

Substitute for HOUSE BILL No. 2036

By Committee on Agriculture

2-20

AN ACT concerning ~~the~~ petroleum products ~~inspection act~~; relating to diesel fuel; misrepresentations regarding biodiesel; penalties; **fuel purchases for state motor vehicles**; amending K.S.A. 2002 Supp. 55-443 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2002 Supp. 55-443 is hereby amended to read as follows: 55-443. (a) It is a violation for any person to:

(1) Act as or represent such person's self to be a technical representative without having a valid license issued by the department of agriculture;

(2) hinder or obstruct in any way the secretary or any of the secretary's authorized agents in the performance of the secretary's official duties under the petroleum products inspection law;

(3) failure to follow the applicable version of NIST Handbook as referenced in chapter 83 of the Kansas Statutes Annotated, and amendments thereto, or any rules and regulations adopted thereunder when installing, repairing, calibrating or testing a device;

(4) failure to complete the testing or placing-in-service report in its entirety and to report the accurate description of the parts replaced, adjusted, reconditioned or work performed;

(5) filing a false or fraudulent application or report to the secretary;

(6) failure to pay all fees and penalties as prescribed by the petroleum products inspection law and the rules and regulations adopted and promulgated pursuant to the petroleum products inspection law;

(7) refuse to keep and make available for examination by the department of agriculture all books, papers, and other information necessary for the enforcement of the petroleum products inspection law or chapter 83 of the Kansas Statutes Annotated, and amendments thereto;

(8) failure to have any commercial dispensing device tested as required by the petroleum products inspection law or chapter 83 of the Kansas Statutes Annotated, and amendments thereto;

(9) sell, offer or expose for sale any petroleum product which does not comply with the provisions of the petroleum products inspection law;

1 (10) sell, use, remove, otherwise dispose of or fail to remove from
2 the premises specified, any dispensing device, package or commodity con-
3 trary to the terms of any order issued by the secretary; ~~and~~

4 (11) *represent that diesel fuel is or contains biodiesel fuel blend or*
5 *otherwise to represent that diesel fuel is made from renewable resources,*
6 *unless not less than 2% of the diesel fuel mixture is mono-alkyl esters*
7 *derived from vegetable oil, **recycled cooking oil** or animal fat. Biodiesel*
8 *fuel used in biodiesel fuel blends shall conform with specification D6751-*
9 *02, issued March 2002, by the American society of testing and materials*
10 *or a later version as adopted by rules and regulations of the sec-*
11 *retary. **If a retail petroleum marketer is alleged to have violated the***
12 *provisions of this subsection, it shall be a defense, that the retail*
13 *petroleum marketer relied in good faith upon the bill of lading; and*

14 (12) violate any order issued by the secretary pursuant to chapter 83
15 of the Kansas Statutes Annotated, and amendments thereto.

16 (b) Any person who violates any provision of the petroleum products
17 inspection law or any applicable provisions of chapter 83 of the Kansas
18 Statutes Annotated, or amendments thereto, or any rules and regulations
19 adopted thereunder, in addition to any other penalty provided by law,
20 may incur a civil penalty imposed under subsection (c) in an amount,
21 fixed by rules and regulations of the secretary, of not less than \$100 nor
22 more than \$5,000 for each such violation and, in the case of a continuing
23 violation, every day such violation continues shall be deemed a separate
24 violation.

25 (c) In determining the amount of the civil penalty, the following shall
26 be taken into consideration: (1) The extent of harm caused by the viola-
27 tion; (2) the nature and persistence of the violation; (3) the length of time
28 over which the violation occurs; (4) any corrective actions taken; and (5)
29 any and all relevant circumstances.

30 (d) All civil penalties assessed shall be due and payable within 10 days
31 after written notice of assessment is served on the person, unless a longer
32 period of time is granted by the secretary. If a civil penalty is not paid
33 within the applicable time period, the secretary may file a certified copy
34 of the notice of assessment with the clerk of the district court in the
35 county where the weighing and measuring device or dispensing device is
36 located. The notice of assessment shall be enforced in the same manner
37 as a judgment of the district court.

38 (e) No civil penalty shall be imposed pursuant to this section except
39 upon the written order of the duly authorized agent of the secretary to
40 the person who committed the violation or to the person whose agent or
41 employee committed the violation. Such order shall state the violation,
42 the penalty to be imposed and the right of the person to appeal to the
43 secretary. Any such person, within 20 days after notification, may make

1 written request to the secretary for a hearing in accordance with the
2 provisions of the Kansas administrative procedure act. The secretary shall
3 affirm, reverse or modify the order and shall specify the reasons therefor.

4 (f) Any person aggrieved by an order of the secretary made under
5 this section may appeal such order to the district court in the manner
6 provided by the act for judicial review and civil enforcement of agency
7 actions.

8 (g) An appeal to the district court or to an appellate court shall not
9 stay the payment of the civil penalty.

10 (h) Any civil penalty recovered pursuant to the provisions of this sec-
11 tion or any penalty recovered under the consumer protection act for vi-
12 olations of this section, and amendments thereto, or any rules and regu-
13 lations adopted thereunder, shall be remitted to the state treasurer in
14 accordance with the provisions of K.S.A. 75-4215, and amendments
15 thereto. Upon receipt of each such remittance, the state treasurer shall
16 deposit the entire amount in the state treasury to the credit of the weights
17 and measures fee fund.

18 (i) This section shall be part of and supplemental to the petroleum
19 products inspection act, article 4 of chapter 55 of the Kansas Statutes
20 Annotated, and amendments thereto.

21 ***New Sec. 2. (a) As used in this section, “motor-vehicle fuels”***
22 ***has the meaning provided by K.S.A. 79-3401, and amendments***
23 ***thereto.***

24 ***(b) All bulk motor-vehicle fuels purchased by any state agency,***
25 ***as defined in K.S.A. 75-3701, and amendments thereto, in each fiscal***
26 ***year for use in state-owned motor vehicles shall be motor-vehicle***
27 ***fuels blends containing at least 10% ethanol. No state agency shall***
28 ***spend more than ten cents per gallon more on fuel blends containing***
29 ***at least 10% ethanol than the current price per gallon of regular***
30 ***fuel on bulk motor vehicle fuel purchases.***

31 ***(c) Where available under current state purchasing agreements,***
32 ***individual motor-vehicle fuel purchases for state-owned motor ve-***
33 ***hicles shall be of motor-vehicle fuels blends containing at least 10%***
34 ***ethanol. Individual motor vehicle fuel purchases for state-owned***
35 ***motor vehicles shall not be more than ten cents per gallon more on***
36 ***fuel blends containing at least 10% ethanol than the current price***
37 ***per gallon of regular fuel.***

38 ***(d) Where available, and as long as the price is no greater than***
39 ***10 cents more per gallon than the price of diesel fuel; a 2% or higher***
40 ***blend of biodiesel must be purchased for use in state-owned diesel***
41 ***powered vehicles and equipment.***

42 Sec. 3. K.S.A. 2002 Supp. 55-443 is hereby repealed.

1 Sec. ~~3~~ 4. This act shall take effect and be in force from and after its
2 publication in the statute book.
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