

SENATE BILL No. 544

AN ACT concerning motor-vehicle fuel taxation; relating to the importation of motor fuels; relating to rates; ethanol blends; amending K.S.A. 79-3401, 79-3410, 79-3415, 79-3416, 79-3420, 79-3424, 79-3426 and 79-3464e and K.S.A. 2005 Supp. 79-3408, 79-3464c and 79-34,141 and repealing the existing sections.

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

Section 1. On January 1, 2007, K.S.A. 79-3401 is hereby amended to read as follows: 79-3401. This act, and amendments thereto, shall be known and may be cited as the “motor-fuel tax law,” and as so constituted is hereinafter referred to as “this act.” The following words, terms and phrases, when used in this act, shall have the meanings ascribed to them in this section, except in those instances clearly indicating a different meaning:

- (a) “Aviation fuel” means motor fuels for use as fuel for aircraft;
- (b) “agricultural ethyl alcohol” means a motor-vehicle fuel component with a purity of at least 99%, exclusive of any added denaturants, denatured in conformity with one of the methods approved by the United States department of the treasury, bureau of alcohol, tobacco and firearms, and distilled in the United States of America from grain produced in the United States of America;
- (c) “bulk plant” means a motor fuels storage facility, other than a terminal, that is primarily used to redistribute motor fuels;
- (d) “dealer” means any person engaged in the retail sale of motor-vehicle fuels or special fuels;
- (e) “director” means the director of taxation, a duly authorized deputy, agent or representative;
- (f) “distributor” means any person, who:
 - (1) Imports or causes to be imported from any other state or territory of the United States motor-vehicle fuels or special fuels for such person’s own use in the state of Kansas, or for sale and delivery therein, after the same shall have come to rest or storage therein, whether or not in the original package, receptacle or container; or
 - (2) imports or causes to be imported, from a foreign country, motor-vehicle fuels or special fuels for such person’s own use in the state of Kansas, or for sale and delivery therein, after the same shall have come to rest or storage, whether or not in the original package, receptacle or container;
 - (3) purchases or receives motor-vehicle fuels or special fuels in the original package, receptacle or container in the state of Kansas for such person’s own use therein, or for sale and delivery therein, from any person who has imported the same from any other state or territory of the United States, or any other nation, in case such motor-vehicle fuels or special fuels have not, prior to such purchase or receipt, come to rest or storage in the state of Kansas; or
 - (4) received and, in any manner, uses, sells or delivers motor-vehicle fuels or special fuels in the state of Kansas on which the tax provided for in this act has not been previously paid;
- (g) “exporter” means any person who exports or causes to be exported motor vehicle fuels or special fuels from Kansas to any other state or territory of the United States or to a foreign country, for such person’s own use or for sale or delivery therein, whether or not in the original package, receptacle or container;
- (h) “importer” means any person who imports or causes to be imported motor-vehicle fuels or special fuels from any other state or territory of the United States or from a foreign country, for such person’s own use in the state of Kansas or for sale or delivery therein, whether or not in the original package, receptacle or container;
- (i) “liquid fuels” or “motor fuels” means any inflammable liquid by whatever name such liquid shall be known or sold, which is used, or practically or commercially usable, either alone or when mixed or combined in an internal-combustion engine for the generation of power;
- (j) “manufacturer” or “refiner” means any person who or which produces, refines, prepares, blends, distills, manufactures or compounds motor-vehicle fuels or special fuels in the state of Kansas for such person’s own use therein, or for sale or delivery therein. The term “manufacturer” shall not include any person who or which mechanically separates liquids from natural gas at production facilities or gathering system pipelines on the lease. No person who produces, refines, prepares, blends, distills, manufactures, or compounds motor-vehicle fuels or special fuels shall be

required to render a distributor's (manufacturer's) report as to any particular lot or lots of motor-vehicle fuels or special fuels until such motor-vehicle fuels or special fuels have been loaded at a refinery or other place of production into tank cars, or placed in any tank at such refinery or other place of production from which any withdrawals are made direct into tanks, tank wagons or other types of transportation equipment, containers or facilities;

(k) "motor vehicle" means a motor vehicle as defined by K.S.A. 8-126, and amendments thereto, and which is required to be registered pursuant to K.S.A. 8-126 et seq., and amendments thereto;

(l) "motor-vehicle fuels" means gasoline, casinghead gasoline, natural gasoline, drip gasoline, aviation gasoline, gasohol, gasoline-oxygenate blend and any other spark-ignition motor fuel as defined by the 1995 United States department of commerce, national institute of standards and technology handbook 130 issued December of 1994, and as may subsequently be defined in rules and regulations which the director may adopt pursuant to K.S.A. 79-3419, and amendments thereto;

(m) "oil inspector" means the director of taxation, a duly authorized deputy, agent or representative;

(n) "person" means every natural person, association, partnership, limited partnership, limited liability company or corporation. When used in any statute, prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to firms and associations means the partners or members thereof and, as applied to corporations, the corporation and the officers thereof;

(o) "public highways" means and includes every way or place, of whatever nature, generally open to the use of the public as a matter of right, for the purposes of vehicular travel and notwithstanding that the same shall have been temporarily closed for the purpose of construction, reconstruction or repair;

(p) "received" means motor-vehicle fuel or special fuel produced, refined, prepared, distilled, manufactured, blended or compounded at any refinery or other place, in the state of Kansas by any person, or imported into this state from any other state, territory, or foreign country by pipeline or connecting pipeline at a pipeline terminal or pipeline tank farm for storage, shall be deemed to be "received" by such person thereat when the same shall have been loaded at such refinery, pipeline terminal, pipeline tank farm or other place, into tank cars, tank trucks or other container, or placed in any tank from which any withdrawals are made direct into tank cars, tank trucks or other types of transportation equipment, containers or facilities;

(q) "retailer" means a person that engages in the business of selling or distributing motor fuels to the end user;

(r) "school bus" means every bus, as defined by K.S.A. 8-1406, and amendments thereto, which is: (1) Privately owned and contracted for, leased or hired by a school district or nonpublic school for the transportation of pupils, students or school personnel to or from school or to or from school-related functions or activities; or (2) owned and operated by a school district or nonpublic school which is registered under the provisions of K.S.A. 8-126 et seq., and amendments thereto, used for the transportation of pupils, students or school personnel to or from school or to or from school-related functions or activities;

(s) "special fuels" means all combustible liquids suitable for the generation of power for the propulsion of motor vehicles including, but not limited to, diesel fuel, alcohol and such fuels not defined under the motor-vehicle fuels definition, hereinafter referred to as motor-vehicle fuel;

(t) "terminal" means a fuel storage and distribution facility that is supplied by motor vehicle, pipeline or marine vessel, and from which motor fuels may be removed at a rack. "Terminal" does not include any facility at which motor fuel blend stocks and additives are used in the manufacture of products other than motor fuels and from which no motor fuels are removed;

(u) "terminal operator" means the person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal;

(v) "transporter" means a person who has been issued a liquid-fuels carrier's license pursuant to K.S.A. 55-506 et seq., and amendments thereto; *and*

(w) “E85 fuels” means an alternative fuel that is a blend of denatured ethanol and hydrocarbon that typically contains 85% ethanol by volume, but at a minimum must contain 70% ethanol by volume, and complies with ASTM specification D5798-99.

Sec. 2. On January 1, 2007, K.S.A. 2005 Supp. 79-34,141 is hereby amended to read as follows: 79-34,141. (a) ~~On and after July 1, 2002, until July 1, 2003, the tax imposed under this act shall be not less than:~~

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

~~(b)~~ On and after ~~July 1, 2003~~ January 1, 2007, until July 1, 2020, the tax imposed under this act shall be not less than:

- (1) On motor-vehicle fuels *other than E85 fuels*, \$.24 per gallon, or fraction thereof;
- (2) on special fuels, \$.26 per gallon, or fraction thereof; ~~and~~
- (3) on LP-gas, \$.23 per gallon, or fraction thereof; *and*
- (4) *on E85 fuels, \$.17 per gallon, or fraction thereof.*

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

- (1) On motor-vehicle fuels *other than E85 fuels*, \$.18 per gallon, or fraction thereof;
- (2) on special fuels, \$.20 per gallon, or fraction thereof; ~~and~~
- (3) on LP-gas, \$.17 per gallon, or fraction thereof; *and*
- (4) *on E85 fuels, \$.11 per gallon, or fraction thereof.*

Sec. 3. K.S.A. 2005 Supp. 79-3408 is hereby amended to read as follows: 79-3408. (a) A tax per gallon or fraction thereof, at the rate computed as prescribed in K.S.A. 79-34,141, and amendments thereto, is hereby imposed on the use, sale or delivery of all motor-vehicle fuels or special fuels which are used, sold or delivered in this state for any purpose whatsoever.

(b) Unless otherwise specified in K.S.A. 79-3408c, and amendments thereto, the incidence of this tax is imposed on the distributor of the first receipt of the motor fuel and such taxes shall be paid but once. Such tax shall be computed on all motor-vehicle fuels or special fuels received by each distributor, manufacturer or importer in this state *or imported by any distributor, manufacturer or importer into this state* and paid in the manner provided for herein, except that an allowance of 2.5% shall be made and deducted by the distributor to cover all ordinary losses which may have resulted from physical loss while handling such motor-vehicle fuels or special fuels. No such allowance shall be made on any motor-vehicle fuel or special fuel exported from the state or sold to the United States of America or any of its agencies or instrumentalities as are now or hereinafter exempt by law from liability to state taxation. No such allowance shall be made for any motor-vehicle fuel or special fuel sold or disposed of to a consumer in tank car, transport or pipeline lots. *As used in this subsection, the term “distributor of the first receipt” shall include distributors, manufacturers and importers that import motor-vehicle fuels or special fuels into Kansas.*

(c) No tax is hereby imposed upon or with respect to the following transactions:

- (1) The sale or delivery of motor-vehicle fuel or special fuel for export from the state of Kansas to any other state or territory or to any foreign country.
- (2) The sale or delivery of motor-vehicle fuel or special fuel to the United States of America and such of its agencies as are now or hereafter exempt by law from liability to state taxation.
- (3) The sale or delivery of motor-vehicle fuel or special fuel to a contractor for use in performing work for the United States or those agencies of the United States above mentioned, provided such contractor has in effect with the United States or any such agency a cost-plus-a-fixed-fee contract covering the work.
- (4) The sale or delivery of motor-vehicle fuel or special fuel which is aviation fuel.
- (5) The first sale or delivery of motor-vehicle fuel or special fuel from a refinery, pipeline terminal, pipeline tank farm or other place to a duly licensed distributor who in turn resells to another duly licensed distributor.

(6) The sale or delivery of special fuel which is indelibly dyed in accordance with regulations prescribed pursuant to 26 U.S.C. 4082 and such special fuel is only used for nonhighway purposes.

(7) The sale of kerosene used as a fuel only to power antique steam motor vehicles first manufactured prior to 1940.

(d) Each distributor, manufacturer, importer, exporter or retailer shall make full reports and furnish such further information as the director may require with reference to all transactions upon which no tax is to be paid.

Sec. 4. K.S.A. 79-3410 is hereby amended to read as follows: 79-3410. (a) Except as hereinafter provided, every distributor, manufacturer, importer, exporter or retailer of motor-vehicle fuels or special fuels, on or before the 25th day of each month, shall render to the director at the director's office in Topeka, Kansas, upon a form prescribed, prepared and furnished by the director a report certified to be true and correct showing the number of gallons of motor-vehicle fuels or special fuels received *or imported* by such distributor, manufacturer, importer, exporter or retailer during the preceding calendar month, and such further information as the director shall require. Every distributor and importer shall be exempt from reporting to the director exempt sales to the end user of special fuel which is indelibly dyed in accordance with regulations prescribed pursuant to 26 U.S.C. 4082. Every distributor, manufacturer or importer within the time herein fixed for the rendering of such reports, shall compute and shall pay to the director at the director's office the amount of taxes due to the state on all motor-vehicle fuels or special fuels received *or imported* by such distributor, manufacturer or importer during the preceding calendar month.

(b) The director may waive the requirement for monthly reports from licensed manufacturers, who are also licensed distributors, when all taxes accrued under either or both licenses or which might accrue are paid under the distributor license. All taxes imposed under the provisions of this act not paid on or before the 25th day of the month succeeding the calendar month in which the motor-vehicle fuels or special fuels were received *or imported* by the distributor, manufacturer or importer shall be deemed delinquent and shall bear interest at the rate per month, or fraction thereof, prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from such due date until paid, and in addition thereto there is hereby imposed upon all amounts of such taxes remaining due and unpaid after such due date a penalty in the amount of 5%, and the penalty shall be by the director added to and collected as a part of the taxes. If the distributor, manufacturer or importer furnishes evidence to the director that the delinquency was due to causes beyond such person's reasonable control, and if in the opinion of the director the delinquency was not the result of willful negligence of the distributor, manufacturer or importer the penalty or interest or both may be waived or reduced by the director.

If any person shall file a false or fraudulent return or fail to file a return with intent to evade the tax imposed by this act, there shall be added to the amount of deficiency determined by the director a penalty equal to 100% of the deficiency together with the interest at the rate per month or fraction thereof, prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, on such deficiency from the date such tax was due to the date of payment, in addition to all other penalties prescribed by law. Every manufacturer, refiner or terminal operator of motor-vehicle fuels or special fuels shall daily send reports to the director of all sales of liquid fuels. The reports are to be made on forms prescribed, prepared and furnished by the director or on forms furnished by the manufacturer and approved by the director.

(c) Whenever the secretary or the secretary's designee determines that the failure of the taxpayer to comply with the provisions of subsection (b) was due to reasonable causes, the secretary or the secretary's designee may waive or reduce any of the penalties and may reduce the interest rate to the underpayment rate prescribed and determined for the applicable period under section 6621 of the federal internal revenue code as in effect on January 1, 1994, upon making a record of the reasons therefor.

Sec. 5. K.S.A. 79-3415 is hereby amended to read as follows: 79-3415. Each distributor, manufacturer, importer, exporter, retailer or user

shall maintain and keep, for a period of three years, a full record or records of all motor-vehicle fuels or special fuels received, *imported*, used or sold and delivered within this state by such distributor, manufacturer, importer, exporter, retailer or user, together with invoices and bills of lading thereof, and such other pertinent papers as may be required by the director.

Sec. 6. K.S.A. 79-3416 is hereby amended to read as follows: 79-3416. Every railroad, street railroad, interurban railroad or suburban railroad, every pipeline company, every common carrier, and every carrier for hire, who shall transport any liquid fuels, motor-vehicle fuels or special fuels, from any point outside of this state into this state, or between any two points in this state, or from any point in this state to any point outside this state, and every private carrier or other person who shall transport any liquid fuels, motor-vehicle fuels or special fuels from any other state into this state, or from this state into another state, or shall transport any liquid fuels, motor-vehicle fuels or special fuels exceeding 500 gallons in amount, for any distance exceeding 25 miles within this state, shall render a written report, under oath, to the director, on forms prescribed and furnished by the director, of all such transportation of liquid fuels, motor-vehicle fuels or special fuels so made to or from points within this state. Every such report shall cover a period of one calendar month and shall be rendered to the director on or before the 15th day of the month succeeding the month covered by such report, and shall show the true name and address of the consignor and the consignee, and if delivery has been to some person other than the original consignee, the name and address of the person to whom delivery was actually made, the date and the point of delivery, and the name and the number of gallons of the liquid fuels, the motor-vehicle fuels or the special fuels delivered. If such transportation was by tank car, such report shall also show the number and initials of each tank car, if such transportation was by motor truck such report shall show the motor and license number of each truck, and if such delivery was made by any other means the report shall show the manner in which such transportation and delivery was made; such records and reports are required pursuant to the police and taxing powers of this state for the purpose of promoting the public health and safety and of aiding in the administration of the tax on motor-vehicle fuels or special fuels.

Every carrier or other person transporting motor-vehicle fuel or special fuel by tank car, tank truck or trailer from a refinery, place of manufacture or production, or pipeline terminal, or importing motor-vehicle fuel or special fuel into this state by tank car, tank truck or trailer for use, sale, or delivery in the state of Kansas shall carry a manifest on forms prescribed, prepared and furnished by the director or on forms furnished by the manufacturer, refiner or terminal operator and approved by the director showing the date of the use, sale, or delivery, the purchaser and the purchaser's address, the point of delivery, the product type or types and the quantity sold corrected to 60 degrees Fahrenheit, the means of delivering, including the license number, if any, liquid-fuels carrier's license number, and other number and description of such tank car, tank truck or trailer. Any manifest, bill of lading, shipping paper or invoice for special fuel which is indelibly dyed in accordance with regulations prescribed pursuant to 26 U.S.C. 4082 shall include the statement "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE." Every person receiving *or importing* motor-vehicle fuel or special fuel or any part of the same shall receipt at the place provided on such manifest for the quantity received *or imported* by such person. The director may prescribe the number of copies of such manifest and the manner and time of delivering the same to the director, ports of entry, or other disposition of copy by the carrier, consignor, consignee, distributor, or other person in any manner connected with or dealing with such shipment.

For the period July 1, 1995 through June 30, 1996, the point of delivery referred to in this section shall include at a minimum the city and state of actual delivery. On and after July 1, 1996, the point of delivery referred to in this section shall include at a minimum the address, city and state of actual delivery. The facility number issued by the Kansas department of health and environment, authorized under K.S.A. 65-34,100 et seq.,

and amendments thereto, may be substituted in lieu of the point of delivery.

Sec. 7. K.S.A. 79-3420 is hereby amended to read as follows: 79-3420. The director, or any deputy or agent appointed in writing by the director, is hereby authorized to examine the books, papers, records, storage tanks, tank wagons, trucks and any other equipment of any distributor, dealer, transporter, manufacturer, importer, exporter, retailer, user or any other person, pertaining to the use, storage, transportation or sale and delivery of liquid fuels, motor-vehicle fuels or special fuels, to verify the accuracy of any report, statement or payment made under the provisions of this act, or to ascertain whether or not all reports and tax payments required by this act have been made. Any information gained by the director, the director's deputies or agents, as the result of the reports, investigations and verifications herein required to be made, shall be confidential, and shall not be divulged by any person except as herein provided. Every distributor, dealer, transporter, manufacturer, importer, exporter, retailer or user and every person handling or possessing any liquid fuels, motor-vehicle fuels or special fuels shall give the director, or the director's deputy or agent appointed in writing, full and free access during reasonable business hours to all the papers, records and property mentioned, with full opportunity to examine the same. The director, or any deputy or agent appointed in writing by the director, shall examine returns and shall determine the correct amount of the tax. If the tax found due shall be greater than the amount paid, or if a claim for a refund is denied, notice shall be mailed to the taxpayer. Within 60 days after the mailing of such notice, the taxpayer may request an informal conference with the secretary of revenue or the secretary's designee relating to the tax liability by filing a written request with the secretary of revenue or the secretary's designee. Based on the evidence presented at such informal conference, the secretary of revenue or the secretary's designee shall make a final determination within the period prescribed by K.S.A. 79-3226, and amendments thereto, and shall notify the taxpayer of such decision and, if additional amounts are found to be due, such decision shall be accompanied by a notice and demand for payment. Notice under this section shall be sent by first-class mail. The tax shall be paid within 20 days thereafter, together with interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, on the additional tax from the date the tax was due unless an appeal is taken in the manner provided by law, but no additional tax shall be assessed for less than \$5. Interest at such rate shall continue to accrue on any additional tax liability during the course of any appeal.

Whenever the director of taxation has reason to believe that a person liable for tax under any provisions of the motor-fuel tax law is about to depart from the state or to remove such person's property therefrom, or to conceal oneself or such person's property therein, or to do any other act tending to prejudice, jeopardize or render wholly or partly ineffectual the collection of such motor-fuel tax unless proceedings be brought without delay, the director shall immediately make an assessment for all motor-fuel tax due from such taxpayer, noting such finding on the assessment. The assessment shall be made on the basis of emergency proceedings in accordance with the provisions of K.S.A. 77-536, and amendments thereto. Thereupon, a warrant shall be issued for the collection of the tax as provided in K.S.A. 79-3412, and amendments thereto, except that there shall be no 10-day waiting period before assessment is issued. The taxpayer, within 15 days from the date of filing of such warrant, may request an informal conference with the secretary of revenue or the secretary's designee on the correctness of the assessment. The director may publish the gallons received *or imported* by each licensed motor-vehicle fuel or special fuel distributor and the deductions claimed by such distributor and such publication shall be an exception to the confidentiality provisions of K.S.A. 75-5133, and amendments thereto. The director may also make available or furnish information to the taxing officials of any other state or of the federal government, or the director of property valuation, in the manner as provided in K.S.A. 74-2424, and amendments thereto.

Sec. 8. K.S.A. 79-3424 is hereby amended to read as follows: 79-3424. The business of using, manufacturing or selling of motor-vehicle

fuels or special fuels shall not be subject to any excise, license, privilege or occupation tax other than the one herein imposed, whether such tax be imposed by the state of Kansas or by any municipal corporation or other political subdivision of this state; and no municipal corporation, or other political subdivision of this state, shall levy or collect any tax upon, or measured by, the sale, receipt, *importation*, distribution or use of motor-vehicle fuel or special fuel, or any excise, license, privilege, or occupational tax upon the business of manufacturing, using, selling or delivering motor-vehicle fuels or special fuels.

Sec. 9. K.S.A. 79-3426 is hereby amended to read as follows: 79-3426. (a) The director, upon the request of the official of any other state entrusted with the enforcement of the motor-vehicle-fuels tax law of such other state, may forward to such official any information which the director may have in the director's possession relative to the manufacture, receipt, sale, delivery, use, transportation or shipment by any person of liquid fuels, and the director, upon request of any distributor, importer, exporter or retailer holding a valid license, shall furnish to such distributor, importer, exporter or retailer a list of the names and addresses of all the persons holding distributor's, importer's, exporter's or retailer's licenses issued and outstanding in this state.

(b) The director, upon the request of the official entrusted with the enforcement of the fuel tax laws of any other state, the District of Columbia, the United States, its territories and possessions, the provinces of the Dominion of Canada, may forward to such official any information which the director may have in the director's possession relative to the manufacture, receipt, *importation*, sale, delivery, use, transportation or shipment by any person of special fuel as defined in this act.

Sec. 10. K.S.A. 2005 Supp. 79-3464c is hereby amended to read as follows: 79-3464c. (a) The director may require a licensed distributor receiving or *importing* 50,000 gallons of motor fuel or more in a calendar month to file by electronic or magnetic media, in a standard format, such information as specified by the director. A licensed distributor, that can show just cause, may request a waiver from these requirements.

(b) Any distributor filing information prescribed by the director in accordance with subsection (a), who continues to file in accordance with subsection (a), shall be entitled to a onetime tax credit against the motor fuel tax imposed by article 34 of chapter 79 of the Kansas Statutes Annotated. Distributors filing in accordance with subsection (a):

(1) On or before July 1, 1999, shall be entitled to an amount equal to \$8,000;

(2) after July 1, 1999, but on or before July 1, 2000, shall be entitled to an amount equal to \$6,400; and

(3) after July 1, 2000, but on or before June 30, 2001, shall be entitled to an amount equal to \$4,000.

(c) Any distributor electing to cease filing in accordance with subsection (a) within 10 years of the taxable year in which the taxpayer claimed the credit pursuant to subsection (b), shall be liable to reimburse the state for the amount of any such credit claimed.

(d) The secretary of revenue shall adopt rules and regulations establishing the criteria and procedures for claiming the tax credit under subsection (b).

Sec. 11. K.S.A. 79-3464e is hereby amended to read as follows: 79-3464e. (a) It shall be unlawful for any distributor, importer, exporter, manufacturer, retailer, user, carrier, transporter or any other person to:

(1) Use, sell, manufacture or deliver any motor-vehicle fuels or special fuels at any place without having a valid, unsuspended and unrevoked license as required by this act;

(2) fail, neglect or refuse to render to the director at the director's office, within the time required by the provisions of this act, any report or statement required by or purporting to be under the provisions of this act, or purporting to be under the rules and regulations promulgated by the director under such provisions;

(3) fail, neglect or refuse to pay the director, within the time required by this act, any tax, taxes, interest or penalties for which such person is liable under the provisions of this act;

(4) fail, neglect or refuse to keep and maintain for a period of three years, or fail to make fully and freely accessible during business hours to

the director, the director's deputy or agent, all books, papers and records required by this act to be kept and maintained and so made accessible;

- (5) use any motor fuels purchased as exempt in a taxable manner;
- (6) sell, receive, *import* or transport motor fuels without proper and correct manifests;
- (7) sell or hold for sale dyed fuel that such person knows or has reason to know will not be used for a nontaxable purpose;
- (8) violate any other provision of this act not specified in this section;
- (9) aid and abet in violations contained in paragraphs (1) through (8);
- (10) falsify, forge or willfully conceal from the director or director's agent, any books, papers and records required by this act;
- (11) knowingly submit a false or forged application for licensure under this act;
- (12) knowingly make any false or forged application for a refund permit or claim for refund or to knowingly make any false statement in any application for a refund permit, or in any claim for a refund;
- (13) present, or cause to be presented, to the director for credit, or for refund, any false, forged or altered invoice of refund;
- (14) falsify, forge or alter any documents associated with the use, sale, manufacture or delivery of any motor fuels;
- (15) deliver or accept delivery, with the intent to evade the obligation of collecting, remitting or accounting for motor fuel tax to this state, any motor fuel, knowing that the manifest or bill of lading indicates that the motor fuel was intended to be delivered to a tax exempt entity or intended to be delivered to a location outside the state of Kansas;
- (16) use dyed fuel other than for a nontaxable use;
- (17) willfully alters or attempts to alter, the strength or composition of any dye in any dyed fuel; or
- (18) aid and abet in violations contained in paragraphs (10) through (17).

(b) Violation of paragraphs (1) through (9) is a misdemeanor. Any person convicted of such violation shall be punished by a fine of not less than \$1,000 nor more than \$10,000, or imprisoned in the county jail for not less than 30 days nor more than one year, or by both such fine and imprisonment. Upon a second or subsequent conviction, such person shall be punished by a fine of not less than \$5,000 nor more than \$50,000, or by imprisonment in the county jail for not less than 60 days nor more than two years, or by both such fine and imprisonment.

(c) Violation of paragraphs (10) through (18) is a severity level 10, nonperson felony.

(d) For any violations of this section, the director may suspend or revoke any license issued to any person found to be in violation and assess an administrative penalty of \$10 per gallon of motor fuels involved, or a penalty of not less than \$1,000 nor more than \$10,000; and upon a second or subsequent violation, a penalty of \$25 per gallon of motor fuels involved or a penalty of not less than \$5,000 nor more than \$50,000.

New Sec. 12. No claim for refund of tax imposed by the Kansas motor-fuel tax law based upon any decision of the Kansas supreme court or any federal court that importers are not subject to any provision of the motor-fuel tax law, including but not limited to the remittance and payment provisions of the motor-fuel tax law, shall be allowed for tax paid prior to the date of such decision.

Sec. 13. K.S.A. 79-3410, 79-3415, 79-3416, 79-3420, 79-3424, 79-3426 and 79-3464e and K.S.A. 2005 Supp. 79-3408 and 79-3464c are hereby repealed.

Sec. 14. On January 1, 2007, K.S.A. 79-3401 and K.S.A. 2005 Supp. 79-34,141 are hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.