

2007 Senate Bill 273

Date of enactment: April 1, 2008  
Date of publication\*: April 15, 2008

## 2007 WISCONSIN ACT 203

AN ACT *to repeal* 182.0175 (1) (c) 1., 182.0175 (1) (c) 2. and 182.0175 (1m) (b); *to renumber and amend* 101.16 (1), 101.16 (3), 101.16 (4), 101.16 (5) and 182.0175 (1) (c) (intro.); *to amend* 101.02 (20) (a), 101.02 (21) (a), 101.16 (2), 101.16 (6), 182.0175 (1m) (a), 182.0175 (1m) (bm), 182.0175 (1m) (d) 5. and 182.0175 (2) (am) 3.; and *to create* 101.16 (1) (intro.), 101.16 (1) (a), 101.16 (1) (b) 1. to 4., 101.16 (1) (c), 101.16 (1) (d), 101.16 (3) (title), 101.16 (3) (b), 101.16 (3g), 101.16 (3r), 101.16 (4) (title), 101.16 (4) (b), 101.16 (4) (c), 101.16 (5) (title), 101.16 (5) (ac), 101.16 (5) (b), 101.16 (5) (c), 101.16 (5) (cg), 101.16 (5) (cm), 101.16 (5) (cn), 101.16 (5) (cr), 101.16 (5) (d), 101.16 (5m), 101.19 (1) (L), 101.19 (1m), 182.0175 (1) (bu), 182.0175 (1) (bv), 182.0175 (1m) (d) 4m., 182.0175 (1m) (e), 182.0175 (2m) (bm) (title) and 182.0175 (2m) (br) of the statutes; **relating to:** the regulation of certain suppliers of liquefied petroleum gas, applicability of the statewide system for notification of the location of transmission facilities, granting rule-making authority, and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 101.02 (20) (a) of the statutes, as affected by 2005 Wisconsin Act 456, is amended to read:

101.02 (20) (a) For purposes of this subsection, “license” means a license, permit or certificate of certification or registration issued by the department under ss. 101.09 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.15 (2) (e), ~~101.16 (3g)~~, 101.17, 101.177 (4) (a), 101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.73 (5) or (6), 101.82 (2), 101.87, 101.935, 101.95, 101.951, 101.952, 101.985 (1) to (3), 145.02 (4), 145.035, 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).

**SECTION 2.** 101.02 (21) (a) of the statutes, as affected by 2005 Wisconsin Act 456, is amended to read:

101.02 (21) (a) In this subsection, “license” means a license, permit or certificate of certification or registra-

tion issued by the department under s. 101.09 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.15 (2) (e), ~~101.16 (3g)~~, 101.17, 101.177 (4) (a), 101.178 (2) or (3) (a), 101.63 (2), 101.653, 101.73 (5) or (6), 101.82 (2), 101.87, 101.935, 101.95, 101.951, 101.952, 101.985 (1) to (3), 145.02 (4), 145.035, 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).

**SECTION 3.** 101.16 (1) (intro.) of the statutes is created to read:

101.16 (1) DEFINITIONS. (intro.) In this section:

**SECTION 4.** 101.16 (1) of the statutes is renumbered 101.16 (1) (b) (intro.) and amended to read:

101.16 (1) (b) (intro.) ~~The term “liquefied petroleum gas” as used in this section, shall mean and include~~ means any material which is composed predominantly of, ~~or any mixtures of,~~ any of the following hydrocarbons ~~or mixtures of the same: propane, propylene, butanes, normal butane or isobutane and butylenes.~~ following hydrocarbons including their isomers:

\* Section 991.11, WISCONSIN STATUTES 2005–06 : Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

**SECTION 5.** 101.16 (1) (a) of the statutes is created to read:

101.16 (1) (a) "Department of transportation cylinder" means a container that holds liquefied petroleum gas and that meets the specifications established by the federal department of transportation.

**SECTION 6.** 101.16 (1) (b) 1. to 4. of the statutes are created to read:

- 101.16 (1) (b) 1. Propane.
2. Propylene.
3. Butane.
4. Butylene.

**SECTION 7.** 101.16 (1) (c) of the statutes is created to read:

101.16 (1) (c) "Propane gas system" means an assembly consisting of one or more containers that has a total water capacity of at least 100 gallons and a means of conveying propane gas from the container or containers to a point of connection with devices used to consume the propane gas. A "propane gas system" includes all piping and other components associated with the assembly that are used to control the quantity, flow, pressure, and physical state of the propane gas.

**SECTION 8.** 101.16 (1) (d) of the statutes is created to read:

101.16 (1) (d) "Retail supplier" means a person engaged in the business of filling containers that have a water capacity of at least 4 pounds with liquefied petroleum gas that is intended to be used directly from the containers as fuel. "Retail supplier" does not include a person who fills such containers with liquefied petroleum gas for the person's own use.

**SECTION 9.** 101.16 (2) of the statutes is amended to read:

101.16 (2) RULES. The department shall promulgate rules to ascertain, fix, and order such reasonable standards, rules, or regulations for the design, construction, location, installation, operation, repair, and maintenance of equipment for storage, handling, use, and transportation by tank truck or tank trailer, of liquefied petroleum gases for fuel purposes, and for the odorization of said gases used therewith, as shall render such equipment safe. ~~The promulgation, effect and review of standards, rules and regulations adopted under this section shall be controlled by this chapter.~~

**SECTION 10.** 101.16 (3) (title) of the statutes is created to read:

101.16 (3) (title) FILLING, EVACUATING, AND USE OF CONTAINERS.

**SECTION 11.** 101.16 (3) of the statutes is renumbered 101.16 (3) (a) and amended to read:

101.16 (3) (a) ~~No~~ Except as provided in par. (b), no person, firm or corporation, except other than the owner thereof and those duly of a liquefied petroleum gas container or a person authorized by the owner so to do, shall, may fill, refill, evacuate, or use in any other manner -a

~~liquefied petroleum gas~~ the container or receptacle for any purpose whatsoever.

**SECTION 12.** 101.16 (3) (b) of the statutes is created to read:

101.16 (3) (b) A retail supplier may evacuate a liquefied petroleum gas container not under its ownership in order to transfer the remaining liquefied petroleum gas that is in that container into a container that is under its ownership.

**SECTION 13.** 101.16 (3g) of the statutes is created to read:

101.16 (3g) LICENSE REQUIRED. (a) No retail supplier may distribute liquefied petroleum gas without holding a license issued by the department. The department, subject to s. 101.02 (20) and (21), shall issue a license to be a retail supplier upon receiving the fee established under s. 101.19 (1) (L) or (1m) and upon obtaining proof of financial responsibility as required under sub. (3r) (c). The term of the license shall be set by the department, not to exceed 2 years.

(b) The department shall publish an annual list of all retail suppliers holding valid licenses under par. (a).

**SECTION 14.** 101.16 (3r) of the statutes is created to read:

101.16 (3r) FINANCIAL RESPONSIBILITY. (a) Except as provided in par. (b), a retail supplier shall maintain proof of financial responsibility in the amount of \$1,000,000 per occurrence with an annual aggregate of \$2,000,000 for compensating 3rd parties for bodily injury and property damages for incidents associated with the release of liquefied petroleum gas.

(b) A retail supplier who only fills department of transportation cylinders or who only fills containers for engine and recreational vehicle fueling systems shall maintain proof of financial responsibility in the amount of \$500,000 per occurrence with an annual aggregate of \$1,000,000 for compensating 3rd parties for bodily injury and property damages for incidents associated with the release of liquefied petroleum gas.

(c) A retail supplier may obtain any of the following to prove financial responsibility as required under par. (a) or (b):

1. A surety bond that is issued by a surety company that is listed as an acceptable surety for federal bonds on the date that the surety bond is obtained in the most recently published U.S. department of the treasury's circular 570.

2. An irrevocable letter of credit that is issued by a financial institution that is authorized to do business in this state or that is federally chartered. The letter of credit shall be for an initial period of at least one year.

3. Commercial general liability insurance as an endorsement to an existing policy or as a separate policy from an insurer, or a risk retention group, that is licensed to transact the business of insurance in this state or that

is eligible to provide insurance as a surplus lines insurer in one or more states.

(d) A retail supplier who fails to maintain proof of financial responsibility as required under par. (a) or (b), may not distribute liquefied petroleum gas at retail until such proof is obtained.

(e) Each retail supplier shall file proof of financial responsibility as required under this subsection with the department.

(f) A 3rd party that issues a surety bond, letter of credit, or general liability insurance to a retail supplier for purposes of this subsection shall provide written notice to the retail supplier and to the department at least 60 days before canceling, revoking, suspending, or failing to renew the bond, letter, or insurance.

(g) A retail supplier that cancels or fails to renew a surety bond, letter of credit, or general liability insurance shall notify the department at least 60 days before canceling or failing to renew the bond, letter, or insurance. Upon receipt of the notice, the department shall revoke the retail supplier's license issued under sub. (3g).

(h) A financial institution that issues an irrevocable letter of credit to a retail supplier for purposes of this subsection shall renew the letter automatically unless notice is given as required under par. (f).

**SECTION 15.** 101.16 (4) (title) of the statutes is created to read:

101.16 (4) (title) REQUIREMENTS TO PROVIDE INFORMATION.

**SECTION 16.** 101.16 (4) of the statutes is renumbered 101.16 (4) (a) and amended to read:

101.16 (4) (a) ~~Every The person, firm, association or corporation~~ actually performing the work of installing, ~~on and after the effective date of regulations promulgated by the department pursuant to this section,~~ equipment utilizing liquefied petroleum gas for fuel purposes, shall furnish the customer or user of said ~~the~~ equipment, a statement, the form of which shall be prescribed by the department, showing that the design, construction, location, and installation of said ~~the~~ equipment conforms with the rules and regulations adopted promulgated by the department pursuant to under this section.

**SECTION 17.** 101.16 (4) (b) of the statutes is created to read:

101.16 (4) (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 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.

**SECTION 18.** 101.16 (4) (c) of the statutes is created to read:

101.16 (4) (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).

**SECTION 19.** 101.16 (5) (title) of the statutes is created to read:

101.16 (5) (title) PENALTIES.

**SECTION 20.** 101.16 (5) of the statutes is renumbered 101.16 (5) (am) and amended to read:

101.16 (5) (am) Any person, firm, association or corporation ~~violating this section, who intentionally violates sub. (3) or (4) or any standard, rule or regulation adopted by the department pursuant to this section, or issuing a false statement under sub. (4), promulgated under sub. (2)~~ shall be fined not less than \$25 nor more than \$100 ~~\$2,000,~~ or ~~shall be~~ imprisoned not less than 30 days nor more than 6 months.

**SECTION 21.** 101.16 (5) (ac) of the statutes is created to read:

101.16 (5) (ac) Except as provided in par. (am), any person who violates sub. (3) or (4) or any rule promulgated under sub. (2) shall forfeit not less than \$10 nor more than \$1,000.

**SECTION 22.** 101.16 (5) (b) of the statutes is created to read:

101.16 (5) (b) Except as provided in par. (c), any retail supplier who violates sub. (3g) or (3r) shall forfeit not less than \$500 and not more than \$1,000 for the first offense and not less than \$2,000 but not more than \$5,000 for each subsequent offense.

**SECTION 23.** 101.16 (5) (c) of the statutes is created to read:

101.16 (5) (c) Any retail supplier who violates sub. (3g) or (3r) shall forfeit not less than \$200 and not more than \$400 for the first offense and not less than \$800 but not more than \$2,000 for each subsequent offense if the retail supplier is one of the following:

1. A retail supplier who only fills department of transportation cylinders.

2. A retail supplier who only fills containers for engine and recreational vehicle fueling systems.

**SECTION 23d.** 101.16 (5) (cg) of the statutes is created to read:

101.16 (5) (cg) Paragraphs (b) and (c) do not apply to intentional violations of subs. (3g) or (3r).

**SECTION 23g.** 101.16 (5) (cm) of the statutes is created to read:

101.16 (5) (cm) Except as provided in par. (cn), any retail supplier who intentionally violates sub. (3g) or (3r) shall be imprisoned not less than 30 days nor more than 6 months or shall be fined not less than \$500 nor more than \$1,000 for the first offense and not less than \$2,000 nor more than \$5,000 for each subsequent offense.

**SECTION 23k.** 101.16 (5) (cn) of the statutes is created to read:

101.16 (5) (cn) Any retail supplier who only fills department of transportation cylinders or containers for engine and recreational vehicles and who intentionally violates sub. (3g) or (3r) shall be imprisoned not less than 30 days nor more than 6 months or shall be fined not less than \$200 nor more than \$400 for the first offense and not less than \$800 nor more than \$2,000 for each subsequent offense.

**SECTION 23n.** 101.16 (5) (cr) of the statutes is created to read:

101.16 (5) (cr) 1. Each day of violation of sub. (3) constitutes a separate offense.

2. Each day of violation of sub. (3g) constitutes a separate offense.

3. Each day of violation of sub. (3r) constitutes a separate offense.

4. Each day of violation of sub. (4) constitutes a separate offense.

**SECTION 24.** 101.16 (5) (d) of the statutes is created to read:

101.16 (5) (d) If a retail supplier is found in violation of sub. (3g) or (3r), the court shall require that the retail supplier cease distributing liquefied petroleum gas at retail until the retail supplier is issued the license required under sub. (3g).

**SECTION 25.** 101.16 (5m) of the statutes is created to read:

101.16 (5m) CIVIL LIABILITY. (a) Any retail supplier who is licensed under sub. (3g) and who suffers damages caused by the filling of a container that is not a department of transportation cylinder by another retail supplier who is not so licensed may bring an action against the unlicensed retail supplier to do any of the following:

1. Enjoin the unlicensed retail supplier from distributing liquefied petroleum gas at retail until the retail supplier receives the required license.

2. Receive monetary damages equal to 3 times the amount of any monetary loss sustained or \$2,000, whichever is greater, multiplied by each day that the unlicensed supplier is not licensed under sub. (3g).

(b) Notwithstanding s. 814.04 (1), a retail supplier who prevails in an action under par. (a) shall be awarded reasonable attorney fees.

(c) An action under this subsection shall be commenced within 180 days after the cause of action accrues or be barred.

**SECTION 26.** 101.16 (6) of the statutes is amended to read:

101.16 (6) EXEMPTION. This section shall does not apply to railroads engaged in interstate commerce or to equipment used by them.

**SECTION 27.** 101.19 (1) (L) of the statutes is created to read:

101.19 (1) (L) Issuing licenses to retail suppliers of liquefied petroleum gas under s. 101.16 (3g), except as provided in sub. (1m).

**SECTION 28.** 101.19 (1m) of the statutes is created to read:

101.19 (1m) The department shall collect an annual fee of \$20 for issuing a license under s. 101.16 (3g) to a retail supplier who only fills department of transportation cylinders.

**SECTION 28m.** 182.0175 (1) (bu) of the statutes is created to read:

182.0175 (1) (bu) "Pavement" means asphalt or concrete pavement.

**SECTION 29.** 182.0175 (1) (bv) of the statutes is created to read:

182.0175 (1) (bv) "Private transmission facilities" means transmission facilities that are owned by a person, other than a governmental unit, and that are located on private property owned or leased by that person and that do not cross a public right-of-way.

**SECTION 30.** 182.0175 (1) (c) (intro.) of the statutes is renumbered 182.0175 (1) (c) and amended to read:

182.0175 (1) (c) "Transmission facilities" includes all pipes, pipelines, wires, cables, ducts, wirelines and associated facilities, whether underground or above-ground, regardless of the nature of their transmittants or of their in-service application. The term includes, but is not restricted to, utility facilities, government-owned facilities, facilities transporting hazardous materials, communications and data facilities, drainage and water facilities and sewer systems. The term does not include any of the following: culverts.

**SECTION 31.** 182.0175 (1) (c) 1. of the statutes is repealed.

**SECTION 32.** 182.0175 (1) (c) 2. of the statutes is repealed.

**SECTION 33.** 182.0175 (1m) (a) of the statutes is amended to read:

182.0175 (1m) (a) *Statewide system.* ~~Transmission facilities owners~~ Owners of transmission facilities, other than private transmission facilities, shall establish or designate a nonprofit organization governed by a board of directors as the operator of a one-call system and shall be members of the system. The one-call system shall be a statewide communication system in which a single operational center receives excavation notices and transmits notice information to affected-member-transmission facilities owners. Owners of private transmission facilities may be members.

**SECTION 34.** 182.0175 (1m) (b) of the statutes is repealed.

**SECTION 35.** 182.0175 (1m) (bm) of the statutes is amended to read:

182.0175 (1m) (bm) *Membership fees.* ~~Members~~ A member may be assessed an initial start-up fee equal to the system's costs in adding the member to the one-call system, except that any initial start-up fee may not exceed \$100 for a member whose transmission facilities serve less than 5,000 customers. For purposes of assessing the initial start-up fee, affiliated transmission facilities owners shall be considered a single member. Under this paragraph, a transmission facilities owner is affiliated with another transmission facilities owner if the transmission facilities owner, directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other transmission facilities owner. Members shall also be assessed a fee per notice of intended excavation activity. Membership in the one-call system ceases if a fee assessed under this paragraph is more than 90 days past due. A transmission facilities owner may be reinstated as a member upon payment of the amount past due.

**SECTION 36.** 182.0175 (1m) (d) 4m. of the statutes is created to read:

182.0175 (1m) (d) 4m. Disclose to persons providing notice that the one-call system does not include private transmission facilities as required under par. (e) 1.

**SECTION 37.** 182.0175 (1m) (d) 5. of the statutes is amended to read:

182.0175 (1m) (d) 5. Inform the person providing notice of the names of ~~affected-member~~ transmission facilities owners who will receive the notice information.

**SECTION 38.** 182.0175 (1m) (e) of the statutes is created to read:

182.0175 (1m) (e) *Information system.* 1. The operator of the one-call system shall ensure, through information distributed to the public by phone, Internet, or printed materials, that a person providing notice on intended excavation activity is informed that private transmission facilities are not subject to the one-call system and that the person providing notice is referred to other entities to be contacted by the person for determin-

ing the location of private transmission facilities. In providing this information, the operator shall specifically use the term "propane" in describing the type of private transmission facilities that are not subject to the one-call system.

2. The department of commerce may promulgate a rule that requires retail suppliers, as defined in s. 101.16 (1) (d), of propane to inform their customers each year of the obligation of owners of transmission facilities under this section.

**SECTION 39.** 182.0175 (2) (am) 3. of the statutes is amended to read:

182.0175 (2) (am) 3. Maintain an estimated minimum clearance of 18 inches between a marking for an unexposed underground transmission facility marked that is marked under sub. (2m) and the cutting edge or point of any power-operated excavating or earth moving equipment. ~~If, except as is necessary at the beginning of the excavation process to penetrate and remove the surface layer of pavement. When the underground transmission facility is becomes exposed or if the transmission facility is already exposed,~~ the excavator may reduce the clearance to 2 times the known limit of control of the cutting edge or point of the equipment or 12 inches, whichever is greater.

**SECTION 40.** 182.0175 (2m) (bm) (title) of the statutes is created to read:

182.0175 (2m) (bm) (title) *Local governmental units.*

**SECTION 41.** 182.0175 (2m) (br) of the statutes is created to read:

182.0175 (2m) (br) *Private transmission facilities.* Paragraphs (a) to (bm) do not apply to owners of private transmission facilities.

**SECTION 42. Nonstatutory provisions.**

(1) SUBMISSION OF PROPOSED RULES. No later than the first day of the 6th month beginning after the effective date of this subsection, the department of commerce shall submit in proposed form the rules being promulgated under section 101.16 (2) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes. Notwithstanding section 227.137 (2) of the statutes, the secretary of administration may not require the department of commerce to prepare an economic impact report for these rules.

**SECTION 43. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The renumbering and amendment of section 101.16 (4) of the statutes and the creation of section 101.16 (4) (title), (b), and (c) of the statutes take effect on the first day of the 6th month beginning after publication.

(2) The treatment of section 182.0175 (1) (bv) and (c) (intro.), 1., and 2., (1m) (a), (b), (bm), (d) 4m. and 5., and (e) 1., and (2m) (bm) (title) and (br) of the statutes takes effect on the first day of the 13th month beginning after publication.

(3) The treatment of section 101.16 (3g), (3r), and (5m) of the statutes, the renumbering and amendment of section 101.16 (5) of the statutes, and the creation of sec-

tion 101.16 (5) (title), (ac), (b), (c), (cg), (cm), (cn), (cr), and (d) of the statutes take effect on the first day of the 16th month beginning after publication.

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