

HOUSE BILL No. 2928

By Committee on Taxation

3-11

9 AN ACT concerning motor fuel taxation; relating to rates of tax; sale of
10 motor fuel, certain prohibited acts; civil penalties; duties of division of
11 weights and measures and attorney general; private remedy; amending
12 K.S.A. 2003 Supp. 79-3492b, 79-34,118, 79-34,141 and 79-34,142 and
13 repealing the existing sections.

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

16 Section 1. K.S.A. 2003 Supp. 79-3492b is hereby amended to read
17 as follows: 79-3492b. Alternatively to the methods otherwise set forth in
18 this act, special LP-gas permit users operating motor vehicles on the pub-
19 lic highways of this state may upon application to the director on forms
20 prescribed by the director elect to pay taxes in advance on LP-gas for
21 each and every motor vehicle owned or operated by them and propelled
22 in whole or in part with LP-gas during the calendar year and thereafter
23 to purchase LP-gas tax free in lieu of securing a bonded user's permit
24 and filing monthly reports and tax payments and keeping the records
25 otherwise provided for in this act. The amount of such tax for each motor
26 vehicle shall, except as otherwise provided, be based upon the gross
27 weight of the motor vehicle and the number of miles it was operated on
28 the public highways of this state during the previous year pursuant to the
29 following schedules:

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(a) On and after July 1, ~~2002~~ 2004, until July 1, ~~2003~~ 2020:

Class A: 3,000 pounds or less	less than 5,000 miles	5,000 to 10,000 miles	10,001 to 15,000 miles	15,001 to 19,999 miles	20,000 to 29,999 miles	30,000 to 39,999 miles	40,000 to 49,999 miles	50,000 to 59,999 miles	60,000 and over
	\$44.00	\$88.00	\$132.00	\$176.00	\$264.00	\$352.00	\$440.00	\$528.00	\$616.00
Class B: more than 3,000 pounds and not more than 4,500 pounds	\$75.00	\$150.00	\$225.00	\$300.00	\$450.00	\$600.00	\$750.00	\$900.00	\$1,050.00
Class C: more than 4,500 pounds and not more than 12,000 pounds	\$91.00	\$181.00	\$273.00	\$364.00	\$546.00	\$728.00	\$910.00	\$1,092.00	\$1,274.00
Class D: more than 12,000 pounds and not more than 16,000 pounds	\$123.00	\$246.00	\$369.00	\$492.00	\$738.00	\$984.00	\$1,230.00	\$1,476.00	\$1,722.00
Class E: more than 16,000 pounds and not more than 24,000 pounds	\$158.00	\$316.00	\$474.00	\$632.00	\$948.00	\$1,264.00	\$1,580.00	\$1,896.00	\$2,212.00
Class F: more than 24,000 pounds and not more than 36,000 pounds	\$220.00	\$440.00	\$660.00	\$880.00	\$1,320.00	\$1,760.00	\$2,200.00	\$2,640.00	\$3,080.00
Class G: more than 36,000 pounds and not more than 48,000 pounds	\$273.00	\$546.00	\$819.00	\$1,092.00	\$1,638.00	\$2,184.00	\$2,730.00	\$3,276.00	\$3,822.00
Class H: more than 48,000 pounds	\$368.00	\$736.00	\$1,104.00	\$1,472.00	\$2,208.00	\$2,944.00	\$3,680.00	\$4,416.00	\$5,152.00
Class I: transit carrier vehicles operated by transit companies									\$1,792.00
Class J: motor vehicles designed for carrying fewer than 10 passengers and used for the transportation of persons for compensation.									\$898.00

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(b) On and after July 1, 2003, until July 1, 2020:

Class A: 3,000 pounds or less	less than 5,000 miles	5,000 to 10,000 miles	10,001 to 15,000 miles	15,001 to 19,999 miles	20,000 to 24,999 miles	25,000 to 29,999 miles	30,000 to 34,999 miles	35,000 to 39,999 miles	40,000 to 49,999 miles	50,000 to 99,999 miles	60,000 and over
	\$46,000	\$92,000	\$138,000	\$184,000	\$276,000	\$368,000	\$460,000	\$552,000	\$644,000	\$936,000	\$1,092,000
Class B: more than 3,000 pounds and not more than 4,500 pounds	\$78,000	\$156,000	\$234,000	\$312,000	\$468,000	\$624,000	\$780,000	\$936,000	\$1,104,000	\$1,488,000	\$1,788,000
Class C: more than 4,500 pounds and not more than 12,000 pounds	\$92,000	\$184,000	\$276,000	\$368,000	\$552,000	\$736,000	\$920,000	\$1,104,000	\$1,388,000	\$1,848,000	\$2,248,000
Class D: more than 12,000 pounds and not more than 16,000 pounds	\$129,000	\$258,000	\$387,000	\$516,000	\$774,000	\$1,032,000	\$1,290,000	\$1,548,000	\$1,806,000	\$2,406,000	\$2,806,000
Class E: more than 16,000 pounds and not more than 24,000 pounds	\$165,000	\$330,000	\$495,000	\$660,000	\$990,000	\$1,320,000	\$1,650,000	\$1,980,000	\$2,310,000	\$3,080,000	\$3,480,000
Class F: more than 24,000 pounds and not more than 36,000 pounds	\$230,000	\$460,000	\$690,000	\$920,000	\$1,380,000	\$1,840,000	\$2,300,000	\$2,760,000	\$3,220,000	\$4,290,000	\$4,690,000
Class G: more than 36,000 pounds and not more than 48,000 pounds	\$285,000	\$570,000	\$855,000	\$1,140,000	\$1,710,000	\$2,280,000	\$2,850,000	\$3,420,000	\$4,090,000	\$5,450,000	\$6,250,000
Class H: more than 48,000 pounds	\$384,000	\$768,000	\$1,152,000	\$1,536,000	\$2,304,000	\$3,072,000	\$3,840,000	\$4,608,000	\$5,376,000	\$7,168,000	\$8,368,000
Class I: transit carrier vehicles operated by transit companies										\$1,808,000	\$2,208,000
Class J: motor vehicles designed for carrying fewer than 10 passengers and used for the transportation of persons for compensation											\$939,000

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(e) On and after July 1, 2020:

Class A: 3,000 pounds or less	Less than 5,000 miles	5,000 to 10,000 miles	10,001 to 15,000 miles	15,001 to 19,999 miles	20,000 to 29,999 miles	30,000 to 39,999 miles	40,000 to 49,999 miles	50,000 to 59,999 miles	60,000 and over
	\$34.00	\$68.00	\$102.00	\$136.00	\$204.00	\$272.00	\$340.00	\$408.00	\$476.00
Class B: more than 3,000 pounds and not more than 4,500 pounds	\$58.00	\$116.00	\$173.00	\$231.00	\$347.00	\$462.00	\$578.00	\$694.00	\$809.00
Class C: more than 4,500 pounds and not more than 12,000 pounds	\$70.00	\$139.00	\$209.00	\$279.00	\$418.00	\$558.00	\$697.00	\$836.00	\$976.00
Class D: more than 12,000 pounds and not more than 16,000 pounds	\$95.00	\$190.00	\$286.00	\$381.00	\$571.00	\$762.00	\$952.00	\$1,142.00	\$1,333.00
Class E: more than 16,000 pounds and not more than 24,000 pounds	\$122.00	\$245.00	\$367.00	\$490.00	\$734.00	\$979.00	\$1,224.00	\$1,469.00	\$1,714.00
Class F: more than 24,000 pounds and not more than 36,000 pounds	\$170.00	\$340.00	\$510.00	\$680.00	\$1,020.00	\$1,360.00	\$1,700.00	\$2,040.00	\$2,380.00
Class G: more than 36,000 pounds and not more than 48,000 pounds	\$211.00	\$422.00	\$632.00	\$843.00	\$1,265.00	\$1,686.00	\$2,108.00	\$2,530.00	\$2,951.00
Class H: more than 48,000 pounds	\$284.00	\$568.00	\$852.00	\$1,136.00	\$1,703.00	\$2,271.00	\$2,839.00	\$3,407.00	\$4,060.00
Class I: transit carrier vehicles operated by transit companies									\$1,336.00
Class J: motor vehicles designed for carrying fewer than 10 passengers and used for the transportation of persons for compensation.									\$694.00

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1 In the event any additional motor vehicles equipped to use LP-gas as a
2 fuel are placed in operation by a special LP-gas permit user after the first
3 month of any calendar year, a tax shall become due and payable to this
4 state and is hereby imposed at the tax rate prescribed herein prorated on
5 the basis of the weight and mileage for the months operated in the cal-
6 endar year. The director shall issue special permit decals for each motor
7 vehicle on which taxes have been paid in advance as provided herein,
8 which shall be affixed on each such vehicle in the manner prescribed by
9 the director.

10 Sec. 2. K.S.A. 2003 Supp. 79-34,118 is hereby amended to read as
11 follows: 79-34,118. Upon application to the director of taxation and pay-
12 ment of the fee prescribed under this section any interstate motor fuel
13 user may obtain a trip permit which will authorize one commercial motor
14 vehicle to be operated within this state without compliance with the other
15 provisions of the interstate motor fuel use act and in lieu of the tax im-
16 posed by K.S.A. 79-34,109 and amendments thereto. The fee for each
17 trip permit issued under this section shall be \$12.50 until ~~July 1, 2003,~~
18 ~~and \$13 until~~ July 1, 2020, and \$10 thereafter. The secretary of revenue
19 shall adopt rules and regulations specifying the conditions under which
20 trip permits will be issued and providing for the issuance thereof. The
21 secretary may designate agents or contract with private individuals, firms
22 or corporations to issue such trip permits so that such permits will be
23 obtainable at convenient locations.

24 Sec. 3. K.S.A. 2003 Supp. 79-34,141 is hereby amended to read as
25 follows: 79-34,141.

26 (a) On and after July 1, ~~2002~~ 2004, until July 1, ~~2003~~ 2020, the tax
27 imposed under this act shall be not less than:

- 28 (1) On motor-vehicle fuels, \$.23 per gallon, or fraction thereof;
- 29 (2) on special fuels, \$.25 per gallon, or fraction thereof; and
- 30 (3) on LP-gas, \$.22 per gallon, or fraction thereof.

31 (b) ~~On and after July 1, 2003, until July 1, 2020, the tax imposed~~
32 ~~under this act shall be not less than:~~

- 33 ~~(1) On motor-vehicle fuels, \$.24 per gallon, or fraction thereof;~~
- 34 ~~(2) on special fuels, \$.26 per gallon, or fraction thereof; and~~
- 35 ~~(3) on LP-gas, \$.23 per gallon, or fraction thereof.~~

36 ~~(c)~~ (e) On and after July 1, 2020, the tax rates imposed under this act
37 shall be not less than:

- 38 (1) On motor-vehicle fuels, \$.18 per gallon, or fraction thereof;
- 39 (2) on special fuels, \$.20 per gallon, or fraction thereof; and
- 40 (3) on LP-gas, \$.17 per gallon, or fraction thereof.

41 Sec. 4. K.S.A. 2003 Supp. 79-34,142 is hereby amended to read as
42 follows: 79-34,142.

43 (a) On and after July 1, ~~2002~~ 2004, until July 1, ~~2003~~ 2020, the state

1 treasurer shall credit amounts received pursuant to K.S.A. 79-3408, 79-
2 3408c, 79-3491a, 79-3492 and 79-34,118 and amendments thereto as fol-
3 lows: To the state highway fund 64.6% and to the special city and county
4 highway fund 35.4%.

5 ~~(b) On and after July 1, 2003, until July 1, 2020, the state treasurer~~
6 ~~shall credit amounts received pursuant to K.S.A. 79-3408, 79-3408c, 79-~~
7 ~~3491a, 79-3492 and 79-34,118, and amendments thereto, as follows: To~~
8 ~~the state highway fund 66.37% and to the special city and county highway~~
9 ~~fund 33.63%.~~

10 ~~—(c)~~ On and after July 1, 2020, the state treasurer shall credit amounts
11 received pursuant to K.S.A. 79-3408, 79-3408c, 79-3491a, 79-3492 and
12 79-34,118 and amendments thereto as follows: To the state highway fund
13 55.3% and to the special city and county highway fund 44.7%.

14 New Sec. 5. (a) Except as otherwise provided, no marketer or retailer
15 of motor fuel shall sell or offer for sale, by posted price or indicating
16 meter, motor fuel at a price below cost.

17 (b) The provisions of this section shall not apply to: (1) Any sales or
18 offers to sell made during a grand opening, sales or offers to sell made
19 to introduce a new or remodeled business or sales or offers to sell made
20 during special promotions, final liquidation of a business, bona fide clear-
21 ance sales and court ordered sales, not to exceed three days per calendar
22 quarter; or

23 (2) any sales or offers to sell made in good faith to meet an equally
24 low retail price of a competitor in the ordinary course of trade or the
25 usual conduct of business selling motor fuel of like grade as required by
26 federal or state law.

27 (c) As used in this section, “cost” means product cost and actual
28 freight or transportation costs plus applicable taxes and fees pursuant to
29 federal, state and local law and any credit card processing fees or if such
30 costs are unavailable then “cost” means the average of the three lowest
31 prices posted by suppliers on the day at the terminal from which the most
32 recent supply of motor fuel delivered to the retail location was acquired
33 as published by a nationally recognized petroleum price reporting service
34 and actual freight offered from a common carrier for hire designated for
35 the terminal from which the most recent supply of motor fuel delivered
36 to the retail location, plus applicable taxes and fees pursuant to federal,
37 state and local law and any credit card processing fees.

38 (d) If the division of weights and measures of the department of ag-
39 riculture receives a complaint and has reason to believe that a marketer
40 or retailer has violated the provisions of this act, the division shall
41 promptly contact the marketer or retailer and demand that such marketer
42 or retailer raise their price of motor fuel to comply with the provisions of
43 this act. Within 10 business days, the division shall investigate and deter-

1 mine whether the allegations contained in the complaint are still true. If
2 valid, the marketer or retailer who is the subject of the complaint shall
3 provide the division with all records and documentation requested in
4 order for the division to determine if a violation of the act has occurred.
5 The division shall take out of service any pumps of any marketer or retailer
6 who fails to comply with the division's request for records and documen-
7 tation as provided in this act. If the division determines that the marketer
8 or retailer is violating the provisions of this act, the division shall notify
9 the attorney general of such violation and provide the attorney general
10 with all records, documentation and findings of the division related to
11 such violation.

12 (e) The attorney general may bring an action: (1) To obtain a declar-
13 atory judgment that a violation of the provisions of this act has occurred;

14 (2) to obtain temporary or permanent injunctive relief against a mar-
15 keter or retailer who has violated, is violating or is otherwise likely to
16 violate the provisions of this act;

17 (3) to recover any penalty as provided by the provisions of this act;
18 and

19 (4) to recover reasonable expenses, including, but not limited to,
20 costs, accounting fees and investigation fees of the division of weights and
21 measures and the attorney general.

22 (f) On the first violation of the provisions of this section, the attorney
23 general shall send to the violator by certified mail, return receipt re-
24 quested, an order that the violator cease and desist from the violation
25 within 24 hours of receipt of such order, a second violation of the pro-
26 visions of this section shall render the violator liable for the payment of
27 a civil penalty in a sum of \$1,000 for each day the violation occurs and a
28 third or subsequent violation of the provisions of this section shall render
29 the violator liable for the payment of a civil penalty in a sum of \$10,000
30 for each day such violation occurs.

31 (g) A marketer or retailer of motor fuel aggrieved by a violation of
32 the provisions of this act may bring an action to: (1) Obtain a declaratory
33 judgment that a violation of the provisions of this act has occurred;

34 (2) obtain temporary or permanent injunctive relief against a mar-
35 keter or retailer who has violated, is violating or is otherwise likely to
36 violate the provisions of this act; and

37 (3) recover reasonable expenses, including, but not limited to, costs,
38 accounting fees and attorney fees.

39 (h) The secretary of agriculture shall adopt rules and regulations to
40 implement the provisions of this act.

41 Sec. 6. K.A. 2003 Supp. 79-3492b, 79-34,118, 79-34,141 and 79-
42 34,142 are hereby repealed.

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1 Sec. 7. This act shall take effect and be in force from and after its
2 publication in the statute book.