



States' Biofuels Statutes

STATE OF DELAWARE

This project was undertaken in partnership with the USDA Office of the Chief Economist, The Office of Energy Policy and New Uses. For information on the full project, visit [States' Biofuels Statutory Citations](#). These statutes are placed in reverse chronological order using the date of the most recent amendment to the statute. Many biofuels laws were enacted as amendments to previously passed laws.

Current through the 2013 Legislative Session of the Delaware General Assembly.

§ 5131. Definitions

As used in this chapter:

- (1) “A program to demonstrate commercial feasibility of alternatively fueled vehicles” means testing programs, pilot programs, demonstration programs and other programs in which data is being collected on fuel economy, performance and air emissions of vehicles primarily propelled by fuels other than gasoline, reformulated gasoline, diesel fuel, reformulated diesel fuel, fuel oil or kerosene and, for any taxpayer, the number of vehicles involved in such programs does not exceed the greater of 10 vehicles or 10 percent of the taxpayer’s vehicles propelled primarily by a fuel subject to tax under this chapter.
- (2) “Department” means the Department of Transportation.
- (3) “Dyed diesel fuel” means any diesel fuel dyed pursuant to federal regulations cited in 26 CFR 48.4082-1, as amended from time to time.
- (4) “Highway” means every way or place generally open to the use of the public for the purpose of vehicular travel, notwithstanding that they may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair or reconstruction.
- (5) “Motor vehicle” means any vehicle propelled by an internal combustion engine and licensed or subject to be licensed for operation upon the highways.
- (6) “Person” includes every natural person, fiduciary, association or corporation. Whenever used in any cause prescribing and imposing a fine or imprisonment, or both, the term “person,” as applied to an association, means and includes the partners or members thereof, and, as applied to corporations, the officers thereof.

(7) “Special fuel” means and includes all combustible gasses and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include gasoline as defined in § 5101 of this title and except that it does not include combustible gases and liquids used prior to January 1, 1996, in a program to determine commercial feasibility of alternatively fueled vehicles.

(8) “Special fuel dealer” means any person in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person.

(9) “Special fuel supplier” means any person in the business of handling or selling special fuel who delivers or places such fuel into a bulk supply tank or tanks of a special fuel user or special fuel dealer.

(10) “Special fuel tax exemption marker” means a marker or sticker supplied by the Department to be affixed to a special fuel bulk storage tank, or to the pump attached thereto, to certify that tax-free fuel may be placed into such tank.

(11) “Special fuel user” means the owner or other person responsible for the operation of a motor vehicle at the time special fuel is placed in the fuel supply tank or tanks thereof while such vehicle is within this State.

(12) “Use” means the receipt, delivery or placing of special fuel by a special fuel user into the fuel supply tank or tanks of any motor vehicle while such vehicle is within this State.

Credits: 54 Laws 1963, ch. 107; 57 Laws 1970, ch. 741, § 24D; 61 Laws 1977, ch. 141, § 1; 65 Laws 1986, ch. 297, §§ 4-7; 68 Laws 1992, ch. 290, § 184; 69 Laws 1993, ch. 171, §§ 1, 2; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995; 71 Laws 1998, ch. 459, § 1, eff. July 17, 1998.

§ 5132. Tax imposed

(a) There is hereby levied and imposed a tax of 22 cents per gallon, computed in the same manner and subject to the same limitations, as the tax rate established for gasoline in § 5110 of this title, as amended, on the sale or delivery of special fuel to any special fuel dealer or special fuel user not the holder of a valid special fuel dealer’s or special fuel user’s license. Said tax, with respect to all special fuel delivered by a special fuel supplier into the bulk storage tank or tanks of said dealer or user, shall attach at the time of such delivery and shall be collected by the supplier from the dealer or user and shall be paid over to the Department of Transportation as hereinafter provided.

(b) There is hereby levied and imposed a tax of 22 cents per gallon, computed in the same manner and subject to the same limitations, as the tax rate established for gasoline in § 5110 of this title, as amended, on the use (within the meaning of the word “use” as defined in § 5131 of this title) of special fuel when such special fuel is delivered into the supply tanks of motor vehicles in this State by a licensed special fuel dealer or a licensed special fuel user. Said tax, with respect to all special fuel delivered by a licensed special fuel dealer into supply tanks of motor vehicles in this State, shall attach at the time of such delivery and shall be collected by such dealer from the special fuel user and shall be paid over to the Department of Transportation as hereinafter provided. Said tax, with respect to special fuel acquired by

any licensed special fuel user in any manner other than by delivery by a special fuel dealer into the supply tank of a motor vehicle, shall attach at the time of the use (as defined in § 5131 of this title) of such fuel and shall be paid over to the Department of Transportation by said user as herein provided.

Credits: 54 Laws 1963, ch. 107; 55 Laws 1965, ch. 112, § 2; 57 Laws 1970, ch. 741, § 24B; 58 Laws 1971, ch. 289, § 2; 59 Laws 1973, ch. 216, § 2; 60 Laws 1975, ch. 14, § 1; 60 Laws 1976, ch. 423, § 1; 61 Laws 1977, ch. 74, § 2; 61 Laws 1977, ch. 141, § 2; 63 Laws 1981, ch. 179, § 26; 68 Laws 1992, ch. 290, § 184; 69 Laws 1993, ch. 77, §§ 52-55.

§ 5133. Exemptions

(a) The tax imposed by this chapter shall not apply to special fuel sold and delivered to and used by the following persons:

- (1) The United States or any governmental agencies thereof;
- (2) The State and every political subdivision thereof;
- (3) Volunteer fire companies in any of their official vehicles and veterans' or civic organizations in their ambulances when such ambulances are provided on a voluntary basis.

(b) The Department may, for purposes of identification, require that the above persons apply to the Department for a special fuel tax exemption marker to be affixed to the applicable bulk supply tank or pump thereof. The tax exemption marker may be revoked by the Department for just cause.

Credits: 54 Laws 1963, ch. 107; 61 Laws 1977, ch. 141, § 3; 65 Laws 1986, ch. 297, §§ 8, 9; 69 Laws 1993, ch. 77, § 66.

§ 5134. Special fuel license; bond

(a) Required.--It shall be unlawful for any person to act as a special fuel dealer in this State unless such person is the holder of a valid special fuel dealer's license issued by the Department. Except for special fuel which is delivered by a special fuel dealer into a fuel supply tank of any motor vehicle in this State, the use (as defined in this subchapter) of special fuel in this State by any person shall be unlawful unless such person is the holder of a valid special fuel user's license issued by the Department. However, the requirement for a special fuel dealer's or special fuel user's license and bond may be waived by the Department, if said dealer or user has contracted to pay the applicable special fuel tax to a licensed special fuel supplier at the time of purchase. Also, it shall be unlawful for a special fuel supplier to collect the special fuel tax from a special fuel dealer or special fuel user unless the supplier is the holder of a valid special fuel supplier's license. A fee of \$10 shall be paid to the Department for the issuance of each special fuel license. As a condition of their license, persons shall make the required loan payments on their own account or for their retailer customers who:

- (1) Participate in the Small Retail Gasoline Station Assistance Loan Fund, established in Chapter 74 of

Title 7; and

(2) Provide these funds to the person.

(b) Application.--Application for a special fuel license shall be made to the Department of Transportation on forms supplied by the Department. A license shall be required for each separate place of business or location where special fuels are regularly delivered or placed into the fuel supply tank of a motor vehicle by a special fuel dealer or special fuel user.

(c) Form of application.--The application shall be filed upon a form prepared and furnished by the Department. The application shall contain such information as the Department deems necessary.

(d) Bond.--

(1) No special fuel license shall be issued to any person or continued in force unless such person has furnished a surety bond in such forms and amount as the Department may require, but not less than \$5,000, nor more than \$200,000, to secure compliance with this chapter, and the payment of any and all taxes, interest and penalties due and to become due hereunder. Every bond filed with and approved by the Department shall, without the necessity of periodic renewal, remain in force and effect until such time as the license is revoked for cause, or otherwise cancelled or surrendered.

(2) The bond shall be in such form as may be approved by the Department of Transportation, and shall be executed by a surety company to be approved by the Department and duly licensed to do business under the laws of this State. The bond shall be payable to the State, and be conditioned upon the prompt filing of true reports and the payment by such licensee to the Department of any and all special fuel taxes levied or imposed by this State, together with any and all penalties and/or interest thereon, and generally upon faithful compliance with the provisions of this chapter.

(3) If liability upon the bond thus filed by the licensee with the Department shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or, if in the opinion of the Department, any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, then the Department may require the filing of a new bond with like surety as hereinbefore provided in the same amount, failing which, the Department shall forthwith cancel the license of the licensee. If the new bond is furnished by the licensee as above provided, the Department shall cancel and surrender the bond of the licensee for which such new bond shall be substituted; provided, however, that such bond shall not be cancelled if any liability shall have accrued under the provisions thereof which shall be still outstanding.

(4) If the Department of Transportation, after a hearing of which the licensee shall be given 5 days' notice in writing, shall decide that the amount of the existing bond is insufficient to insure payment to the State of the amount of the tax and any penalties and interest for which the licensee is or may at any time become liable, then the licensee shall forthwith upon the written demand of the Department file an additional bond in the same manner and form with like security thereon as hereinbefore provided. The total amount of any such additional bond as well as the bond required under paragraph (d)(1) of this section shall not exceed the maximum of \$200,000, and the Department shall forthwith cancel the license certificate of any licensee failing to file an additional bond as herein provided.

(5) Any surety on any bond furnished by any licensee as above provided, upon written request mailed to the Department of Transportation, certified mail, return receipt requested, shall be released and discharged from any and all liability to the State accruing on such bond. Upon receipt of such request, the Department shall forthwith acknowledge in writing the receipt of said request and shall thereafter inform the surety that it shall be released and discharged from any and all liability to the State accruing on such bond after the expiration of 60 days from the date on which the Department received the surety's request for release and discharge. Simultaneously, the Department shall also notify the licensee who furnished such bond of the fact that the surety will be released and discharged from any and all liability on a certain date. The licensee shall further be advised that unless it shall, on or before the expiration of such 60-day period, file with the Department a new bond in the amount and form hereinbefore in this section provided, the Department shall forthwith cancel the license of the licensee.

(e) Issuance.--Upon receipt of the application and bond in proper form, the Department of Transportation shall issue to the applicant a license to act as a special fuel dealer or a special fuel user or a special fuel supplier; provided, however, that the Department may refuse to issue a license to any person:

- (1) Who formerly held any type of license, which, prior to the time of filing application, has been revoked for cause; or
- (2) Who is a subterfuge for the real party in interest whose license, prior to the time of filing application, has been revoked for cause; or
- (3) Upon other sufficient cause being shown.

Before such refusal, the Department shall grant the applicant a hearing and shall grant the applicant at least 30 days' written notice of the time and place thereof.

(f) Term of license.--Each special fuel license shall expire on June 30. Every person desiring to continue as a special fuel dealer or as a special fuel user or as a special fuel supplier shall annually thereafter on July 1 procure from the Department such a license, which shall expire on June 30 next following.

(g) Assignment forbidden.--No special fuel dealer's license or special fuel user's license or special fuel supplier's license shall be transferable.

(h) Revocation, cancellation and surrender of license and bond.--The Department of Transportation may revoke the license of any special fuel dealer or special fuel user or special fuel supplier for reasonable cause. Before revoking any such license the Department shall notify the licensee to show cause within 30 days of the date of the notice why such license should not be revoked; provided, however, that at any time prior to and pending such hearing the Department may, in the exercise of reasonable discretion, suspend such license.

The Department shall cancel any license to act as a special fuel dealer or a special fuel user or special fuel supplier immediately upon surrender thereof by the holder.

Credits: 54 Laws 1963, ch. 107; 57 Laws 1970, ch. 741, §§ 24B, 24C, 24E; 59 Laws 1973, ch. 216, § 2; 61 Laws 1977, ch. 141, §§ 4-9; 64 Laws 1984, ch. 365, §§ 2, 6; 64 Laws 1984, ch. 368, § 4; 65 Laws 1986, ch. 297, § 10; 65 Laws 1986, ch. 339, § 2; 66 Laws 1987, ch. 97, § 2; 68 Laws 1992, ch. 290, § 184; 69 Laws 1993, ch. 77, § 75; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995; 70 Laws 1996, ch. 311, §§ 3, 4, eff. March 22, 1996.

§ 5135. Records

(a) Preparation of records.--For each location where special fuel is delivered or placed into the fuel supply tank of a motor vehicle by a licensed special fuel dealer or a licensed special fuel user, said dealer or user making such delivery shall prepare and maintain such records as the Department of Transportation may reasonably require with respect to all such deliveries, and with respect to inventories, receipts, purchases, use and sales or other dispositions of special fuel. Also, each licensed special fuel supplier shall prepare and maintain such records as the Department of Transportation shall reasonably require with respect to all sales and/or deliveries of special fuel to customers.

(b) Retention of records.--The records required under this section shall be retained for a minimum of 3 years and shall be available, at all reasonable times, for examination by representatives of the Department.

Credits: 54 Laws 1963, ch. 107; 57 Laws 1970, ch. 741, §§ 24B, 24C, 24E; 59 Laws 1973, ch. 216, § 2; 60 Laws 1976, ch. 477, § 1; 61 Laws 1977, ch. 141, § 10; 68 Laws 1992, ch. 290, § 184; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

§ 5136. Monthly reports and payments

(a) Reports.--For the purpose of determining the amount of liability for the tax herein imposed, each licensee shall file with the Department of Transportation, on forms prescribed by the Department, a monthly tax report. Such report shall contain a declaration by the person making 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 report and shall be in lieu of such verification. The report shall show such information as the Department may reasonably require for the proper administration and enforcement of this chapter. A licensed special fuel dealer or a licensed special fuel user shall file a report for each location at which special fuel is delivered or placed by said dealer or user into a fuel supply tank of a motor vehicle; provided, however, that if said dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the monthly report to the Department covering such location need not include inventory control data covering bulk storage from which wholesale distribution is made. A licensed special fuel supplier shall file 1 report regardless of the number of locations at which the supplier's special fuel is stored or handled.

(b) Due date.--The special fuel licensee shall file the report on or before the twenty-fifth day of the next succeeding calendar month following the monthly period to which it relates. When the twenty-fifth day

of the month falls on a weekend or state holiday, the due date of the report shall be the next following business day of the State. Such report and payment shall be considered to have been duly and timely filed if such report or payment is postmarked by the United States Postal Service on or before the due date; provided, however, that for good cause the Secretary of the Department of Transportation may grant a licensee a reasonable extension of time.

In lieu of depositing tax payments in the United States mail, a licensed special fuel dealer, user or supplier may hand deliver said payment to the Department of Transportation or the Department may require licensed special fuel dealers, users or suppliers to make electronic transfers of such funds to the appropriate state account.

(c) Tax computation.--The tax imposed by this subchapter shall be computed by each special fuel dealer or special fuel user by multiplying the tax rate per gallon provided in this subchapter by the number of gallons of special fuel delivered or placed by the special fuel dealer or special fuel user into the supply tank or tanks of a motor vehicle; provided, however, that if a special fuel dealer or special fuel user has contracted with a licensed special fuel supplier to have the tax included in the price of the fuel, then the tax shall be computed by the supplier by multiplying the tax rate per gallon provided in this subchapter by the number of gallons of special fuel delivered or placed into the bulk storage tank or tanks of the dealer or user.

(d) Payments.--The monthly tax report shall be accompanied by remittance covering the tax due hereunder on special fuel as computed in subsection (c) of this section.

If a check received in payment of moneys due the Department under this subchapter shall be returned to the Department by the maker's bank because of insufficient funds, closed account, stopped payment or any other reason, there shall be imposed upon the maker a service charge of \$10, and interest at the rate of 1 percent per month, or fraction thereof, shall accrue on the tax from the date such tax was due to be paid. A statement shall be sent to the maker demanding payment within 10 days of the original amount of the check plus the added service charge, penalty and interest, if any, and the cost of the postage incurred in mailing the statement, such amounts to be set forth in the statement. Failure of the maker to respond to the demand within 10 days shall constitute cause for the Department to suspend the maker's special fuel license, and 30 days after such suspension, if restitution has not been received, to revoke the maker's special fuel license.

(e) Refusal or failure to file report when due.--In case any special fuel licensee refuses or fails to file a report required by this chapter within the time prescribed by subsection (b) of this section, there is hereby imposed a penalty of \$5.75 per business day of this State up to a maximum of \$28.75 for each such report. For each report filed more than 5 business days late, the penalty shall be \$28.75 or 12 percent of the tax due, whichever is greater, for each such report. Any tax due shall also bear interest at the rate of 1 percent per month, or fraction thereof, until same is paid; provided, however, that if any such licensee shall establish by a fair preponderance of evidence that the failure to file a report within the time prescribed was due to reasonable cause and was not with intent to violate the law, the Department may waive all or any part of the penalty provided by this subsection.

(f) Failure to pay tax.--When a licensee files a report but fails to pay in whole or in part the tax due hereunder, there shall be added to the amount due and unpaid, interest at the rate of 1 percent per month,

or fraction thereof, from the date such tax was due to the date of payment in full thereof.

(g) Deficiency.--If it be determined by the Department of Transportation that the tax reported by any licensee is deficient, the Department shall proceed to assess the deficiency on the basis of information available to the Department and there shall be added to this deficiency interest at the rate of 1 percent per month, or fraction thereof, from the date such tax was due to the date of payment in full thereof.

(h) Determination if no report is made.--If any person liable for a report under the requirements of this chapter as a special fuel dealer, special fuel user or special fuel supplier, whether or not the person is licensed as such, fails, neglects, or refuses to file a special fuel tax report when due, the Department of Transportation shall, on the basis of information available to it, determine the tax liability of that person for the period during which no report was filed, and to the tax as thus determined the Department shall add the penalty and interest provided in subsection (e) of this section. An assessment made by the Department pursuant to this subsection or to subsection (g) of this section shall be presumed to be correct and in any instance when the validity of the assessment is questioned, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of evidence that it is erroneous or excessive as the case may be.

(i) Fraudulent report.--If any licensee shall file a false or fraudulent report with intent to evade the tax imposed by this chapter, there shall be added to the amount of deficiency determined by the Department a penalty equal to 25 percent of the deficiency together with interest at 1 percent per month, or fraction thereof, on such deficiency from the date such tax was due to the date of payment thereof in addition to all other penalties prescribed by law.

(j) Limitation.--Except in the case of a false or fraudulent report, or of neglect, failure or refusal to make a report, every deficiency shall be assessed under subsection (g) of this section within 3 years after the twenty-fifth day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined or within 3 years after the report is filed, whichever period expires the later.

(k) Notification; redetermination; appeal.--Promptly after determination of the amount of moneys due to the State under this subchapter for whatever reason, the Secretary of Transportation shall notify by mail the person against whom the assessment is made. Within 60 days of the date upon which any such determination was mailed, such person may file with the Secretary of Transportation a petition for redetermination of the assessment. Every petition for redetermination shall state specifically the reasons which the petitioner believes entitles the petitioner to such redetermination. It shall be the duty of the Secretary to dispose of a petition for redetermination within 90 days of the Secretary's receipt of it. The petitioner shall be promptly notified by the Secretary of the Secretary's decision. Within 60 days after the date of the Secretary's decision, the petitioner may appeal such decision to the Superior Court of this State.

(l) Collection of delinquent taxes.--If any special fuel dealer, special fuel user or special fuel supplier shall, for a period in excess of 10 days, be in default of payment of any taxes, penalties and/or interest thereon, which are payable under the terms of this subchapter, the Department of Transportation may issue a warrant under its official seal, signed by its Secretary, and directed to the sheriff of any county of the State, commanding the sheriff to levy upon and sell the goods and chattels of such debtor, without

exemption, found within the sheriff's jurisdiction for payment of the amount of such delinquency together with any additional penalties and interest which have accrued and the cost of executing the warrant and conducting the sale, and to return such warrant to the Department and to pay the Department the money collected by virtue thereof within the time specified in the warrant which shall be not less than 20 or more than 60 days from the date the warrant was issued. The sheriff to whom any such warrant is directed shall proceed upon the same in all respects with like effect and in the same manner as prescribed by law in respect to executions issued against goods and chattels upon judgments by a court of record, and the sheriff shall be entitled to the same fees for services in executing the warrant to be collected in the same manner. The foregoing notwithstanding, nothing in this subsection shall be construed as forfeiting or waiving any rights of the Department or of this State to collect such taxes by an action upon any bond that may be filed with the Department under any provision of this subchapter where by suit or otherwise; and in case such suit, action or other proceeding shall have been instituted for the collection of said tax, such suit, action or other proceeding shall not be construed as waiving any other right herein provided.

Credits: 54 Laws 1963, ch. 107; 57 Laws 1970, ch. 741, §§ 24B, 24C, 24E; 59 Laws 1973, ch. 216, § 2; 60 Laws 1975, ch. 191, §§ 1, 2; 60 Laws 1976, ch. 423, §§ 2, 3; 60 Laws 1976, ch. 440, §§ 4-6; 61 Laws 1977, ch. 141, § 11; 64 Laws 1984, ch. 368, §§ 5, 6; 65 Laws 1986, ch. 297, §§ 11-13; 67 Laws 1990, ch. 260, § 1; 67 Laws 1990, ch. 340, § 2; 68 Laws 1992, ch. 290, § 184; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995.

§ 5137. Refund of taxes erroneously or illegally collected

In the event that any taxes, penalties or interest imposed by this law have been erroneously or illegally collected from a licensee, the Department of Transportation may permit such licensee to take credit against a subsequent tax report for the amount of the erroneous or illegal overpayment, or shall certify the amount thereof to the Secretary of Transportation who shall thereupon draw a warrant for such certified amount to such licensee. Such refund shall be paid to the licensee forthwith.

No refund of any taxes, fees, penalties or interest imposed under this chapter may be obtained except by filing a written claim with the Department before the expiration of 1 year from the earlier of:

- (1) The date of the payment; or
- (2) The date the payment was required to be made.

The claim must be in such form as may be prescribed by the Department, and shall specifically set forth the circumstances entitling the claimant to the refund.

Credits: 54 Laws 1963, ch. 107; 57 Laws 1970, ch. 741, §§ 24B, 24C, 24E; 59 Laws 1973, ch. 216, §§ 2, 3; 61 Laws 1977, ch. 141, § 12; 65 Laws 1986, ch. 297, § 14; 68 Laws 1991, ch. 156, § 55(c); 68 Laws 1992, ch. 290, § 184.

§ 5138. Administration

(a) Rules and regulations.--The Department of Transportation shall enforce this chapter, and may prescribe, adopt and enforce reasonable rules and regulations relating to the administration and enforcement thereof.

(b) Examination of records.--The Department of Transportation may examine the records of special fuel dealers, special fuel users, special fuel suppliers and other sellers of distillate fuels and make such other investigations as it may deem necessary in the administration and enforcement of this chapter.

(c) Presumption.--For the purpose of enforcing this chapter, it shall be prima facie presumed that all special fuel received by any person into storage having dispensing equipment designed to fuel motor vehicles is to be transferred or delivered by that person into the fuel supply tanks of motor vehicles.

(d) Reciprocal exchange of data.--The Department of Transportation shall, upon request from the officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces or the Dominion of Canada, forward to such officials any information which it may have relative to the receipt, storage, delivery, sale, use or other disposition of special fuel by any special fuel dealer or special fuel user; provided such other state or states furnish like information to this State.

(e) Records open to public.--Reports required by this chapter, exclusive of schedules, itemized statements and other supporting evidence annexed thereto, shall at all reasonable times be open to the public.

Credits: 54 Laws 1963, ch. 107; 57 Laws 1970, ch. 741, §§ 24B, 24C, 23E; 59 Laws 1973, ch. 216, § 2; 61 Laws 1977, ch. 141, §§ 13, 14; 64 Laws 1984, ch. 335, § 1; 68 Laws 1992, ch. 290, § 184.

§ 5139. Violations and penalties; enforcement

(a) Acts forbidden.--It shall be unlawful for any person to:

(1) Refuse or knowingly and intentionally fail to make and file any statement required by this chapter in the manner or within the time required;

(2) Knowingly and with intent to evade or to aid in the evasion of the tax imposed herein to make any false statement or conceal any material fact in any record, report or affidavit provided for in this chapter;

(3) Knowingly and with intent to evade or to aid in the evasion of the tax imposed herein, or to withhold or fail to remit moneys due under this chapter;

(4) Assign or attempt to assign a license to act as a special fuel dealer or a special fuel user;

(5) Knowingly and with intent to evade or to aid in the evasion of the tax imposed herein to receive special fuel in this State into the supply tank or tanks of a motor vehicle from a person not holding a

valid license as a special fuel dealer;

(6) Knowingly and with intent to evade or aid in the evasion of the tax imposed herein to deliver or place special fuel into the bulk supply tank or tanks of a person not licensed as a special fuel dealer or special fuel user or not a holder of a valid special fuel tax exemption marker without collecting the lawful tax imposed herein;

(7) Fail to keep and maintain the books and records required by this chapter;

(8) Knowingly and with intent to deceive, defraud or evade the tax imposed herein to permanently remove, replace, alter or render inoperable any volumetric measuring device or “totalizer” of any pump dispensing motor fuel subject to this chapter;

(9) Sign and deliver or cause to be delivered to the Motor Fuel Tax Administration any report required by this subchapter knowing that it contains false statements material to the computation of the tax imposed by this subchapter.

(b) Penalties and remedies.--Any person violating subsection (a) of this section is guilty of a class A misdemeanor; provided, however, that if the violation results in an evasion or wrongful withholding of special fuel tax amounting to more than \$500, then the violation shall constitute a class E felony. Any person who has once been convicted of any violation of subsection (a) of this section and who thereafter is convicted of any subsequent violation of subsection (a) of this section shall be guilty of a class E felony. The Superior Court shall have the exclusive jurisdiction over those violations enumerated in subsection (a) of this section.

(c) Penalties are cumulative.--The fine and imprisonment provided for in this section shall be in addition to any other penalty imposed by any other provision of this chapter.

(d) Enforcement.--The Delaware State Police is authorized and directed to assist in the enforcement of this section.

(e) License required.--It shall be unlawful for any person to conduct any activities requiring a license under this chapter without a license or after a license has been surrendered, cancelled or revoked. Whoever violates this subsection shall, for the first offense, be fined not less than \$100 nor more than \$300, and for each subsequent offense, not less than \$300 nor more than \$500. The Justice of the Peace Courts shall have jurisdiction over this subsection.

Credits: 54 Laws 1963, ch. 107; 61 Laws 1977, ch. 141, § 15; 64 Laws 1984, ch. 397, §§ 1-4; 66 Laws 1988, ch. 273, §§ 1-3; 68 Laws 1992, ch. 290, § 185.

§ 5140. Prohibiting use of dyed diesel fuel on highways; Violations and penalties

(a) Notices with respect to dyed diesel fuel.--

(1) A notice, stating: “dyed diesel fuel, nontaxable use only, penalty for taxable use” shall be:

a. Provided by the terminal operator to any person that receives dyed diesel fuel at a terminal rack of that operator;

b. Provided by the seller of dyed diesel fuel to its buyer if the fuel is located outside the bulk transfer or terminal system and is not sold from a retail pump posted in accordance with the requirements of paragraph (a)(1)c. of this section;

c. Posted by a seller on any retail pump where it sells dyed diesel fuel for use by its buyer.

(2) The notice required under paragraph (a)(1)a. or b. of this section shall be provided at the time of the removal or sale and shall appear on shipping papers, bills of lading and invoices accompanying the sale or removal of the fuel.

(3) The Department may designate any federal notice provision which is substantially similar to a provision of this subsection as satisfying any notice requirement of this subsection.

(b) Dyed diesel fuel not to be used on public highways.--

(1) A person may not operate a motor vehicle on the public highways of this State if the fuel supply tanks of the vehicle contain dyed diesel fuel unless permitted to do so under a federal law or regulation delegating to the use of dyed diesel fuel on the highways.

(2) A person may not sell or deliver any dyed, diesel fuel knowing or having reason to know that the fuel will be consumed in a highway use. A person who dispenses dyed diesel fuel from a retail pump that is not properly labeled with the notice required by subsection (a) of this section or who knowingly delivers dyed diesel fuel into the storage tank of such a pump shall be presumed to know the fuel will be consumed on the highway.

(c) Enforcement.--Any certified Diesel Compliance Officer or other person authorized by the Department may enter any place where fuels are used, produced or stored and may physically inspect any tank, reservoir or other container that can be used for the production, storage, use or transportation of diesel fuel, diesel fuel dyes or diesel fuel markers. Inspection may also be made of any equipment used for or in connection with the production, storage or transportation of diesel fuel, diesel fuel dyes or diesel fuel markers. This includes any equipment used for the dyeing or marking of diesel fuel. Books, records and other documents may be inspected to determine tax liability. An agent may detain a vehicle, vessel or railroad tank car placed on a customer's siding for the use or storage for the purpose of inspecting fuel tanks or fuel storage tanks as necessary to determine the amount and composition of the fuel. An agent may take and remove samples of diesel fuel in reasonable quantities necessary to determine the composition of the fuel.

(d) Penalties.--Any person who violates any provision of subsections (a) and (b) of this section including refusal to allow an inspection as set forth herein, shall for the first offense be fined not more than \$1,000, or imprisoned not more than 90 days, or both. For a second and any subsequent offense the person shall be fined not more than \$2,000, or imprisoned not more than 6 months, or both.

(e) Disposition of fees, fines and forfeitures.--All fees, fines and penalties collected in the enforcement of this section shall be paid into the Transportation Trust Fund established under Title 2.

(f) Enforcement.--The Delaware State Police is authorized and directed to assist in the enforcement of this section.

(g) Cooperative agreements.--The Secretary of the Department of Transportation may enter into cooperative agreements with other states and federal agencies for exchange of information and to perform joint investigations of alleged dyed diesel fuel violators.

Credits: 71 Laws 1998, ch. 459, § 2, eff. July 17, 1998.