

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

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J.S. McCarthy Company
Augusta, Maine
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CHAPTER 271

H.P. 919 - L.D. 1295

**An Act to Conform Maine Law with
the Provisions of the Federal Clean
Air Act and the Internal Revenue
Code Pertaining to the Use of Dyed
Fuel on Highways**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, recent changes in federal law require that certain high-sulphur diesel fuel be color-dyed in order to help reduce air pollution by identifying fuel not suitable for highway use and to help increase tax compliance by identifying fuel on which taxes have not been paid; and

Whereas, reducing the sulphur content of highway fuel is beneficial to the health and safety of the people of this State; and

Whereas, fuel tax revenues are an important source of revenues for the Highway Fund; and

Whereas, the tax laws of this State do not currently contain any disincentives to the operation of vehicles using high-sulphur diesel fuel on the public ways, which are needed if truckers operating illegally are to be prevented from placing other Maine businesses at an extreme competitive disadvantage; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 36 MRSA §3202, sub-§2-A is enacted to read:

2-A. Dyed fuel. "Dyed fuel" means a distillate that is dyed pursuant to the requirements of the Federal Government.

Sec. 2. 36 MRSA §3202, sub-§4, as enacted by PL 1983, c. 94, Pt. D, §6, is repealed and the following enacted in its place:

4. Motor vehicle. "Motor vehicle" means any vehicle, engine, machine or mechanical contrivance that is propelled by an internal combustion engine or motor.

Sec. 3. 36 MRSA §3202, sub-§5, as enacted by PL 1983, c. 94, Pt. D, §6, is repealed.

Sec. 4. 36 MRSA §3202, sub-§5-A is enacted to read:

5-A. Public way. "Public way" has the same meaning as provided in Title 29-A, section 101.

Sec. 5. 36 MRSA §3203, as amended by PL 1991, c. 592, Pt. D, §5, is repealed and the following enacted in its place:

§3203. Tax levied; consignment sales; credited to Highway Fund

Except as provided in section 3204-A, an excise tax is levied and imposed on all suppliers of special fuel sold and on all users of special fuel used in this State for each gallon of distillate at the rate of 20¢ per gallon and for each gallon of low-energy fuel at the rate of 18¢ per gallon. When special fuel is delivered by a supplier on a consignment basis to a consumer or to a retail outlet, whether or not the retail outlet is wholly owned by the supplier, it is considered to have been "sold" within the meaning of this Act. All taxes and fines collected under this chapter must be credited to the Highway Fund.

Sec. 6. 36 MRSA §3203-A, as amended by PL 1991, c. 592, Pt. D, §6, is repealed.

Sec. 7. 36 MRSA §§3204-A and 3204-B are enacted to read:

§3204-A. Exemptions; affidavit of exempt use

The following fuels are exempt from the tax imposed by section 3203:

1. Single lot. Special fuel purchased in a single lot of no more than 275 gallons and used solely for heating or cooking purposes;

2. Delivered into tank. Special fuel delivered into a tank used solely for heating or cooking purposes, sold for resale to a licensed or registered supplier;

3. Political subdivision. Special fuel sold to this State or any political subdivision of this State;

4. Precludes collection of tax. Special fuel sold or used in such form or under such circumstances as precludes the collection of tax by reasons of federal law;

5. Exportation. Special fuel sold only for exportation from this State;

6. Generation. Special fuel sold to a person for the generation of power for resale or manufacturing; and

7. Retail sale. Kerosene delivered into a separate tank for retail sale, in which case the excise tax must be remitted by licensed users pursuant to section 3207, rather than by the supplier.

The purchaser of special fuel that qualifies for one of the above exemptions must sign and provide to the seller a sworn statement indicating that the fuel will be used for the exempt purpose. The State Tax Assessor shall make forms available to suppliers for this purpose. The signed form must be retained by the supplier for at least 3 years.

§3204-B. Dyed fuel; prohibition on highway use

1. Generally. Except as provided in subsection 2, a person may not operate a motor vehicle on the public ways of this State if the fuel supply tanks of the vehicle contain dyed fuel or other fuel on which the tax imposed by section 3203 has not been paid.

2. Exceptions. The following motor vehicles are not subject to the prohibition provided in subsection 1:

A. Motor vehicles owned and operated by this State or any political subdivision of this State; and

B. Motor vehicles authorized to use dyed fuel on the public ways of this State under the provisions of the Code, section 4082 or rules adopted under the Code.

3. Penalty. A person who violates the prohibition provided in subsection 1 commits a Class D crime and is subject to a fine of not less than \$1,000, which may not be reduced. Refusal to permit inspection pursuant to section 3219-A in order to enforce the provisions of this section constitutes prima facie evidence that the tank or container in question contains dyed fuel.

Sec. 8. 36 MRSA §3208, as amended by PL 1985, c. 127, §1, is further amended to read:

§3208. Credit; users

Every user subject to the tax imposed by section 3203 ~~shall be~~ is entitled to a credit on the tax equivalent to the existing rate of taxation per gallon on all fuels purchased by that user from a supplier licensed in accordance with section 3204 upon which fuel the tax is imposed by section 3203 has been paid by that user. Evidence of the payment of that tax, in such form as may be required by or is satisfactory to the State Tax Assessor, ~~shall must~~ be furnished by each user claiming the credit allowed. When the amount of

the credit to which any user is entitled for any quarter exceeds the amount of the tax for which that user is liable for the same quarter, the excess may, under rules of the State Tax Assessor, be allowed as a credit on the tax for which that user would be otherwise liable for another quarter or quarters, or upon application within 3 months from the end of any quarter, duly verified and presented in accordance with ~~regulations promulgated~~ rules adopted by the State Tax Assessor and supported by such evidence as may be satisfactory to the State Tax Assessor, such excess may be refunded if it ~~shall appear~~ appears that the applicant has paid to another state or province under a lawful requirement of such jurisdiction a tax similar in effect to the tax levied in section 3203, on the use or consumption of the same fuel ~~without~~ outside the State, at the same rate per gallon that such tax was paid in this State on that number of gallons used in and a tax paid on in such other jurisdiction, but in no case to exceed the rate per gallon of the then current Maine state fuel tax. Upon receipt of the application, the State Tax Assessor, if satisfied after investigation that a refund is justified, shall so certify to the State Controller and it ~~shall must~~ be paid out of the Highway Fund. This credit ~~shall lapse~~ lapses at the end of the last quarter of the year following that in which the credit arose.

For those accounts in good standing, a monthly refund application, on a form prescribed by the State Tax Assessor, may be filed at the close of any month to claim credits described in this section. That application ~~shall must~~ be processed and approved for payment promptly. Interest ~~shall be~~ is paid at the same rate as is computed under section 186, calculated from the date of receipt of the monthly claim for all proper claims not paid within 30 days of receipt of the claim. ~~Nothing in this~~ This paragraph may ~~not~~ be construed to relieve the applicant from filing quarterly substantiating information as prescribed by this section.

Sec. 9. 36 MRSA §3216, as amended by PL 1995, c. 65, Pt. A, §148 and affected by Pt. A, §153 and Pt. C, §15, is repealed.

Sec. 10. 36 MRSA §3217, as amended by PL 1991, c. 592, Pt. D, §8, is repealed.

Sec. 11. 36 MRSA §3219-A is enacted to read:

§3219-A. Enforcement; penalties

1. Enforcement. The State Tax Assessor shall notify the Secretary of State and the Bureau of State Police of any carrier who has failed to comply with the provisions of this chapter. In order to enforce the provisions of this chapter, any duly authorized and designated agent or officer of the assessor, the

Secretary of State or the Commissioner of Public Safety may:

A. Inspect any fuel tank or container that can or may be used for the production, storage or transportation of special fuel;

B. Inspect any equipment that can or may be used for, or in connection with, the production, storage or transportation of special fuel;

C. Inspect the books and records of any supplier, user, distributor or importer;

D. Detain any motor vehicle for the purpose of inspecting its fuel tanks. Detainment may continue for a reasonable period of time as necessary to determine the amount and composition of the fuel. Designated agents and officers may take and remove samples of fuel in reasonable quantities in order to determine compliance with the provisions of this chapter;

E. Suspend vehicle registrations in the name of any carrier that has violated the provisions of this chapter and the right to operate as provided in Title 29-A, section 2458; and

F. Refuse to issue or reissue authority required by Title 29-A, section 552.

2. Penalties. A person who commits one of the following acts is guilty of a Class E crime and is subject to a fine of not less than \$250, which may not be reduced:

A. If the person is a supplier, selling special fuel without collecting tax on the fuel when the supplier knows or has reason to believe that the fuel will not be used for an exempt purpose;

B. Refusing or failing to make any statement, report, payment or return required by this chapter;

C. Refusing or failing to pay interest or penalties arising from the nonpayment of taxes required by this chapter;

D. Knowingly collecting or attempting to collect, directly or indirectly, a refund of tax without being entitled to that refund;

E. Knowingly making, or aiding or assisting any other person in making, a materially false statement in any return or report submitted to the State Tax Assessor, in any application for refund of tax, in any other application or affidavit submitted to the State Tax Assessor pursuant to this chapter or in any affidavit of exempt use submitted to a supplier pursuant to section 3204-A;

F. Refusing or failing to permit an inspection pursuant to subsection 1; or

G. If the person is a user or an agent or employee of a user, consuming special fuel in a registered motor vehicle when the user does not have a valid license issued pursuant to section 3207. Each day or part of a day during which this paragraph is violated constitutes a separate violation within the meaning of this section.

The fine provided by this subsection is in addition to any other applicable penalty or tax.

Sec. 12. 36 MRSA §3234, sub-§2, as enacted by PL 1983, c. 94, Pt. D, §7, is amended to read:

2. Supplier, distributor or importer; definition. For the purposes of this section, the term supplier, distributor or importer includes, ~~in addition to the persons described in section 3202, subsection 5,~~ any officer, director, member, agent or employee of any supplier, distributor or importer who, in that capacity, is responsible for the control or management of the funds or finances of that supplier, distributor or importer or responsible for either the collection or payment of that supplier, distributor or importer's taxes.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 21, 1995.

CHAPTER 272

S.P. 438 - L.D. 1206

An Act to Amend the Medical Examiner Act

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §3028, sub-§4, as amended by PL 1991, c. 97, §2, is further amended to read: