

HEALTH AND SAFETY CODE CHAPTER 753. FLAMMABLE LIQUIDS

HEALTH AND SAFETY CODE

TITLE 9. SAFETY

SUBTITLE A. PUBLIC SAFETY

CHAPTER 753. FLAMMABLE LIQUIDS

Sec. 753.001. DEFINITIONS. In this chapter and in the rules adopted under this chapter:

(1) "Board" means the State Board of Insurance.

(2) "Bulk plant" means that portion of a property operated in conjunction with a retail service station where flammable liquids are received by tank vessel, tank car, or tank vehicle and are stored or blended in bulk for distribution by tank car, tank vehicle, or container.

(3) "Flammable liquid" means a liquid having a flash point below 140°F Fahrenheit and having a vapor pressure of not more than 40 pounds per square inch (absolute) at 100°F Fahrenheit. The term does not include a liquefied petroleum gas.

(4) "Mobile service unit" means a vehicle, tank truck, or other mobile device from which a flammable liquid used as motor fuel may be dispensed as an act of retail sale into the fuel tank of a motor vehicle parked on an off-street parking facility.

(5) "Person" means an individual, firm, association, corporation, or other private entity.

(6) "Retail service station" means that portion of a property where a flammable liquid used as motor fuel is stored and dispensed as an act of retail sale from fixed equipment into the fuel tank of a motor vehicle. The term does not include a marina.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 223, eff. Sept. 1, 1991.

Sec. 753.0011. TRANSFER OF POWERS AND DUTIES; REFERENCES IN CHAPTER. The powers and duties assigned to the State Board of Insurance under this chapter are transferred to the Texas Commission on Fire Protection. All references in this chapter to the State Board of Insurance mean the Texas Commission on Fire Protection.

Added by Acts 1991, 72nd Leg., ch. 628, Sec. 7, eff. Sept. 1, 1991.

Sec. 753.002. MOBILE SERVICE UNITS. (a) The board shall adopt rules for the safe movement and operation of mobile service units and the safe dispensing of flammable liquids by mobile service units.

(b) A municipality may require a license for the operation of each mobile service unit in the municipality and may charge a reasonable license fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.003. FLAMMABLE LIQUID AT RETAIL SERVICE STATIONS.

(a) The board shall administer this chapter through the state fire marshal and shall adopt rules for the safe storage, handling, and use of flammable liquids at retail service stations.

(b) The rules must substantially conform to the most recent published standards of the National Fire Protection Association, including standards in effect on or after August 1, 1989, for the storage, handling, and use of flammable liquids at retail service stations.

(c) In adopting rules, the board may use recognized standards, including:

(1) standards recognized by the federal government;

(2) standards published by a nationally recognized standards-making organization; and

(3) specifications and instructions of manufacturers.

(d) This chapter or a rule adopted under this chapter does not prohibit or permit the prohibition of an unattended self-service gasoline station operation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 224, eff. Sept. 1, 1991.

Sec. 753.004. STORAGE TANKS. (a) Except as provided by Subsection (d), flammable liquids may not be stored at a retail service station in a tank that has a gross capacity of more than 60 gallons above the surface of the ground. The individual or combined capacity or size of an underground flammable liquid tank at a retail

service station may not be limited.

(b) A retail service station may operate in conjunction with a bulk plant that has aboveground storage tanks if:

(1) there are separate underground tanks having a capacity of not less than 550 gallons each for final storage and dispensing of flammable liquids into motor vehicle fuel tanks; and

(2) any piping that connects the bulk plant storage tanks with the retail service station's underground tanks is equipped with a valve that is within the control of the retail service station operator and that is kept closed and locked when the underground tanks are not being filled.

(c) Each aboveground tank at a bulk plant that is operated in conjunction with a retail service station that is on the same or contiguous property must be equipped with emergency vents of the types and capacities prescribed by standards adopted under Section 753.003.

(d) Gasoline, diesel fuel, or kerosene may be stored in an aboveground storage tank with a capacity of not more than 4,000 gallons at a retail service station located in an unincorporated area or in a municipality with a population of less than 5,000.

(e) Under Subsection (d), a retail service station may have a tank not exceeding the specified capacity for each separate grade of gasoline, diesel fuel, or kerosene, but may not have more than one tank of that capacity for the same grade.

(f) A new aboveground storage tank may not be constructed within:

(1) 15 feet of an adjoining property line, including the full width of the right-of-way of a public road that runs between the property on which the proposed tank site is located and an adjoining property;

(2) 15 feet of the right-of-way line of a public road that is nearest to the proposed tank site;

(3) five feet of an established place of business or other building designated by board rule;

(4) 100 feet of the property line of any established school, hospital, nursing home, day-care center, preschool, or nursery school; or

(5) 15 feet of any fuel dispenser.

(g) In adopting rules under Section 753.003, the board shall include rules concerning the design, construction, and installation of tanks permitted to be used under Subsection (d). Except as provided by Subsection (f), the rules may not be more stringent than the standards of the National Fire Protection Association.

(h) The authority of a retail service station to store flammable liquids in an aboveground storage tank under Subsection (d) is not affected by a change in the boundaries or population of a municipality that occurs after the date the retail service station begins operation, unless prohibited by municipal ordinance. A municipal ordinance prohibiting the use of aboveground storage tanks may not take effect before the second anniversary of the date on which the ordinance was adopted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 225, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 902, Sec. 1, eff. June 16, 1991.

Sec. 753.005. VEHICLE REGULATIONS. The size and weight of and load carried by a vehicle used to transport or deliver flammable liquid from a point of origin to a point of destination may not be limited unless the limitation is in accordance with an applicable state motor vehicle and highway law and a municipal or county ordinance or rule in effect on September 1, 1969.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.006. UNIFORMITY AND CONFORMITY. (a) A county or municipality may not enact or enforce an ordinance or rule that is inconsistent with this chapter or the board's rules unless allowed by this chapter.

(b) If a municipality by ordinance adopted rules relating to mobile service units not later than 180 days after the board adopted rules relating to mobile service units and the rules adopted by the municipality are more restrictive than the board's rules, the rules are not invalid under Subsection (a).

(c) This chapter does not invalidate a municipal or county

ordinance or rule that was in effect on September 1, 1969, and that relates to the storage of flammable liquids or relates to or prohibits mobile service units.

(d) The board rules must provide that a facility that is in service before the effective date of an applicable rule and that is not in strict conformity with the rule may continue in service if the facility does not constitute a distinct hazard to life or property. The rules may delineate the type of nonconformities that should be considered distinctly hazardous and the nonconformities that should be evaluated in light of local conditions. The rules must provide that a person who owns a facility affected by the rules receives reasonable notice of intent to evaluate the need for compliance and the time and place at which the person may appear to offer evidence on that issue.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.007. CITATION IN ACTION FOR DECLARATORY JUDGMENT.

In an action for declaratory judgment on the validity or applicability of a rule adopted by the board under this chapter, citation shall be served on the state fire marshal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 226, eff. Sept. 1, 1991.

Sec. 753.008. ENFORCEMENT. (a) The Texas Natural Resource Conservation Commission has concurrent jurisdiction with the board regarding the inspection of initial installation and other administrative supervision of aboveground tanks authorized and regulated by this chapter. The Texas Natural Resource Conservation Commission has the primary authority for inspection of initial installation of the tanks. The Texas Natural Resource Conservation Commission shall report all violations of this chapter in regard to aboveground storage tanks to the state fire marshal for enforcement proceedings.

(b) Under the board's supervision, the state fire marshal and each county fire marshal and municipal fire marshal shall enforce this chapter and the rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., ch. 14, Sec. 227, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.253, eff. Sept. 1, 1995.

Sec. 753.009. INJUNCTIVE RELIEF. (a) The board may bring suit against a person who appears to be violating or threatening to violate a rule adopted under this chapter to restrain the person from violating or continuing to violate the rule.

(b) The suit shall be brought in the district court having jurisdiction in the county in which the violation or threat of violation occurs. At the board's request, the attorney general shall represent the board.

(c) In the suit, the court may grant the board any prohibitory or mandatory injunction the facts warrant, including a temporary restraining order, temporary injunction, or permanent injunction. The court may grant the relief without requiring a bond or other undertaking.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.010. CIVIL PENALTY. (a) A person who violates a rule adopted under this chapter is liable to the state for a civil penalty of not more than \$100 for each day the person violates the rule.

(b) The civil penalty is recoverable in a district court in:

- (1) Travis County;
- (2) the county in which the person resides; or
- (3) the county in which the violation occurs.

(c) At the board's request, the attorney general shall institute and conduct a suit in the name of the state to recover the penalty.

(d) The civil penalty provided by this section may be in addition to or in lieu of the criminal penalty prescribed by Section 753.011.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.011. CRIMINAL PENALTY. (a) A person who is engaged in the business of storing, selling, or handling flammable liquids commits an offense if the person violates a rule adopted

under this chapter.

(b) An offense under this section is a Class B misdemeanor.

(c) Each day a person continues to violate a rule adopted under this chapter constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 228, eff. Sept. 1, 1991.