

HOUSE BILL 2366

By Lynn

AN ACT to amend Tennessee Code Annotated, Title 67,
Chapter 3, relative to taxation of petroleum
products and alternative fuels.

WHEREAS, the general assembly finds that it is in the public interest for the State to enable dealers and distributors of propane to assess the product in order to raise funds for the purposes of promoting the common good, welfare, and advancement of the propane industry; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 3, is amended by adding Sections 2 through 15 as a new, appropriately designated part.

SECTION 2. As used in this part:

(1) "Association" means the Tennessee Propane Gas Association, Inc., a Tennessee nonprofit corporation;

(2) "Dealer":

(A) Means any person who is registered with the state to engage in:

(i) The business of selling or otherwise dealing in liquefied petroleum gases requiring handling, storing, measuring, transporting, or distributing liquefied petroleum gas; or

(ii) The business of installing, servicing, repairing, adjusting, connecting, or disconnecting containers, equipment, or appliances using liquefied gas;

(B) Does not include:

(i) A person who engages in any of the activities listed in subdivision (a)(2)(A)(i) or subdivision (a)(2)(A)(ii) only in connection with the person's employer's use of liquefied petroleum gas and not as a business; or

(ii) A person who retails liquefied petroleum gas in containers of less than fifty pounds (50 lbs.) of water capacity and whose retail business does not involve the filling or transportation of such containers;

(3) "Distributor" means a person whose primary business involves the sale of liquefied petroleum gas to a dealer;

(4) "Foundation" means the Tennessee Propane Education and Research Foundation, a Tennessee nonprofit corporation that is tax exempt under Section 501(c)(3) of the Internal Revenue Code;

(5) "Liquefied petroleum gas" means any material that is composed predominantly of any of the following hydrocarbons or mixtures of the same: propane; propylene; butanes, such as normal butanes or isobutene; and butylenes;

(6) "Person" means an individual, a partnership, a firm, or a corporation; and

(7) "Propane" means a type of liquefied petroleum gas.

SECTION 3. Each distributor, as the owner of propane at the time of odorization, or at the time of import of odorized propane, shall make an assessment based on the volume of odorized propane sold and placed into commerce in this state. Each dealer shall pay the assessment on each gallon of propane purchased from a distributor. The assessment charge shall be identified and listed as a separate line item on each distributor's invoice to a dealer for the sale of odorized propane.

SECTION 4. Each distributor shall collect the assessment from the dealer to whom the sale is made. Each distributor shall remit to the foundation the sum of the amount of the assessment multiplied by the number of gallons of propane sold to any dealer during the preceding quarter not later than the twenty-fifth (25th) day of the month following the end of the

prior quarter. The foundation shall provide forms to the distributors for reporting the assessment. Each distributor shall file the report not later than the twenty-fifth (25th) day of the month following the end of the prior quarter regardless of the amount due.

SECTION 5. The assessment amount may not exceed the maximum allowable rate of two-tenths of one cent (\$.002) for each gallon of propane sold in this state by distributors to dealers.

SECTION 6. A distributor shall keep records of the number of gallons of propane sold to dealers, including the number of gallons, name of dealer, and rate of assessment. All documents or records regarding purchases and sales that are made or kept as required by this section shall be made available to the foundation upon its written request from time to time for the purpose of determining the distributor's compliance with this section. The foundation shall keep these records confidential and shall not disclose the records except to its accountants, attorneys, or financial advisors, or except upon court order.

SECTION 7. The foundation may bring an action to recover any unpaid assessments plus the reasonable costs, including attorney's fees, incurred in the action and may use assessment funds to cover all reasonable costs and expenses incurred in connection with recovery of any unpaid assessment.

SECTION 8. A dealer may request a refund of the assessment collected from the dealer in the prior month by submitting a written request for a refund to the foundation no later than thirty (30) days after the end of the month for which the refund is requested. The refund request shall state specifically the period of time for which a refund is requested, the amount of the refund, the distributors to whom the dealer paid assessments, and the amount of each assessment paid and shall be accompanied by proof of payment of the assessment satisfactory to the foundation. The foundation shall mail a refund to the dealer within thirty (30) days of receipt of a properly documented refund request; provided, that the foundation shall have no

obligation to make a refund to a dealer of assessments that are not yet paid to the foundation by the distributor. Any dealer who requests and is paid a refund in accordance with this section shall not be eligible to receive the benefit of any consumer rebate programs for a period of one (1) year following the date of a refund request under this section and shall not be entitled to the payment of any interest by the foundation on the amount refunded.

SECTION 9. The foundation shall use the funds to promote the common good and welfare, and advancement of the propane industry in this state, including the following activities and programs: education, training, safety compliance, equipment replacement for low-income customers, marketing, advertising, promotion, and customer rebates to encourage energy-efficient appliance and equipment purchases by residential, commercial, or agricultural consumers. The foundation shall consult with the association regarding its proposed use of the funds.

SECTION 10. No funds collected pursuant to this part shall be used in any manner for influencing state or federal legislation or for lobbying.

SECTION 11. No more than ten percent (10%) of the funds collected pursuant to this part shall be used by the foundation for administrative expenses relating to the expenditure of the funds. The foundation may advance costs of conducting referenda pursuant to this part and reimburse those costs from the assessment funds. Costs of litigation expenses incurred and the cost of the audit are not administrative expenses.

SECTION 12. All funds received by the foundation pursuant to this part shall be kept in separate accounts from other foundation funds. The foundation shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the foundation with respect to use and expenditure of the funds.

SECTION 13. The books and records of the foundation shall be audited by a certified public accountant each fiscal year with respect to the receipt and use of the funds. Copies of

such audit shall be provided to any interested party upon written request. The foundation may pay for the audit from the assessment funds.

SECTION 14. No meeting or activity undertaken by the association or the foundation pursuant to this part shall be considered illegal under antitrust law or a restraint of trade.

SECTION 15. In all cases, the price of propane shall be determined by market forces. Neither the foundation nor the association may take any action nor shall any provision be interpreted as establishing an agreement to pass along to consumers the cost of any assessment.

SECTION 16. This act shall take effect July 1, 2018, the public welfare requiring it.