the volume of odorized propane sold. The assessment, when made, shall be  
33 listed as a separate line item on the bill labeled "New York Propane  
34 Education and Safety Assessment". Assessments collected from purchasers  
35 of propane are payable to the council on a monthly basis by the twenty-  
36 fifth of the month following the month of collection.

37 If payment is not made to the council by the due date under this  
38 subdivision, an interest penalty of one percent of any amount unpaid  
39 shall be added for each month or fraction of a month after the due date,  
40 until final payment is made.

41 3. The council may establish an alternative means of collecting the  
42 assessment if another means is found to be more efficient and effective.  
43 The council may establish a late payment charge and rate of interest to  
44 be imposed on any person who fails to remit or pay to the council any  
45 amount due under this article.

46 4. Pending disbursement pursuant to a program, plan, or project, the  
47 council shall invest funds collected through assessments, and any other  
48 funds received by the council, only in obligations of the United States  
49 or any agency thereof, in general obligations of any state or political  
50 subdivision thereof, in any interest-bearing account or certificate of  
51 deposit of a bank that is a member of the Federal Reserve System, or in  
52 obligations fully guaranteed as to principal and interest by the United  
53 States.

54 § 14-106. Compliance. The supreme court is vested with the jurisdic-  
55 tion specifically to enforce the provisions of this article, and prevent  
56 or restrain any person from violating any such provision. A successful

1 action for compliance under this section may also require payment by the  
2 defendant of the costs incurred by the council in bringing the action.

3 § 14-107. Lobbying restrictions. No funds collected by the council  
4 shall be used in any manner for influencing legislation or elections,  
5 except that the council may recommend to the president changes in this  
6 article or other statutes that would further the purpose of this arti-  
7 cle.

8 § 14-108. Pricing. In all cases, the price of propane shall be deter-  
9 mined by market forces. Consistent with the antitrust laws, the council  
10 may take no action, nor may any provision of this article be interpreted  
11 as establishing an agreement to pass along to consumers the cost of the  
12 assessment provided for in section 14-105 of this article.

13 § 14-109. Relation to other programs. Nothing in this article may be  
14 construed to preempt or supersede any other program relating to propane  
15 education and safety organized and operated under the laws of the state  
16 of New York.

17 § 2. The general business law is amended by adding a new section 391-  
18 aa to read as follows:

19 § 391-aa. Liquefied petroleum gas systems; consumer protections. 1.  
20 On or after July first, two thousand eighteen, no liquefied petroleum  
21 gas marketer or any other person shall install, inspect or service  
22 liquefied petroleum gas systems in New York state or hold himself,  
23 herself or itself out to be qualified or adequately trained to install,  
24 inspect or service liquefied petroleum gas systems in New York state  
25 without first successfully completing the following portions of a  
26 propane safety and training program known as the Propane Education and  
27 Research Council's Certified Employee Training Program, as amended from  
28 time to time:

29 a. Basic Principles and Practices of Propane (also known as Book 1.0);

30 b. Designing and Installing Exterior Vapor Distributions Systems (also  
31 known as Book 4.1);

32 c. Placing Vapor Distribution Systems and Appliances into Operation  
33 (also known as Book 4.2);

34 d. Installing Appliances and Interior Vapor Distribution Systems (also  
35 known as Book 4.3); and

36 e. Designing and Installing Dispenser Transfer Systems (also known as  
37 Book 5.1);

38 Such training shall be provided by a qualified propane industry organ-  
39 ization.

40 2. Within thirty days of the effective date of this section, every  
41 liquefied petroleum gas marketer or any other person hired to install,  
42 inspect, or service a liquefied petroleum gas system shall post on his,  
43 her, or its website, if such a website is maintained, an indication of  
44 whether the training required by this section has been completed by the  
45 individuals that will be performing such work. Prior to commencing the  
46 installation, inspection or service of a liquefied petroleum gas system,  
47 a liquefied petroleum gas marketer or any other person hired to perform  
48 such work shall provide the customer or prospective customer, upon  
49 request, a written notice that the individuals that will perform such  
50 work have successfully completed the training required by this section.

51 3. In the event that a liquefied petroleum gas marketer or any other  
52 person hired to install, inspect or service a liquefied petroleum gas  
53 system performs such work without having first successfully completed  
54 the training required by this section, such liquefied petroleum gas  
55 marketer or such other person shall be civilly liable for any property

1 damage, injury or death caused by such installation, inspection or  
2 service.

3 4. It is hereby declared to be a deceptive trade act and practice and  
4 unlawful for any liquefied petroleum gas marketer or any other person to  
5 hold himself, herself or itself out to be qualified or adequately  
6 trained to install, inspect or service liquefied petroleum gas systems  
7 in New York state without first successfully completing the training  
8 required by this section.

9 5. Nothing in this section shall be construed to alter or supersede  
10 any requirements pertaining to liquefied petroleum gases set forth in  
11 the Fire Code of New York State or the Fuel Gas Code of New York State.

12 6. For the purposes of this section the following terms shall have the  
13 following meanings:

14 a. "Person" shall mean any natural person, sole proprietorship, part-  
15 nership, corporation, limited liability company, trust, incorporated or  
16 unincorporated association, or any other legal entity.

17 b. "Liquefied petroleum gas" shall mean liquefied petroleum gas as  
18 such term is defined in section one hundred ninety-two-e of the agricul-  
19 ture and markets law.

20 c. "Liquefied petroleum gas system" shall mean any system, equipment,  
21 or component, individually or collectively, that utilizes liquefied  
22 petroleum gas including but not limited to a storage container, storage  
23 cylinder, end point or points of combustion, appliances and all attach-  
24 ments utilizing or transporting liquefied petroleum gas.

25 d. "Liquefied petroleum gas marketer" shall mean any natural person,  
26 sole proprietorship, partnership, corporation, limited liability compa-  
27 ny, trust, incorporated or unincorporated association, or any other  
28 legal entity engaged directly in the retail sale or retail transport of  
29 liquefied petroleum gas.

30 e. "Qualified propane industry organization" shall mean the New York  
31 propane gas association, the national propane gas association, a succes-  
32 sor organization of these associations, or any other propane industry  
33 organization authorized to do business in New York state that is  
34 designed primarily to provide information regarding propane, propane  
35 equipment, mechanical and technical practices, and propane uses to  
36 consumers and members of the propane industry.

37 § 3. This act shall take effect immediately.