

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 426
94TH GENERAL ASSEMBLY

1034S.06T

2007

AN ACT

To repeal sections 323.010, 323.020, 323.050, 323.060, 323.075, 323.080, 323.090, and 323.110, RSMo, and to enact in lieu thereof twelve new sections relating to the Missouri propane safety act, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 323.010, 323.020, 323.050, 323.060, 323.075, 323.080, 323.090, 2 and 323.110, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known 3 as sections 323.005, 323.010, 323.020, 323.025, 323.050, 323.060, 323.075, 323.080, 323.090, 4 323.105, 323.110, and 323.115, to read as follows:

323.005. This chapter may be cited as the "Missouri Propane Safety Act".

323.010. For the purposes of this chapter, the following words and phrases shall mean:

- 2 (1) **"Affiliated industry", any person or firm engaged in the manufacturing,**
3 **assembling, and marketing of appliances, containers, and products used in the propane**
4 **industry, the interstate or intrastate transportation or storage of propane, the installation**
5 **or design of propane piping systems, or other such affiliation with the commercial,**
6 **residential, or agricultural use of propane by consumers in Missouri;**
7 (2) **"Commission", the Missouri propane gas commission;**
8 (3) **"Compressed natural gas" (CNG), a mixture of hydrocarbon gases and vapors,**
9 **consisting principally of methane in gaseous form that has been compressed for use as a**
10 **vehicular fuel;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 **(4) "Director", the executive director of the commission;**

12 [(2)] **(5) "Dispensing station", a system of compressors, safety devices, cylinders,**
13 piping, fittings, valves, regulators, gauges, relief devices, vents, installation fixtures and other
14 compressed natural gas equipment intended for use in conjunction with motor vehicle fueling
15 by compressed natural gas but does not include a natural gas pipeline located upstream of the
16 inlet of the compressor;

17 [(3)] **(6) "Liquefied petroleum gas", any material which is composed predominantly of**
18 any of the following hydrocarbons, or mixtures of the same: Propane, propylene, butanes (normal
19 butane or isobutane), and butylenes;

20 [(4)] **(7) "Motor vehicle", all vehicles except those operated on rails which are propelled**
21 by internal combustion engines and are used or designed for use in the transportation of a person
22 or persons or property;

23 **(8) "Person", any individual, group of individuals, partnership, association,**
24 **cooperative, corporation, or any other entity;**

25 **(9) "Producer", the owner of the propane at the time it is recovered at a**
26 **manufacturing facility, irrespective of the state where production occurs;**

27 **(10) "Propane", propane, butane, mixtures of propane and butane, and liquefied**
28 **petroleum gas, as defined by the National Fire Protection Association Standard 58 for the**
29 **storage and handling of liquefied petroleum gases;**

30 **(11) "Public member", a member of the commission who is a resident of Missouri,**
31 **is a user of odorized propane, and is not related by the third degree of consanguinity to any**
32 **retailer or wholesale distributor of propane;**

33 **(12) "Retail marketer", a business engaged primarily in selling propane gas, its**
34 **appliances, and equipment to the ultimate consumer or to retail propane dispensers;**

35 **(13) "Wholesaler" or "reseller", a seller of propane who is not a producer and who**
36 **does not sell propane to the ultimate consumer.**

323.020. 1. The [director of the department of agriculture] **commission** shall make,
2 promulgate and enforce regulations setting forth general standards covering the design,
3 construction, location, installation and operation of equipment for storing, handling, transporting
4 by tank truck, tank trailer, and utilizing liquefied petroleum gases and specifying the odorization
5 of such gases and the degree thereof. The regulations shall be such as are reasonably necessary
6 for the protection of the health, welfare and safety of the public and persons using such materials,
7 and shall be in substantial conformity with the generally accepted standards of safety concerning
8 the same subject matter. Such regulations shall be adopted by the [director of the department of
9 agriculture] **commission** pursuant to chapter 536, RSMo. Any rule or portion of a rule, as that

10 term is defined in section 536.010, RSMo, that is promulgated under the authority of this chapter,
11 shall become effective only if the [agency] **authority** has fully complied with all of the
12 requirements of chapter 536, RSMo, including but not limited to section 536.028, RSMo, if
13 applicable, after January 1, 1999. All rulemaking authority delegated prior to January 1, 1999,
14 is of no force and effect and repealed as of January 1, 1999, however nothing in this act shall be
15 interpreted to repeal or affect the validity of any rule adopted and promulgated prior to January
16 1, 1999. If the provisions of section 536.028, RSMo, apply, the provisions of this section are
17 nonseverable and if any of the powers vested with the general assembly pursuant to section
18 536.028, RSMo, to review, to delay the effective date, or to disapprove and annul a rule or
19 portion of a rule are held unconstitutional or invalid, the purported grant of rulemaking authority
20 and any rule so proposed and contained in the order of rulemaking shall be invalid and void,
21 except that nothing in this act shall affect the validity of any rule adopted and promulgated prior
22 to January 1, 1999.

23 2. Except as specifically provided in subsection 1 of section 323.060, regulations in
24 substantial conformity with the published standards of the National Board of Fire Underwriters
25 for the design, installation and construction of containers and pertinent equipment for the storage
26 and handling of liquefied petroleum gases as recommended by the National Fire Protection
27 Association shall be deemed to be in substantial conformity with the generally accepted
28 standards of safety concerning the same subject matter.

29 **323.025. 1. There is hereby created within the department of agriculture, the**
30 **"Missouri Propane Gas Commission", which shall constitute a body corporate and politic,**
31 **an independent instrumentality exercising essential public functions. The commission shall**
32 **ensure the administration and enforcement of this chapter and all rules and regulations**
33 **and orders promulgated thereunder. The powers of the commission shall be vested in nine**
34 **commissioners, who shall be residents of this state, to be appointed by the governor, by and**
35 **with the advice and consent of the senate. The commission shall consist of one member**
36 **representing multi-state retail marketers of propane, one member representing wholesalers**
37 **or resellers of propane, one member from a county of the third classification representing**
38 **retail marketers of propane, one member who is affiliated with the Mechanical Contractors**
39 **Association in Missouri, one member affiliated with the Plumbing Industry Council, one**
40 **member representing an affiliated industry, one member representing the department of**
41 **agriculture, one member representing the department of natural resources, and one public**
42 **member. The commissioners annually shall elect from among their number a chairman**
43 **and a vice chairman, and such other officers as they may deem necessary.**

16 2. The commissioners shall serve five-year terms, with each term beginning July
17 first and ending on June thirtieth. However, of the commissioners first appointed, two
18 shall be appointed for a term of two years, two shall be appointed for a term of three years,
19 two shall be appointed for a term of four years, and three shall be appointed for a term of
20 five years. Each commissioner appointed thereafter shall be appointed for a term ending
21 five years from the date of expiration of the term for which his predecessor was appointed.
22 A person appointed to fill a vacancy prior to the expiration of such a term shall be
23 appointed for the remainder of the term. No commissioner appointed by the governor
24 under this section shall serve more than one full term. For those commissioners first
25 appointed, if such commissioner serves a term less than five years, each shall be eligible to
26 serve one full five-year term. Each commissioner shall hold office for the term of such
27 appointment and until such successor has been appointed and qualified.

28 3. Other than the public member, commission members shall be full-time employees
29 or owners of businesses in the industry or the agency they represent.

30 4. Notwithstanding the provisions of any other law to the contrary:

31 (1) No officer or employee of this state shall be deemed to have forfeited or shall
32 forfeit such office or employment by reason of his acceptance of membership on the
33 commission or such service to the commission;

34 (2) It shall not constitute a conflict of interest for a director, officer, or employee
35 of any company selling propane at retail or wholesale, or engaged in the manufacture, sale,
36 installation, or distribution of propane-use equipment, the contracting of propane piping
37 systems, or in the transportation, storage, or marketing of propane, or any other firm,
38 person, or corporation, to serve as a member of the commission, provided such trustee,
39 director, officer, or employee shall abstain from deliberation, action, and vote by the
40 commission in each instance where the business affiliation or public office association of
41 any such trustee, director, officer, or employee is involved.

42 5. Commissioners shall receive no compensation for the performance of their duties
43 under this section, but each commissioner shall be reimbursed from the funds of the
44 commission for his or her actual and necessary expenses incurred in carrying out his or her
45 official duties.

46 6. Meetings shall be held at the call of the chairman or whenever two
47 commissioners so request. Five commissioners of the commission shall constitute a
48 quorum, and any action taken by the commission under the provisions of this chapter may
49 be authorized by resolution approved by a majority, but not less than four of the
50 commissioners present at any regular or special meeting. No vacancy in the membership

51 of the commission shall impair the right of a quorum to exercise all the rights and perform
52 all the duties of the commission.

53 7. The commissioners shall employ an executive director. The executive director
54 also shall serve as the secretary for the commission and shall administer, manage, and
55 direct the affairs and business of the commission, subject to the policies, control, and
56 direction of the commissioners. The commission may employ technical experts and such
57 other officers, agents, and employees as deemed necessary, and may fix their qualifications,
58 duties, and compensation.

59 8. The secretary shall keep a record of the proceedings of the commission and shall
60 be custodian of all books, documents, and papers filed with the commission and of its
61 minute book and seal. The secretary shall have the authority to cause to be made copies
62 of all minutes and other records and documents of the commission and to give certificates,
63 under the seal of the commission, to the effect that such copies are true copies, and all
64 persons dealing with the commission may rely upon such certificates. Resolutions of the
65 persons dealing with the commission need not be published or posted unless the
66 commission shall so direct.

67 9. Before entering into his or her duties, each commissioner of the commission shall
68 execute a surety bond for fifty thousand dollars, and the director shall execute a surety
69 bond for one hundred thousand dollars or, in lieu thereof, the chairman of the commission
70 shall execute a blanket bond covering all members, the director, and the employees or
71 other officers of the commission. Each surety bond shall be conditioned on the faithful
72 performance of the duties of the office or offices covered, shall be executed by a surety
73 company authorized to transact business in this state as surety, shall be approved by the
74 attorney general, and shall be filed in the office of the secretary of state. The cost of each
75 such bond shall be paid by the commission.

76 10. At the beginning of each fiscal year, the commission shall prepare and submit
77 for public comment a budget plan, including the probable costs of all programs, projects,
78 and contracts and a recommended rate of assessment as may be necessary to cover such
79 costs. Publication of the proposed budget in the Missouri Register for at least thirty days
80 shall constitute appropriate public notice. The commission shall approve or modify the
81 budget following the public comment period.

82 11. The commission shall, following the close of each fiscal year, submit an annual
83 report of its activities for the preceding year to the department of agriculture, the
84 governor, and the general assembly. Each report shall set forth a complete operating and
85 financial statement for the commission during the fiscal year it covers. At least once in each

86 year, an independent certified public accountant shall audit the books and accounts of the
87 commission.

88 12. The commission shall have the power necessary to:

89 (1) Sue and be sued in its own name;

90 (2) Have an official seal and alter the same at pleasure;

91 (3) Have perpetual succession;

92 (4) Maintain an office at such place or places within this state as the commission
93 may designate;

94 (5) Conduct hearings and mediate disputes arising from the enforcement of this
95 chapter;

96 (6) Disperse funds for its lawful activities and fix salaries and wages of its
97 employees; and

98 (7) Exercise all powers necessary or convenient to accomplish its purposes.

99 13. The commission shall have the following duties:

100 (1) Develop comprehensive plans and programs for the prevention, control and
101 abatement of propane-related accidents in Missouri;

102 (2) Mandate a comprehensive certification training program based on the
103 department of agriculture's existing liquified petroleum gas certification and training
104 program;

105 (3) Promulgate by rule by August 28, 2010, a statewide code for the installation of
106 propane-related equipment;

107 (4) Advise, consult, and cooperate with other agencies of the state, the federal
108 government, other states, and interstate agencies, as well as with affected groups, political
109 subdivisions, and industries in furtherance of the purposes of this chapter;

110 (5) Accept gifts, contributions, donations, loans and grants from the federal
111 government and from other sources, public or private, for carrying out any of its functions.
112 Such funds shall not be expended for other than the purposes for which provided;

113 (6) Exercise general supervision of the administration and enforcement of this
114 chapter and all rules, regulations, and orders promulgated hereunder;

115 (7) Suspend any registration filed under this chapter granted to persons or
116 companies doing business under the requirements of this chapter, if such registrant is in
117 violation of any provision of this chapter;

118 (8) Represent the state of Missouri in all matters pertaining to this chapter,
119 including negotiation of interstate compact agreements;

120 **(9) To do any act necessary or convenient to the exercise of the powers granted by**
121 **or reasonably implied from the provisions of this chapter.**

122 **14. The director may make such investigations as the director deems necessary to**
123 **carry out effectively the director's responsibilities under this chapter or to determine**
124 **whether a person has engaged or is engaging in acts or practices that constitute a violation**
125 **of any provision of this chapter or of any regulation or plan issued under this chapter. For**
126 **the purpose of any investigation, the director is empowered to administer oaths and**
127 **affirmations, subpoena witnesses, compel their attendance, take evidence, and require the**
128 **production of books, papers, and documents which are relevant to the inquiry. Such**
129 **attendance of witnesses and the production of any such records may be required from any**
130 **place in this state. In case of contumacy by or refusal to obey a subpoena issued to any**
131 **person, the director may seek enforcement thereof in the circuit court of proper venue.**

132 **15. The Missouri propane gas commission is hereby authorized to regulate the**
133 **inspection of and provide specifications for propane as provided in this section.**

134 **16. A commissioner shall be removed from office by the governor for misfeasance,**
135 **malfeasance, or willful neglect of duty or other cause after notice and public hearing,**
136 **unless such notice or hearing shall be expressly waived in writing.**

137 **17. The director or any designated employee shall have free access, during**
138 **reasonable hours, to any premises in the state where an installation covered by this chapter**
139 **is being constructed, or is being installed, for the purpose of ascertaining whether said**
140 **installation is being constructed and installed in accordance with the applicable provisions.**

323.050. No city, town, village, fire district, or other political subdivision shall adopt or
2 enforce any ordinance or regulation in conflict with the provisions of this chapter, or with the
3 regulations promulgated under section 323.020. **Nothing in this section shall prohibit any**
4 **political subdivision from establishing a licensing requirement for persons relating to the**
5 **installation, repair, replacement, or maintenance of liquified petroleum gas and all other**
6 **fuel gas piping systems.**

323.060. 1. No person or company shall engage in this state in the business of selling
2 at retail of liquefied petroleum gas or in the business of handling or transportation of liquefied
3 petroleum gas over the highways of this state without having first registered with the [director
4 of the department of agriculture] **commission**. Registration must be in the appropriate class as
5 determined by the director.

6 2. No person or company shall engage in this state in the business of installing,
7 modifying, repairing, or servicing equipment and appliances for use with liquefied petroleum gas

8 without having first registered with the [director of the department of agriculture] **commission**.
9 Registration must be in the appropriate classes as determined by the director.

10 3. Nonresidents of the state of Missouri desiring to engage in the business of distribution
11 of liquefied petroleum gases at retail, or the business of installing, repairing or servicing
12 equipment and appliances for use of liquefied petroleum gases, shall comply with sections
13 [323.010] **323.005** to 323.110 and rules and regulations promulgated hereunder.

14 4. No person registered pursuant to this section and engaged in this state in the business
15 of selling at retail of liquefied petroleum gas or in the business of handling or transportation of
16 liquefied petroleum gas over the highways of this state shall be liable for actual or punitive civil
17 damages for injury to persons or property that result from any occurrence caused by the
18 installation, modification, repair, or servicing of equipment and appliances for use with liquefied
19 petroleum gas by any other person unless such registered person had received written notification
20 or had other actual knowledge of such installation, modification, repair, or servicing of
21 equipment and appliances and failed to inspect such installation, modification, repair, or
22 servicing of equipment and appliances within thirty days after receipt of such notice or actual
23 knowledge.

24 5. Nothing in this section is intended to limit the liability of any person for any damages
25 that arise directly from the gross negligence or willful or wanton acts of such person.

26 6. All utility operations of public utility companies subject to the safety jurisdiction of
27 the public service commission are exempt from the provisions of this section.

28 7. Persons who only sell liquefied petroleum gas in containers having a capacity of fifty
29 pounds or less that have been filled by another person registered under this chapter are exempt
30 from the provisions of this [section] **chapter**.

323.075. 1. Every person required to be registered under subsection 1 of section 323.060
2 shall demonstrate financial responsibility for compensating third parties for bodily injury and
3 property damage caused by the release of liquefied petroleum gas. The minimum amount of
4 financial responsibility shall be one million dollars per occurrence with an annual aggregate of
5 two million dollars.

6 2. A person may demonstrate financial responsibility required in subsection 1 of this
7 section either by self insurance or by being insured in the manner set forth in this section.

8 3. A registrant may demonstrate financial responsibility by obtaining liability insurance
9 in the required amounts as an endorsement to an existing policy or as a separate policy issued
10 by an insurance company authorized by the department of insurance to transact the business of
11 insurance in the state of Missouri. The endorsement or policy shall include a requirement that
12 the insurance company deliver a copy of any final notice of cancellation to the [department of

13 agriculture] **commission** at the same time such a notice is provided to the insured. A copy of the
14 certificate of insurance evidencing such coverage shall accompany any original application. The
15 original insurance policy, any relevant endorsements, and the certificate of insurance must be
16 made available upon request for examination and copying by the [department of agriculture]
17 **commission**.

18 4. The [director] **commission** may promulgate regulations governing acceptable forms
19 of self insurance.

20 5. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that
21 is created under the authority delegated in this section shall become effective only if it complies
22 with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section
23 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers
24 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the
25 effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
26 grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be
27 invalid and void.

28 [6. The provisions of this section shall become effective on January 1, 2006.]

323.080. 1. The [director of the department of agriculture] **commission** may suspend
2 any registration filed hereunder if the registrant violates or fails to comply with any provision of
3 this chapter or the rules and regulations promulgated hereunder until the violation or failure is
4 corrected. It is unlawful to perform any of the acts for which registration is required while a
5 suspension is in effect.

6 2. Before suspension of any registration, written notice shall be given to the registrant
7 setting forth the action contemplated and the reasons therefor. The notice shall state the time and
8 place for a hearing on the contemplated action and shall be sent by registered mail to the
9 registrant at least ten days before the hearing. At the hearing the registrant may present evidence
10 as he deems fit. Upon suspension of a registration, notice shall be sent by registered mail to the
11 last known address of the registrant.

323.090. Any person who is aggrieved by a suspension order of the [director of the
2 department of agriculture] **commission** may appeal from the suspension order within ten days
3 after the mailing of the notice of suspension. The appeal shall be to the circuit court of the
4 county in which such person resides or has his principal place of business. The circuit court shall
5 review the record, permit the presentation of any additional evidence as the parties thereto may
6 desire, determine whether the evidence supports the order of suspension and enter a judgment
7 sustaining or overruling the suspension order.

2 **323.105. 1. The commission shall set a fee for odorized propane in the state and**
3 **shall set the initial assessment at no greater than one-tenth of one cent per gallon.**
4 **Thereafter, annual assessments shall be sufficient to cover the costs of the plans and**
5 **programs of the commission. The assessment shall not be greater than twenty-five**
6 **hundredths of one cent per gallon of odorized propane. The assessment may not be raised**
7 **by more than one-tenth of one cent per gallon annually.**

8 **2. The owner of propane immediately prior to odorization in this state or the owner**
9 **of odorized propane at the time of import into this state shall be responsible for the**
10 **payment of the assessment on the volume of propane at the time of import or odorization,**
11 **whichever is later. Assessments shall be remitted to the commission on a monthly basis by**
12 **the twenty-fifth of the month following the month of collection. Nonodorized propane shall**
13 **not be subject to assessment until odorized. For purposes of collection, all propane either**
14 **odorized at terminal locations in Missouri for delivery to either in-state storage locations**
15 **or propane odorized at terminal locations outside Missouri and delivered to Missouri as**
16 **identified on a bill of lading, shall be considered as assessable.**

17 **3. The commission may, by rule, establish an alternative means to collect the**
18 **assessment if another means is found to be more efficient and effective. The commission**
19 **may by rule establish a late payment charge and rate of interest to be imposed on any**
20 **person who fails to remit any amount due under this chapter.**

21 **4. The commission shall set fees for permits, licenses, and certificates required by**
22 **this chapter. Fees shall be determined by the commission to provide sufficient funds for**
23 **the operation of the commission and its programs and shall be set by rule promulgated in**
24 **accordance with the provisions of section 323.020. The commission may alter the fee**
25 **schedule once every two years. Any funds collected under this section shall be deposited**
26 **in the propane inspection fund.**

27 **5. There is hereby created the "Propane Inspection Fund", which shall consist of**
28 **all funds collected under this section. The fund shall be used solely by the commission for**
29 **the administration and enforcement of this chapter. Notwithstanding the provisions of**
30 **section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the**
31 **biennium shall not revert to the credit of the general revenue fund. Any interest and**
32 **moneys earned on investments of moneys in the fund shall be credited to the fund.**

33 **6. No funds collected by the commission shall be used in any manner for**
34 **influencing legislation or for campaign contributions, except that the commission may**
35 **recommend to the director changes in this act or other statutes that would further the**
purpose of the commission.

323.110. 1. Any person found in violation of any provision of sections [323.010] **323.005** to 323.210 shall be deemed guilty of a class A misdemeanor. The prosecutor of each county in which a violation occurs may bring an action hereunder. But if a prosecutor declines to bring such action, then the attorney general may bring an action instead, and in so doing shall have all the powers and jurisdiction of such prosecutor.

2. Any person who is found, upon investigation by the [department of agriculture] **commission**, to be in possible violation of sections [323.010] **323.005** to 323.210 shall be notified by certified mail of the facts constituting such violation, and shall be afforded an opportunity by the [director] **commission** to explain such facts at an informal hearing to be conducted within fourteen days of such notification. In the event that such person fails to timely respond to such notification or upon unsuccessful resolution of any issues relating to an alleged violation, such person may be summoned to a formal administrative hearing before [a department of agriculture hearing officer] **the commission**. Said hearing shall be conducted in conformance with chapter 536, RSMo. If any person is found to have committed one or more violations of sections [323.010] **323.005** to 323.210, such person may be ordered to cease and desist from such violation, and the order shall be enforceable in any circuit court of competent jurisdiction, and, in addition, the person may be required to pay a penalty of not more than five hundred dollars per violation and five hundred dollars for each day such violation continues. Any party to such hearing aggrieved by a determination of a hearing officer may, in accordance with chapter 536, RSMo, appeal to the circuit court of the county in which such party resides, or if the party is the state, in Cole County.

323.115. 1. Violations of this chapter may be referred to the attorney general for appropriate action, except that nothing shall be construed as requiring the commission to refer to the attorney general violations of this chapter whenever the commission believes that the administration and enforcement of the regulations would be served adequately by administrative action under subsection 2 of this section or suitable written notice or warning to any person committing the violations.

2. Any person who fails or refuses to pay, collect, or remit any assessment or fee required of the person by this chapter may be assessed a civil penalty by the commission of not less than five hundred dollars nor more than five thousand dollars for each violation. Each violation shall be a separate offense. In addition, or in lieu of such civil penalty, the commission may issue an order requiring the person to cease-and-desist from continuing the violation. No penalty shall be assessed nor a cease-and-desist order issued unless the person is given notice and opportunity for a hearing before the commission with respect to the violation. The order of the commission assessing a penalty or imposing a cease-and-

15 **desist order shall be final and conclusive unless the person affected by the order files a**
16 **petition for review under chapter 536, RSMo. Any person who fails to obey a cease-and-**
17 **desist order after it has become final shall be subject to a civil penalty assessed by the**
18 **commission, after an opportunity for hearing before the commission, of not more than five**
19 **hundred dollars for each offense. Each day that the failure continues shall be deemed a**
20 **separate offense. If any person fails to pay an assessment of a civil penalty after it has**
21 **become a final order, the commission shall refer the matter to the attorney general for**
22 **recovery of the amount assessed in any appropriate circuit court of the state. In**
23 **such action, the validity and appropriateness of the final order imposing the civil penalty**
24 **shall not be subject to review.**

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