

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Representative Lipton

HOUSE BILL 1599

"AN ACT TO STRENGTHEN THE ENFORCEMENT PROVISIONS SUPPORTING
THE LAWS GOVERNING THE TRANSPORTATION OF FUELS INTO AND
WITHIN THE STATE; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. As used in this Act, unless the context clearly requires otherwise:

(a) "Commissioner" shall mean the Commissioner of Revenues, also known as the Director for the Revenue Division, Department of Finance and Administration.

(b) "Director" shall mean the Director of Highways and Transportation of the Arkansas State Highway and Transportation Department.

(c) "Fuels" shall mean motor fuel, distillate special fuels, and liquefied gas special fuels, as defined in the 'Motor Fuel Tax Law', as amended, and the 'Special Motor Fuels Tax Law', as amended, and shall include gasoline, diesel fuel and liquefied petroleum gas fuels used to propel an automotive vehicle.

(d) "Person" shall include any operator, individual, owner, company, partnership, joint venture, joint agreement, association (mutual or otherwise), corporation, estate, trust, business trust, receiver, trustee, leasing company, common carrier, private carrier, or transporter.

(e) "River Ports" shall mean those ports where fuels transported by barge are unloaded.

SECTION 2. (A) No person shall import or export fuels into or out of this State by motor carrier, rail, barge, or any mode of transport, other than pipeline, for sale or use within this State without:

1. Being a "Supplier" or "Distributor", licensed by the

Commissioner under the laws of the State of Arkansas, as such terms are defined in the "Motor Fuel Tax Law", as amended, and "Special Motor Fuels Tax Law", as amended; and

2. Acquiring an import/export load permit issued by the Director, or his designee, for each load.

(B) No common carrier pipeline company shall import or export fuels by pipeline without filing a copy of all reports, required by other laws of the State, with the Director.

(C) The Director, or his designee shall issue import/export load permits and shall be authorized to charge a fee of five dollars (\$5.00) for the issuance of each such import/export load permit. The Director shall prescribe and publish such rules and regulations as may be necessary for the enforcement of this Act.

(D) The Director shall have the authority to station one or more representatives at each port of entry or pipeline terminal to assist in the enforcement of this Act.

(E) All import/export load permit fees collected pursuant to this Section of this Act shall be deposited with the State Treasurer as special highway revenues and shall be transferred by the State Treasurer to the State Highway Department Fund for usage by the State Highway and Transportation Department to help defray the cost of administering this Act.

SECTION 3. (A) All shipments or movements of fuels by motor vehicle, barge, or any means of conveyance, except by pipeline, for sale or use within the State and terminating within or without the State shall be accompanied by a bill of lading which shall show the following:

1. The seller's or the purchaser's "Supplier" and/or "Distributor" license number;

2. The origin of the transport trip;

3. The particular destination or destinations of the transport trip;

4. The type or types of fuels being transported and quantity or quantities thereof to be delivered to each destination;

5. The person or persons responsible for the payment of the fuels tax; and

6. Such other information or forms as the Director by regulation

may adopt or require to implement the intent of this Act.

(B) Any transporter of fuels by any means, except by pipeline, shall be required to produce a copy of the bill of lading containing the information required by this Section and a copy of the permit, if required by Section 2 of this Act, for inspection by any enforcement officer within the State of Arkansas. Any failure to have such a bill of lading and a copy of the permit in such vehicle, or to produce same as prescribed, shall be an offense punishable as set forth in Section 9 hereof. The bill of lading required by this Section may be on the transporter's own form, but shall contain space for the required information and be submitted to and approved by the Director prior to use. The import/export load permit shall be on a form issued by the Director.

SECTION 4. (A) All transporters of fuels, including but not limited to motor vehicle, river barge, railroad car, pipeline, or other means, either now or hereafter employed, shall be responsible for retaining and safeguarding in their possession a clear and legible copy of all documentation required by this Act covering the cargo being transported. If transportation is by motor vehicle, the responsibility for such retention and safeguarding shall commence at the time the driver of the vehicle enters the boundaries of the State of Arkansas or assumes responsibility for the transport of the cargo which shall continue unabated until that point at which his responsibility for the transport of the cargo is terminated. In all cases of highway transport by motor vehicle, the copy of the bill of lading and import/export load permit shall be retained in the cab of the vehicle during the period of the operator's responsibility.

(B) Fuels transported in interstate commerce through Arkansas, the origin of which is outside of Arkansas and destination of which is outside of Arkansas, shall be exempt from the import/export load permit requirements of Section 2 of this Act.

SECTION 5. All interstate carriers of fuels traveling through the State of Arkansas and whose destination is without the State of Arkansas shall present their bills of lading at the ports of entry upon entering the State. The Director, or his representatives, may then verify the amount of fuels being transported and issue an Interstate Shipment Record, on a form to be

prescribed by the Director, to said carrier. Upon the motor carrier leaving the State of Arkansas, he shall present the aforesaid Interstate Shipment Record at the last port of entry within the State prior to his exit from the State at which time the Director or his representative may again verify the amount of fuels as indicated on the bill of lading and Interstate Shipment Record. Inspection may be made to determine the identity of the product and amount contained in the transport carrier. No deliveries within the State of Arkansas shall be permitted under this subsection and any interstate carrier violating these provisions shall be guilty of a misdemeanor and shall be subject to the penalties as provided in Section 9 of this Act.

SECTION 6. In order to enforce the provisions of this Act, any officer of the Arkansas Highway Police or any other law enforcement officer shall have the authority to stop any vehicle appearing to be handling or transporting fuels for the purpose of examining the documents required by this Act or to insure the operator's compliance with its provisions. If after such examination or investigation, it is determined that the transporter should have secured an import/export load permit, as required by this Act, but has failed to secure such permit, the enforcement officer shall forthwith cause the offending vehicle and its operator to be removed to the nearest Arkansas State Highway and Transportation Department property or port of entry where the Commissioner's representative shall immediately assess the tax on that load together with the penalty provided in Section 8 of this Act against the person found to be responsible for the payment of the tax. Notice upon said person shall be effectuated by delivering written notice of the assessment to the operator of the vehicle at such time.

SECTION 7. The Director or his representative shall be authorized to impound any vehicle and refuse authority to travel on Arkansas highways to any vehicle which previous to the entry into the State has not complied with all requirements of this Act. Further, travel shall not be authorized until the criminal fines and/or bonds have been posted, and taxes and penalties paid in full, unless the Director has initiated forfeiture proceedings pursuant to Section 9 of this Act.

SECTION 8. Any person who shall violate any provision of this Act shall

be immediately responsible for the taxes, as imposed by this State, on the fuels involved in the violation, plus twenty percent (20%) as a penalty. All fines and penalties imposed pursuant to this Act shall be in addition to any and all penalties imposed pursuant to the "Arkansas Tax Procedure Act".

SECTION 9. (A) Any person transporting fuels into the State of Arkansas without the appropriate bill of lading and import/export load permit and/or Interstate Shipment Record as required by this Act, shall be guilty of a misdemeanor and shall be fined \$2,500.00, of which one-half shall be deposited with the State Treasurer as special highway revenues to be disbursed in the same manner and to be used for the same purposes as is set out in the "Arkansas Highway Revenue Distribution Law".

(B) Any person who shall make, or assist any other person to make, any false or fraudulent statement in any report required by this Act and/or the "Motor Fuel Tax Law", as amended, and/or the "Special Motor Fuels Tax Law", as amended, or who shall fail to include any information demanded by this Act and/or the "Motor Fuel Tax Law", as amended, and/or the "Special Motor Fuels Tax Law", as amended, or who shall fail to produce upon request of proper authority any information required in this Act and/or the "Motor Fuel Tax Law", as amended, and/or the "Special Motor Fuels Tax Law", as amended, shall be guilty of a misdemeanor and subject to the penalties as provided in this Section.

(C) (1) Any motor vehicle, including the cargo thereof, found to have been in violation of any of the provisions of this Act shall be impounded by the Director pending disposition under this Act. Such disposition may include an action for the forfeiture and sale of the motor vehicle and cargo involved in any criminal proceedings. Any proceeds derived from the sale of such motor vehicle and cargo shall be deposited with the State Treasurer as special highway revenues to be disbursed in the same manner and to be used for the same purposes as is set out in the "Arkansas Highway Revenue Distribution Law".

(2) In addition to the criminal proceedings as set out above, any vehicle including the cargo thereof which has been or is being used in violation of any provision of this Act, or by the means of which any violation of said Act has taken or is taking place may be seized and forfeited, provided that no vehicle shall be forfeited under the provisions of this Act by reason of any act or omission, established by the owner thereof to have been com-

mitted or omitted by any person other than such owner, while such vehicle was unlawfully in possession of a person who acquired possession thereof in violation of the criminal laws of the United States or of any state. A proceeding for the forfeiture of said vehicle shall be filed by the Director in the Circuit Court of Pulaski County, Arkansas, in a civil proceeding. All proceeds from the sale of such vehicle and cargo after payment of expenses connected with the forfeiture proceedings shall be deposited with the State Treasurer as special highway revenues to be disbursed in the same manner and to be used for the same purposes as is set out in the "Arkansas Highway Revenue Distribution Law".

SECTION 10. (A) Each domestic refiner, importer, exporter, "supplier" or "distributor" taking possession of fuels within the State of Arkansas for delivery without the State shall be licensed and bonded by the Motor Fuel Tax Section of the Department of Finance and Administration. Failure to obtain a license as required by the "Motor Fuel Tax Law", as amended, or "Special Motor Fuels Tax Law", as amended, or other pertinent law, shall constitute a violation of said law and any such person shall be subject to the penalties set forth in Section 9 of this Act.

(B) Each domestic refiner, importer, exporter, "supplier" or "distributor" taking possession of fuels within the State shall include the license number of each licensed "distributor" or special fuels "supplier" on each cargo manifest, bill of lading, delivery tickets or other documents; the failure to so include said license number shall constitute a violation of this Act and shall be punishable in accordance with the provisions of Section 9 of this Act.

(C) Persons taking delivery at river ports, as defined in Section 1 of this Act, shall have the responsibility of complying with all the provisions of this Act and are subject to the applicable penalties.

(D) Domestic refiners, importers, exporters, "suppliers" or "distributors" of fuels and other accounts acquiring such fuels from without the State for delivery within the State, shall be licensed pursuant to the laws of this State and subject to all provisions contained in this Act and are subject to the applicable penalties, fines, and forfeitures of vehicle and cargo contents as set out by Section 9 of this Act.

SECTION 11. The Director of Highways and Transportation of the Arkansas State Highway and Transportation Department shall prescribe and promulgate rules and regulations necessary for the proper enforcement of this Act. In any audits conducted by the Arkansas State Highway and Transportation Department relating to the "Motor Fuel Tax Law", as amended, and/or the "Special Motor Fuels Tax Law", as amended, and/or this Act and/or other pertinent laws may call upon the Commissioner of Revenues for assistance.

SECTION 12. Act 224 of 1977, as amended, is hereby repealed. All other laws and parts of laws in conflict with this Act are also hereby repealed.

SECTION 13. It is hereby found and determined by the Seventy-Sixth General Assembly that abuses of the "Motor Fuel Tax Law", as amended, and "Special Motor Fuels Tax Law", as amended, exist which result in substantial loss of revenues to the State; and that this Act is immediately necessary to strengthen the enforcement provisions governing the transportation of fuels. Therefore, an emergency is hereby declared to exist and that this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987.

