

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1473
Finance Committee Substitute Adopted 6/8/94

Short Title: Improve Tracking of Fuel Shipments.

(Public)

Sponsors:

Referred to:

May 25, 1994

A BILL TO BE ENTITLED
AN ACT TO ADDRESS MOTOR FUEL TAX EVASION.
The General Assembly of North Carolina enacts:

Section 1. G.S. 105-430 reads as rewritten:

"§ 105-430. Definitions.

The following definitions apply in this Article:

(01) Bulk plant. – A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

(02) Reserved.

(03) Destination state. – The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.

(1) Distributor. – A person who possesses motor fuel in this State for sale, use, or other distribution in this State or another state.

(2) Export. – To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or for the seller constitutes an export by the seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

(3) Import. – To do either of the following:

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- 1 a. ~~Bring motor fuel into this State by pipeline, marine vessel,~~
2 ~~railroad tank car, or transport truck. any means of conveyance~~
3 ~~other than in the fuel supply tank of a motor vehicle.~~
4 b. Exchange motor fuel located at a pipeline terminal or a seaport
5 terminal in this State for motor fuel located inside or outside the
6 State.

7 In applying this definition, motor fuel delivered into this State from
8 out-of-state by or for the seller constitutes an import by the seller, and
9 motor fuel delivered into this State from out-of-state by or for the
10 purchaser constitutes an import by the purchaser.

11 (4) Motor fuel. – Any of the following:

- 12 a. All products commonly or commercially known or sold as
13 gasoline (including casinghead and absorption or natural
14 gasoline) regardless of their classification or uses.
15 b. Any liquid prepared, advertised, offered for sale or sold for use
16 as or commonly and commercially used as a fuel in internal
17 combustion engines, which when subjected to distillation in
18 accordance with the standard method of test for distillation of
19 gasoline, naphtha, kerosene and similar petroleum products
20 (American Society for Testing Materials Designation D-86)
21 shows not less than ten per centum (10%) distilled (recovered)
22 below three hundred forty-seven degrees (347°) Fahrenheit (one
23 hundred seventy-five degrees (175°) Centigrade) and not less
24 than ninety-five per centum (95%) distilled (recovered) below
25 four hundred sixty-four degrees (464°) Fahrenheit (two hundred
26 forty degrees (240°) Centigrade); with the exception that the
27 term "motor fuel" shall not include commercial solvents which
28 distill, by American Society for Testing Materials Method D-
29 86, not more than nine per centum (9%) at 176° F. and which
30 have a distillation range of 125° F. or less, of liquefied gases
31 which would not exist as liquids at a temperature of 60°
32 *Fahrenheit and a pressure of 14.7 pounds per square inch
33 absolute.

34 (5) Person. – Defined in G.S. 105-228.90.

35 (5a) Reserved.

36 (5b) Rack. – A mechanism for delivering motor fuel from a refinery, a
37 terminal, or a bulk plant into a railroad tank car, a transport truck, or
38 another means of nonbulk transfer.

39 (6) Secretary. – The Secretary of Revenue.

40 (7) Terminal. – A motor fuel storage and distribution facility that is
41 supplied by pipeline or marine vessel and from which motor fuel may
42 be removed at a rack.

43 (8) Terminal operator. – A person who owns, operates, or otherwise
44 controls a terminal.

1 (9) Transport truck. – A semitrailer combination rig designed or used to
2 transport loads of at least 4,200 gallons of motor fuel over the
3 highways."

4 Sec. 2. Article 36 of Chapter 105 of the General Statutes is amended by
5 adding a new section to read:

6 **"§ 105-432.1. Application for registration as terminal operator.**

7 A person may not engage in business in this State as a terminal operator unless the
8 person is licensed under this Article as a distributor, is licensed under Article 36A of
9 this Chapter as a supplier, or is registered as a terminal operator with the Secretary. To
10 register as a terminal operator, a person must complete an application for registration
11 provided by the Secretary and provide the information that would be required if the
12 person filed an application for a license as a distributor.

13 A terminal operator must display a copy of a registration issued under this section in
14 a conspicuous place at each place of business of the terminal operator. A terminal
15 operator's registration is not transferable and remains in effect until surrendered or
16 cancelled."

17 Sec. 3. G.S. 105-433(d) reads as rewritten:

18 "(d) Export Exception. – A distributor whose sale or other distribution of fuel consists
19 only of exporting fuel who meets the following restrictions is not required to be
20 incorporated or formed in this State, authorized to transact business in this State, or have
21 a designated agent for service of process in this State. State:

22 (1) The distributor's sale or other distribution of motor fuel consists only
23 of exporting the motor fuel.

24 (2) The distributor is licensed for motor fuel tax purposes in each state to
25 which the distributor exports motor fuel."

26 Sec. 4. Article 36 of Chapter 105 of the General Statutes is amended by
27 adding a new section to read:

28 **"§ 105-438.1. Shipping document required to transport motor fuel by railroad tank**
29 **car or transport truck.**

30 (a) Issuance. – A person may not transport motor fuel by railroad tank car or
31 transport truck unless the person has a shipping document for its transportation that
32 complies with this section. A terminal operator and the operator of a bulk plant must
33 give a shipping document to the person who operates a railroad tank car or a transport
34 truck into which motor fuel is loaded at the terminal rack or bulk plant rack.

35 (b) Content. – A shipping document issued by a terminal operator or the operator
36 of a bulk plant must be machine-printed and must contain the following information and
37 any other information required by the Secretary:

38 (1) Identification, including address, of the terminal or bulk plant from
39 which the motor fuel was received.

40 (2) The date the motor fuel was loaded.

41 (3) The gross volume and the net volume temperature-corrected to 60°
42 Fahrenheit of motor fuel loaded.

43 (4) The destination state of the motor fuel, as represented by the purchaser
44 of the motor fuel or the purchaser's agent.

1 (c) Reliance. – A terminal operator or bulk plant operator may rely on the
2 representation made by the purchaser of motor fuel or the purchaser's agent concerning
3 the destination state of the motor fuel. A purchaser is liable for any tax due as a result
4 of the purchaser's diversion of fuel from the represented destination state.

5 (d) Duties of Transporter. – A person to whom a shipping document was issued
6 must do all of the following:

7 (1) Carry the shipping document in the conveyance for which it was
8 issued when transporting the motor fuel described in it.

9 (2) Show the shipping document to a law enforcement officer upon
10 request when transporting the motor fuel described in it.

11 (3) Deliver motor fuel described in the shipping document to the
12 destination state printed on it unless the person does all of the
13 following:

14 a. Notifies the Secretary before transporting the motor fuel into a
15 state other than the printed destination state that the person has
16 received instructions since the shipping document was issued to
17 deliver the motor fuel to a different destination state.

18 b. Receives from the Secretary a confirmation number authorizing
19 the diversion.

20 c. Writes on the shipping document the change in destination state
21 and the confirmation number for the diversion.

22 (4) Give a copy of the shipping document to the distributor or other person
23 to whom the motor fuel is delivered.

24 (e) Duties of Person Receiving Shipment. – A person to whom motor fuel is
25 delivered by railroad tank car or transport truck may not accept delivery of the motor
26 fuel if the destination state shown on the shipping document for the motor fuel is a state
27 other than North Carolina. To determine if the shipping document shows North
28 Carolina as the destination state, the person to whom the fuel is delivered must examine
29 the shipping document and must keep a copy of the shipping document. The person
30 must keep a copy at the place of business where the motor fuel was delivered for 30
31 days from the date of delivery and must keep it at that place or another place for at least
32 three years from the date of delivery.

33 (f) Sanctions. – The following acts are grounds for a civil penalty payable to the
34 Department of Transportation, Division of Motor Vehicles, or the Department of
35 Revenue:

36 (1) Transporting motor fuel in a railroad tank car or transport truck
37 without a shipping document or with a false or an incomplete shipping
38 document.

39 (2) Delivering motor fuel to a destination state other than that shown on
40 the shipping document.

41 The penalty imposed under this subsection is payable by the person in whose name
42 the conveyance is registered, if the conveyance is a transport truck, and is payable by
43 the person responsible for the movement of motor fuel in the conveyance, if the
44 conveyance is a railroad tank car. The amount of the penalty depends on the amount of

1 fuel improperly transported or diverted and whether the person against whom the
2 penalty is assessed has previously been assessed a penalty under this subsection. For a
3 first assessment under this subsection, the penalty is the amount of motor fuel tax
4 payable on the improperly transported or diverted motor fuel. For a second or
5 subsequent assessment under this subsection, the penalty is the greater of one thousand
6 dollars (\$1,000) or five times the amount of motor fuel tax payable on the improperly
7 transported or diverted motor fuel. A penalty imposed under this subsection is in
8 addition to any motor fuel tax assessed."

9 Sec. 5. G.S. 105-441(a) reads as rewritten:

10 "(a) Acts. – Any ~~distributor~~person who commits one or more of the following acts
11 is guilty of a Class 1 misdemeanor:

- 12 (1) Fails to obtain a license required by this Article.
- 13 (2) Willfully fails to make a report required by this Article.
- 14 (3) Willfully fails to pay a tax when due under this Article.
- 15 (4) Makes a false statement in an application, a report, or a statement
16 required under this Article.
- 17 (5) Fails to keep records as required under this Article.
- 18 (6) Refuses to allow the Secretary of Revenue or a representative of the
19 Secretary of Revenue to examine the ~~distributor's~~person's books and
20 records concerning motor fuel.
- 21 (7) Fails to disclose the correct amount of motor fuel sold or used in this
22 State.
- 23 (8) Fails to file a replacement bond or an additional bond as required
24 under this Article.
- 25 (9) Fails to show or give a shipping document as required under this
26 Article."

27 Sec. 6. G.S. 105-447 reads as rewritten:

28 "**§ 105-447. Reports and records of carriers.**~~movements of motor fuel.~~

29 ~~Every person, firm or corporation engaged in the business of, or transporting motor~~
30 ~~fuel, whether common carrier or otherwise, and whether by rail, water, pipeline or over~~
31 ~~public highways, either in interstate or in intrastate commerce, to points within the State~~
32 ~~of North Carolina, and every person, firm or corporation transporting motor fuel by~~
33 ~~whatever manner to a point in the State of North Carolina from any point outside of said~~
34 ~~State shall be required to keep for a period of two years from the date of each delivery~~
35 ~~records on forms prescribed by, or satisfactory to, the Secretary of Revenue of all~~
36 ~~receipts and deliveries of motor fuel so received or delivered to points within the State~~
37 ~~of North Carolina, including duplicate original copies of delivery tickets or invoices~~
38 ~~covering such receipts and deliveries, showing the date of the receipt or delivery, the~~
39 ~~name and address of the party to whom each delivery is made, and the amount of each~~
40 ~~delivery; and shall report, under oath, to the Secretary of Revenue, on forms prescribed~~
41 ~~by said Secretary of Revenue, all deliveries of motor fuel so made to points within the~~
42 ~~State of North Carolina. Such reports shall cover monthly periods, shall be submitted~~
43 ~~within the first 10 days of each month covering all shipments transported and delivered~~
44 ~~for the previous month, shall show the name and address of the person to whom the~~

1 deliveries of motor fuel have actually and in fact been made, the name and address of
2 the originally named consignee if motor fuel has been delivered to any other than the
3 originally named consignee, the point of origin, the point of delivery, the date of
4 delivery, and the number and initials of each tank car, and the number of gallons
5 contained therein if shipped by rail; the name of the boat, barge or vessel, and the
6 number of gallons contained therein, and the consignor and consignee if shipped by
7 water; the license number of each tank truck and the number of gallons contained
8 therein, and the consignor and consignee if transported by motor truck; if delivered by
9 other means the manner in which such delivery is made; and such other additional
10 information relative to shipments of motor fuel as the Secretary of Revenue may
11 require: Provided, that the Secretary of Revenue may modify or suspend the provisions
12 of this section with regard to reports of interstate or intrastate shipments or deliveries
13 upon application of any licensed distributor: Provided, also, that the Secretary of
14 Revenue shall have full power to require any distributor to make additional reports and
15 to produce for examination duplicate originals of delivery tickets or invoices covering
16 both receipts and deliveries of products as herein provided. The reports herein provided
17 for shall cover specifically gasoline, kerosene, benzine, naphtha, crude oil, or any
18 distillates from crude petroleum. Any person, firm or corporation refusing, failing or
19 neglecting to make such report shall be guilty of a Class 1 misdemeanor.

20 (a) Report. – A person who transports, by pipeline, marine vessel, railroad tank
21 car, or transport truck, motor fuel that is being imported into this State or exported from
22 this State must make a monthly report to the Secretary of motor fuel received or
23 delivered for import or export by the transporter during the month. The report is due by
24 the 25th day of the month following the month covered by the report and must contain
25 the following information and any other information required by the Secretary:

26 (1) The name and address of each person from whom the transporter
27 received motor fuel outside the State for delivery in the State, the
28 amount of motor fuel received, and the date the motor fuel was
29 received.

30 (2) The name and address of each person to whom the transporter
31 delivered motor fuel from a location inside the State to a location
32 outside the State, the amount of motor fuel delivered, and the date the
33 motor fuel was delivered.

34 (b) Records. – A person who is required to submit a report under subsection (a)
35 must keep a record of all shipping documents or other documents used to determine the
36 information provided in the report. The records must be kept for three years from the
37 due date of the report to which the records apply."

38 Sec. 7. G.S. 105-449.27 reads as rewritten:

39 "**§ 105-449.27. Article 9 of Revenue Act made applicable. Shipping document**
40 **requirements and transporter report requirements that apply to motor**
41 **fuel also apply to fuel.**

42 All the provisions of Article 9 of Chapter 105 of the General Statutes, relating to
43 general administration, penalties and remedies pursuant to the State Revenue Act, shall
44 insofar as practicable, and except when in a direct conflict with the provisions of this

1 ~~Article, be applicable with respect to this Article.—The requirements set by G.S. 105-~~
 2 ~~438.1 concerning a shipping document apply to fuel. The requirements set by G.S. 105-~~
 3 ~~447 concerning reports and records of movements of motor fuel apply to movements of~~
 4 ~~fuel."~~

5 Sec. 8. G.S. 105-449.34(a) reads as rewritten:

6 "(a) ~~General Class 1 Misdemeanors.~~ – A person who commits one or more of the
 7 following acts is guilty of a Class 1 ~~misdemeanor and is punishable as provided in G.S. 14-~~
 8 ~~3÷misdemeanor:~~

- 9 (1) Fails to obtain a license required by this Article.
- 10 (2) Willfully fails to make a report required by this Article.
- 11 (3) Willfully fails to pay a tax when due under this Article.
- 12 (4) Makes a false statement in an application, a report, or a statement
13 required under this Article.
- 14 (5) Fails to keep records as required under this Article.
- 15 (6) Refuses to allow the Secretary or a representative of the Secretary to
16 examine the licensee's books and records concerning fuel.
- 17 (7) Fails to disclose the correct amount of fuel sold or used in this State.
- 18 (8) Fails to file a replacement bond or an additional bond as required
19 under this Article.
- 20 (9) Fails to show or give a shipping document as required under this
21 Article."

22 Sec. 9. G.S. 105-449.2 is amended by adding the following definitions in the
23 appropriate order to read:

24 "(1a) Code. – Defined in G.S. 105-228.90.

25 "(2a) Dyed diesel fuel. – Diesel fuel that is required to be dyed under section
26 4082 of the Code or under regulations adopted by the United States
27 Environmental Protection Agency."

28 Sec. 10. Article 36A of Chapter 105 of the General Statutes is amended by
29 adding a new section to read:

30 "**§ 105-449.24A. Penalties for highway use of dyed diesel fuel.**

31 It is unlawful to use dyed diesel fuel for a highway use unless that use is permitted
32 under section 4082 of the Code. A person who operates on a highway a motor vehicle
33 whose supply tank contains dyed diesel fuel whose use is unlawful under this section is
34 guilty of a Class 1 misdemeanor and is liable for a civil penalty.

35 The penalty is payable to the Department of Transportation, Division of Motor
36 Vehicles, or the Department of Revenue and is payable by the person in whose name the
37 motor vehicle is registered. The amount of the penalty depends on the amount of fuel in
38 the supply tank of the motor vehicle. The penalty is the greater of one thousand dollars
39 (\$1,000) or five times the amount of motor fuel tax payable on the fuel in the supply
40 tank. A penalty imposed under this section is in addition to any motor fuel tax
41 assessed."

42 Sec. 11. This act becomes effective January 1, 1995.