

CHAPTER 168.

OIL INSPECTION.

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[168.01 to 168.16 Stats. 1939 repealed by 1941 c. 265, 305]

168.01 Use of terms. (1) Whenever in this chapter the term "supervisor" is used, it means the head of the division of petroleum products in the department of taxation. The terms "deputy inspector", and "inspector" mean the duly authorized inspectors of the division of petroleum products in the department of taxation engaged in the work of the inspection of petroleum products either exclusively or as part of other duties.

(2) The term "petroleum product" shall mean gasoline and kerosene.

(3) The term "person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, public or private, or a receiver, trustee, conservator or other representative appointed by order of any court.

(4) Whenever used in any section of this chapter prescribing and imposing a fine or imprisonment or both, the term "person" as applied to partnerships and associations shall mean and include the partners or members thereof, and as applied to corporations the term "person" shall mean and include the officers, agents or employes thereof who are responsible for any violation of this chapter.

History: 1951 c. 727.

168.02 Oil inspection; duties. It shall be the duty of the commissioner of taxation to enforce and administer the provisions of this chapter through the division of petroleum products, to oversee all deputy inspectors, instruct them in the performance of their duties, see that they faithfully perform the duties of their office, keep a record of their reports to him, and to make a report to the governor on October 1 in each year. The commissioner of taxation shall make rules and regulations for their guidance not inconsistent with the provisions of this chapter. Inspection districts shall be defined and numbered by the commissioner of taxation.

168.03 Deputy inspectors; bonds; duties. (1) The division head and every deputy inspector shall take and file the official oath and execute and file a surety bond in a sum not exceeding \$5,000 nor less than \$500 fixed by the commissioner of taxation, and a certified copy of such bond shall be filed in the office of the secretary of state. The bond of the supervisor and of each deputy shall be approved by the governor. Such bonds to be procured as other official bonds furnished by the state.

(2) He shall on the first day of each month make in writing to the division of petroleum products and to the motor fuel tax division of the state department of taxation a full statement of the number of barrels of all products inspected, for whom inspected, the date and place of such inspection and such other information as the department of taxation may require.

(3) Every deputy inspector shall comply with all instructions issued by the head of the division of petroleum products and furnish to him full information regarding any accident or explosion that may come to his knowledge from the use of illuminating or heating oils, gasoline, benzine, naphtha or other like products of petroleum. It shall be the duty of every inspector who shall know of the violation of any provision of this chapter to notify the district attorney of the county in which the same shall occur and to make complaint before any court of competent jurisdiction, and it shall be the duty of all district attorneys to prosecute within their respective counties all cases of offense arising under this chapter. Any inspector who shall have knowledge of any such violation and fail to enter complaint against the person so offending shall be liable to a fine not exceeding \$50 and shall be removed from his office; and in case the death of any person shall result from the explosion of a lamp or other vessel containing illuminating oil sold, used or furnished for use in violation of any of the provisions of this chapter the person

selling or furnishing said oil for use shall be deemed guilty of manslaughter in the third degree. All illuminating oil manufactured or refined in this state shall be inspected, examined and tested as herein provided before being removed from the premises of the manufacturer or refiner.

168.04 Standards. (1) Gasoline sold in this state shall meet the following specifications:

- (a) An initial boiling point of not more than 131° F.
- (b) Not less than 10 per cent shall be evaporated at 167° F.
- (c) Not less than 50 per cent shall be evaporated at 284° F.
- (d) Not less than 90 per cent shall be evaporated at 392° F.
- (e) The end point shall not exceed 437° F.
- (f) Not less than 95 per cent shall be recovered.
- (g) The natural residue shall not exceed 3 per cent.
- (h) There shall be no gasoline sold within the state to the public which does not conform to the Federal Specifications Board specification for motor gasoline VV-G-101 or the latest revision thereof.

(2) Any petroleum product designated by name or reference "kerosene" shall meet the following specifications:

- (a) The flash point by means of the Tagliabue closed cup shall not be less than 115° F.
- (b) The end point shall be the same as required in federal specifications.
- (c) The color shall not be darker than plus 16 Saybolt.

(3) Any petroleum product meeting the specifications set out in subsection (2) of this section shall, for the purposes of this chapter, be classified as kerosene; provided that if any product meets the flash and end point specifications given above and is darker in color than plus 16 Saybolt because of the addition of artificial coloring or of any other product of a darker color, the color specification provided above automatically becomes ineffective, and the flash and end point specifications become the sole determining factors.

168.05 Inspection of petroleum products. (1) No petroleum product imported into and received in this state or received from a manufacturer or refiner or from a marine or pipeline terminal within this state shall be unloaded from its original container, sold, offered for sale or used until a true sample of not less than 8 ounces is taken therefrom as hereinafter provided; provided, however, that if such petroleum product has been previously inspected at the refinery, marine or pipeline terminal the same may be unloaded, sold, offered for sale or used. Each person so importing or receiving a petroleum product which has not been previously inspected shall notify the deputy inspector in his district of the receipt thereof, and such agent or employe shall take a sample of such petroleum product.

(2) If such petroleum product is received on a regular business day between the hours of 8 o'clock a. m. and 5 o'clock p. m., such notice shall be given forthwith upon receipt of such petroleum product. If received at any time after the hour of 5 o'clock p. m. and prior to the hour of 12 o'clock midnight, such notice shall be given on the next following regular business day between the hours of 7 o'clock a. m. and 9 o'clock a. m. If received at any time on and after 12 o'clock midnight and prior to the hour of 8 o'clock a. m. of a regular business day, such notice shall be given on the same day between the hours of 7 o'clock a. m. and 9 o'clock a. m.; provided, that if such petroleum product is received before the hour of 12 o'clock noon on a regular business day that falls on Saturday, such notice shall be given forthwith upon receipt of such petroleum product. If received after the hour of 12 o'clock noon on such day, such notice shall be given on the next following regular business day between the hours of 7 o'clock a. m. and 9 o'clock a. m. Provided, further, that if any petroleum product is received on Sunday or any legal holiday, under the laws of this state, such notice shall be given on the next following regular business day between the hours of 7 o'clock a. m. and 9 o'clock a. m. Such notice shall set forth such information as the head of the division of petroleum products may reasonably require.

(3) If the deputy inspector does not, upon proper notice, after a reasonable length of time, take such sample, the recipient of such petroleum product may, in the presence of a disinterested witness, unseal such original container and take a true sample of not less than 8 ounces of the contents thereof. Such sample shall be immediately placed in a glass bottle and sealed with seals furnished by the head of the division of petroleum products. The recipient shall record upon such seal the means of conveyance, the type of container, the product name, and quantity of the contents thereof and such other information as the head of the division of petroleum products may reasonably require for the proper identification of such shipment. Such sample thus taken shall be held for delivery,

upon demand, to the deputy inspector. After such sample is thus taken such petroleum product may be unloaded, sold, offered for sale or used the same as if sampled by the deputy inspector.

(4) For the purpose of this section, the following shall constitute a reasonable length of time in which a deputy inspector shall take the sample herein required: If notice is properly given to such deputy inspector before the hour of 12 o'clock noon, he shall take such sample before the hour of 5 o'clock p. m. of the same day; provided, however, that if such notice is properly given before the hour of 12 o'clock noon on a regular business day that falls on Saturday, such sample shall be taken before the hour of 12 o'clock noon of the next following regular business day; if notice is properly given between the hours of 12 o'clock noon and 5 o'clock p. m., such sample shall be taken before the hour of 12 o'clock noon of the next following regular business day. Saturdays after the hour of 12 o'clock noon, Sundays and legal holidays, under the laws of this state, shall not be considered regular business days.

A deputy oil inspector is notified of the receipt of a petroleum product subject to inspection by him only when knowledge thereof is received by him. As a practical matter, such notice almost always must be given personally, either directly or by telephone or messenger. 39 Atty. Gen. 197.

168.06 Powers. (1) For the purposes of administering this chapter, the head of the division of petroleum products and the deputy inspectors are authorized to take samples of gasoline, kerosene, other refined oils, fuel oils and distillates for tests and to make inspections at any points within or without this state, and shall have power to open any original container containing gasoline, kerosene, other refined oils, fuel oils and distillates and take a true sample of not less than 8 ounces of the contents thereof, even though such original containers may still be in the possession of a common or contract carrier, provided such opening and sampling does not unduly inconvenience or hamper the transportation of such products. After such original containers are thus opened and sampled the same shall be resealed with seals furnished by the head of the division of petroleum products for such purposes. The authority conferred by this section shall be in addition to, and not in limitation of any of the provisions of section 168.05.

(2) Inspections made by the deputy inspectors shall be conducted, so far as applicable, in accordance with methods outlined in Federal Standard Stock Catalog, section IV, part 5, federal specification VV-L-791-a, as adopted October 2, 1934, or any changes, modifications or amendments that may be made thereto.

(3) If any uninspected petroleum product is emptied or transferred into any container in which is contained any other grade of inspected petroleum product, then the entire commingling shall be deemed uninspected and a sample of such commingled petroleum product shall be taken before such commingled petroleum product is removed from such container, sold, offered for sale or used.

(4) Notice of such commingling of any inspected petroleum product shall be given in the same manner and subject to the same conditions as notice of the receipts of petroleum product as provided in section 168.05. The sample of such commingled petroleum product shall be taken by the deputy inspector within a reasonable length of time, as defined and set forth in section 168.05, after notice. If such deputy inspector does not take such sample within such time, the commingler shall take a true sample of not less than 8 ounces of the commingled petroleum product. The taking, sealing and holding of such sample by the commingler shall, so far as applicable, be governed by the provisions of section 168.05 relating to the same by a person receiving a petroleum product.

168.07 Inspections; requirements. The deputy inspector shall inspect each sample of gasoline and kerosene and if he finds that they meet the minimum specifications herein provided, he shall issue an inspection certificate after which they may be sold or used in this state. If the deputy inspector finds that the gasoline or kerosene does not meet the minimum specifications herein provided, he shall so notify the person for whom the inspection was made and it shall be unlawful for such person or any other person to sell or use said products in this state as long as they fail to meet the minimum specifications and until they are approved by the deputy inspector.

168.08 Records. The head of the division of petroleum products and the deputy inspectors shall keep a record of each inspection made, showing:

- (1) Time and place of each.
- (2) Number of containers inspected.
- (3) Number of gallons contained therein.
- (4) Amount of fees thereon.
- (5) Product name of petroleum product inspected.

168.09 Inspection of records. Any deputy inspector shall have authority to enter in or upon the premises of any manufacturer, vendor, dealer or user of gasoline, kerosene, other refined oils, fuel oils and distillates, during regular business hours to determine whether any gasoline or kerosene intended for sale or use has not been sampled and inspected in accordance with the provisions of this chapter.

168.10 Access to records. Every agent and employe of any railroad company or other transportation company and every person transporting gasoline, kerosene, other refined oils, fuel oils and distillates, having the custody of books or records showing the shipment or receipt of gasoline, kerosene, or other refined oils, fuel oils and distillates shall give and permit the head of the division of petroleum products and the deputy inspectors free access to such books and records for the purpose of determining the amount of gasoline and kerosene shipped and received. All clerks, bookkeepers, express agents, railroad agents or officials, employes, or common carriers, or other persons shall render the head of the division of petroleum products and the deputy inspectors all information in their possession when so requested in tracing, finding, sampling and inspecting such shipments.

168.11 Identification devices; penalty. (1) All visible containers of gasoline and kerosene and all devices used for drawing such products from underground storage containers at filling stations, garages, or other places where such products are sold or offered for sale shall be marked or labeled in a conspicuous place with the name of such product. All barrels, casks, jugs, packages or cans, in which gasoline, benzine, naphtha and other like products are stored or delivered shall be made only of metal and painted vermilion red and have the word "gasoline," "benzine" and the name of such other like products of petroleum, plainly stenciled in English thereon, or if such gasoline, benzine, naphtha or other like product of petroleum is sold by a dealer for immediate use in a motor vehicle, then delivery shall be from underground containers or tanks by means of a hose, through a measuring device or pump complying with the rules and regulations of the state department of agriculture, direct to the tank of such motor vehicle, and not from buckets or containers. No such dealer shall deliver kerosene in a barrel, cask, jug, package or can painted or stenciled as hereinbefore provided. Every person purchasing gasoline, benzine, naphtha or other like products of petroleum for use or sale shall procure and keep the same only in barrels, casks, jugs, packages or cans painted and stenciled as hereinbefore provided, or if such products are used as fuel for a motor vehicle or motor boat, then in the tanks of such vehicle or boat. No person keeping for use or using kerosene shall put or keep the same in any barrel, cask, jug, packages or can painted or stenciled as hereinbefore provided. Provided, however, that in case of gasoline, benzine and naphtha, or other like product of petroleum, being sold in bottles, cans or packages, or any product that contains gasoline, benzine or naphtha, or other like products of which petroleum is a constituent part thereof; of not more than one quart for cleaning and similar purposes, it shall be deemed sufficient if the contents of such bottles, cans or packages are so designated by a label securely pasted or attached thereto with the words "gasoline," "benzine" or "naphtha," "unsafe when exposed to heat or fire," printed in bright red ink in letters not less than one-fourth inch in size. Any person violating any of the provisions of this section shall be punished by a fine of not less than \$5 nor more than \$50, or by imprisonment in the county jail not to exceed 3 months, or by both such fine and imprisonment.

(2) Tank wagons with separate compartments for gasoline and kerosene shall have a red tag on the faucet from which gasoline is drawn.

(3) It shall be unlawful for any person to receive, unload, use, sell or offer for sale in this state, any gasoline, kerosene, other refined oils, fuel oils and distillates which he knows or reasonably should know, is misnamed upon the accompanying bill of lading or waybill.

168.12 Fees for oil inspection. (1) Every deputy inspector shall demand and receive within 2 weeks after demand, from the owner or other person for whom he shall inspect any gasoline and kerosene, an inspection fee of 1½ cents for each 50 gallons from which the sample was taken. Such fees shall be a lien on the products so inspected, and when collected shall be paid within 2 weeks after receipt into the general fund, and are appropriated therefrom for defraying the expenses incident to such inspection as provided in section 20.056 (2). Within 15 days after the close of each fiscal year, the head of the division of petroleum products shall determine what the cost of inspection has been for the preceding fiscal year, and shall divide that cost by the gallons inspected. If the cost so calculated is less than 1½ cents for each 50 gallons he shall so publicly certify and shall fix the nearest one-half cent above such calculated cost as the fee to be

charged for such inspection fees during the then current fiscal year and for the 30 days next succeeding. He shall publish by one publication in the official state paper a certificate as to the previous cost and the fee so fixed to be charged for such service during the ensuing fiscal year and for 30 days thereafter. From 30 days after the close of the preceding fiscal year until 30 days after the close of the then current fiscal year the said certified fee shall be the fee which each deputy inspector shall demand and collect in lieu of the legal fee heretofore provided and fixed.

(2) If gasoline or kerosene shall be shipped outside of the state after inspection, the person so making such shipments shall be given credit by the deputy inspector for such fees, if notice of such shipment out of the state, properly acknowledged and sworn to before a notary public is given the deputy inspector not later than the 20th day of the following month.

168.13 Required records. Every person receiving gasoline and kerosene in this state shall keep books and records of all gasoline and kerosene so received, together with bills of lading, waybills and other pertinent documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be subject to inspection by the head of the division of petroleum products and deputy inspectors. Such books, records and other papers and documents shall be preserved for not less than 2 years, unless the head of the division of petroleum products, in writing, authorizes their destruction or disposal at an earlier date.

168.14 Rules and regulations. The commissioner of taxation is authorized to make, promulgate and enforce such reasonable rules and regulations relating to the administration and enforcement of the provisions of this chapter as may be deemed necessary.

168.15 Penalty. Every person who violates any provision of this chapter, except section 168.155 (1), shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$5 nor more than \$1,000 or be imprisoned in the county jail not less than 30 days nor more than 6 months.

168.155 Misbranding of lubricating oils and lubricants. (1) Every person dealing in previously used or previously used and reclaimed, re-refined, re-cleaned or reconditioned lubricating oils, lubricants or mixtures of lubricants shall at all times have each and every container or item of equipment in or through which any of such products are sold, kept for sale, displayed or dispensed plainly labeled in lettering as large as any other lettering thereon and in any event in letters of not less than one-half inch in height on containers of one quart or less and of not less than one inch in height on containers larger than one quart, showing that the contents thereof are reclaimed oils. Every person who causes to be published, displayed or circulated any advertising matter offering for sale any previously used or previously used and reclaimed, re-refined, re-cleaned or reconditioned lubricating oils, lubricants or mixtures of lubricants, shall state in such advertising in letters at least as large as any other lettering therein the fact that such products are reclaimed oils. Any person violating any provision of this subsection shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$25 nor more than \$500, or by imprisonment not exceeding 3 months, or by both such fine and imprisonment.

(2) Any person dealing in previously used or previously used and reclaimed, re-refined, re-cleaned or reconditioned lubricating oils, lubricants or mixtures of lubricants without having each and every container or item of equipment in or through which any of such products are sold, kept for sale, displayed or dispensed plainly labeled as required in subsection (1), or advertising any of such products for sale without inserting in such advertising a statement as required in subsection (1) may upon proper hearing be enjoined from selling any of such products or offering, displaying or advertising any of the same for sale. Action for such injunction may be brought in any court having jurisdiction to hear and decide equity cases in the county in which the defendant resides, and may be brought either by the attorney-general or by the district attorney for such county. The authority granted by this subsection shall be in addition to and not in lieu of authority to prosecute criminally any person for a violation of subsection (1). The granting or enforcing of any injunction under the provisions of this subsection is a preventive measure for the protection of the people of this state, not a punitive measure, and the fact that a person has been charged or convicted of a violation of subsection (1) shall not prevent the issuance of a writ of injunction to prevent further unlawful dealing in previously used or previously used and reclaimed, re-refined, re-cleaned or reconditioned lubricating oils, lubricants or mixtures of lubricants, nor shall the fact that a writ of injunction has been granted under the provisions of this subsection preclude the institution of criminal prosecution or punishment.

(3) The commissioner of taxation and the deputy inspectors shall enforce the provisions of this section.

(4) For the purposes of this section the term "person" means any individual, firm, corporation or organization.

168.16 Title. This chapter may be cited as the "Oil Inspection Act."