

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1473

Short Title: Improve Tracking of Fuel Shipments.

(Public)

Sponsors: Senators Kerr, Cochrane, Hoyle, Marshall, Winner of Buncombe; and Albertson.

Referred to: Finance.

May 25, 1994

A BILL TO BE ENTITLED

AN ACT TO ADDRESS MOTOR FUEL TAX EVASION IN CROSS-BORDER SHIPMENTS OF FUEL BY REQUIRING SHIPPING DOCUMENTS ISSUED BY THE SELLER OF THE FUEL TO THE TRANSPORTER OF THE FUEL TO INCLUDE THE DESTINATION STATE FOR THE FUEL, AND TO OTHERWISE IMPROVE THE STATE'S ABILITY TO TRACK SHIPMENTS OF MOTOR FUEL.

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

1 seller and motor fuel delivered out-of-state by or for the purchaser  
2 constitutes an export by the purchaser.

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

4 a. Bring motor fuel into this State by ~~pipeline, marine vessel,~~  
5 ~~railroad tank car, or transport truck.~~ any means of conveyance  
6 other than in the fuel supply tank of a motor vehicle.

7 b. Exchange motor fuel located at a pipeline terminal or a seaport  
8 terminal in this State for motor fuel located inside or outside the  
9 State.

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

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

15 a. All products commonly or commercially known or sold as  
16 gasoline (including casinghead and absorption or natural  
17 gasoline) regardless of their classification or uses.

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

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

38 (5a) Reserved.

39 (5b) Rack. – A mechanism for delivering motor fuel from a refinery, a  
40 terminal, or a bulk plant into a railroad tank car, a transport truck, or  
41 another means of nonbulk transfer.

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

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

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

6           (9) Transport truck. – A semitrailer combination rig designed or used to  
7 transport motor fuel over the highways, usually in loads of at least  
8 4,200 gallons."

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

11 **"§ 105-432.1. Application for registration as terminal operator.**

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

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

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

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

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

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

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

33 **"§ 105-438.1. Shipping document required to transport motor fuel by railroad tank**  
34 **car or transport truck.**

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

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

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

- 1           (2)   The date the motor fuel was loaded.  
2           (3)   The gross volume and the net volume temperature-corrected to 60°  
3           Fahrenheit of motor fuel loaded.  
4           (4)   The destination state of the motor fuel, as represented by the purchaser  
5           of the motor fuel or the purchaser's agent.

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

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

- 12           (1)   Carry the shipping document in the conveyance for which it was  
13           issued when transporting the motor fuel described in it.  
14           (2)   Show the shipping document to a law enforcement officer upon  
15           request when transporting the motor fuel described in it.  
16           (3)   Deliver motor fuel described in the shipping document to the  
17           destination state printed on it unless the person does all of the  
18           following:  
19               a.   Notifies the Secretary before transporting the motor fuel into a  
20               state other than the printed destination state that the person has  
21               received instructions since the shipping document was issued to  
22               deliver the motor fuel to a different destination state.  
23               b.   Receives from the Secretary a confirmation number authorizing  
24               the diversion.  
25               c.   Writes on the shipping document the change in destination state  
26               and the confirmation number for the diversion.  
27           (4)   Give a copy of the shipping document to the distributor or other person  
28           to whom the motor fuel is delivered.

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

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

- 41           (1)   Transporting motor fuel in a railroad tank car or transport truck  
42           without a shipping document or with a false or an incomplete shipping  
43           document.

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

3           The amount of the penalty depends on the amount of fuel improperly transported or  
4 diverted. The penalty is twenty dollars (\$20.00) for each 100 gallons of fuel.

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

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

8           (1) Fails to obtain a license required by this Article.

9           (2) Willfully fails to make a report required by this Article.

10          (3) Willfully fails to pay a tax when due under this Article.

11          (4) Makes a false statement in an application, a report, or a statement  
12 required under this Article.

13          (5) Fails to keep records as required under this Article.

14          (6) Refuses to allow the Secretary of Revenue or a representative of the  
15 Secretary of Revenue to examine the ~~distributor's~~ person's books and  
16 records concerning motor fuel.

17          (7) Fails to disclose the correct amount of motor fuel sold or used in this  
18 State.

19          (8) Fails to file a replacement bond or an additional bond as required  
20 under this Article.

21          (9) Fails to give a shipping document as required under this Article."

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

23 **"§ 105-447. Reports and records of carriers. ~~movements of motor fuel.~~**

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

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

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

21 (1) The name and address of each person from whom the transporter  
22 received motor fuel outside the State for delivery in the State, the  
23 amount of motor fuel received, and the date the motor fuel was  
24 received.

25 (2) The name and address of each person to whom the transporter  
26 delivered motor fuel from a location inside the State to a location  
27 outside the State, the amount of motor fuel delivered, and the date the  
28 motor fuel was delivered.

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

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

34 "**§ 105-449.27. Article 9 of Revenue Act made applicable. Shipping document**  
35 **requirements and transporter report requirements that apply to motor**  
36 **fuel also apply to fuel.**

37 All the provisions of Article 9 of Chapter 105 of the General Statutes, relating to  
38 general administration, penalties and remedies pursuant to the State Revenue Act, shall  
39 insofar as practicable, and except when in a direct conflict with the provisions of this  
40 Article, be applicable with respect to this Article. The requirements set by G.S. 105-  
41 438.1 concerning a shipping document apply to fuel. The requirements set by G.S. 105-  
42 447 concerning reports and records of movements of motor fuel apply to movements of  
43 fuel."

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

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

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

16       Sec. 9. This act becomes effective January 1, 1995.