

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 110
Second Edition Engrossed 3/19/91

Short Title: Improve Fuel Tax Laws/Bond Limit.

(Public)

Sponsors: Senators Winner, Kincaid, and Staton.

Referred to: Transportation.

February 20, 1991

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ADMINISTRATION OF THE TAXES ON MOTOR FUELS, SPECIAL FUEL, AND MOTOR CARRIERS, AND TO TEMPORARILY RESTORE THE \$40,000 CAP ON BONDS THAT MAY BE REQUIRED OF FUEL DISTRIBUTORS AND SUPPLIERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-433 reads as rewritten:

"§ 105-433. Application for license as ~~distributor~~. distributor; bond or letter of credit required.

(a) Application. – Any distributor engaged in business on April 1, 1931, shall, within 30 days thereafter, and any other distributor shall, prior to the commencement of doing business, file a duly acknowledged application for a license with the Secretary of Revenue on a form prescribed and furnished by him setting forth the name under which such distributor transacts or intends to transact business within this State, the address of each place of business and a designation of the principal place of business. If such distributor is a firm or association, the application shall set forth the name and address of each person constituting the firm or association, and if a corporation, the names and addresses of the principal officers and such other information as the Secretary of Revenue may require. Every distributor shall obtain a license from the Secretary of Revenue. To obtain a license, an applicant must file an application with the Secretary of Revenue on a form provided by the Secretary and file with the Secretary a bond or an irrevocable letter of credit. An application shall include the applicant's name and address and any other information required by the Secretary of Revenue. If the

1 applicant is a corporation, the applicant must either be incorporated in this State or be
2 authorized to transact business in this State. If the applicant is a limited partnership, the
3 applicant must either be formed in this State or be authorized to transact business in this
4 State. If the applicant is an individual or a general partnership, the applicant must
5 designate an agent for service of process and give the agent's name and address.

6 (b) Bond. – Each applicant for a distributor's license must file with the Secretary
7 of Revenue a bond or an irrevocable letter of credit. distributor shall at the same time file a
8 bond in such amount, in such form, and with such surety or sureties as may be required by the
9 Secretary of Revenue, conditioned upon the rendition of the reports and the payment of the tax
10 hereinafter provided for. The amount of the bond required by the Secretary or irrevocable
11 letter of credit may not exceed the greater of (i) two thousand dollars (\$2,000) or (ii) two
12 times the distributor's applicant's average expected monthly tax liability under this Article
13 or, in the case of an initial bond, two times the distributor's estimated average monthly tax
14 liability under this Article, as determined by the Secretary. Secretary, and may not be less
15 than two thousand dollars (\$2,000). A distributor An applicant who is also required to be
16 bonded file a bond or an irrevocable letter of credit under G.S. 105-449.5 as a supplier of
17 special fuels may file a single bond, bond or irrevocable letter of credit under either this
18 section or under G.S. 105-449.5, G.S. 105-449.5 for the combined amount required under
19 these sections and amount. A bond filed under this section shall be conditioned upon
20 compliance with the requirements of Article 36 and Article 36A of this Subchapter.
21 Subchapter, shall be payable to the State, and shall be in the form required by the
22 Secretary of Revenue.

23 A After filing a bond or an irrevocable letter of credit with an application for a
24 distributor's license, a distributor required to file a bond under this section shall, within 30
25 days after receiving a notice from the Secretary of Revenue, file an additional bond or
26 irrevocable letter of credit in the amount requested by the Secretary. The amount of the
27 initial bond or irrevocable letter of credit and any additional bonds bond or irrevocable
28 letter of credit filed by the distributor, however, may not exceed the limits set in this
29 section.

30 (c) Issuance. – Upon approval of the application and bond, the Secretary of
31 Revenue shall issue to the distributor a nonassignable license with a duplicate copy for
32 each place of business of said distributor in this State, which shall be displayed in a
33 conspicuous place at each such place of business and shall continue in force until
34 surrendered or canceled. No distributor shall sell, offer for sale, or use any motor fuels
35 within this State until such license has been issued. The Secretary of Revenue shall
36 issue a distributor's license to an applicant who meets the requirements of this section
37 and shall issue a duplicate copy of the license for each place of business of the
38 distributor. A distributor shall display a license issued under this section in a
39 conspicuous place at each place of business of the distributor. A distributor's license is
40 not transferable and remains in effect until surrendered or cancelled. Any distributor
41 failing to comply with or violating any of the provisions of this section shall be guilty of
42 a misdemeanor and upon conviction thereof shall be fined not less than one hundred
43 dollars (\$100.00), nor more than five thousand dollars (\$5,000), or imprisonment for not
44 more than 24 months, or both."

1 Sec. 2. G.S. 105-440 reads as rewritten:

2 **"§ 105-440. Applications for and administration of tax refunds; criminal penalty.**

3 (a) Annual Refunds. – An application for an annual refund of tax permitted by
4 this Article shall be filed with the Secretary of Revenue on or before April 15th
5 following the end of the calendar year for which the refund is claimed. The application
6 shall state whether or not the applicant has filed a North Carolina income tax return for
7 the preceding taxable year, and shall state that the applicant has paid for the fuel for
8 which a refund is claimed or that payment for the fuel has been secured to the seller's
9 satisfaction.

10 (b) Quarterly Refunds. – An application for a quarterly refund of tax permitted
11 by this Article shall be filed with the Secretary of Revenue on or before the last day of
12 the month following the end of the calendar quarter for which the refund is claimed. The
13 application shall state that the applicant has paid for the fuel for which a refund is
14 claimed or that payment for the fuel has been secured to the seller's satisfaction.

15 (c) Late Applications. – ~~Applications~~ An application filed with the Secretary
16 within six months of the date the application is due shall be ~~accepted~~, accepted but the
17 ~~amount of the refund shall be reduced by~~ is subject to a penalty of twenty-five percent
18 (25%) of the amount of the refund otherwise due if the application is filed within 30
19 days after the date the application is due, and ~~shall be reduced by~~ is subject to a penalty of
20 fifty percent (50%) of the amount of the refund otherwise due if the application is filed
21 more than 30 days but within six months after the date the application is due. ~~An~~ The
22 Secretary may not accept an application filed more than six months after the date the
23 application is ~~due shall not be accepted~~. due.

24 (d) Approval of Refund. – If the Secretary of Revenue determines that an
25 application for refund is correct, he shall issue the applicant a warrant upon the State
26 Treasurer for the amount of the refund. If the Secretary determines that an application
27 for refund is incorrect, he shall send a written notice of his determination to the
28 applicant, stating a time and place for a hearing. If, upon holding the hearing, the
29 Secretary finds the applicant has collected or sought to collect a refund to which he is
30 not entitled, he shall reject the application and the applicant shall be required to pay
31 back the tax, if any, refunded to him on the basis of the rejected application. The
32 applicant may seek review of the Secretary's decision under G.S. 105- 241.2, 105-241.3,
33 and 105-241.4.

34 (e) Criminal Penalty. – A person who knowingly makes a false application for
35 refund to obtain a refund to which he is not entitled is guilty of a misdemeanor and is
36 punishable by a fine of up to five hundred dollars (\$500.00), imprisonment for up to two
37 years, or both."

38 Sec. 3. G.S. 105-441 reads as rewritten:

39 **"§ 105-441. Enumeration of acts constituting misdemeanor; cancellation of license**
40 **and bond.**

41 (a) Acts. – ~~Any distributor who shall fail, neglect, or refuse to make the reports~~
42 ~~herein required or pay the taxes herein imposed, or who shall refuse to permit the~~
43 ~~Secretary of Revenue or any agent appointed by him, to examine the books and records~~
44 ~~of such distributor pertaining to the motor fuels made taxable by this Article or who~~

1 ~~shall make any false, or fraudulent report or statement hereunder, or who does, or~~
2 ~~attempts to do, anything whatsoever to avoid a full disclosure of the quantity of motor~~
3 ~~fuels sold, distributed or used within this State, or who fails to file an additional bond~~
4 ~~required under G.S. 105-433 shall be guilty of a misdemeanor, and, on commits one or~~
5 ~~more of the following acts is guilty of a misdemeanor:~~

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

18 ~~On conviction, a distributor shall be fined not less than one hundred dollars~~
19 ~~(\$100.00) and not more than five thousand dollars (\$5,000) or, in the case of an~~
20 ~~individual or the officer or employee charged with the duty of making ~~such a~~ report for a~~
21 ~~corporation, to be imprisoned not exceeding 24 months, or both; and the Secretary of~~
22 ~~Revenue may forthwith cancel the license of such distributor and notify him in writing of such~~
23 ~~cancellation by registered mail to be sent to his last known address. In the event that the license~~
24 ~~of any distributor is cancelled as above provided, and in the event such distributor shall have~~
25 ~~paid to the State of North Carolina all the taxes due and payable by him under this Article,~~
26 ~~together with any and all penalties accruing under the provisions of this Article, then the~~
27 ~~Secretary of Revenue shall cancel and surrender the bond theretofore filed by said distributor.~~
28 ~~both.~~

29 (b) Cancellation. – The Secretary of Revenue may summarily cancel the license
30 of a distributor when the Secretary finds that the distributor is incurring liability for the
31 tax imposed under this Article after failing to pay a tax when due under this Article. In
32 addition, the Secretary may cancel the license of a distributor who commits one or more
33 of the acts listed in subsection (a) after holding a hearing on whether the license should
34 be cancelled.

35 The Secretary of Revenue shall send a distributor whose license is summarily
36 cancelled a notice of the cancellation and shall give the distributor an opportunity to
37 have a hearing on the cancellation within 10 days after the cancellation. The Secretary
38 of Revenue shall give a distributor whose license may be cancelled after a hearing at
39 least 10 days' written notice of the date, time, and place of the hearing. A notice of a
40 summary license cancellation and a notice of hearing shall be sent by registered mail to
41 the last known address of the distributor.

42 When the Secretary cancels the license of a distributor, the Secretary shall return the
43 bond or irrevocable letter of credit filed by the distributor if the distributor has paid all
44 taxes and penalties due under this Article."

45 Sec. 4. G.S. 105-446 reads as rewritten:

1 **"§ 105-446. Refund for tax on motor fuel used other than to propel a motor vehicle.**

2 A person who purchases and uses motor fuel for a purpose other than to operate a
3 licensed motor vehicle may receive an annual ~~refund,~~ refund for the tax the person paid
4 on fuel used during the preceding calendar ~~year,~~ year at a rate equal to the amount of the
5 flat cents-per-gallon rate in effect during the year for which the refund is claimed plus
6 the average of the two variable cents-per-gallon rates in effect during that year, less one
7 cent (1¢) per gallon. An application for a refund allowed under this section shall be
8 made in accordance with G.S. 105-440."

9 Sec. 5. G.S. 105-449.2 reads as rewritten:

10 **"§ 105-449.2. Definitions.**

11 The following words, terms and phrases as used in this Article are, for the purposes
12 thereof, hereby defined as follows: definitions apply in this Article:

13 (1) "~~Secretary~~" shall mean the Secretary of Revenue.

14 (2) "~~Motor vehicle~~" means a self-propelled vehicle that is designed for use
15 ~~on a highway.~~

16 (3) "~~Fuel~~" means ~~combustible gases and liquids, other than those subject~~
17 ~~to tax under Article 36, that are or can be used to generate power to~~
18 ~~propel a motor vehicle.~~

19 (4) "~~Highway~~" shall mean and include every way or place of whatever
20 nature open to the use of the public for purposes of vehicular travel in
21 this State, including the streets and alleys in towns and cities.

22 (5) "~~Person~~" shall mean and include natural persons and partnerships,
23 firms, associations and corporations.

24 (6) "~~Use~~" shall mean and include, in addition to its original meaning, the
25 receipt of fuel by any person into the fuel supply tank of a motor
26 vehicle or into a receptacle for which fuel is supplied by any person to
27 his own or other motor vehicles.

28 (7) "~~User~~" means a person who owns or operates a fuel-propelled motor
29 vehicle licensed under Chapter 20 and who does not maintain storage
30 facilities for fueling the vehicle.

31 (8) a. "~~User seller~~" shall mean a bulk user or reseller as defined in this
32 subdivision:

33 b. "~~Bulk user~~" means any person who maintains storage facilities
34 in excess of 100 gallons and stores fuel therein, and who
35 dispenses such fuel into the fuel tanks of, or attached to, motor
36 vehicles owned, leased or operated by him.

37 e. "~~Reseller~~" means any person who maintains storage facilities in
38 excess of 100 gallons and stores fuel therein, and who sells
39 and/or dispenses such fuel to the public at retail locations into
40 the fuel tanks of, or attached to, motor vehicles.

41 (9) "~~Supplier~~" means a person who:

42 a. Sells or delivers fuel to a user seller; or

- 1 b. ~~Maintains an inventory of fuel, part or all of which he uses or~~
2 ~~sells for use in a motor vehicle, and is not required to be~~
3 ~~licensed as a user-seller; or~~
4 e. ~~Imports fuel, other than in the usual tank or receptacle~~
5 ~~connected with the engine of a motor vehicle, into the State for~~
6 ~~his own use.~~
- 7 (10) ~~Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 937, s. 14,~~
8 ~~effective July 8, 1986.~~
- 9 (11) ~~" Liquid" means any substance which is liquid at temperature in excess~~
10 ~~of 60 degrees F. and a pressure of 14.7 pounds per square inch~~
11 ~~absolute.~~
- 12 (1) Fuel. – A combustible gas or liquid that can be used to generate power
13 to propel a motor vehicle and that is not subject to tax under Article 36
14 of this Chapter.
- 15 (2) Highway. – Defined in G.S. 20-4.01(13).
- 16 (3) Liquid. – A substance that is liquid at a temperature above 60 degrees
17 F. and a pressure greater than 14.7 pounds per square inch absolute.
- 18 (4) Motor vehicle. – A self-propelled vehicle that is designed for use on a
19 highway.
- 20 (5) Person. – An individual, a firm, a partnership, an association, a
21 corporation, or any other organization or group acting as a unit.
- 22 (6) Secretary. – The Secretary of Revenue.
- 23 (7) Supplier. – A person who does one or more of the following:
24 a. Acquires fuel for sale or delivery to a user-seller.
25 b. Maintains an inventory of fuel, part or all of which the person
26 uses in a motor vehicle or sells to someone other than a user-
27 seller for use in a motor vehicle.
28 c. Imports fuel into the State, by a means other than the usual tank
29 or receptacle connected with the engine of a motor vehicle, for
30 use in a motor vehicle owned or operated by that person.
- 31 (8) Use. – The term includes the receipt of fuel in the fuel supply tank of
32 a motor vehicle and the receipt of fuel in a receptacle from which fuel
33 is supplied to a motor vehicle.
- 34 (9) User. – A person who owns or operates a motor vehicle licensed
35 under Chapter 20 and who does not maintain storage facilities for
36 fueling the motor vehicle.
- 37 (10) User-seller. – A bulk-user or a reseller.
38 A bulk-user is a person who maintains storage facilities for fuel and
39 who dispenses the fuel into the fuel supply tank of, or attached to, a
40 motor vehicle owned or operated by that person.
41 A reseller is a person who maintains storage facilities for fuel and
42 who sells the fuel at retail or dispenses the fuel at a retail location into
43 the fuel supply tank of, or attached to, a motor vehicle."
- 44 Sec. 6. G.S. 105-449.4 reads as rewritten:

1 **"§ 105-449.4. Application for supplier's license.**

2 ~~To procure such license every supplier shall file with the Secretary an application~~
3 ~~upon oath in such form as the Secretary may prescribe setting forth the name and~~
4 ~~address of the supplier and such other information as the Secretary may require. To~~
5 obtain a license as a supplier, an applicant must file an application with the Secretary on
6 a form provided by the Secretary and file with the Secretary a bond or an irrevocable
7 letter of credit. An application shall include the applicant's name and address and any
8 other information required by the Secretary. If the applicant is a corporation, the
9 applicant must either be incorporated in this State or be authorized to transact business
10 in this State. If the applicant is a limited partnership, the applicant must either be
11 formed in this State or be authorized to transact business in this State. If the applicant is
12 an individual or a general partnership, the applicant must designate an agent for service
13 of process and give the agent's name and address."

14 Sec. 7. G.S. 105-449.5 reads as rewritten:

15 **"§ 105-449.5. Supplier to file bond.**

16 ~~A-The Secretary may not issue a supplier's license shall not be issued to an applicant~~
17 ~~until the applicant has filed with the Secretary a bond in the approximate sum of or an~~
18 ~~irrevocable letter of credit. The amount of the bond or irrevocable letter of credit may~~
19 ~~not exceed two times the applicant's average expected monthly tax due to be paid by the~~
20 ~~supplier, liability under this Article, as determined by the Secretary, but the amount of the~~
21 ~~bond shall in no case and may not be less than five hundred dollars (\$500.00). Such bond~~
22 ~~shall be in such form and with such surety or sureties as may be required by the Secretary,~~
23 ~~conditioned upon making proper reports and paying the tax provided for in this Article, and~~
24 ~~otherwise complying with the provisions of this Article. A supplier An applicant who is also~~
25 ~~required to be bonded file a bond or an irrevocable letter of credit under G.S. 105-433 as~~
26 ~~a distributor of motor fuels may file a single bond, bond or irrevocable letter of credit~~
27 ~~under either this section or under G.S. 105-433 for the combined amount required under~~
28 ~~these sections, and amount. A bond filed under this section shall be conditioned upon~~
29 ~~compliance with the requirements of Article 36 and Article 36A of this Subchapter.~~
30 ~~Subchapter, shall be payable to the Secretary, and shall be in the form required by the~~
31 Secretary.

32 ~~A-After filing a bond or an irrevocable letter of credit with an application for a~~
33 ~~supplier's license, a supplier required to file a bond under this section shall, within 30 days~~
34 ~~after receiving a notice from the Secretary, file an additional bond or irrevocable letter~~
35 ~~of credit in the amount requested by the Secretary. The amount of the initial bond or~~
36 ~~irrevocable letter of credit and any additional bonds bond or irrevocable letter of credit~~
37 ~~filed by the supplier, however, may not exceed the limits set in this section."~~

38 Sec. 8. G.S. 105-449.7 reads as rewritten:

39 **"§ 105-449.7. Issue of supplier's license.**

40 ~~The application in proper form having been accepted for filing, and the other~~
41 ~~conditions and requirements of this Article having been complied with, the Secretary~~
42 ~~shall issue to such supplier a license and such license shall remain in full force and~~
43 ~~effect, unless cancelled as provided in this Article. Secretary shall issue a supplier's~~
44 license to an applicant who meets the requirements of this Article. A supplier's license

1 remains in effect until cancelled. A supplier is considered an agent and trust officer of
2 the State for the collection of the tax imposed by this Article.”

3 Sec. 9. G.S. 105-449.14 reads as rewritten:

4 **"§ 105-449.14. Power of Secretary to cancel licenses.**

5 ~~If a licensee shall at any time file a false report of any data or information required~~
6 ~~by this Article, or shall fail, refuse or neglect to file any report as required by this~~
7 ~~Article, or to pay the full amount of any tax required by this Article, or if a supplier fails~~
8 ~~to file an additional bond required under G.S. 105-449.5 or fails to keep accurate~~
9 ~~records of quantities of fuel received, produced, refined, manufactured, compounded,~~
10 ~~sold or used in this State, or if a user-seller fails to maintain accurately any required~~
11 ~~records, the Secretary may forthwith cancel his license and notify him in writing of such~~
12 ~~cancellation by registered mail sent to his last address appearing on the files of the~~
13 ~~Secretary.~~

14 The Secretary may cancel any license issued under this Article upon the written
15 request of the licensee. The Secretary may summarily cancel the license of a supplier
16 when the Secretary finds that the supplier is incurring liability for the tax imposed under
17 this Article after failing to pay a tax when due under this Article. In addition, the
18 Secretary may cancel the license of a supplier or any other licensee who commits one or
19 more of the acts listed in G.S. 105-449.34 after holding a hearing on whether the license
20 should be cancelled.

21 The Secretary shall send a supplier whose license is summarily cancelled a notice of
22 the cancellation and shall give the supplier an opportunity to have a hearing on the
23 cancellation within 10 days after the cancellation. The Secretary shall give a licensee
24 whose license may be cancelled after a hearing at least 10 days' written notice of the
25 date, time, and place of the hearing. A notice of a summary license cancellation and a
26 notice of hearing shall be sent by registered mail to the last known address of the
27 licensee.

28 When the Secretary cancels the license of a supplier, the Secretary shall return the
29 bond or irrevocable letter of credit filed by the supplier if the supplier has paid all taxes
30 and penalties due under this Article."

31 Sec. 10. G.S. 105-449.17 reads as rewritten:

32 **"§ 105-449.17. ~~Certain exempt sales.~~ Exemption for fuel sold for nonhighway use.**

33 ~~Sales of fuels to a user-seller shall be exempt from the tax levied under the~~
34 ~~provisions of this Article when such user-seller purchases said fuel for nonhighway uses~~
35 ~~or for sale for nonhighway use and maintains storage facilities for such fuel separate and~~
36 ~~apart from facilities servicing motor vehicles, providing such storage facilities are~~
37 ~~plainly marked in such manner as the Secretary may prescribe to indicate that~~
38 ~~nontaxpaid fuel is contained therein. Suppliers shall make reports of such sales, in such~~
39 ~~form as the Secretary may require, each month on monthly tax report forms. Each user-~~
40 ~~seller shall maintain such records as the Secretary may prescribe of all nontaxpaid fuel~~
41 ~~purchased pursuant to this section. All records of nontaxable sales and purchases made~~
42 ~~pursuant to this section shall be subject to audit by deputies, employees or other agents~~
43 ~~of the Secretary. The tax imposed by this Article does not apply to fuel sold or delivered~~
44 ~~by a supplier to a user-seller when the fuel is for a purpose other than to propel a motor~~

1 vehicle and the supplier dispenses the fuel into a storage facility of the user-seller that is
 2 marked with the phrase 'For Nonhighway Use' or a similar phrase that clearly indicates
 3 the fuel is not to be used to propel a motor vehicle. A supplier is liable for the tax due
 4 on fuel dispensed into a storage facility of a user-seller that is not marked to indicate the
 5 fuel is to be used for a purpose other than to propel a motor vehicle. A user-seller is
 6 liable for the tax due on fuel dispensed by a supplier into a storage facility that is
 7 marked for nonhighway use and is subsequently used or sold for use to propel a motor
 8 vehicle."

9 Sec. 11. G.S. 105-449.20 reads as rewritten:

10 **"§ 105-449.20. When Secretary may estimate fuel sold, delivered or used. tax liability**
 11 **of supplier or user-seller.**

12 ~~Whenever any person shall neglect or refuse a supplier or a user-seller fails to make~~
 13 ~~and file any a report for any calendar month as required by this Article or shall file an~~
 14 ~~incorrect or fraudulent report, under G.S. 105-449.19 or 105-449.21 or files a false~~
 15 ~~report under one of those statutes, the Secretary shall determine, from any information~~
 16 ~~obtainable, the number of gallons of fuel with respect to which the person has incurred~~
 17 ~~liability under the special fuels tax laws of the State. supplier or user-seller owes tax~~
 18 ~~under this Article. In all cases where a~~ When a user-seller actually sells or uses an
 19 amount in addition to that reported ~~more fuel than the user-seller reports to the~~
 20 Secretary as having been purchased from a supplier licensed under this Article proof of
 21 such additional sales or use shall constitute prima facie evidence that all fuel in excess
 22 of that so reported was acquired tax free. supplier, the user-seller is presumed to have
 23 acquired the additional fuel tax-free to propel a motor vehicle."

24 Sec. 12. G.S. 105-449.34 reads as rewritten:

25 **"§ 105-449.34. Acts and omissions declared to be misdemeanors; penalties.**

26 ~~A person shall be who commits one or more of the following acts is guilty of a~~
 27 ~~misdemeanor if he wilfully violates any of the provisions of this Article, a penalty for~~
 28 ~~which is not otherwise provided, or if he shall:~~

- 29 (1) ~~Wilfully fail or refuse to pay the tax imposed by this Article, or~~
- 30 (2) ~~Engage in business in this State as a supplier or user-seller without~~
 31 ~~being the holder of an uncanceled license to engage in such business,~~
 32 ~~or~~
- 33 (3) ~~Wilfully fail to make any of the reports required by this Article, or~~
- 34 (4) ~~Make any false statement in any application, report or statement~~
 35 ~~required by this Article, or~~
- 36 (5) ~~Refuse to permit the Secretary or any deputy to examine records as~~
 37 ~~provided by this Article, or~~
- 38 (6) ~~Fail to keep proper records of quantities of fuel received, produced,~~
 39 ~~refined, manufactured, compounded, sold, used or delivered in this~~
 40 ~~State as required by this Article, or~~
- 41 (7) ~~Make any false statement on any delivery ticket or invoice as to the~~
 42 ~~quantity of fuel delivered, sold or used; or make any false statement in~~
 43 ~~connection with a report, or an application for the refund of any~~
 44 ~~moneys or taxes provided in this Article. misdemeanor:~~

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

12 Sec. 13. G.S. 105-449.48 reads as rewritten:

13 **"§ 105-449.48. Fees ~~paid~~ and civil penalties credited to Highway Fund.**

14 All fees collected under this Article and all civil penalties collected under G.S. 105-
15 449.52 shall be ~~paid~~ credited to the Highway Fund."

16 Sec. 14. G.S. 105-449.52 reads as rewritten:

17 **"§ 105-449.52. ~~Violators to pay penalty and furnish bond. Penalty for operating a~~**
18 **motor vehicle without a registration card or an identification marker.**

19 (a) Penalty. —When any person is discovered in this State operating a vehicle in
20 violation of the provisions of this Article, it shall be unlawful for anyone thereafter to
21 operate said vehicle on the streets or highways of this State, except to remove it from
22 the street or highway for purposes of parking or storing said vehicle, until he shall pay
23 to the Department of Revenue a penalty of seventy five dollars (\$75.00). Such penalty
24 may be paid to an agent of the Division of Motor Vehicles. All penalties received by the
25 Department of Revenue under this section shall be paid into the Highway Fund.—A
26 motor carrier who operates in this State or causes to be operated in this State a motor
27 vehicle that does not carry the registration card required by this Article or does not
28 display an identification marker in accordance with this Article is subject to a civil
29 penalty of seventy-five dollars (\$75.00). The penalty is payable to the Department of
30 Revenue or the Division of Motor Vehicles. When a motor vehicle is found to be
31 operating without a registration card or an identification marker, the motor vehicle may
32 not be driven for a purpose other than to park the motor vehicle until the penalty
33 imposed under this section is paid unless the officer that imposes the penalty determines
34 that operation of the motor vehicle will not jeopardize collection of the penalty.

35 (b) Hearing. — Any person denying his liability for ~~such~~ a penalty imposed under
36 this section may pay the ~~same~~ penalty under protest. He may protest and apply to the
37 Department of Revenue for a hearing, and said hearing. Upon receiving a request for a
38 hearing, the Secretary shall schedule a hearing ~~shall be granted~~ before a duly designated
39 employee or agent of the Department within 30 days after receipt of the ~~request for such~~
40 hearing request. If after ~~said~~ the hearing the Department determines that the person was
41 not liable for the penalty, the amount collected shall be ~~refunded to him~~ refunded. If after
42 said the hearing the Department determines that the person was liable for ~~said~~ the
43 penalty, the person paying the penalty may bring an action in the Superior Court of
44 Wake County against the Secretary of Revenue for refund of the penalty. No

1 restraining order or injunction shall issue from any court of the State to restrain or
2 enjoin the collection of the penalty or to permit the operation of ~~said~~the vehicle without
3 payment of the ~~penalty prescribed herein.~~ penalty.

4 ~~In addition, the Secretary may, if he deems it desirable or necessary to secure~~
5 ~~compliance with the provisions of this Article, require the furnishing of a bond to the~~
6 ~~Secretary in the amount of two hundred dollars (\$200.00), in such form and with such~~
7 ~~surety or sureties as he may prescribe, conditioned on registering or making an~~
8 ~~application for registration in accordance with this Article within 10 days and~~
9 ~~conditioned on the payment of any taxes found to be due pursuant to this Article. In~~
10 ~~cases where the Secretary shall require such bond, it shall be unlawful for anyone~~
11 ~~thereafter to operate said vehicle on the streets or highways of this State, except to~~
12 ~~remove it from the street or highway for purposes of parking or storing said vehicle,~~
13 ~~unless and until said bond is furnished.~~

14 ~~Whenever the Secretary is required to exercise his discretion under the provisions of~~
15 ~~this section, such discretion may be exercised by him or by a duly designated agent or~~
16 ~~employee of the Division of Motor Vehicles or the Department of Revenue."~~

17 Sec. 15. Notwithstanding the provisions of G.S. 105-433, the maximum bond
18 or letter of credit that may be required of a distributor under that section is forty
19 thousand dollars (\$40,000). Notwithstanding the provisions of G.S. 105-449.5, the
20 maximum bond or letter of credit that may be required of a supplier under that section is
21 forty thousand dollars (\$40,000). A distributor or supplier required to file a bond or
22 letter of credit under both sections may file a single bond or letter of credit for the
23 combined amount required up to a maximum of eighty thousand dollars (\$80,000).

24 Sec. 16. G.S. 105-269.3 reads as rewritten:

25 **~~"§ 105-269.3. Article applicable to gasoline and fuel taxes and gasoline and oil inspection~~**
26 **~~fees.—Administration and enforcement of Subchapter V and fuel~~**
27 **~~inspection fee.~~**

28 ~~The provisions of this Article shall be applicable—This Article applies to taxes levied~~
29 ~~under Subchapter V of this Chapter 105 of the General Statutes and to inspection fees~~
30 ~~levied under Chapter 119 of the General Statutes. The State Highway Patrol and law~~
31 ~~enforcement officers and other appropriate personnel in the Division of Motor Vehicles~~
32 ~~of the Department of Transportation may assist the Department of Revenue in enforcing~~
33 ~~Subchapter V of this Chapter and Article 3 of Chapter 119 of the General Statutes. The~~
34 ~~State Highway Patrol and law enforcement officers of the Division of Motor Vehicles~~
35 ~~have the power of peace officers in matters concerning the enforcement of Subchapter~~
36 ~~V of this Chapter and Article 3 of Chapter 119 of the General Statutes."~~

37 Sec. 17. G.S. 105-449.55 and 105-449.56 are repealed.

38 Sec. 18. Section 15 of this act is effective retroactively as of January 1, 1991,
39 and expires July 1, 1991. The remainder of this act is effective upon ratification.