



2009 ASSEMBLY BILL 742

February 12, 2010 - Introduced by LAW REVISION COMMITTEE. Referred to
Committee on Rules.

1 **AN ACT** *to repeal* 168.18; *to renumber* 168.12 (6) (a), 168.12 (6) (f) and 168.12
2 (6) (g); *to renumber and amend* 168.01 (2), 168.02, 168.03, 168.12 (title),
3 168.12 (1), 168.12 (1g), 168.12 (1r), 168.12 (5), 168.12 (6) (b), 168.12 (6) (c),
4 168.12 (6) (d), 168.12 (6) (e), 168.12 (6) (h), 168.12 (7), 168.12 (8) (a), 168.12 (8)
5 (b), 168.12 (8) (c), 168.12 (8) (d), 168.12 (8) (e), 168.12 (9) and 168.125; *to amend*
6 20.566 (1) (s), 20.855 (4) (r), 25.47 (1), chapter 78 (title), subchapter IV (title) of
7 chapter 78, 98.246 (title), (1) and (2), 101.02 (18m), 168.04 (3), 168.05 (title),
8 168.05 (1), 168.05 (2), 168.05 (3), 168.05 (4), 168.05 (5), 168.06 (1), 168.06 (2),
9 168.06 (3), 168.07 (1), 168.07 (2), 168.08 (intro.), 168.09, 168.10, 168.11 (1) (a),
10 168.11 (1) (b) 3., 168.11 (2) (intro.), 168.11 (2) (a), 168.11 (2) (b), 168.11 (2) (c),
11 168.11 (2) (d), 168.11 (3), 168.11 (4), 168.13, 168.14 (2), 168.14 (2m) (b) 3., 168.14
12 (2m) (c) 3., 168.15, 168.16 (2), 168.16 (3), 168.17, 227.01 (13) (zd), 341.45 (1g)
13 (a), 341.45 (2), 341.45 (4m) and 341.45 (5); *to repeal and recreate* 168.14
14 (title); and *to create* subchapter V of chapter 78 [precedes 78.90], 78.90, 78.93,

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- 1 78.94 and 168.05 (6) of the statutes; **relating to:** fuel products fees and
2 inspection (suggested as remedial legislation by the Department of Commerce).
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Analysis by the Legislative Reference Bureau

Under current law, the Department of Commerce (Commerce) prescribes standards for gasoline and similar fuels and administers laws regulating the inspection and sale of those fuels and other petroleum products. Current law also requires certain suppliers who receive petroleum products for sale in this state to pay a petroleum inspection fee. The Department of Revenue (DOR) administers the laws that relate to this fee. This bill reorganizes the statutes so that the petroleum inspection fee statutes are placed with other statutes that relate to vehicle fuel taxes and that are also administered by DOR. The bill also does the following:

1. Changes the term “petroleum products” to “fuel products” to more accurately describe the products covered under the laws administered by Commerce and DOR.

2. Clarifies that with regard to requirements for fuel product inspection, an inspector is not required to take a sample of every fuel product that is received in this state, and that the inspector may discard the sample seven or more days after taking the sample.

3. Authorizes Commerce to determine what constitutes a reasonable length of time in which an inspector may take a sample of a fuel product rather than requiring that the sample be taken during a specified time as required under current law.

4. Eliminates a requirement that a recipient of fuel products submit an application to Commerce if the recipient wants to unload the fuel products before inspection.

5. Clarifies that the requirements for inspection of fuel products do not apply to fuel products that are used in this state but that are not sold or offered for sale in this state.

6. Authorizes, rather than requires as under current law, an inspector to inspect fuel product samples to determine whether the samples meet minimum specifications prescribed by Commerce and eliminates the requirement that the inspector issue an inspection certificate.

7. Authorizes an inspector to enter the premises of a distributor of fuel products. Under current law, an inspector may enter only the premises of a manufacturer, vendor, dealer, or user of fuel products.

8. Requires that fuel product dispensing devices be marked or labeled in a conspicuous place with the octane rating, if any, of the fuel product being dispensed. Current law requires these devices to be marked only with the name and grade of the fuel product being dispensed.

9. Revises the testing method for determining the flash point of certain fuel products.

10. Establishes flash point and flammability standards for fuel products that are delivered, placed, or stored in a portable container and that are used in turbine

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1 unless the department, and the department of commerce under s. 168.13, in writing,
2 authorize their destruction or disposal at an earlier date.

3 **SECTION 9.** 78.94 of the statutes is created to read:

4 **78.94 Access to records.** Every agent or employee of any railroad company
5 or other transportation company and every person transporting fuel products having
6 the custody of books or records showing the shipment or receipt of fuel products shall
7 give and permit the department free access to such books and records for the purpose
8 of determining the amount of fuel products shipped and received. All clerks,
9 bookkeepers, express agents, railroad agents or officials, employees, or common
10 carriers, or other persons shall provide all information in their possession when so
11 requested in tracing and finding such shipments.

12 **SECTION 10.** 98.246 (title), (1) and (2) of the statutes are amended to read:

13 **98.246 (title) Petroleum Fuel product sales.** (1) In this section, "petroleum
14 fuel products" has the meaning given under s. ~~168.03~~ 168.01 (3).

15 (2) ~~Petroleum~~ Fuel products may not be sold from a terminal or storage facility
16 in this state on any basis other than gross volume without correction for
17 temperature.

18 **SECTION 11.** 101.02 (18m) of the statutes is amended to read:

19 101.02 (18m) The department may perform, or contract for the performance
20 of, testing of ~~petroleum~~ fuel products other than testing provided under ch. 168. The
21 department may establish a schedule of fees for such ~~petroleum~~ fuel product testing
22 services. The department shall credit all revenues received from fees established
23 under this subsection to the appropriation account under s. 20.143 (3) (ga). Revenues
24 from fees established under this subsection may be used by the department to pay

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1 for testing costs, including laboratory supplies and equipment amortization, for such
2 products.

3 **SECTION 12.** 168.01 (2) of the statutes is renumbered 78.90 (3) and amended
4 to read:

5 78.90 (3) “Supplier” includes a person who imports, or acquires immediately
6 upon import, ~~petroleum~~ fuel products by pipeline or marine vessel from a state,
7 territory, or possession of the United States or from a foreign country into a terminal
8 and who is registered under 26 USC 4101 for tax-free transactions in gasoline.
9 “Supplier” also includes a person who produces in this state; or imports into a
10 terminal or bulk plant; or acquires immediately upon import by truck, railcar, or
11 barge into a terminal; alcohol or alcohol derivative products. “Supplier” also includes
12 a person who produces, manufactures or refines ~~petroleum~~ fuel products in this
13 state. “Supplier” also includes a person who acquires ~~petroleum~~ fuel products
14 pursuant to an industry terminal exchange agreement or by a 2-party exchange
15 under section 4105 of the Internal Revenue Code. “Supplier” does not include a retail
16 dealer or wholesaler who merely blends alcohol with gasoline before the sale or
17 distribution of the product and does not include a terminal operator who merely
18 handles in a terminal ~~petroleum~~ fuel products consigned to the terminal operator.

19 **SECTION 13.** 168.02 of the statutes is renumbered 168.01 (4) and amended to
20 read:

21 168.01 (4) ~~INSPECTOR DEFINED.~~ “Inspector” means a duly authorized ~~petroleum~~
22 fuel products inspector of the department.

23 **SECTION 14.** 168.03 of the statutes is renumbered 168.01 (3) and amended to
24 read:

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1 168.01 (3) ~~PETROLEUM PRODUCTS DEFINED.~~ “Petroleum Fuel products” means
2 gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil, and diesel fuel.

NOTE: Substitutes the term “fuel products” for “petroleum products” to better describe the products covered under applicable laws administered by the Department of Commerce and the Department of Revenue.

3 **SECTION 15.** 168.04 (3) of the statutes is amended to read:

4 168.04 (3) Except as otherwise provided in this section, rules promulgated
5 under this section shall be in conformity with nationally recognized standards,
6 specifications, and classifications, such as those published by the American Society
7 ~~for Testing and Materials~~ ASTM International, the Society of Automotive Engineers,
8 and the U.S. Environmental Protection Agency. The department may not
9 promulgate or enforce a rule prohibiting the placement of additional product
10 information on the dispensing device.

11 **SECTION 16.** 168.05 (title) of the statutes is amended to read:

12 **168.05 (title) Inspection of petroleum fuel products.**

13 **SECTION 17.** 168.05 (1) of the statutes is amended to read:

14 168.05 (1) No ~~petroleum~~ fuel product imported into and received in this state
15 or received from a manufacturer or refiner or from a marine or pipeline terminal
16 within this state may be unloaded from its original container except as provided
17 under sub. (5), sold, offered for sale, or used until a true sample of not less than 8
18 ounces is taken as provided in this chapter. This subsection does not apply if the
19 department has previously inspected the ~~petroleum~~ fuel product at the refinery,
20 marine or pipeline terminal. Each person importing or receiving a ~~petroleum~~ fuel
21 product ~~which~~ that has not been previously inspected shall notify the inspector in the
22 person’s district of the receipt thereof, ~~and the inspector shall take a sample of the~~
23 ~~petroleum product.~~

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NOTE: Clarifies that an inspector is not required to take a sample of every fuel product that is received in this state.

1 **SECTION 18.** 168.05 (2) of the statutes is amended to read:

2 168.05 (2) If such ~~petroleum~~ fuel product is received on a regular business day
3 between the hours of 7:45 a.m. and 4:30 p.m., such notice shall be given ~~forthwith~~
4 upon receipt of such ~~petroleum~~ fuel product. If received at any other time, such notice
5 shall be given between the next succeeding hours of 7:45 a.m. and 10 a.m. of a regular
6 business day. ~~Provided, except that,~~ if any ~~petroleum~~ fuel product is received on
7 Saturday, Sunday, or any legal holiday, designated in s. 995.20, such notice shall be
8 given on the next following regular business day between the hours of 7:45 a.m. and
9 10 a.m.

10 **SECTION 19.** 168.05 (3) of the statutes is amended to read:

11 168.05 (3) If the inspector does not, upon proper notice, after a reasonable
12 length of time, take such sample, the recipient of such ~~petroleum~~ fuel product may,
13 in the presence of a disinterested witness, open ~~such~~ the original container and take
14 a true sample of not less than 8 ounces of the contents ~~thereof.~~ Such of the original
15 container. The sample shall be immediately placed in a clean container ~~which that~~
16 is in compliance with s. 168.11 (2) and (3) and tightly closed. The recipient shall
17 record upon a label attached to ~~such~~ the container the means of conveyance, the type
18 of original container, the product name and quantity of the contents ~~thereof~~ of the
19 container, and such other information as the department reasonably requires for the
20 proper identification of ~~such~~ the shipment. ~~Such~~ The sample ~~thus taken~~ shall be held
21 for delivery, upon demand, to the inspector. After ~~such~~ the sample is taken ~~such~~
22 ~~petroleum~~ the fuel product may be unloaded, sold, offered for sale, or used the same

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1 as if sampled by the inspector. The inspector or the recipient may discard the sample
2 7 or more business days after the day on which the sample was taken.

NOTE: Clarifies that an inspector or a recipient may discard a fuel product sample
7 or more business days after the day on which the sample was taken.

3 **SECTION 20.** 168.05 (4) of the statutes is amended to read:

4 168.05 (4) For the purpose of this section, the following department shall
5 constitute determine what constitutes a reasonable length of time in which an
6 inspector shall may take the a sample herein required: ~~If notice is properly given to~~
7 ~~an inspector before the hour of 11:45 a.m., the inspector shall take such sample before~~
8 ~~the hour of 4:30 p.m. of the day; if notice is properly given between the hours of 11:45~~
9 ~~a.m. and 4:30 p.m., such sample shall be taken before the hour of 11:45 a.m. of the~~
10 ~~next following regular business day. Saturdays, Sundays, and legal holidays,~~
11 ~~designated in s. 995.20, shall not be considered regular business days.~~

NOTE: Authorizes the Department of Commerce to determine what constitutes a
reasonable length of time in which an inspector may take a fuel product sample,
eliminating the current requirement that a sample be taken during a specified time.

12 **SECTION 21.** 168.05 (5) of the statutes is amended to read:

13 168.05 (5) The department may permit a recipient to unload ~~such petroleum~~
14 ~~the fuel~~ product prior to inspection if the recipient ~~submits an application setting~~
15 ~~forth good and sufficient reasons, and~~ complies with requirements of sub. (3). ~~The~~
16 recipient may unload ships or boats without inspection if an emergency is declared
17 by the U.S. coast guard. A recipient must notify the department as required by sub.
18 (2) and the department shall revoke permission granted under this subsection if the
19 recipient violates sub. (2).

NOTE: Eliminates the requirement that a recipient of fuel products submit an
application to the Department of Commerce if the recipient wants to unload fuel products
before inspection.

20 **SECTION 22.** 168.05 (6) of the statutes is created to read:

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1 168.05 (6) This section does not apply to fuel products that are used in this state
2 but that are not sold or offered for sale in this state.

NOTE: Clarifies that the fuel products inspection requirements do not apply to fuel products that are used in this state but that are not sold or offered for sale in this state.

3 **SECTION 23.** 168.06 (1) of the statutes is amended to read:

4 168.06 (1) For the purposes of administering this chapter, inspectors may take
5 samples of ~~gasoline~~ ~~gasoline-alcohol fuel blends~~, ~~kerosene~~, ~~other refined oils~~, fuel
6 oils and ~~petroleum distillates~~ products for tests and make inspections at any points
7 within or without this state, and may open any original container containing
8 ~~gasoline~~, ~~gasoline-alcohol fuel blends~~, ~~kerosene~~, ~~other refined oils~~, ~~fuel oils~~ and
9 ~~petroleum distillates~~ products and take a true sample of not less than 8 ounces of the
10 contents thereof, even though the original containers may still be in the possession
11 of a common or contract carrier, provided the opening and sampling does not unduly
12 inconvenience or hamper the transportation of the fuel products. After the original
13 containers are opened and sampled ~~the same~~, the inspector shall be resealed reseal
14 the containers with seals furnished by the department for such purposes. The
15 authority conferred by this section shall be in addition to, and not in limitation of,
16 any of the provisions of s. 168.05.

17 **SECTION 24.** 168.06 (2) of the statutes is amended to read:

18 168.06 (2) If any ~~petroleum~~ fuel product is emptied or transferred into any
19 container ~~in which is contained~~ containing any other grade of ~~petroleum~~ fuel product,
20 then the entire commingling shall be ~~deemed~~ considered uninspected and a sample
21 of such ~~the commingled petroleum product~~ fuel products shall be taken before such
22 ~~the commingled petroleum product is~~ fuel products are removed from such ~~the~~
23 container, sold, offered for sale, or used.

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1 **SECTION 25.** 168.06 (3) of the statutes is amended to read:

2 168.06 (3) Notice of ~~such~~ the commingling of any ~~petroleum~~ fuel products shall
3 be given in the same manner and subject to the same conditions as notice of the
4 receipts of ~~petroleum~~ fuel products as provided in s. 168.05. The sample of ~~such~~ the
5 commingled ~~petroleum~~ fuel products shall be taken by the inspector within a
6 reasonable length of time, as ~~defined and set forth~~ provided in s. 168.05, after notice.
7 If ~~such~~ the inspector does not take ~~such~~ the sample within ~~such~~ that time, the
8 commingler shall take a true sample of not less than 8 ounces of the commingled
9 ~~petroleum~~ fuel products. The taking, sealing, and holding of ~~such~~ the sample by the
10 commingler shall, so far as applicable, be governed by the provisions of s. 168.05
11 relating to ~~the same~~ by a person receiving a ~~petroleum~~ fuel product.

12 **SECTION 26.** 168.07 (1) of the statutes is amended to read:

13 168.07 (1) The inspector shall ~~may~~ inspect ~~each sample~~ samples of ~~petroleum~~
14 ~~product and if the inspector finds that it meets~~ fuel products to determine whether
15 the samples meet the minimum specifications prescribed by the department, ~~the~~
16 ~~inspector shall issue an inspection certificate, except that inspections for particular~~
17 ~~grade specifications shall be at the discretion of.~~ The inspector shall determine
18 whether the samples meet grade specifications after the department tests the
19 samples. If an inspector believes that a fuel product has been misidentified, an
20 inspection shall be performed. If the inspector finds that the ~~petroleum~~ fuel product
21 does not meet the minimum specifications prescribed by the department, the
22 inspector shall notify the person for whom the inspection was made. After such
23 notice, no person may sell or use the fuel product in this state or remove it from
24 storage as long as it fails to meet the minimum specifications prescribed by the
25 department or until satisfactory disposition is approved by the inspector. Any

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1 transporter, wholesaler, or distributor of ~~petroleum~~ fuel products who delivers or
2 causes to be delivered a ~~petroleum~~ fuel product that fails to meet the minimum
3 specifications prescribed by the department shall, at the direction of the department,
4 remove the ~~petroleum~~ fuel product and dispose of it in a manner approved by the
5 department. The department may contract for the performance of testing conducted
6 under this subsection.

NOTE: Authorizes, rather than requires, an inspector to inspect fuel products to determine whether the samples meet minimum Department of Commerce specifications and eliminates the requirement that an inspector issue an inspection certificate.

7 **SECTION 27.** 168.07 (2) of the statutes is amended to read:

8 168.07 (2) Inspections under sub. (1) shall be conducted, so far as applicable,
9 in accordance with the methods outlined in the latest ~~revision of the ASTM~~
10 International Annual Book of Standards of the American Society for Testing and
11 Materials.

12 **SECTION 28.** 168.08 (intro.) of the statutes is amended to read:

13 **168.08 Records.** (intro.) The department shall keep a record of each
14 inspection made, showing all of the following:

15 **SECTION 29.** 168.09 of the statutes is amended to read:

16 **168.09 Authority to enter.** Any inspector may enter in or upon the premises
17 of any manufacturer, distributor, vendor, dealer, or user of ~~gasoline, gasoline-alcohol~~
18 ~~fuel blends, kerosene, other refined oils, fuel oils and petroleum distillates,~~ fuel
19 products during regular business hours to determine whether any ~~petroleum~~ fuel
20 product intended for sale or use has not been sampled and inspected in accordance
21 with this chapter.

NOTE: Authorizes an inspector to enter the premises of a “distributor” of fuel products, in addition to a manufacturer, vendor, dealer, or user of fuel products.

22 **SECTION 30.** 168.10 of the statutes is amended to read:

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1 **168.10 Access to records.** Every agent or employee of any railroad company
2 or other transportation company and every person transporting gasoline,
3 gasoline-alcohol fuel blends, kerosene, other refined oils, fuel oils and petroleum
4 distillates fuel products, having the custody of books or records showing the
5 shipment or receipt of gasoline, gasoline-alcohol fuel blends, kerosene, or other
6 refined oils, fuel oils and petroleum distillates fuel products, shall give and permit
7 the department and the inspectors; and, in regard to the fee under s. 168.12 (1), shall
8 give and permit the department of revenue; an inspector free access to such books
9 and records for the purpose of determining the amount of petroleum fuel products
10 shipped and received. All clerks, bookkeepers, express agents, railroad agents or
11 officials, employees, or common carriers, or other persons shall provide the
12 department and the inspectors; and, in regard to the fee under s. 168.12 (1), shall
13 provide the department of revenue; all information in their possession when so
14 requested in tracing, finding, sampling, and inspecting such shipments.

15 **SECTION 31.** 168.11 (1) (a) of the statutes is amended to read:

16 168.11 (1) (a) Except as provided in par. (b), all devices used to draw petroleum
17 fuel products from storage containers at filling stations motor fuel dispensing
18 facilities, garages, or other places where petroleum fuel products are sold or offered
19 for sale shall be marked or labeled in a conspicuous place and in a conspicuous
20 manner with the name and the grades grade, and octane rating if any, of the
21 petroleum fuel product being dispensed.

NOTE: Requires the octane reading of a fuel product to be marked or labeled in a
conspicuous place, in addition to the name and grade of the fuel product.

22 **SECTION 32.** 168.11 (1) (b) 3. of the statutes is amended to read:

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1 168.11 (1) (b) 3. A label under this paragraph shall be on ~~the front or side~~ each
2 face of the upper half of the dispensing device and shall be conspicuous and legible
3 to a customer when viewed from the driver's seat of a motor vehicle that is located
4 within 6 feet of the dispensing device. The device may also be marked or labeled with
5 any product grade specifications prescribed under s. 168.04.

6 **SECTION 33.** 168.11 (2) (intro.) of the statutes is amended to read:

7 168.11 (2) (intro.) No person may deliver, place, receive, or store in any ~~visible~~
8 portable container any ~~gasoline; any fuel~~ product of ~~petroleum~~, regardless of name,
9 meeting the gasoline specifications prescribed by the department under s. 168.04; or
10 any fuel product of ~~petroleum~~ commonly or commercially used as a fuel in a
11 spark-ignition internal combustion engine or turbine engine or as a fuel for any
12 appliance or device if ~~such~~ the fuel product of ~~petroleum~~ has a flash point of less than
13 100° F. 100 degrees Fahrenheit when tested in the Tagliabue using either an ASTM
14 D 6450 or ASTM D 56 closed cup tester, unless the container is constructed of sound
15 metal or of equally sound nonflammable material meeting the requirements of rules
16 promulgated by the department's ~~flammable and combustible liquids code~~
17 department; is substantially a bright red color; and has the common name of the
18 ~~product contents~~ clearly labeled or painted on it. These requirements do not apply
19 to any of the following:

 NOTE: Revises the testing method for determining the flash point of a fuel product.
See also SECTIONS 38 and 39 of the bill.

20 **SECTION 34.** 168.11 (2) (a) of the statutes is amended to read:

21 168.11 (2) (a) The fuel supply tank permanently connected to an internal
22 combustion engine; or turbine engine.

23 **SECTION 35.** 168.11 (2) (b) of the statutes is amended to read:

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1 168.11 (2) (b) The fuel supply tank ~~which~~ that is structurally a part of any
2 appliance or device consuming the fuel;

3 **SECTION 36.** 168.11 (2) (c) of the statutes is amended to read:

4 168.11 (2) (c) The first use of any container of one gallon or less originally filled
5 by a manufacturer or packager when the container complies with the packaging and
6 labeling requirements of the federal government and its agencies; ~~or.~~

7 **SECTION 37.** 168.11 (2) (d) of the statutes is amended to read:

8 168.11 (2) (d) ~~Containers~~ Stationary tanks of ~~275~~ 110 gallons capacity or more.
9 This ~~provision~~ paragraph does not exempt such ~~containers~~ tanks from the
10 identification requirements specified in rules promulgated by the department.

NOTE: For consistency with federal guidelines, revises the exemptions for delivering, placing, or storing fuel products in containers. The bill exempts tanks of 110 gallons or greater capacity; current law exempts containers of 275 gallons or greater capacity.

11 **SECTION 38.** 168.11 (3) of the statutes is amended to read:

12 168.11 (3) Except for containers referred to in sub. (2) (a), (b), and (c), no person
13 may deliver, place, receive, or store any ~~kerosene, diesel fuel or burner oil, or a like~~
14 fuel product of petroleum ~~which that~~ has a flash point of ~~100° F.~~ 100 degrees
15 Fahrenheit or more when tested in the Tagliabue using either an ASTM D 6450 or
16 ASTM D 56 closed cup tester, in any ~~visible~~ portable container ~~which that~~ is in any
17 manner colored red.

18 **SECTION 39.** 168.11 (4) of the statutes is amended to read:

19 168.11 (4) No person may use interchangeably any pipeline, hose, pump, or
20 metering device to dispense ~~gasoline, or a like~~ fuel product of petroleum ~~which that~~
21 has a flash point of less than ~~100° F.~~ 100 degrees Fahrenheit when tested in the
22 Tagliabue using either an ASTM D 6450 or ASTM D 56 closed cup tester, and to
23 dispense ~~kerosene, diesel fuel or burner fuel oils, or a like~~ fuel product of petroleum

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1 ~~which~~ that has a flash point of ~~100° F.~~ 100 degrees Fahrenheit or more when tested
2 ~~in the Tagliabue~~ using either an ASTM D 6450 or ASTM D 56 closed cup tester, unless
3 the pipeline, hose, pump, or metering device has been sufficiently flushed and
4 cleaned before the interchanged use to eliminate any contamination of products due
5 to the interchanged use.

6 **SECTION 40.** 168.12 (title) of the statutes is renumbered 78.91 (title) and
7 amended to read:

8 **78.91 (title) Fees for oil fuel product inspection.**

9 **SECTION 41.** 168.12 (1) of the statutes is renumbered 78.91 (1) and amended
10 to read:

11 78.91 (1) Except as provided in subs. ~~(1g)~~ (2) and ~~(1r)~~ (3), there is imposed a
12 ~~petroleum~~ fuel product inspection fee at the rate of 2 cents per gallon on all ~~petroleum~~
13 fuel products that are received by a supplier for sale in this state or for sale for export
14 to this state. The department of revenue shall determine when a ~~petroleum~~ fuel
15 product is received under this subsection in the same manner that it determines
16 under s. 78.07 when motor vehicle fuel is received. The fee shall be paid under s.
17 ~~168.125~~ 78.92 and shall be based on the number of gallons reported under s. ~~168.125~~
18 78.92.

19 **SECTION 42.** 168.12 (1g) of the statutes is renumbered 78.91 (2) and amended
20 to read:

21 78.91 (2) The fee under sub. (1) is not imposed on ~~petroleum~~ fuel products that
22 are shipped from storage at a refinery, marine terminal, pipeline terminal, pipeline
23 tank farm, or place of manufacture to a person for storage at another refinery, marine
24 terminal, pipeline terminal, pipeline tank farm, or place of manufacture.

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1 **SECTION 43.** 168.12 (1r) of the statutes is renumbered 78.91 (3) and amended
2 to read:

3 78.91 (3) The fee under sub. (1) is not imposed on ~~petroleum~~ fuel products
4 exported from this state by a person who is licensed under sub. ~~(7)~~ (6) or s. 78.09.

5 **SECTION 44.** 168.12 (5) of the statutes is renumbered 78.91 (4) and amended
6 to read:

7 78.91 (4) No fee may be charged on a commingled or blended ~~petroleum~~ fuel
8 product when such commingling or blending is approved by the ~~inspector~~
9 department of commerce as a satisfactory means of disposing of contaminated or
10 substandard products.

11 **SECTION 45.** 168.12 (6) (a) of the statutes is renumbered 78.91 (5) (a).

12 **SECTION 46.** 168.12 (6) (b) of the statutes is renumbered 78.91 (5) (b) and
13 amended to read:

14 78.91 (5) (b) To receive an allowance, an eligible purchaser under par. (a) shall
15 complete a claim upon a form that the department of ~~revenue~~ prescribes and
16 furnishes and file the claim with the department of ~~revenue~~ not later than 12 months
17 after the date of purchase of the general aviation fuel.

18 **SECTION 47.** 168.12 (6) (c) of the statutes is renumbered 78.91 (5) (c) and
19 amended to read:

20 78.91 (5) (c) The department of ~~revenue~~ shall investigate the correctness and
21 veracity of the representations in the claim and may require a claimant to submit
22 records to substantiate the claim. The department of ~~revenue~~ shall either allow or
23 deny a claim under this subsection not later than 60 days after the filing of the claim.
24 If the department of ~~revenue~~ allows the claim, it shall pay the claimant the amount
25 allowed from the moneys appropriated under s. 20.855 (4) (r). If the department of

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1 revenue does not pay the allowance by the 90th day after the date on which the
2 purchaser files the claim, the department of revenue shall also pay interest on the
3 unpaid claim beginning on that day, at the rate of 9% per year, from the moneys
4 appropriated under s. 20.855 (4) (r).

5 **SECTION 48.** 168.12 (6) (d) of the statutes is renumbered 78.91 (5) (d) and
6 amended to read:

7 78.91 (5) (d) If a purchaser negligently files a claim under this subsection that
8 is inaccurate in whole or in part, the department of revenue shall do one of the
9 following:

10 1. If the department of revenue has not paid the claim but has allowed a portion
11 of the claim, reduce the allowance by 25%.

12 2. If the department of revenue has paid the claim, require the purchaser to
13 refund to the department of revenue that portion of the amount paid under par. (c)
14 to which the purchaser is not entitled and impose a penalty on the purchaser equal
15 to 25% of the allowance, plus interest on the sum of the unpaid penalty and the
16 amount required to be refunded, accruing from the date that the penalty is imposed,
17 at the rate of 12% per year.

18 **SECTION 49.** 168.12 (6) (e) of the statutes is renumbered 78.91 (5) (e) and
19 amended to read:

20 78.91 (5) (e) If a purchaser files a fraudulent claim under this subsection, the
21 department of revenue shall do one of the following:

22 1. If the claim has not been paid and the department of revenue allows no
23 portion of the claim, impose a penalty on the purchaser equal to 50% of the amount
24 claimed by the purchaser, plus interest on the unpaid penalty, accruing from the date
25 that the penalty is imposed, at the rate of 12% per year.

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1 2. If the claim has not been paid and the department of revenue allows a portion
2 of the claim, reduce the allowance by 50%.

3 3. If the claim has been paid, require the purchaser to refund to the department
4 of revenue that portion of the amount paid under par. (c) that the department of
5 revenue determines was fraudulently obtained and impose a penalty on the
6 purchaser equal to 50% of the amount claimed by the purchaser, plus interest on the
7 sum of the unpaid penalty and the amount required to be refunded, accruing from
8 the date that the penalty is imposed, at the rate of 12% per year.

9 **SECTION 50.** 168.12 (6) (f) of the statutes is renumbered 78.91 (5) (f).

10 **SECTION 51.** 168.12 (6) (g) of the statutes is renumbered 78.91 (5) (g).

11 **SECTION 52.** 168.12 (6) (h) of the statutes is renumbered 78.91 (5) (h) and
12 amended to read:

13 78.91 (5) (h) With respect to imposing a penalty and requiring a refund under
14 par. (d), the department of revenue shall give notice to the purchaser within 4 years
15 after the date that the claim was filed. The department of revenue may impose a
16 penalty and require a refund under par. (e) when the department of revenue
17 discovers the fraud committed.

18 **SECTION 53.** 168.12 (7) of the statutes is renumbered 78.91 (6) and amended
19 to read:

20 78.91 (6) No person may ship ~~petroleum~~ fuel products into this state unless
21 that person has a valid certificate under s. 73.03 (50) and either has a license under
22 s. 78.09 or obtains a ~~petroleum~~ fuel products shipper license from the department of
23 revenue by filing with ~~that~~ the department an application prescribed and furnished
24 by ~~that~~ the department and verified by the owner of the business if the owner is an
25 individual, by a member if the owner is an unincorporated association, by a partner

ASSEMBLY BILL 742**SECTION 53**

1 if the owner is a partnership, or by the president and secretary if the owner is a
2 corporation.

3 **SECTION 54.** 168.12 (8) (a) of the statutes is renumbered 78.91 (7) (a) and
4 amended to read:

5 78.91 (7) (a) To protect the revenues of this state, the department of revenue
6 may require any person who is liable to ~~that~~ the department for the fee under sub.
7 (1) to place with it security in the amount that ~~that~~ the department determines. The
8 department of revenue may increase or decrease the amount of the security, but that
9 amount may not exceed 3 times the person's average monthly liability for the fee
10 under sub. (1) as estimated by ~~that~~ the department. If any person fails to provide that
11 security, the department of revenue may refuse to issue a license under sub. (7) (6)
12 or s. 78.09 or may revoke the person's license under sub. (7) (6) or s. 78.09. If any
13 taxpayer is delinquent in the payment of the fee under sub. (1), the department of
14 revenue may, upon 10 days' notice, recover the fee, interest, penalties, costs, and
15 disbursements from the person's security. The department of revenue may not pay
16 interest on any security deposit.

17 **SECTION 55.** 168.12 (8) (b) of the statutes is renumbered 78.91 (7) (b) and
18 amended to read:

19 78.91 (7) (b) The security required under par. (a) may be a surety bond
20 furnished to the department of revenue and payable to this state. The department
21 of revenue shall prescribe the form and contents of the bond.

22 **SECTION 56.** 168.12 (8) (c) of the statutes is renumbered 78.91 (7) (c) and
23 amended to read:

24 78.91 (7) (c) The surety of a bond under par. (b) may conditionally cancel the
25 bond by filing written notice with the person who is liable for the fee under sub. (1)

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1 and with the department of revenue. A surety who files that notice is not discharged
2 from any liability that has accrued or from any liability that accrues within 60 days
3 after the filing. If the person who is liable for the fee under sub. (1) does not, within
4 60 days after receiving the notice, file with the department of revenue a new bond
5 that is satisfactory to ~~that~~ the department, ~~that~~ the department shall revoke the
6 person's license under sub. ~~(7)~~ (6) or s. 78.09. If the person furnishes a new bond, the
7 department of revenue shall cancel and surrender the old bond when it is satisfied
8 that all liability under the old bond has been discharged.

9 **SECTION 57.** 168.12 (8) (d) of the statutes is renumbered 78.91 (7) (d) and
10 amended to read:

11 78.91 **(7)** (d) If the liability on the bond is discharged or reduced or if the
12 department of revenue determines that the bond is insufficient, ~~that~~ the department
13 shall require additional surety or new bonds. If any person who is liable for the fee
14 under sub. (1) fails to file that additional bond within 5 days after the department
15 of revenue provides written notice, that person's license under sub. ~~(7)~~ (6) or s. 78.09
16 is revoked.

17 **SECTION 58.** 168.12 (8) (e) of the statutes is renumbered 78.91 (7) (e) and
18 amended to read:

19 78.91 **(7)** (e) Suspension, revocation, or cancellation of a license under sub. ~~(7)~~
20 (6) or s. 78.09, partial recovery on the bond or execution of a new bond does not affect
21 the validity of a bond under this subsection.

22 **SECTION 59.** 168.12 (9) of the statutes is renumbered 78.91 (8) and amended
23 to read:

24 78.91 **(8)** Sections 78.65 to 78.74 and 78.79 to 78.81 as they apply to the taxes
25 under ~~ch. 78~~ this chapter apply to the fee under sub. (1).

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1 **SECTION 60.** 168.125 of the statutes is renumbered 78.92 and amended to read:

2 **78.92 Reports; payment.** Persons who are liable for the fee under this
3 ~~chapter~~ subchapter shall state the number of gallons of ~~petroleum~~ fuel products on
4 which the fee is due and the amount of their liability for the fee in the reports under
5 s. 78.12 (1) to (3). The requirements for payment of the motor vehicle fuel tax under
6 s. 78.12 (5) apply to the fee under this ~~chapter~~ subchapter.

7 **SECTION 61.** 168.13 of the statutes is amended to read:

8 **168.13 Required records.** Every person receiving ~~petroleum~~ fuel products
9 in this state shall keep books and records of all ~~petroleum~~ fuel products so received,
10 together with bills of lading, waybills, and other pertinent documents. Such books
11 and records and other papers and documents shall, at all times during business
12 hours of the day, be subject to inspection by ~~the department and its inspectors, and~~
13 ~~are subject to inspection by the department of revenue in regard to the fee under s.~~
14 ~~168.12 (1) an inspector.~~ Such books, records and other papers and documents shall
15 be preserved for not less than 4 years, unless the department, and the department
16 of revenue under s. 78.93, in writing, ~~authorizes~~ authorize their destruction or
17 disposal at an earlier date.

18 **SECTION 62.** 168.14 (title) of the statutes is repealed and recreated to read:

19 **168.14 (title) Mislabeling.**

20 **SECTION 63.** 168.14 (2) of the statutes is amended to read:

21 168.14 (2) No person may receive, unload, use, sell, or offer for sale in this state,
22 any ~~gasoline, gasoline-alcohol fuel blends, kerosene, fuel oils, diesel fuels or other~~
23 ~~petroleum distillates which~~ product that the person knows, or reasonably should
24 know, is misidentified as to name or grade. Gasoline-ethanol blends that are
25 identified in compliance with s. 168.11 when sold at retail are correctly identified as

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1 to name. Biodiesel blends that are identified in compliance with sub. (2m) (c) 4. when
2 sold at retail are correctly identified as to name.

3 **SECTION 64.** 168.14 (2m) (b) 3. of the statutes is amended to read:

4 168.14 (2m) (b) 3. The fuel meets all of the applicable requirements of the
5 ~~American Society for Testing and Materials~~ ASTM International.

6 **SECTION 65.** 168.14 (2m) (c) 3. of the statutes is amended to read:

7 168.14 (2m) (c) 3. The fuel meets all of the applicable requirements of the
8 ~~American Society for Testing and Materials~~ ASTM International.

9 **SECTION 66.** 168.15 of the statutes is amended to read:

10 **168.15 Penalty.** Every person who violates any provision of this chapter ~~that~~
11 ~~is not related to the fee under s. 168.12 (1)~~ shall forfeit not less than \$10 nor more
12 than \$100 for each violation. Each day a person fails to comply with any provision
13 of this chapter is a separate violation.

14 **SECTION 67.** 168.16 (2) of the statutes is amended to read:

15 168.16 (2) Any accident or explosion involving fuel products of petroleum which
16 that comes to the knowledge of the department shall be investigated to determine
17 whether or not there has been a violation of this chapter.

18 **SECTION 68.** 168.16 (3) of the statutes is amended to read:

19 168.16 (3) The department may, upon request of state agencies or local
20 authorities, assist in the investigation of hazardous situations involving suspected
21 or known fuel products of petroleum.

22 **SECTION 69.** 168.17 of the statutes is amended to read:

23 **168.17 Attorney general and district attorney to prosecute.** Upon
24 request of the department, the attorney general or proper district attorney shall

ASSEMBLY BILL 742**SECTION 69**

1 prosecute any action to enforce this chapter ~~except the fee that is imposed under s.~~
2 ~~168.12 (1).~~

3 **SECTION 70.** 168.18 of the statutes is repealed.

4 **SECTION 71.** 227.01 (13) (zd) of the statutes is amended to read:

5 227.01 (13) (zd) Establishes procedures for ~~oil~~ fuel product inspection fee
6 collection under s. ~~168.12~~ 78.91.

7 **SECTION 72.** 341.45 (1g) (a) of the statutes is amended to read:

8 341.45 (1g) (a) Except as provided in subs. (3) and (4g), every person who
9 purchases or obtains motor vehicle fuel or an alternate fuel outside of this state and
10 operates any qualified motor vehicle into this state upon a highway and transports
11 that fuel in an attached or unattached fuel supply tank for the sole purpose of
12 operating the qualified motor vehicle shall pay the Wisconsin motor vehicle fuel or
13 alternate fuels tax and the ~~oil~~ fuel product inspection fee under s. ~~168.12~~ 78.91 on
14 the gallons consumed by the qualified motor vehicle while operated on the highways
15 of this state. The person shall pay the tax and fee by purchasing motor vehicle fuel
16 or alternate fuels within this state in an amount that is equivalent to the gallonage
17 consumed while operating the qualified motor vehicle on the highways of this state,
18 or by remitting the tax and fee directly to the department or to another jurisdiction
19 that is a party to the international fuel tax agreement.

20 **SECTION 73.** 341.45 (2) of the statutes is amended to read:

21 341.45 (2) Every person regularly or habitually operating qualified motor
22 vehicles upon the highways of any other state and using in those qualified motor
23 vehicles motor vehicle fuel or an alternate fuel purchased or obtained in this state
24 shall be allowed a credit or refund equal to the ~~oil~~ fuel product inspection fee and the
25 tax on the motor vehicle fuel or alternate fuel actually paid to the state in which it

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1 is used, but not to exceed the tax and fee imposed on motor vehicle fuel or alternate
2 fuels by this state.

3 **SECTION 74.** 341.45 (4m) of the statutes is amended to read:

4 341.45 (4m) All ~~oil~~ fuel product inspection fees paid to the department of
5 transportation under sub. (1g) (a) in excess of ~~oil~~ fuel product inspection fee credits
6 or refunds under sub. (2) shall be deposited in the petroleum inspection fund. All ~~oil~~
7 fuel product inspection fees credited or refunded by the department of transportation
8 under sub. (2) in excess of ~~oil~~ fuel product inspection fees paid to the department of
9 transportation under sub. (1g) (a) shall be paid from the petroleum inspection fund.

10 **SECTION 75.** 341.45 (5) of the statutes is amended to read:

11 341.45 (5) The department shall promulgate rules under ch. 227 necessary to
12 administer this section. The rules shall include provisions relating to the issuance
13 and use of the permits authorized under sub. (4g). The rules may include provisions
14 relating to the payment of interest on late payments of motor vehicle fuel and
15 alternate fuels taxes and ~~oil~~ fuel product inspection fees, and fees for the late
16 payment or underpayment of motor vehicle fuel and alternate fuels taxes and ~~oil~~ fuel
17 product inspection fees.

18

(END)