

Senate Bill 234

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CHAPTER 130, LAWS OF 1967

AN ACT to repeal 78.09 (2) (b); to renumber 78.09 (2) (c); and to amend 78.04 (1), 78.07 (2) (b) and (3), 78.08, 78.09 (1), 78.20 (2), 78.52, 78.65 (1), 78.67, 78.68 (2), 78.73 (1) (e), (2) and (5) and 78.75 (1) (b) and (e) of the statutes, relating to the motor fuel tax and providing penalties.

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

SECTION 1. 78.04 (1) of the statutes is amended to read:

78.04 (1) All products commonly or commercially known or sold as gasoline ~~(including casing head and absorption or natural gasoline), benzol, bensene~~ or naphtha (except commercial or industrial naphthas or solvents for exclusive use other than as a fuel for motor vehicles) regardless of their classification or uses;

SECTION 2. 78.07 (2) (b) and (3) of the statutes are amended to read:

78.07 (2) (b) ~~In case of an emergency~~ *Upon written request and for good reason* the department may permit the storage of motor fuel in

quantities of 100,000 gallons or more at any marine terminal, pipeline terminal, or pipeline tank farm to be supplied by other means of transportation from a refinery within the state, and the motor fuel so ~~stored~~ *supplied* shall then be subject to the ~~provisions of~~ sub. (1) as if imported by boat, barge or pipeline.

(3) Except as provided in subs. (1) and (2), motor fuel imported into this state shall be deemed received in this state at the time and place of unloading and by the person who is the owner thereof immediately after unloading; except that motor fuel sold or distributed to unlicensed persons in this state by a person licensed under s. 78.09 (2) (a) ~~or (b)~~ shall be deemed received by such licensed person at the time and place of unloading in this state.

SECTION 3. 78.08 of the statutes is amended to read:

78.08 "Wholesaler" means any person (including the state of Wisconsin and any ~~political subdivision~~ *county, city, town, village or school district* thereof, but not including the United States or its agencies except to the extent ~~now or hereafter~~ permitted by the constitution and laws thereof) who produces, refines, blends, ~~manufactures~~ or receives (within the meaning of the word "received" as defined in s. 78.07) motor fuel in this state, but does not include industrial users who receive motor fuel under s. 78.01 (3).

SECTION 4. 78.09 (1) of the statutes is amended to read:

78.09 (1) No person shall act as a wholesaler within this state unless such person is the holder of a valid license issued to him under s. 78.10. No license to act as a wholesaler shall be issued upon any application for any location in this state unless the person applying therefor has at such location a minimum storage capacity of 20,000 gallons for active use in the receipt, storage and disposition of motor fuel; ~~except~~. Such minimum shall not apply to storage at airports for motor fuel for exclusive use in airplanes or to storage facilities owned and operated by ~~a this state, or any county, city, town or, village for motor fuel for its own use or school district thereof.~~

SECTION 5. 78.09 (2) (b) of the statutes is repealed.

SECTION 6. 78.09 (2) (c) of the statutes is renumbered 78.09 (2) (b).

SECTION 7. 78.20 (2) of the statutes is amended to read:

78.20 (2) Such claim shall be filed not later than one year after the date of purchase of the motor fuel or the claim will not be allowed; ~~but if the final filing date falls on a Saturday, Sunday or a legal holiday, the next secular or business day shall be the final filing date.~~

SECTION 8. 78.52 of the statutes is amended to read:

78.52 SEPARATE FUEL SUPPLY TANKS REQUIRED. Every motor vehicle operated by special fuel shall be equipped with a special fuel supply tank separate from and in no way connected to any cargo tank on or attached to such motor vehicle; ~~except that any motor vehicle which is not so equipped on September 1, 1953, and which has a direct fuel supply line from the cargo tank to the motor of such vehicle shall be excluded from this requirement for the period that such motor vehicle is operated by the same owner and is not so equipped, and such cargo tank shall not be considered to be the fuel supply tank of that motor vehicle. Such motor vehicle, which is not so equipped, shall have an accurate metering device installed in the fuel supply line to measure the amount of special fuel consumed in the operation of such motor vehicle. The number of gallons of special fuel so consumed, as determined by such metering device, shall be multiplied by seven one hundredths of the resulting figure expressed in dollars which~~

figure shall be the special fuel tax due to the state therefor. The payment of the special fuel tax so computed shall be made to the state as provided in s. 78.49:

SECTION 9. 78.65 (1) of the statutes is amended to read:

78.65 (1) If a wholesaler fails to maintain at any licensed location the minimum storage capacity *for active use* required by s. 78.09 (1) or if a wholesaler or special fuel licensee violates any provision of this chapter, and the department deems good cause exists for suspension or revocation by reason of such violation, it may suspend such person's license, or, after a hearing of the charges is held, it may revoke such license. No license shall be suspended unless the holder thereof has been ~~daily~~ notified of a hearing to be held on the charges, and no license shall be revoked until after the holder thereof has been ~~daily~~ notified of a hearing and has been afforded an opportunity to appear and testify. The department shall notify ~~said the~~ licensee in writing of the time and place a hearing of the charges shall be held. Such notice shall contain a statement of the alleged violation, and shall be served upon the licensee at least 10 days prior to ~~said the~~ hearing, either by *personal* delivery ~~of the same personally~~ to the licensee, or by mailing ~~the same~~ by registered mail to the address of ~~said the~~ licensee as shown in the application for a license ~~theretofore~~ filed by ~~said licensee~~. At the time and place fixed in ~~said the~~ notice, the department shall proceed to a hearing of the charges, and the licensee shall be afforded an opportunity to present in person or by counsel ~~such~~ statements, testimony, evidence and argument ~~as may~~ be pertinent to the charges or to any defense thereto. The department may continue such hearing from time to time but not ~~to exceed a period of more than 60~~ days. After such hearing, the department shall rescind the order of suspension, if any ~~exists~~, and ~~for good cause appearing therefor shown~~ shall either suspend the license for a given period of time or revoke the license.

SECTION 10. 78.67 of the statutes is amended to read:

78.67 When the final date provided in ~~ss. 78.01, 78.12, 78.13, 78.17, 78.49, 78.50, 78.68, 78.75, 78.76 and 78.78~~ *this chapter* for the filing of any report or claim or for the remittance of any tax or penalty falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final date. Any such report, claim or remittance which is delivered to the department by United States mail shall be considered timely filed or remitted if ~~the envelope in which it is mailed is~~ properly addressed to the department and postmarked before midnight of the final date.

SECTION 11. 78.68 (2) of the statutes is amended to read:

78.68 (2) If any licensee makes and files any incorrect or incomplete report, or fails, neglects or refuses to pay all the tax for any calendar month, the department, ~~upon discovering said incorrect or incomplete report or unpaid tax,~~ shall estimate the motor fuel or special fuel receipts or distributions of ~~said the~~ licensee, based upon such information as is available in its office or elsewhere, and shall determine the amount of any motor fuel or special fuel tax still due from ~~said the~~ licensee and shall add to ~~said that~~ amount a penalty of 2% thereof ~~for failure, neglect or refusal to pay said tax, except that~~. If it appears to the department that any unpaid tax was due to an unintentional miscalculation on the report, the 2% penalty shall be waived. The department may also waive any penalty amounting to \$6 or less if it ~~appears to be~~ *is* in the best interest of the state to do so. ~~Such waivers of tax penalty shall be voided if said tax is not paid within one month after the date of demand as provided for in this subsection.~~ The amount so fixed shall be prima facie evidence of the correctness of ~~said the~~ estimate. The department shall ~~send mail~~ a written demand for any amended report required and for payment of ~~said the~~ tax and penalty to the licensee by ~~mail addressed~~

to said licensee at the address of the ~~at his~~ principal place of business of said licensee. If such amended report is not filed or if the tax and penalty due are not paid within 2 months from the date of ~~said such~~ demand, ~~the his~~ license of said licensee shall be automatically revoked and the department shall prepare such amended report and proceed to collect such motor fuel or special fuel tax and penalty as herein provided.

SECTION 12. 78.73 (1) (e), (2) and (5) of the statutes are amended to read:

78.73 (1) (e) Uses any false or fictitious name or ~~gives any false or fictitious~~ address when purchasing or obtaining motor fuel or special fuel from any source for sale or consumption in this state ~~shall may~~ be fined not less than \$100 ~~nor~~ more than \$500 or imprisoned in the county jail ~~for not to exceed more than~~ 6 months or both.

(2) Each day in which any person acts as a licensee without a license shall constitute a separate offense, and for each such offense ~~such person shall may~~ be fined not more than \$5,000 or imprisoned in the county jail for not less than 60 days ~~nor~~ more than one year or both.

(5) Except as otherwise provided in subs. (1), ~~(2), (3) and to~~ (4), any person violating ~~any provision of~~ this chapter ~~shall may~~ be fined not less than \$25 ~~nor~~ more than \$500 or imprisoned not more than 6 months or both.

SECTION 13. 78.75 (1) (b) and (e) of the statutes are amended to read:

78.75 (1) (b) Such claim ~~must shall~~ be filed not later than 6 months after the date of purchase of the motor fuel or special fuel, or the claim ~~will shall~~ not be allowed; ~~provided, however, if the final filing date falls on a Saturday, Sunday or a legal holiday, the next secular or business day shall be the final filing date.~~

(e) On the filing of such claim, accompanied by the paid original invoice, the department shall determine the amount of refund due. The department may make such investigation of the correctness of the facts stated in such claim as it deems necessary ~~and may require a claimant to submit records to substantiate his claim.~~ When the department has approved such claim, it shall pay the claimant the reimbursement herein provided, out of the moneys collected under ch. 78 to be used for carrying out this section. No refund shall be claimed by or allowed to any person on account of any motor fuel or special fuel carried from this state in the ordinary fuel tank of a motor vehicle.

SECTION 14. Wherever "s. 78.09 (2) (c)" appears in section 78.07 (1) (c) of the statutes substitute "s. 78.09 (2) (b)".

Approved November 1, 1967.