PROPANE COMMISSION ACT

Act 332 of 2020

AN ACT to create a propane commission and to prescribe its powers and duties; to prescribe the powers and duties of certain state governmental officers and entities; to levy an assessment on the distribution of certain propane products; to provide for the administration, collection, and disposition of the assessment; to impose a late fee on certain assessments; to create certain funds; to provide for the promulgation of rules; to provide for a referendum; and to provide remedies and penalties.

History: 2020, Act 332, Imd. Eff. Dec. 29, 2020

The People of the State of Michigan enact:

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460.621 Short title.

Sec. 1.

This act shall be known and may be cited as the "propane commission act".

History: 2020, Act 332, Imd. Eff. Dec. 29, 2020

460.622 Definitions.

Sec. 2.

As used in this act:

(a) "Commission" means the propane commission created in section 3.

(b) "Department" means the department of agriculture and rural development.

(c) "Director" means the director of the department.

(d) "Education" means any action to provide propane consumers or members of the propane industry with information regarding the safe use and handling of propane, the proper use and handling of propane equipment, and the proper mechanical and technical practices when using and handling propane.

(e) "Financial institution" means a state or nationally chartered bank, member of the farm credit system, savings and loan association, savings bank, or credit union, whose deposits are insured by an agency of the United States government and that maintains a principal or branch office located in this state under the laws of this state or the United States.

(f) "Import" means to bring odorized propane into this state by motor vehicle, marine vessel, pipeline, or any other means. Import does not include bringing odorized propane into this state in the fuel supply tank of a motor vehicle if the odorized propane is used to power that motor vehicle.

(g) "Industry association" means the Michigan Propane Gas Association, a nonprofit corporation of this state.

(h) "MiPERC" means the national Propane Education and Research Council affiliate in this state.

(i) "Person" means an individual, partnership, corporation, association, cooperative, limited liability company, or any other business entity.

(j) "Propane" means a hydrocarbon whose chemical composition is predominantly C3H8, and includes liquefied petroleum gases, renewable propane, and any mixture of both liquefied petroleum gases and renewable propane.

(k) "Propane Education and Research Council" means a nonprofit corporation operated by the national propane industry to promote propane education, research, and use.

(l) "Research" means any type of study, investigation, or other activity designed to advance the image, desirability, usage, marketability, efficiency, and safety of propane and propane use equipment and to further the development of information and products related to propane and propane use equipment.

(m) "Retail propane dispenser" means a person that sells odorized propane to consumers only in containers of less than 240 pounds water capacity or for use as fuel to power motor vehicles.

(n) "Retail propane marketer" means a person engaged in the business of selling odorized propane to consumers in containers larger than 240 pounds water capacity or selling odorized propane to retail propane dispensers.

(o) "Wholesale propane distributor" means a person that sells odorized propane to a retail propane marketer.

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History: 2020, Act 332, Imd. Eff. Dec. 29, 2020

460.623 Propane commission; membership; term; appointment; audit; director supervision.

Sec. 3.

(1) The propane commission is created within the department.

(2) The commission is composed of all of the following:

(a) The director, or an individual designated by the director from the director's staff, who serves as a nonvoting, ex officio member of the commission.

(b) Five members appointed by the governor with the advice and consent of the senate.

(3) A member appointed by the governor under subsection (2) must be both of the following:

(a) A citizen and resident of this state who is 18 years of age or older.

(b) Engaged in the retail propane industry in this state as an employee or owner of a retail propane marketer for not less than 2 years immediately before appointment.

(4) Except as provided under subsection (5), the term of office of a commission member appointed by the governor under subsection (2)(b) is 3 years. The term of an appointed member expires on July 1, except that a term continues until a successor is appointed and qualified. A member shall vacate the office if the member ceases to be qualified for office under this act. A member appointed to fill a vacancy serves for the remainder of the unexpired term and until a successor is appointed and qualified.

(5) Of the commission members initially appointed under subsection (2)(b), 1 shall serve for a term of 1 year, 2 shall serve for a term of 2 years, and 2 shall serve for a term of 3 years.

(6) The commission shall annually elect from its members a chairperson, a treasurer, and other officers it considers advisable.

(7) A majority of the voting members of the commission constitutes a quorum for the transaction of business and the carrying out of the duties of the commission. The business that the commission may perform must be conducted at a public meeting of the commission held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting must be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The chairperson shall call meetings of the commission at least annually and, additionally, shall call a meeting on petition of 3 or more members of the commission not later than 7 days after receiving the petition.

(8) The commission shall maintain accurate books, records, and accounts of its transactions. The books, records, and accounts must be open to inspection by the public and are subject to audit by the auditor general or a certified public accountant. Except as otherwise provided in subsection (9), a document prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function must be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(9) Information collected under this act relating to any assessments collected or remitted or gallons of propane imported, sold, delivered, or used by a person is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. This exemption does not include information regarding any penalties levied under this act.

(10) The expenditures of the commission must be audited by a certified public accountant not less than annually. Within 30 days after completion of the audit, the certified public accountant shall give copies of the audit to the members of the commission and the director. The commission shall publish an activity and financial report annually and make it available to interested parties.

(11) The director shall supervise commission activities to ensure compliance with this act and coordinate administrative activities between the commission and the department. The director may obtain information necessary to confirm compliance with this act and may disclose statistical information except for information exempt from disclosure as described in subsection (9).

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History: 2020, Act 332, Imd. Eff. Dec. 29, 2020

460.625 Propane commission, duties and powers; liability; collection of money; prohibition on campaign contributions.

Sec. 5.

(1) The commission shall educate residents, business owners, and other users of propane on the safe use of propane, and promote the use of high efficiency appliances and equipment through rebate and incentive programs for Michigan residents. The commission may develop procedures and carry out any other activity necessary to accomplish the purposes of this act.

(2) The commission may appoint committees to carry out a project authorized under this act.

(3) The commission may appoint employees, agents, and representatives. The commission may contract with other agencies, associations, or organizations including, but not limited to, the industry association and MiPERC. The commission may incur other expenses to carry on the promotion activities for propane under subsection (1) and to otherwise carry out the purposes of this act.

(4) This state is not liable for the acts of the commission or its contracts. A member, employee, agent, or representative of the commission is not personally liable for the contracts of the commission. To ensure the commission's activities are self-supporting, all salaries, expenses, obligations, and liabilities incurred by the commission are payable only from money collected under this act when used for the purposes of this act, except that any money obtained through donations and gifts or provided by a governmental agency may be used within limits stipulated by the donor or governmental agency. No more than 10% of the money collected through assessments under this act may be used for administrative expenses.

(5) Money collected by the commission must not be used in any manner for a campaign contribution. As used in this subsection, "contribution" means that term as defined in section 4 of the Michigan campaign finance act, 1976 PA 388, MCL 169.204.

History: 2020, Act 332, Imd. Eff. Dec. 29, 2020

460.626 Propane commission; body corporate; powers.

Sec. 6.

The commission is a body corporate and may sue and be sued, plead and be impleaded, contract and be contracted with, and carry out all powers granted to it. The commission is a public body and has the powers necessary to effectuate the purposes of this act. A grant of power to the commission is an extension of the power of the commission and not a limitation of the power of the commission.

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History: 2020, Act 332, Imd. Eff. Dec. 29, 2020

460.627 Propane assessment; subject to referendum; rate; notification; collection of assessment; records; deposit of collections.

Sec. 7.

(1) Subject to a referendum under section 11(2), beginning on January 1 of the year following the effective date of this act, an initial assessment at the rate of 1/10 of 1 cent per gallon is levied upon odorized propane sold and placed into commerce in this state. The commission shall determine the assessment rate for subsequent years subject to subsections (2) and (3).

(2) Not later than December 1 of each year, the commission shall notify each wholesale propane distributor and retail propane marketer of the applicable assessment rate for the next year.

(3) The total annual assessment rate levied under this section must not exceed 1/2 of 1 cent per gallon.

(4) Each wholesale propane distributor or other owner of propane at the time of odorization in this state, or at the time of import of odorized propane into this state, shall make and collect an assessment based on the volume of odorized propane sold and placed into commerce in this state. Each wholesale propane distributor shall separately identify and itemize the assessment on an invoice, bill of sale, or other similar billing document given to a retail propane marketer for the sale of odorized propane.

(5) Each person responsible for collecting the assessment shall remit all assessments to the commission on a quarterly basis, not later than the 25th day of the month following the end of each calendar quarter. Each person responsible for collecting the assessment shall file a report, on a form provided by the commission, not later than the 25th day of the month following the end of the calendar quarter regardless of the amount due.

(6) Each person responsible for collecting the assessment shall keep records of the volume of odorized propane the person imported, sold, delivered, or used in this state, including the number of gallons, name of purchaser, and rate of assessment with respect to odorized propane that is subject to this act. All records made or kept as required by this subsection must be made available to the commission upon its written request to determine compliance with this act. The commission shall keep the records confidential and shall not disclose the records except to its accountants, attorneys, or financial advisors without a court order directing it to do so.

(7) The commission shall deposit the assessments it collects under this act into a financial institution as described in section 8 and shall not commingle the assessments with other funds. The commission shall use the assessments it collects under this act for the purposes of this act.

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History: 2020, Act 332, Imd. Eff. Dec. 29, 2020

460.628 Deposit and disbursement of revenues collected.

Sec. 8.

Money, assets, or other items of value collected or received under this act, whether collected from assessments, received as grants or gifts, or earned from royalties or license fees or derived from any activities performed by an organization, agency, or individual and conducted under this act, are not state money and must be deposited in a financial institution in this state. The money, assets, or other items of value described in this section are allocated to the commission and must be disbursed by the commission to carry out its responsibilities under this act.

History: 2020, Act 332, Imd. Eff. Dec. 29, 2020

460.629 Failure to collect and remit assessments; penalties.

Sec. 9.

A person that fails to collect or remit an assessment under this act shall pay to the commission the amount due, plus both of the following:

(a) A late fee of 10% of the amount due.

(b) An additional late fee of 1% of the amount due for each month the payment is overdue.

History: 2020, Act 332, Imd. Eff. Dec. 29, 2020

460.630 Enforcement by department; written complaint.

Sec. 10.

(1) The department shall enforce the provisions of this act. The commission shall reimburse the department for costs incurred by the department in holding referenda, reviewing petitions, and enforcing this act. The money received by the department must be allocated for the department's use.

(2) The commission may file a written complaint with the director documenting that a person has failed to collect or remit an assessment or failed to pay a late fee due to the commission under this act. On receipt of a complaint, the director shall investigate its allegations. If, after investigation, the director finds that the person has failed to collect or remit an assessment or failed to pay a late fee to the commission, the director may bring an action to recover unpaid assessments or late fees plus the reasonable costs, including attorney fees, incurred in the action. The director may use assessment funds to cover all reasonable costs and expenses incurred in connection with the recovery of unpaid assessments and late fees.

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History: 2020, Act 332, Imd. Eff. Dec. 29, 2020

460.631 Referendum requirements.

Sec. 11.

(1) All of the following apply to a referendum held under subsection (2) or (3):

(a) Each retail propane marketer with customers in this state is entitled to 1 vote representing a single firm, individual proprietorship, corporation, company, association, partnership, or spouse- or family-owned business, regardless of the number of bulk plants or retail sales outlets owned.

(b) Votes must be submitted by mail.

(c) Passage of the referendum requires more than 50% of the votes of all of the retail propane marketers with customers in this state, as described in subdivision (a).

(d) Subject to subdivisions (a) to (c), the director may promulgate rules for conducting the referendum.

(2) Within 60 days after the effective date of this act, the director shall hold a referendum on the question of whether the initial assessment described in section 7(1) will be levied.

(3) If the initial referendum under subsection (2) passes, notwithstanding any other provision of this act, the director shall hold a subsequent referendum on the question of whether the assessment will be terminated if the director receives a petition signed by not less than 33-1/3% of all retail propane marketers with customers in this state, as described in subsection (1)(a).

(4) If the referendum described in subsection (2) fails to pass, or if a referendum terminating the assessment under subsection (3) passes, the commission shall do all of the following:

(a) Recommend to the legislature that it repeal this act effective 6 months after the date of the referendum.

(b) Phase out the commission's operations in the 6 months following the date of the referendum.

(c) After 6 months from the date of the referendum, take no further action to further the purposes of this act.

History: 2020, Act 332, Imd. Eff. Dec. 29, 2020