

LEGISLATIVE BILL 1067

Approved by the Governor April 11, 2000

Introduced by Kristensen, 37

AN ACT relating to motor fuel; to amend sections 66-485, 66-487, 66-488, 66-491, 66-492, 66-4,114, 66-4,147, 66-525, 66-527, 66-651, 66-654, 66-667, 66-673, 66-674, 66-675, 66-684, 66-694, 66-698, 66-6,110, 66-6,115, 66-719, 66-722, 66-723, and 66-727, Reissue Revised Statutes of Nebraska, and sections 66-4,141, 66-4,142, 66-4,144, 66-681, 66-718, and 66-1521, Revised Statutes Supplement, 1998; to change provisions relating to exporters, permits, licenses, penalties, and filings; to define and redefine terms; to change the manner of setting variable fuel tax rates; to eliminate the State Tax Board, obsolete provisions, and provisions relating to tax collection; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal sections 66-493, 66-4,115, 66-691.01, 66-696, and 66-730, Reissue Revised Statutes of Nebraska, and sections 77-501, 77-502, and 77-503, Revised Statutes Supplement, 1998; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 66-485, Reissue Revised Statutes of Nebraska, is amended to read:

66-485. The department, for the first year of a new license or whenever it deems it necessary to insure compliance with sections 66-482 to 66-4,149, may require any supplier, distributor, wholesaler, exporter, or importer subject to such sections to place with the department such security as it determines. The amount and duration of the security shall be fixed by the department and shall be approximately three times the total estimated average monthly tax liability payable by such supplier, distributor, wholesaler, or importer pursuant to such sections. Such security shall consist of a surety bond executed by a surety company duly licensed and authorized to do business within this state in the amount specified by the department. In the case of an exporter, the amount and duration of the security shall be fixed by the department. Such security shall run to the Department of Revenue and be conditioned upon the payment of all taxes, interest, penalties, and costs for which such supplier, distributor, wholesaler, exporter, or importer is liable, whether such liability was incurred prior to or after such security is filed.

Sec. 2. Section 66-487, Reissue Revised Statutes of Nebraska, is amended to read:

66-487. (1) Every licensed supplier, distributor, wholesaler, exporter, and importer shall keep a complete and accurate record of all gallonage of motor vehicle fuel, to be based on gross gallons, received, purchased, or obtained and imported by ~~such a~~ supplier, distributor, wholesaler, or importer, which record shall show the name and address of the person from whom each transfer or purchase of motor vehicle fuel so received or imported was made, the point from which shipped or delivered, the point at which received, the method of delivery, the quantity of each transfer or purchase, and a complete and accurate record of the number of gallons, to be based on gross gallons, of motor vehicle fuel imported, produced, refined, manufactured, or compounded and the date of importation, production, refining, manufacturing, or compounding. If any licensed supplier, distributor, wholesaler, or importer sells to another licensed supplier, distributor, wholesaler, importer, or exporter any motor vehicle fuel, such seller shall keep as part of its records the name, address, and license number of the supplier, distributor, wholesaler, importer, or exporter to whom the motor vehicle fuel was sold along with the date, quantity, and location where the motor vehicle fuel was sold.

(2) Every licensed supplier, distributor, wholesaler, exporter, and importer shall include the information prescribed in subsection (1) of this section with the monthly return required by section 66-488.

(3) The records required by this section shall be retained and be available for audit and examination by the department or its authorized agents during regular business hours for a period of three years following the date of filing fuel tax reports supported by such records or for a period of five years if the required reports are not filed.

Sec. 3. Section 66-488, Reissue Revised Statutes of Nebraska, is amended to read:

66-488. (1) Every supplier, distributor, wholesaler, importer, and exporter who engages in the sale, distribution, delivery, and use of motor vehicle fuel shall render and have on file with the department by the twenty-fifth day of each calendar month if filed electronically or by the twentieth day of each calendar month if not filed electronically, on forms prescribed by the department, a return reporting the number of gallons of motor vehicle fuel, based on gross gallons, received, imported, or exported and unloaded and emptied or caused to be received, imported, or exported and unloaded and emptied by such supplier, distributor, wholesaler, or importer in the State of Nebraska and the number of gallons of motor vehicle fuel produced, refined, manufactured, blended, or compounded by such supplier, distributor, wholesaler, or importer within the State of Nebraska, during the preceding calendar month, and defining the nature of such motor vehicle fuel. The return shall contain a declaration, by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the return and shall be in lieu of such verification. The return shall be considered filed on time if mailed in an envelope properly addressed to the department, postage prepaid, and postmarked before midnight of the final filing date. The return shall be signed by the supplier, distributor, wholesaler, importer, or exporter or a principal officer, general agent, managing agent, attorney in fact, chief accountant, or other responsible representative of the supplier, distributor, wholesaler, importer, or exporter, and such return shall be entitled to be received in evidence in all courts of this state and shall be prima facie evidence of the facts therein stated. If the final filing date for such return falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date.

(2) For tax periods beginning January 1, 2002, and thereafter, the return required by subsection (1) of this section shall be filed with the department by the twenty-fifth day of each calendar month regardless of whether it is filed electronically to report the motor vehicle fuel activity which occurred during the preceding calendar month.

Sec. 4. Section 66-491, Reissue Revised Statutes of Nebraska, is amended to read:

66-491. No person shall bring into this state in the fuel supply tanks of a qualified motor vehicle or in any other container, regardless of whether or not the supply tanks are connected to the motor of the vehicle, any motor vehicle fuel, diesel fuel, or compressed fuel to be used in the operation of the vehicle in this state unless he or she has purchased a trip permit pursuant to ~~subsection (4) of~~ section 66-492 or paid or made arrangements in advance with the department for payment of Nebraska motor vehicle fuel taxes, diesel fuel taxes, or compressed fuel taxes on the gallonage consumed in operating the vehicle in this state.

Any person who brings into this state in the fuel supply tanks of a qualified motor vehicle motor vehicle fuel, diesel fuel, or compressed fuel in violation of this section or the International Fuel Tax Agreement Act shall be subject to an administrative penalty of one hundred dollars for each violation to be assessed and collected by the department or another state agency which may be contracted with to act as the department's agent for such purpose. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

Sec. 5. Section 66-492, Reissue Revised Statutes of Nebraska, is amended to read:

66-492. ~~(1) The advance arrangements referred to in section 66-491 shall include the procuring of a permit and the furnishing and maintaining of security as defined in section 66-485 in a sum to be fixed and determined by the department but not less than one thousand dollars to assure the required reporting, payment of tax, keeping of records, and payment of any penalties. The amount of security as fixed and determined by the department shall be a minimum of one thousand dollars and up to approximately two times the average liability for the reporting period of the permit holder. Such security shall run to the Department of Revenue and be conditioned upon the payment of all taxes, interest, penalties, and costs for which such person is liable, whether such liability was incurred prior to or after such security is filed.~~

~~(2) Such permit may be obtained upon application to the department. The department shall charge a fee of ten dollars for each permit issued. The holder of a permit under this section shall have the privilege of bringing into this state in the fuel supply tanks of qualified motor vehicles any amount of motor vehicle fuel, diesel fuel, or compressed fuel to be used in the operation of the vehicles and for that privilege shall pay Nebraska motor vehicle fuel, diesel fuel, or compressed fuel taxes. The department may issue~~

the permits required by this section in the form of gummed stickers or decals that expire on December 31.

(3) Each qualified motor vehicle operated into or through Nebraska in interstate operations using motor vehicle fuel, diesel fuel, or compressed fuel acquired in any other state shall carry in or on each vehicle a duplicate of the permit required in this section. If the department issues the permits in the form of gummed stickers or decals, each vehicle shall have affixed an unexpired gummed sticker or decal. All fees collected shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

(4) In lieu of the permit and security required by subsection (1) of this section, the department shall provide for a trip permit to be issued. Such trip permits shall be issued for a fee of twenty dollars and shall be valid for a period of seventy-two hours. The carrier enforcement division designated under section 60-1303 shall act as an agent for the department in collecting the fees prescribed in this ~~subsection~~ section and shall remit all such fees collected to the State Treasurer for credit to the Highway Cash Fund. Such trip permits shall be available at weighing stations operated by the carrier enforcement division and at various vendor stations as determined appropriate by the carrier enforcement division. Trip permits shall be obtained at the first available location, whether that is a weighing station or a vendor station. The vendor stations shall be entitled to collect and retain an additional fee of ten percent of the fee collected pursuant to this ~~subsection~~ section as reimbursement for the clerical work of issuing the permits.

Sec. 6. All taxes, interest, and penalties collected under Chapter 66, article 4, shall be remitted to the State Treasurer for credit to the Highway Trust Fund or Highway Cash Fund as appropriate.

Sec. 7. Section 66-4,114, Reissue Revised Statutes of Nebraska, is amended to read:

66-4,114. Motor vehicle fuel in the supply tank of any qualified motor vehicle as defined in section 66-490 which is regularly connected with the carburetor of the engine of any such vehicle and which is brought into this state shall be liable for the payment of the tax imposed by this state upon motor vehicle fuel under sections 66-489 and 66-4,105 except when a trip permit is used as provided in ~~subsection (4)~~ of section 66-492 or the International Fuel Tax Agreement Act.

Sec. 8. Section 66-4,141, Revised Statutes Supplement, 1998, is amended to read:

66-4,141. (1) Upon receipt of the cost figures required by section 66-4,143, the department shall determine the statewide average cost by dividing the total amount paid for motor vehicle fuel, diesel fuel, and compressed fuel by the State of Nebraska, excluding any state and federal taxes, by the total number of gallons of motor vehicle fuel, diesel fuel, and compressed fuel purchased during the reporting period.

(2) After computing the statewide average cost as required in subsection (1) of this section, the department shall multiply such statewide average cost by the tax rate established pursuant to section 66-4,144.

(3) In making the computations required by subsections (1) and (2) of this section, gallonage reported shall be rounded to the nearest gallon and total costs shall be rounded to the nearest dollar. All other computations shall be made with three decimal places, except that after all computations have been made the tax per gallon shall be rounded to the nearest one-tenth of one cent.

(4) The tax rate per gallon computed pursuant to this section shall be distributed to all licensed motor vehicle fuel suppliers, distributors, wholesalers, and importers, diesel fuel suppliers, distributors, wholesalers, and importers, compressed fuel retailers, and interstate motor vehicle operators who choose to be subject to sections 66-490 to 66-494 at least five days prior to the first day of any semiannual period during which the tax is to be adjusted. Such tax rate shall be utilized in computing the ~~tax~~ taxes due for the period specified by the department.

Sec. 9. Section 66-4,142, Revised Statutes Supplement, 1998, is amended to read:

66-4,142. (1) The department shall at the end of each calendar quarter determine the total amount of motor fuel tax that was not collected in the preceding calendar quarter due to the credit provided in section 66-1344 and due to any exemption provided in sections 66-489 and 66-4,105 less the amount transferred to the Highway Trust Fund from the Ethanol Production Incentive Cash Fund pursuant to section 66-1345.

(2) If the amount determined in subsection (1) of this section is at least equal to the amount of revenue raised in the same period by one-tenth of one cent of the fuel tax imposed by sections 66-489, 66-4,105, 66-668, and

66-6,107, the department shall for the next succeeding calendar quarter adjust the rate of the fuel tax imposed by such sections in an amount which the department estimates, based on the estimates provided to the State Tax Board pursuant to section 66-4,144, will raise sufficient revenue to meet and not exceed the amount so determined, except that all such adjustments shall be in increments of one-tenth of one cent per gallon.

Sec. 10. Section 66-4,144, Revised Statutes Supplement, 1998, is amended to read:

66-4,144. (1) In order to insure that an adequate balance in the Highway Restoration and Improvement Bond Fund is maintained to meet the debt service requirements of bonds to be issued by the commission under subsection (2) of section 39-2223, the Governor may call a meeting of the State Tax Board at any time in advance of the issuance of such bonds. At such meeting, the board shall set the rate of Director-State Engineer shall certify to the department the excise tax rate to be imposed by sections 66-4,140, 66-669, and 66-6,108 for each year during which such bonds are outstanding necessary to provide in each such year money equal in amount to not less than one hundred twenty-five percent of such year's bond principal and interest payment requirements. The department shall adjust the rate as certified by the Director-State Engineer. Such rate shall be in addition to the rate of excise tax set pursuant to subsection (2) of this section. Each such rate shall be effective from July 1 of a stated year through June 30 of the succeeding year or during such other period not longer than one year as the ~~board determines~~ Director-State Engineer certifies to be consistent with the principal and interest requirements of such bonds. Such excise tax rates set pursuant to this subsection may be increased, but such excise tax rates shall not be subject to reduction or elimination unless the ~~board~~ Director-State Engineer has received from the Nebraska Highway Bond Commission notice of reduced principal and interest requirements for such bonds, in which event the ~~Governor may call a meeting of the board to determine whether the rate or rates shall be changed~~ Director-State Engineer shall certify the new rate or rates to the department. The new rate or rates, if any, ~~set by the board~~ shall become effective on the first day of the following semiannual period.

(2) In order to insure that there is maintained an adequate Highway Cash Fund balance to meet expenditures from such fund as appropriated by the Legislature, ~~within fifteen days after the adjournment of each regular session of the Legislature, the board shall set the rate of by June 15 or five days after the adjournment of the regular legislative session each year, whichever is later, the Director-State Engineer shall certify to the department the excise tax rate to be imposed by sections 66-4,140, 66-669, and 66-6,108. The department shall adjust the rate as certified by the Director-State Engineer to which will be effective from July 1 through June 30 of the succeeding year.~~ The rate of excise tax for a given July 1 through June 30 period set pursuant to this subsection shall be in addition to and independent of the rate or rates of excise tax set pursuant to subsection (1) of this section for such period.

(3) ~~The Department of Roads, with assistance from the Department of Revenue, shall prepare and provide the necessary information to each member of the board at least five days before each meeting. Such information shall include, but not be limited to, the unobligated balance in the Highway Cash Fund anticipated on the subsequent June 30, monthly estimates of anticipated receipts to the Highway Cash Fund for the subsequent fiscal year, and the appropriations made from the Highway Cash Fund for the subsequent fiscal year.~~

(4) ~~The board~~ The Director-State Engineer shall determine the cash and investment balances of the Highway Cash Fund at the beginning of each fiscal year under consideration and the estimated receipts to the Highway Cash Fund from each source which provides at least one million dollars annually to such fund. ~~The board shall then fix the rate of excise tax in shall be an amount sufficient to meet the appropriations made from the Highway Cash Fund by the Legislature. Such rate shall be set in increments of one-tenth of one percent.~~

(5) ~~On or before the fifteenth day of each month, the~~ (3) The Department of Roads shall provide to the Legislative Fiscal Analyst a copy of the information that is submitted to the Department of Revenue and used to set or adjust the excise tax rate. each member of the board and the Clerk of the Legislature a report reflecting a comparison of the Highway Cash Fund deposits for the preceding calendar month and fiscal year to date against the projections for the same periods and the limitations of information contained in such report. The projections in the report shall be those last used by the board in setting the excise tax rate for the periods being reviewed. The report shall contain a comparison of actual receipts received to date added to any modified projections of deposits to the Highway Cash Fund for the

remainder of the current fiscal year, as supplied by the Department of Roads to the board, against the appropriation for the current fiscal year. If the accumulative total deposits to the Highway Cash Fund under Chapter 66, articles 4 and 6, for the fiscal year are at any time less than ninety-eight percent or greater than one hundred four percent of the projected deposits for such period or if

(4) If the actual receipts received to date added to any projections or modified projections of deposits to the Highway Cash Fund for the current fiscal year, as supplied by the Department of Roads to the board, are less than ~~ninety-eight~~ ninety-nine percent or greater than one hundred ~~four~~ two percent of the appropriation for the current fiscal year, the Governor may call a meeting of the board to determine whether the rate shall be changed. If such a change is required, the board shall set the new rate which shall become Director-State Engineer shall certify to the department the adjustment in rate necessary to meet the appropriations made from the Highway Cash Fund by the Legislature. The department shall adjust the rate as certified by the Director-State Engineer to be effective on the first day of the following semiannual period.

(5) ~~(6)~~ Nothing in this section shall be construed to abrogate the duties of the Department of Roads or attempt to change any highway improvement program schedule.

Sec. 11. Section 66-4,147, Reissue Revised Statutes of Nebraska, is amended to read:

66-4,147. The receipts from the tax established under sections 66-4,145, 66-4,146, 66-670, and 66-6,109 shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to suppliers, distributors, wholesalers, exporters, importers, or retailers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated to the Highway Allocation Fund.

Sec. 12. Section 66-525, Reissue Revised Statutes of Nebraska, is amended to read:

66-525. (1) The department shall require every railroad or railroad company, motor truck or motor truck transportation company, water transportation company, pipeline company, and other person transporting or bringing into the State of Nebraska or transporting from a refinery, pipeline, pipeline terminal, or barge terminal within the State of Nebraska for the purpose of delivery within or export from this state any motor vehicle fuel or diesel fuel which is or may be produced and compounded for the purpose of operating or propelling any motor vehicle, to furnish a return on forms prescribed by the department to be delivered and on file in the office of the department by the twenty-fifth day of each calendar month if filed electronically or by the twentieth day of each month if not filed electronically, showing all quantities of such motor vehicle fuel or diesel fuel transported during the preceding calendar month for which the report is made, giving the name of the consignee, the point at which delivery was made, the date of delivery, the method of delivery, the quantity of each such shipment, and such other information as the department requires.

(2) For tax periods beginning January 1, 2002, and thereafter, the return required by subsection (1) of this section shall be filed with the department by the twenty-fifth day of each calendar month regardless of whether it is filed electronically to report the motor vehicle fuel or diesel fuel activity which occurred during the preceding calendar month.

Sec. 13. Section 66-527, Reissue Revised Statutes of Nebraska, is amended to read:

66-527. (1) Any peace officer or agent of the department, having probable cause to believe that a vehicle is being used for the unlawful transportation of motor vehicle fuel or diesel fuel, shall make a search thereof with or without a warrant, and in every case when a search is made with or without a warrant and it appears that any provision of sections 66-501 to 66-512 and 66-526 to 66-531 has been violated, the peace officer or agent shall take such fuel being unlawfully transported, the vehicle, and the person in charge thereof into custody, a complaint shall be filed within thirty days of the seizure against such party, fuel, and vehicle, a warrant shall issue, and such party, fuel, and vehicle shall be held for trial as in a criminal action. The vehicle and the fuel so seized shall not be taken from the possession of any officer or agent seizing and holding them by writ of replevin or other proceedings.

(2) In addition, any person who violates any provision of sections 66-501 to 66-512 and 66-526 to 66-531 is subject to an administrative penalty of one thousand dollars for each violation to be assessed and collected by the department. All such penalties under this subsection shall be assessed against the owner of the vehicle as of the date of the violation. All such

penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

(3) For purposes of this section:

(a) Owner means registered owner, titleholder, lessee entitled to possession of the motor vehicle, or anyone otherwise maintaining a possessory interest in the motor vehicle, but does not include anyone who, without participating in the use or operation of the motor vehicle and otherwise not engaged in the purpose for which the motor vehicle is being used, holds indicia of ownership primarily to protect his or her security interest in the motor vehicle or who acquired ownership of the motor vehicle pursuant to a foreclosure of a security interest in the motor vehicle; and

(b) Use means to operate, fuel, or otherwise employ.

Sec. 14. Section 66-651, Reissue Revised Statutes of Nebraska, is amended to read:

66-651. The purpose of the Diesel Fuel Tax Act is to supplement the provisions of the tax upon motor vehicle fuel set forth in Chapter 66, article 4, and the tax upon compressed fuel set forth in the Compressed Fuel Tax Act by imposing a tax upon all fuels suitable for the generation of power for diesel-powered motor vehicles registered or required to be registered for operation upon the highways of this state.

Sec. 15. Section 66-654, Reissue Revised Statutes of Nebraska, is amended to read:

66-654. Diesel fuel shall mean all combustible liquids suitable for the generation of power for diesel-powered motor vehicles registered or required to be registered for operation upon the highways of this state, except that it shall not include kerosene as defined in section 66-660.

Sec. 16. Section 66-667, Reissue Revised Statutes of Nebraska, is amended to read:

66-667. The department, for the first year of a new license or whenever it deems it necessary to insure compliance with the Diesel Fuel Tax Act, may require any supplier, distributor, wholesaler, exporter, or importer subject to the act to place with the department such security as it determines. The amount and duration of the security shall be fixed by the department and shall be approximately three times the estimated average monthly tax liability payable by such supplier, distributor, wholesaler, or importer pursuant to the act. In the case of an exporter, the amount and duration of the security shall be fixed by the department. Such security shall consist of a surety bond executed by a surety company duly licensed and authorized to do business within this state in the amount specified by the department. Such security shall run to the department and be conditioned upon the payment of all taxes, interest, penalties, and costs for which such supplier, distributor, wholesaler, exporter, or importer is liable, whether such liability was incurred prior to or after such security is filed.

Sec. 17. Section 66-673, Reissue Revised Statutes of Nebraska, is amended to read:

66-673. (1)~~(a) Through December 31, 1995, a purchaser of diesel fuel that has not been indelibly dyed that is being delivered into a diesel fuel storage facility may present an exemption certificate to the seller when the purchaser uses the fuel exclusively for agricultural uses or if the purchaser is a state, county, municipality, or other political subdivision.~~

~~(b)~~ A purchaser of diesel fuel that has not been indelibly dyed may present an exemption certificate to the seller when not more than fifty gallons of such fuel is placed directly into the supply tank of a temperature control unit or power take-off unit. To qualify for this exemption, the supply tank of the temperature control unit or power take-off unit cannot be connected to the engine which provides motive power to a motor vehicle or connected to any fuel supply tank connected to the engine of a motor vehicle.

(2) The seller of undyed diesel fuel may in good faith accept the exemption certificate and sell undyed diesel fuel without collecting the tax. The seller may accept an exemption certificate for multiple purchases. Such a certificate shall be renewed annually. If the seller is a supplier, distributor, wholesaler, or importer, the seller may deduct the number of gallons sold without the tax from the return for the period during which the fuel was sold or for a subsequent period. If the seller is not a supplier, distributor, wholesaler, or importer, the seller may provide a monthly exemption certificate to the distributor, wholesaler, or importer or other supplier of the taxed diesel fuel for the total number of gallons of undyed diesel fuel sold without tax during the prior month.

(3) Receipt of an exemption certificate taken in good faith shall be conclusive proof for the seller that the sale was exempt.

(4) Any person who wrongfully claims an exemption and presents an exemption certificate shall be liable for the tax on the diesel fuel. The

department shall, on the basis of information available, determine the tax that would have been due on such transaction and assess the tax against such person.

(5) Any person who unlawfully issues an exemption certificate shall be subject to an administrative penalty of one thousand dollars for each violation to be assessed and collected by the department. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

~~(6) Any person who purchased undyed diesel fuel that has not been taxed prior to January 1, 1996, pursuant to an exemption certificate issued under subsection (1) of this section is liable for the taxes imposed by the Diesel Fuel Tax Act on any of the untaxed fuel subsequently used in a registered motor vehicle. The tax shall be paid on or before the twentieth day of the next succeeding calendar month following the monthly period in which the fuel was placed into the motor vehicle and shall be reported on forms prescribed by and available from the department. Failure to pay the tax by the date specified shall subject the purchaser of the fuel to penalties and interest in the same manner as is provided for all other motor fuel tax deficiencies. The rate of the tax imposed by this section shall be the amount of tax imposed under the act on December 31, 1995.~~

Sec. 18. Section 66-674, Reissue Revised Statutes of Nebraska, is amended to read:

66-674. (1) There is hereby levied and imposed an excise tax of ten and one-half cents per gallon, increased by the amounts imposed or determined under sections 66-4,142, 66-669, and 66-670, upon the use of all diesel fuel used in this state. Users of diesel fuel subject to taxation under this section shall be allowed the same exemptions, deductions, and rights of reimbursement, other than the commission provided under section 66-678, as are authorized and permitted to suppliers, distributors, wholesalers, or importers by the Diesel Fuel Tax Act.

(2) Every person using diesel fuel subject to taxation on the use thereof under section 66-673 and this section shall become licensed and pay the excise tax and file a return concerning the tax to the department in like manner and form as is required by section 66-675 for suppliers, distributors, wholesalers, or importers, except that the returns and tax payments required under this section shall be filed quarterly.

(3) For purposes of this section, use shall mean the consumption of diesel fuel in a motor vehicle registered or required to be registered for operation upon the highways of this state.

Sec. 19. Section 66-675, Reissue Revised Statutes of Nebraska, is amended to read:

66-675. ~~(1)~~ Each supplier, distributor, wholesaler, importer, and exporter shall file with the department, on forms prescribed by the department, a monthly tax return. The return shall contain a declaration by the person making the return to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the return and shall be in lieu of such verification. The return shall show such information as the department reasonably requires for the proper administration and enforcement of the Diesel Fuel Tax Act. The supplier, distributor, wholesaler, importer, or exporter shall file the return on or before the twenty-fifth day if filed electronically or the twentieth day if not filed electronically of the next succeeding calendar month following the monthly period to which it relates. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. Such return shall be considered filed on time if mailed in an envelope properly addressed to the department, postage paid, and postmarked before midnight of the final filing date.

(2) For tax periods beginning January 1, 2002, and thereafter, the return required by subsection (1) of this section shall be filed with the department by the twenty-fifth day of the next succeeding calendar month following the monthly period to which it relates regardless of whether it is filed electronically.

Sec. 20. Section 66-681, Revised Statutes Supplement, 1998, is amended to read:

66-681. (1) Except as provided in subsection (5) of this section, no the fuel supply tank of a motor vehicle registered or required to be registered for operation on the highway shall be fueled not contain or be used with undyed diesel fuel that has not been taxed or diesel fuel which contains any evidence of the dye or chemical marker added pursuant to the regulations promulgated under 26 U.S.C. 4082 or 42 U.S.C. 7545 indicating untaxed low or high sulphur diesel fuel.

(2) No retailer of diesel fuel shall sell or offer to sell diesel fuel that contains any evidence of the dye or chemical marker added pursuant to the regulations promulgated under 26 U.S.C. 4082 or 42 U.S.C. 7545 indicating untaxed low or high sulphur diesel fuel unless the fuel dispensing device is clearly marked with a notice that the fuel is dyed or chemically marked.

(3) Any law enforcement officer, any carrier enforcement officer, or any agent of the department who has reasonable grounds to suspect a violation of the Diesel Fuel Tax Act may inspect the fuel in the fuel supply tank of any motor vehicle or the fuel storage facilities and dispensing devices of any diesel fuel retailer to determine compliance with this section. Fuel inspections may also be conducted in the course of safety or other inspections authorized by law.

(4) Any person who violates any provision of this section or who refuses to permit an inspection authorized by this section shall be guilty of a Class IV misdemeanor and shall be subject to an administrative penalty of two hundred fifty dollars for the first such violation. If the person had another violation under this section within the last five years, the person shall be subject to an administrative penalty of ~~five hundred~~ one thousand dollars for the current violation. If the person had two or more violations under this section within the last five years, the person shall be subject to an administrative penalty of ~~one thousand~~ two thousand five hundred dollars for the current violation. All such penalties shall be assessed against the ~~registered~~ owner of the vehicle as of the date of the violation. The penalty shall be assessed and collected by the department. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

(5) Any motor vehicle owned or leased by any state, county, municipality, or other political subdivision may be operated on the highways of this state with dyed diesel fuel, except high sulphur diesel fuel dyed in accordance with regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to 42 U.S.C. 7545, if the taxes imposed by the act are paid to the department by the state, county, municipality, or other political subdivision. The state, county, municipality, or other political subdivision shall pay the tax and file a return concerning the tax to the department in like manner and form as is required under section 66-674.

(6) For purposes of this section:

(a) Owner means registered owner, titleholder, lessee entitled to possession of the motor vehicle, or anyone otherwise maintaining a possessory interest in the motor vehicle, but does not include anyone who, without participating in the use or operation of the motor vehicle and otherwise not engaged in the purpose for which the motor vehicle is being used, holds indicia of ownership primarily to protect his or her security interest in the motor vehicle or who acquired ownership of the motor vehicle pursuant to a foreclosure of a security interest in the motor vehicle; and

(b) Use means to operate, fuel, or otherwise employ.

Sec. 21. Section 66-684, Reissue Revised Statutes of Nebraska, is amended to read:

66-684. Sections 66-684 to ~~66-696~~ 66-695 shall be known as the Alternative Fuel Tax Act.

Sec. 22. Section 66-694, Reissue Revised Statutes of Nebraska, is amended to read:

66-694. No alternative-fuel-powered motor vehicle registered or required to be registered in this state shall be operated on the highways of this state unless a valid alternative fuel user permit has been obtained from the department. Any motor vehicle operator who violates this section shall be subject to an administrative penalty of one thousand dollars for each violation to be assessed and collected by the department. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Sec. 23. Section 66-698, Reissue Revised Statutes of Nebraska, is amended to read:

66-698. The purpose of the Compressed Fuel Tax Act is to supplement the provisions of the tax upon motor vehicle fuel set forth in Chapter 66, article 4, and the tax upon diesel fuel set forth in the Diesel Fuel Tax Act by imposing a tax upon all compressed fuel sold or distributed for use in motor vehicles registered or required to be registered for operation upon the highways of this state.

Sec. 24. Section 66-6,110, Reissue Revised Statutes of Nebraska, is amended to read:

66-6,110. (1) Each retailer shall file a tax return with the

department on forms prescribed by the department. Quarterly returns are required if the retailer's yearly tax liability is less than six thousand dollars. Monthly returns are required if the retailer's yearly tax liability is six thousand dollars or more. The return shall contain a declaration by the person making the return to the effect that the statements contained in the return are true and are made under penalties of law, which declaration has the same force and effect as a verification of the return and is in lieu of such verification. The return shall show such information as the department reasonably requires for the proper administration and enforcement of the Compressed Fuel Tax Act. The retailer shall file the return on or before the twenty-fifth day if filed electronically or the twentieth day if not filed electronically of the next succeeding calendar month following the reporting period to which it relates. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day is the final filing date. The return is filed on time if mailed in an envelope properly addressed to the department, postage paid, and postmarked before midnight of the final filing date.

(2) For tax periods beginning January 1, 2002, and thereafter, the return required by subsection (1) of this section shall be filed with the department by the twenty-fifth day of the next succeeding calendar month following the reporting period to which it relates regardless of whether it is filed electronically.

Sec. 25. Section 66-6,115, Reissue Revised Statutes of Nebraska, is amended to read:

66-6,115. (1) A person shall not place compressed fuel into the supply tank of a registered motor vehicle. The fuel supply tank of a motor vehicle registered or required to be registered for operation on the highway shall not contain or be used with compressed fuel unless the taxes imposed by the Compressed Fuel Tax Act are paid to the retailer of the fuel at the time the fuel is purchased. Any person who fuels a registered motor vehicle in violation of violates this section is guilty of a Class IV misdemeanor and, in addition to the taxes imposed by the act, is subject to an administrative penalty of one thousand dollars for each violation to be assessed and collected by the department. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund. All such penalties shall be assessed against the owner of the vehicle as of the date of the violation.

(2) The department shall by rule or regulation adopt a standard miles-per-gallon rating for compressed fuel transport and delivery vehicles that are not equipped with a separate fuel supply tank. The miles-per-gallon rating adopted shall be used by the owners of the vehicles to calculate the amount of fuel tax owed to the state on the fuel consumed from the vehicle's cargo tank for purposes of operating the vehicle. The owners of the vehicles shall pay the excise taxes imposed by the act and make a report concerning the taxes to the department in like manner, form, and time as is required by the act for retailers of compressed fuel.

(3) For purposes of this section:

(a) Owner means registered owner, titleholder, lessee entitled to possession of the motor vehicle, or anyone otherwise maintaining a possessory interest in the motor vehicle, but does not include anyone who, without participating in the use or operation of the motor vehicle and otherwise not engaged in the purpose for which the motor vehicle is being used, holds indicia of ownership primarily to protect his or her security interest in the motor vehicle or who acquired ownership of the motor vehicle pursuant to a foreclosure of a security interest in the motor vehicle; and

(b) Use means to operate, fuel, or otherwise employ.

Sec. 26. Section 66-718, Revised Statutes Supplement, 1998, is amended to read:

66-718. (1) The department may require such other information as it deems necessary on any report, return, or other statement under the motor fuel laws. ~~Licensees under the International Fuel Tax Agreement Act shall file reports as required by the agreement under section 66-1406.~~

(2) ~~Beginning January 1, 1999, the~~ The department shall require any of the reports, returns, or other filings due from suppliers and terminal operators under the motor fuel laws to be made electronically, except that such requirement shall not apply to any person normally reporting less than one hundred thousand gallons of motor fuel a month. Beginning January 1, 2002, the Tax Commissioner may require any of the reports, returns, or other filings due from any motor fuels licensees to be filed electronically.

(3) The department shall prescribe the formats or procedures for electronic filing. To the extent not inconsistent with requirements of the motor fuel laws, the department shall adopt formats and procedures that are

consistent with other states requiring electronic reporting of motor fuel information.

(4) Any person who does not file electronically when required or who fails to use the prescribed formats and procedures shall be considered to have not filed the return, report, or other filing.

(5) For purposes of the electronic funds transfer requirements contained in section 77-1784, motor vehicle fuel tax, diesel fuel tax, compressed fuel tax, and all other tax programs administered by the Motor Fuel Tax Enforcement and Collection Division shall be considered as comprising one tax program.

Sec. 27. Section 66-719, Reissue Revised Statutes of Nebraska, is amended to read:

66-719. (1) Any person who neglects or refuses to file the report or return due for any period or to pay the tax due for any period within the time prescribed for the filing of such report or return or for the payment of such tax under the motor fuel laws shall automatically accrue a penalty of fifty dollars.

(2) Any person who neglects or refuses to file the report or return due for any period or to pay the tax due for any period within ten days after the time prescribed for the filing of such report or return or the payment of such tax under the motor fuel laws shall, in addition to the penalty in subsection (1) of this section, be subject to the larger of:

- (a) A penalty of one hundred dollars; or
- (b) A penalty of ten percent of the tax not paid.

(3)(a) Notwithstanding anything in subsection (1) or (2) of this section to the contrary, no penalty shall be imposed upon any person who voluntarily reports an underpayment of tax by filing an amended return and paying such tax if such amended return is filed and payment is made within thirty days after the date such tax was due.

(b) Except as provided in subsection (8) of this section, interest shall not be waived on any additional tax due as reported on any amended return, and such interest shall be computed from the date such tax was due.

(4) Any person who neglects or refuses to report and pay motor fuel tax on methanol, naphtha, benzine, benzol, kerosene, or any other volatile, flammable, or combustible liquid that is blended with motor vehicle fuel or undyed diesel fuel shall be subject to a penalty equal to one hundred percent of the tax not paid or one thousand dollars, whichever is larger. Such penalty shall be in addition to the motor fuel tax due and all other penalties provided by law.

(5) If any person knowingly files a false report or return, the penalty shall be equal to one hundred percent of the tax not paid or one thousand dollars, whichever is larger, which penalty shall be in addition to all other penalties provided by law.

(6) Any person who knowingly conducts any activities requiring a license or permit under the motor fuel laws without a license or permit or after a license or permit has been surrendered, suspended, or canceled shall automatically accrue a penalty of one hundred dollars per day for each day such violation continues.

(7) The department may in its discretion waive all or any portion of the penalties incurred upon sufficient showing by the taxpayer that the failure to file or pay is not due to negligence, intentional disregard of the law, rules, or regulations, intentional evasion of the tax, or fraud committed with intent to evade the tax or that such penalties should otherwise be waived.

(8)(a) The department may in its discretion waive any and all interest incurred upon sufficient showing by the taxpayer that such interest should be waived.

(b) Interest may only be waived if:

(i) Interest is due to an error or unreasonable delay by the department;

(ii) Interest is due to erroneous written advice by the department when the advice was a direct response to a written request for advice from the taxpayer and the taxpayer reasonably relied upon the advice; or

(iii) Interest is due because of an amount erroneously refunded if the taxpayer did not request the refund and the refund was not caused by information provided by the taxpayer.

(9) All penalties collected by the department under this section shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Sec. 28. Section 66-722, Reissue Revised Statutes of Nebraska, is amended to read:

66-722. (1) As soon as practical after a return is filed, the department shall examine it to determine the correct amount of tax. If the

department finds that the amount of tax shown on the return is less than the correct amount, it shall notify the taxpayer of the amount of the deficiency determined.

(2) If any person fails to file a return or has improperly purchased motor fuel without the payment of tax, the department shall estimate the person's liability from any available information and notify the person of the amount of the deficiency determined.

(3) The amount of the deficiency determined shall constitute a final assessment together with interest and penalties thirty days after the date on which notice was mailed to the taxpayer at his or her last-known address unless a written protest is filed with the department within such thirty-day period.

(4) The final assessment provisions of this section shall constitute a final decision of the agency for purposes of the Administrative Procedure Act.

(5) An assessment made by the department shall be presumed to be correct. In any case when the validity of the assessment is questioned, the burden shall be on the person who challenges the assessment to establish by a preponderance of the evidence that the assessment is erroneous or excessive.

(6)(a) Except in the case of a fraudulent return or of neglect or refusal to make a return, the notice of a proposed deficiency determination shall be mailed within three years after the twentieth day of the month following the end of the period for which the amount proposed is to be determined or within three years after the return is filed, whichever period expires later.

(b) The taxpayer and the department may agree, prior to the expiration of the period in subdivision (a) of this subsection, to extend the period during which the notice of a deficiency determination can be mailed. The extension of the period for the mailing of a deficiency determination shall also extend the period during which a refund can be claimed.

(c) For tax periods beginning January 1, 2002, and thereafter, the notice required by subdivision (a) of this subsection shall be mailed within three years after the twenty-fifth day of the month following the end of the period for which the amount proposed is to be determined or within three years after the return is filed, whichever period expires later.

Sec. 29. Section 66-723, Reissue Revised Statutes of Nebraska, is amended to read:

66-723. (1) Any corporate officer or employee with the authority to decide whether the corporation will pay the taxes imposed upon a corporation by the motor fuel laws, to file any reports or returns required by the motor fuel laws, or to perform any other act required of a corporation under the motor fuel laws shall be personally liable for the payment of the taxes, interest, ~~or~~ penalties, or other administrative penalties in the event of willful failure on his or her part to have the corporation perform such act. Such taxes shall be collected in the same manner as provided under the Uniform State Tax Lien Registration and Enforcement Act.

(2) Within thirty days after the day on which the notice and demand are made for the payment of such taxes, any corporate officer or employee seeking to challenge the Tax Commissioner's determination as to his or her personal liability for the corporation's unpaid taxes may petition for a redetermination. The petition may include a request for the redetermination of the personal liability of the corporate officer or employee, the redetermination of the amount of the corporation's unpaid taxes, or both. If a petition for redetermination is not filed within the thirty-day period, the determination becomes final at the expiration of the period.

(3) If the requirements prescribed in subsection (2) of this section are satisfied, the Tax Commissioner shall abate collection proceedings and shall grant the corporate officer or employee an oral hearing and give him or her ten days' notice of the time and place of such hearing. The Tax Commissioner may continue the hearing from time to time as necessary.

(4) Any notice required under this section shall be served personally or by mail in the manner provided in section 66-721.

(5) If the Tax Commissioner determines that further delay in the collection of such taxes from the corporate officer or employee will jeopardize future collection proceedings, nothing in this section shall prevent the immediate collection of such taxes.

(6) For purposes of this section:

(a) Corporation shall mean any corporation and any other entity that is taxed as a corporation under the Internal Revenue Code;

(b) Taxes shall mean all taxes and additions to taxes including interest and penalties imposed under the motor fuel laws which are administered by the Tax Commissioner; and

(c) Willful failure shall mean that failure which was the result of an intentional, conscious, and voluntary action.

Sec. 30. Section 66-727, Reissue Revised Statutes of Nebraska, is amended to read:

66-727. (1) It shall be unlawful for any person to:

(a) Knowingly import, distribute, sell, produce, refine, compound, blend, or use any motor vehicle fuel, diesel fuel, or compressed fuel in the State of Nebraska without remitting the full amount of tax imposed by the provisions of the motor fuel laws;

(b) Refuse or knowingly and intentionally fail to make and file any return, report, or statement required by the motor fuel laws in the manner or within the time required;

(c) Knowingly and with intent to evade or to aid or abet any other person in the evasion of the tax imposed by the motor fuel laws (i) make any false or incomplete report, return, or statement, (ii) conceal any material fact in any record, report, return, or affidavit provided for in the motor fuel laws, (iii) improperly claim any exemption from tax imposed by the motor fuel laws, or (iv) create or submit any false documentation purporting to show that tax-free fuel has been purchased or sold tax paid or that tax-paid fuel has been used for a tax-exempt purpose;

(d) Knowingly conduct any activities requiring a license under the provisions of the Petroleum Release Remedial Action Act, the Diesel Fuel Tax Act, the Compressed Fuel Tax Act, and Chapter 66, articles 4, 5, and 7, without a license or after a license has been surrendered, suspended, or canceled;

(e) Knowingly conduct any activities requiring a license under the ~~International Fuel Tax Agreement Act or any activities requiring a permit~~ under the provisions of the motor fuel laws without such license or permit or after such license or permit has been surrendered, suspended, or canceled;

(f) Knowingly assign or attempt to assign a license or permit;

(g) Knowingly fail to keep and maintain books and records required by the motor fuel laws;

(h) Knowingly fail or refuse to pay a fuel tax when due;

(i) Knowingly make any false statement in connection with an application for the refund of any money or tax;

(j) Fail or refuse to produce for inspection any license or permit issued under the motor fuel laws; or

(k) Knowingly violate any of the motor fuel laws or any rule or regulation under the motor fuel laws.

(2) Any person who violates subdivision (1)(b), (f), (h), or (k) of this section shall be guilty of a Class IV felony. Failing to report or pay taxes due shall constitute a separate offense for each reporting period.

(3) Any person who violates subdivision (1)(a), (c), (d), (g), or (i) of this section shall be guilty of a Class IV felony if the amount of tax involved is less than five thousand dollars and a Class III felony if the amount of tax is five thousand dollars or more. Failing to report or pay taxes due shall constitute a separate offense for each reporting period.

(4) Any person who violates subdivision (1)(e) or (j) of this section shall be guilty of a separate Class IV misdemeanor for each day of operation.

Sec. 31. Section 66-1521, Revised Statutes Supplement, 1998, is amended to read:

66-1521. (1) A petroleum release remedial action fee is hereby imposed upon the refiner, importer, or supplier who first sells, offers for sale, or uses petroleum within this state, except that the fee shall not be imposed on petroleum that is exported or packaged in individual containers of one hundred ten gallons or less and intended for sale or use in this state. The amount of the fee shall be nine-tenths of one cent per gallon on motor vehicle fuels as defined in section 66-482 and three-tenths of one cent per gallon on petroleum other than such motor vehicle fuels. The amount of the fee shall be used first for payment of claims approved by the State Claims Board pursuant to section 66-1531; second, up to three million dollars of the fee per year shall be used for reimbursement of owners and operators under the Petroleum Release Remedial Action Act for investigations of releases ordered pursuant to section 81-15,124; and third, the remainder of the fee shall be used for any other purpose authorized by section 66-1519. The fee shall be paid by all refiners, importers, and suppliers subject to the fee by filing a monthly return on or before the twenty-fifth day if filed electronically or the twentieth day if not filed electronically of the calendar month following the monthly period to which it relates. The pertinent provisions, specifically including penalty provisions, of the motor fuel laws as defined in section 66-712 shall apply to the administration and collection of the fee.

There shall be a refund allowed on any fee paid on petroleum which was taxed and then exported. The fee paid under this subsection shall not be eligible for the credit under section 66-4,124.

(2) No refiner, importer, or supplier shall sell, offer for sale, or use petroleum in this state without having first obtained a petroleum release remedial action license. Application for a license shall be made to the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue upon a form prepared and furnished by the division. If the applicant is an individual, the application shall include the applicant's social security number. Failure to obtain a license prior to such sale, offer for sale, or use of petroleum shall be a Class IV misdemeanor. The division may suspend or cancel the license of any refiner, importer, or supplier who fails to pay the fee imposed by subsection (1) of this section in the same manner as licenses are suspended or canceled pursuant to section 66-720.

(3) The division shall adopt and promulgate rules and regulations necessary to carry out this section.

(4) The division shall deduct and withhold from the petroleum release remedial action fee collected pursuant to this section an amount sufficient to reimburse the direct costs of collecting and administering the petroleum release remedial action fee. Such costs shall not exceed twenty-eight thousand dollars for each fiscal year. The twenty-eight thousand dollars shall be prorated, based on the number of months the fee is collected, whenever the fee is collected for only a portion of a year. The amount deducted and withheld for costs shall be deposited in the Petroleum Release Remedial Action Collection Fund which is hereby created. The Petroleum Release Remedial Action Collection Fund shall be appropriated to the Department of Revenue. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) The division shall collect the fee imposed by subsection (1) of this section.

(6) For tax periods beginning January 1, 2002, and thereafter, the return required by subsection (1) of this section shall be filed with the department by the twenty-fifth day of the calendar month following the monthly period to which it relates regardless of whether it is filed electronically.

Sec. 32. Sections 26 and 35 of this act become operative on January 1, 2001. Sections 8 to 10, 32, 33, 36, and 38 become operative on their effective date. The other sections of this act become operative on July 1, 2000.

Sec. 33. Original sections 66-4,141, 66-4,142, and 66-4,144, Revised Statutes Supplement, 1998, are repealed.

Sec. 34. Original sections 66-485, 66-487, 66-488, 66-491, 66-492, 66-4,114, 66-4,147, 66-525, 66-527, 66-651, 66-654, 66-667, 66-673, 66-674, 66-675, 66-684, 66-694, 66-698, 66-6,110, 66-6,115, 66-719, 66-722, 66-723, and 66-727, Reissue Revised Statutes of Nebraska, and sections 66-681 and 66-1521, Revised Statutes Supplement, 1998, are repealed.

Sec. 35. Original section 66-718, Revised Statutes Supplement, 1998, is repealed.

Sec. 36. The following sections are outright repealed: Sections 77-501, 77-502, and 77-503, Revised Statutes Supplement, 1998.

Sec. 37. The following sections are outright repealed: Sections 66-493, 66-4,115, 66-691.01, 66-696, and 66-730, Reissue Revised Statutes of Nebraska.

Sec. 38. Since an emergency exists, this act takes effect when passed and approved according to law.