

House Bill 929

By: Representative Davis of the 109th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 9 of Title 48 of the Official Code of Georgia Annotated, the
2 "Motor Fuel Tax Law," so as to define certain terms; to provide that taxes imposed upon
3 motor fuels shall be collected by the supplier; to provide for a tax on unaccounted for motor
4 fuel losses; to provide for the collection, payment, and remittance of such taxes; to provide
5 for documentation relative to such taxes; to provide for the transportation of taxed fuels; to
6 provide for penalties; to provide for related matters; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 1 of Chapter 9 of Title 48 of the Official Code of Georgia Annotated, the "Motor Fuel
11 Tax Law," is amended by revising Code Section 48-9-2, relating to definitions, as follows:
12 "48-9-2.

13 As used in this article, the term:

14 (1) 'Agricultural field use' means the use of motor fuel of a type other than gasoline by
15 vehicles licensed under paragraph (.1) of Code Section 40-2-150. Such term shall include
16 the incidental movement over a highway as well as all off-road operations.

17 (1) 'Aviation gasoline' means gasoline that is designed and sold for use solely for
18 aviation purposes in aircraft engines.

19 (2) 'Aviation gasoline dealer' means any person who sells or consumes aviation gasoline
20 for aviation purposes only.

21 (2.1) 'Blended fuel' means a mixture composed of gasoline or diesel fuel and another
22 liquid, including, but not limited to, gasoline blend stocks, gasohol, ethanol, methanol,
23 fuel grade alcohol, diesel fuel enhancers, and resulting blends, other than a de minimis
24 amount of product such as carburetor detergent or oxidation inhibitor, that can be used
25 as a motor fuel in a motor vehicle.

1 (2.2) 'Blender' means any person that produces blended fuel outside the bulk motor fuel
2 transfer or terminal system.

3 (2.3) 'Blending' means the mixing of one or more petroleum products, with or without
4 another product, regardless of the original character of the product blended, if the product
5 obtained by the blending is capable of use or otherwise sold for use in the generation of
6 power for the propulsion of a motor vehicle, an aircraft, or a marine vessel. The term
7 does not include the blending that occurs in the process of refining by the original refiner
8 of crude petroleum or the blending of products known as lubricating oil in the production
9 of lubricating oils and greases.

10 (2.4) 'Bulk motor fuel transfer or terminal system' means the motor fuel distribution
11 system consisting of refineries, pipelines, marine vessels, and terminals. Motor fuel in
12 a refinery, a pipeline, a terminal, or a marine vessel transporting motor fuel to a refinery
13 or terminal is in the bulk motor fuel transfer or terminal system. Motor fuel in a motor
14 fuel storage facility, including, but not limited to, a bulk plant that is not part of a refinery
15 or terminal, in the motor fuel supply tank of any engine or motor vehicle, in a marine
16 vessel transporting motor fuel to a motor fuel storage facility that is not in the bulk motor
17 fuel transfer or terminal system, or in any tank car, rail car, truck, or other equipment
18 suitable for ground transportation is not in the bulk motor fuel transfer or terminal
19 system.

20 (2.5) 'Bulk plant' means a bulk motor fuel storage and distribution facility that is not a
21 terminal within the bulk motor fuel transfer or terminal system and from which motor
22 fuel may be removed at a loading rack.

23 (2.6) 'Bulk plant operator' means the operator of a bulk motor fuel transfer or terminal
24 system.

25 (2.7) 'Bulk transfer' means any transfer of motor fuel from one location to another by
26 pipeline tender or marine delivery within the bulk motor fuel transfer or terminal system,
27 including, but not limited to:

28 (A) Marine vessel movement of motor fuel from a refinery or terminal to a terminal;

29 (B) Pipeline movements of motor fuel from a refinery or terminal to a terminal;

30 (C) Bulk transfers of motor fuel within a terminal between licensed suppliers prior to
31 completion of removal across the loading rack; and

32 (D) Two-party exchanges between licensed suppliers or between licensed suppliers and
33 permissive suppliers.

34 (2.8) 'Bulk user' means a person who maintains storage facilities for motor fuel and uses
35 part or all of the stored motor fuel to operate a motor vehicle, marine vessel, or aircraft.

36 (3) 'Compressed petroleum gas' means all liquid petroleum products composed of
37 propane, propylene, butanes, butylenes, or any mixture thereof as determined by test

1 method ASTM D-216370, Natural Gas Processors Association Liquefied Petroleum
2 Specifications, 1970 revision.

3 (4) 'Consumer distributor' means any person who has both highway and nonhighway use
4 of motor fuel of a type other than gasoline and who elects to become licensed as a
5 distributor to obtain the exemption allowed by this article.

6 (4.1) 'Delivery' means the placing of motor fuel or any blended fuel into a bulk storage
7 facility or the fuel tank of a motor vehicle which is licensed, or required to be licensed,
8 to operate on the public highways.

9 (4.2) 'Designated inspection site' means any state highway inspection station, weigh
10 station, agricultural inspection station, mobile station, or other location designated by the
11 commissioner or the commissioner's designee to be used as a motor fuel inspection site.

12 (4.3) 'Destination state' means the state, territory, or foreign country to which motor fuel
13 is directed for delivery into a storage facility, a receptacle, a container, or a type of
14 transportation equipment for the purpose of resale or use.

15 (5) 'Distributor' means every person other than the United States or any of its agencies
16 who:

17 (A) Produces, refines, prepares, distills, manufactures, blends, or compounds motor
18 fuel in this state;

19 (B) Makes the first sale in this state of any motor fuel imported into this state after the
20 motor fuel has been received in this state;

21 (C) Consumes or uses in this state any motor fuel imported into this state before the
22 motor fuel has been received by any other person in this state;

23 (D) Purchases motor fuel for export from this state;

24 (E) Consumes or uses motor fuel of a type other than gasoline for both highway and
25 nonhighway use and who elects to become licensed as a distributor to obtain the
26 exemption allowed by this article;

27 (F) Sells motor fuel of a type other than gasoline to consumers who have no highway
28 use of such fuel and who elects to become licensed as a distributor to obtain the
29 exemptions allowed by this article; or

30 (G) Imports motor fuel into this state for production, refining, preparation, distilling,
31 manufacturing, blending, compounding, consumption, or use within this state.

32 (5.1) 'Dyed fuel oils' means any fuel oil dyed pursuant to regulations issued by either the
33 United States Environmental Protection Agency or the Internal Revenue Service.

34 (5.2) 'Export and import' means:

35 (A) When motor fuels are sold for export and delivered across the boundaries of this
36 state by or for the seller, such action is presumed to be an export from the place of
37 origin and an import into the destination state or country by the seller; and

1 (B) When motor fuels are purchased for export and transported across the boundaries
 2 of this state by or for the purchaser, such action is presumed to be an export from the
 3 place of origin and an import into the destination state or country by the purchaser.

4 (6) 'Fuel oils' means all liquid petroleum products including, but not limited to, kerosene,
 5 but does not mean gasoline, compressed petroleum gas, or special fuel.

6 (7) 'Gasoline' means all products commonly or commercially known or sold as gasoline.

7 (8) 'Highway use' means:

8 (A) The consumption or use of motor fuel other than gasoline in or upon a motor
 9 vehicle which is operated on the public highways;

10 (B) The placing of motor fuel other than gasoline in the running tank or power cells of
 11 a motor vehicle designed for use and used on the public highways; or

12 (C) The use of motor fuel other than gasoline in the construction, reconstruction,
 13 maintenance, or repair of public highways.

14 (8.1) Import' means to bring motor fuel into this state for sale, use, or storage by any
 15 means of conveyance other than in the fuel supply tank of a motor vehicle. Motor fuel
 16 delivered into this state from out of state by or for the seller constitutes an import by the
 17 seller, and motor fuel delivered into this state from out of state by or for the purchaser
 18 constitutes an import by the purchaser.

19 (8.2) 'Loading rack' means that part of a terminal facility by which motor fuels are
 20 physically removed from the terminal facility into transport tank trucks, marine vessels,
 21 or rail cars.

22 (9) 'Motor fuel' means any source of energy that can be used for propulsion of motor
 23 vehicles on the public highways including, but not limited to:

24 (A) Gasoline;

25 (B) Fuel oils;

26 (C) Compressed petroleum gas; and

27 (D) Special fuel.

28 (10) 'Motor vehicle' means:

29 (A) Every self-propelled vehicle designed for operation or required to be licensed for
 30 operation upon the public highways; and

31 (B) Any other machine or mechanical contrivance using motor fuel to the extent that
 32 the machine or contrivance is operated upon the public highways.

33 (10.1) 'Permissive supplier' means an out-of-state supplier that elects, but is not required,
 34 to have a supplier's license pursuant to this article.

35 (10.2) 'Position holder' means the person who holds the inventory position in motor fuel
 36 in a terminal, as reflected on the records of the terminal operator. A person holds the
 37 inventory position in motor fuel when that person has a contract with the terminal

1 operator for the use of storage facilities and terminal services for motor fuel at the
 2 terminal. The term includes a terminal operator who owns motor fuel in the terminal.

3 (11) 'Public highway' means every way or place of whatever nature generally open to the
 4 use of the public as a matter of right for the purpose of vehicular travel even though such
 5 way or place may never have been so open or may be temporarily closed for the purpose
 6 of construction, reconstruction, maintenance, or repair.

7 (12) 'Purchase' means any acquisition of ownership.

8 (13) 'Received,' in addition to its ordinary meaning, means:

9 (A) Motor fuel produced, refined, prepared, distilled, manufactured, blended, or
 10 compounded within this state; or

11 (B) Motor fuel imported into the territorial boundaries of this state which is held for
 12 sale or use or is stored in any receptacle which has withdrawal facilities for sale or use
 13 in this state.

14 (13.1) 'Refinery' means a facility used to produce motor fuel from crude oil, unfinished
 15 oils, natural gas liquids, or other hydrocarbons and from which taxable motor fuel may
 16 be removed by pipeline, by rail car, by marine vessel, or at a loading rack.

17 (14) 'Sale' means any exchange, gift, consignment, bailment, or any other accounted for
 18 or unaccounted for disposition.

19 (15) 'Special fuel' means all sources of energy other than gasoline, fuel oils, or
 20 compressed petroleum gas.

21 (15.1) 'Supplier' means a person:

22 (A) Who is:

23 (i) Subject to the general taxing jurisdiction of this state; and

24 (ii) Registered or required to be registered pursuant to 26 U.S.C. Section 4101 for
 25 transactions in motor fuels in the bulk motor fuel transfer or terminal system; and

26 (B) Does one or more of the following:

27 (i) Is the position holder in a terminal or refinery in this state and may concurrently
 28 also be a position holder in motor fuel in another state;

29 (ii) Imports motor fuel into this state from a foreign country;

30 (iii) Acquires motor fuel from a terminal or refinery in this state from a position
 31 holder pursuant to either a two-party exchange or a qualified buy-sell arrangement
 32 which is treated as an exchange and appears on the records of the terminal operator;

33 or

34 (iv) Is the position holder in a terminal or refinery outside this state with respect to
 35 motor fuel which that person imports into this state. A terminal operator shall not be
 36 considered a supplier based solely on the fact that the terminal operator handles motor
 37 fuel consigned to it within a terminal.

1 ~~'Supplier' also means a person that produces or sells fuel grade alcohol or alcohol~~
 2 ~~derivative substances in this state, produces or sells fuel grade alcohol or alcohol~~
 3 ~~derivative substances for import to this state into a terminal, or acquires upon import by~~
 4 ~~truck, rail car, or marine vessel into a terminal fuel grade alcohol or alcohol derivative~~
 5 ~~substances. 'Supplier' includes a permissive supplier unless specifically provided~~
 6 ~~otherwise.~~

7 (15.2) 'Terminal' means a motor fuel storage and distribution facility that is supplied by
 8 pipeline or marine vessel and from which motor fuels may be removed by either a
 9 loading rack or user pipeline. However, the term does not include any facility at which
 10 petroleum blend stocks and additives are used to manufacture products other than motor
 11 fuel and from which no motor fuel is removed bulk motor fuel storage and distribution
 12 facility to which a terminal control number has been assigned by the Internal Revenue
 13 Service to which motor fuel is supplied by pipeline, rail car, or marine vessel, and from
 14 which motor fuel may be removed at a loading rack.

15 (15.3) 'Terminal operator' means any person that owns, operates, or otherwise controls
 16 a terminal. A terminal operator may own the motor fuel that is transferred through or
 17 stored in the terminal.

18 (15.4) 'Transmix' means the buffer or interface between two different products in a
 19 pipeline shipment or a mix of two different products within a refinery or terminal that
 20 results in an off-grade mixture.

21 (16) 'Transport tank truck' means any tank truck used to transport motor fuel in bulk
 22 quantities.

23 (16.1) 'Two-party exchange' means a transaction in which the motor fuel is transferred
 24 from one licensed supplier or permissive supplier to another licensed supplier or
 25 permissive supplier and:

26 (A) Which transaction includes a transfer from the person that holds the original
 27 inventory position in taxable motor fuel in the terminal as reflected on the records of
 28 the terminal operator;

29 (B) The exchange transaction is completed prior to the removal of the motor fuel from
 30 the terminal by the receiving exchange partner; and

31 (C) The transaction is recorded on the terminal operator's books and records with the
 32 receiving exchange partner as the supplier or permissive supplier that removes the
 33 motor fuel across the terminal for purposes of reporting the transaction to this state.

34 (16.2) 'Unaccounted for motor fuel losses' means the difference between:

35 (A) The amount of motor fuel in inventory at the terminal at the beginning of the
 36 calendar year plus the amount of motor fuel received by the terminal during the year;
 37 and

1 (B) The amount of motor fuel in inventory at the terminal at the end of the calendar
 2 year plus the amount of motor fuel removed from the terminal during the year."

3 **SECTION 2.**

4 Said article is further amended by revising Code Section 48-9-3, relating to levy of excise
 5 tax, rate, taxation of motor fuels not commonly sold or measured by gallon, rate, prohibition
 6 of tax on motor fuel by political subdivisions, exception, exempted sales by licensed
 7 distributors, exemption of motor fuel used for nonhighway purposes, and exemption of motor
 8 fuel for public mass transit buses, as follows:

9 "48-9-3.

10 (a)(1) An excise tax is shall be imposed at the rate of 7 1/2¢ per gallon on distributors
 11 suppliers who sell or use motor fuel within this state. It is the intention of the General
 12 Assembly that the legal incidence of the tax be imposed upon the distributor supplier.

13 (2) In the event any motor fuels which are not commonly sold or measured by the gallon
 14 are used in any motor vehicles on the public highways of this state, the commissioner
 15 may assess, levy, and collect a tax upon such fuels, under such regulations as the
 16 commissioner may promulgate, in accordance with and measured by the nearest power
 17 potential equivalent to that of one gallon of regular grade gasoline. Any determination
 18 by the commissioner of the power potential equivalent of such motor fuels shall be
 19 prima-facie correct. Upon each such quantity of such fuels used upon the public
 20 highways of this state, a tax at the same rate per gallon imposed on motor fuel under
 21 paragraph (1) of this subsection shall be assessed and collected.

22 (3) No county, municipality, or other political subdivision of this state shall levy any fee,
 23 license, or other excise tax on a gallonage basis upon the sale, purchase, storage, receipt,
 24 distribution, use, consumption, or other disposition of motor fuel. Nothing contained in
 25 this article shall be construed to prevent a county, municipality, or other political
 26 subdivision of this state from levying license fees or taxes upon any business selling
 27 motor fuel.

28 (4) For purposes of this subsection, and notwithstanding the provisions of paragraph (2)
 29 of this subsection and any provision contained in the National Bureau of Standards
 30 Handbook or any other national standard that may be adopted by law or regulation, the
 31 gallon equivalent of compressed natural gas shall be not less than 110,000 British thermal
 32 units. As used in this paragraph, the term 'compressed natural gas' means a mixture of
 33 hydrocarbon gases and vapors, consisting principally of methane in gaseous form, that
 34 has been compressed for use as a motor fuel.

35 ~~(b) No tax is imposed by this article upon or with respect to the following sales by duly~~
 36 ~~licensed distributors:~~

- 1 ~~(1) Bulk sales to a duly licensed distributor;~~
- 2 ~~(2) Sales of motor fuel for export from this state when exempted by any provisions of~~
 3 ~~the Constitutions of the United States or this state;~~
- 4 ~~(3) Sales of motor fuel to a licensed distributor for export from this state;~~
- 5 ~~(4) Sales of motor fuel to the United States for the exclusive use of the United States~~
 6 ~~when the motor fuel is purchased and paid for by the United States;~~
- 7 ~~(5) Sales of aviation gasoline to a duly licensed aviation gasoline dealer, except for 1¢~~
 8 ~~per gallon of the tax imposed by paragraph (1) of subsection (a) of this Code section and~~
 9 ~~all of the tax imposed by Code Section 48-9-14;~~
- 10 ~~(6) Bulk sales of compressed petroleum gas or special fuel to a duly licensed consumer~~
 11 ~~distributor;~~
- 12 ~~(7)(A) Sales of compressed petroleum gas or special fuel to a consumer who has no~~
 13 ~~highway use of the fuel at the time of the sale and does not resell the fuel. Consumers~~
 14 ~~of compressed petroleum gas or special fuel who have both highway and nonhighway~~
 15 ~~use of the fuel and resellers of such fuel must be licensed as distributors in order for~~
 16 ~~sales of the fuel to be tax exempt. Each type of motor fuel is to be considered~~
 17 ~~separately under this exemption.~~
- 18 ~~(B)(i) In instances where a sale of compressed petroleum gas has been made to an~~
 19 ~~ultimate consumer who has both highway and nonhighway use of that type of motor~~
 20 ~~fuel and no tax has been paid by the distributor on the sale, the consumer shall~~
 21 ~~become licensed as a consumer distributor of that type of motor fuel. After the~~
 22 ~~consumer is licensed as a consumer distributor and if it is demonstrated to the~~
 23 ~~satisfaction of the commissioner that the motor fuel purchased prior to the licensee's~~
 24 ~~becoming licensed as a consumer distributor was used for nonhighway purposes, such~~
 25 ~~sales shall be exempt from the tax imposed by this article; provided, however, that,~~
 26 ~~if at the time of demonstration the ultimate consumer does not have both highway and~~
 27 ~~nonhighway use of such fuel but it can be demonstrated by the distributor to the~~
 28 ~~satisfaction of the commissioner that the motor fuel was used for nonhighway~~
 29 ~~purposes, the sales shall be exempt from the tax imposed by this article; and~~
- 30 ~~(ii)(I) Any special fuel sold by a distributor to a purchaser who has a storage~~
 31 ~~receptacle which has a connection to a withdrawal outlet that may be used for~~
 32 ~~highway use, as defined in paragraph (8) of Code Section 48-9-2, is not exempt~~
 33 ~~from the motor fuel and road taxes imposed by this article unless: (1) the purchaser~~
 34 ~~is at the time of sale a valid licensed distributor of that type of motor fuel, or (2) an~~
 35 ~~exemption certificate has been obtained from the purchaser on forms furnished by~~
 36 ~~the Department of Revenue showing that the purchaser has no highway use of such~~
 37 ~~fuels and is not a reseller of such fuels. Each exemption certificate shall be valid~~

1 for a period of not more than three years and shall be kept by the distributor as one
 2 of the records specified in Code Section 48-9-8. It shall be the responsibility of the
 3 purchaser to notify the distributor when the purchaser is no longer qualified for the
 4 nonhighway exemption. All applicable taxes must be charged the purchaser until
 5 the purchaser is granted a valid distributor's license for that type of motor fuel.

6 (H) Any such purchaser granted an exemption under subdivision (I) of this division
 7 who falsely claims the exemption or fails to rescind the purchaser's exemption
 8 certificate to the distributor in writing when he or she is no longer eligible for the
 9 exemption shall be deemed a distributor for purposes of taxation and is subject to
 10 all provisions of this article relating to distributors. This division in no way shall
 11 restrict the option of the purchaser to become licensed as a distributor. If the
 12 distributor sells special fuel to a purchaser who has a storage receptacle which has
 13 a connection to a withdrawal outlet that may be used for highway use, as defined in
 14 paragraph (8) of Code Section 48-9-2, and the purchaser is not a valid licensed
 15 distributor and has not executed a valid signed exemption certificate, the taxes
 16 imposed by this article are due from the distributor and not the purchaser on all sales
 17 of that type of fuel to that purchaser;

18 (8) Sales of fuel oils, compressed petroleum gas, or special fuel directly to an ultimate
 19 consumer to be used for heating purposes only. The delivery of fuel oils, compressed
 20 petroleum gas, or special fuel directly to an ultimate consumer to be used for heating
 21 purposes only shall be made directly into the storage receptacle of the heating unit of the
 22 consumer by the licensed distributor. To qualify for this exemption, sales must be
 23 delivered into storage receptacles that are not equipped with any secondary withdrawal
 24 outlets for the motor fuel;

25 (9) Sales of dyed fuel oils to a consumer for other than highway use as defined in
 26 paragraph (8) of Code Section 48-9-2; or

27 (10)(A) During the period of July 1, 2006, through June 30, 2008, sales of motor fuel,
 28 as defined in paragraph (9) of Code Section 48-9-2, for public mass transit vehicles
 29 which are owned by public transportation systems which receive or are eligible to
 30 receive funds pursuant to 49 U.S.C. Sections 5307 and 5311 for which passenger fares
 31 are routinely charged and which vehicles are used exclusively for revenue generating
 32 purposes which motor fuel sales occur at bulk purchase facilities approved by the
 33 department.

34 (B) During the period of July 1, 2006, through June 30, 2008, sales of motor fuel, as
 35 defined in paragraph (9) of Code Section 48-9-2, for vehicles operated by a public
 36 campus transportation system, provided that such system has a policy which provides
 37 for free transfer of passengers from the public transportation system operated by the

1 jurisdiction in which the campus is located; makes the general public aware of such free
2 transfer policy; and receives no state or federal funding to assist in the operation of such
3 public campus transportation system and which motor fuel sales occur at bulk purchase
4 facilities approved by the department.

5 (C) For purposes of this paragraph, the term 'vehicle' or 'vehicles' means buses, vans,
6 minibuses, or other vehicles which have the capacity to transport seven or more
7 passengers.

8 (e) Fuel oils, compressed petroleum gas, or special fuel used by a duly licensed distributor
9 for nonhighway purposes is exempt from the tax imposed by this article.

10 (d) ~~No export from this state shall be recognized as being exempt from tax under~~
11 ~~paragraphs (2) and (3) of subsection (b) of this Code section unless the exporter informs~~
12 ~~the seller and the terminal operator of the intention to export and causes to be set out the~~
13 ~~minimum information specified in subsection (e) of Code Section 48-9-17 on the bill of~~
14 ~~lading or equivalent documentation under which the motor fuel is transported. In the event~~
15 ~~that the motor fuel is delivered to any point other than that which is set out on the bill of~~
16 ~~lading or equivalent documentation, the legal incidence of the tax shall continue to be~~
17 ~~imposed exclusively upon the exporter who caused the export documentation to be issued~~
18 ~~and no exemption shall be recognized until suitable proof of exportation has been provided~~
19 ~~to the commissioner.~~

20 (b) The tax imposed by this Code section shall be imposed on the removal of motor fuel
21 from the terminal using the loading rack, other than by bulk transfer. The supplier or
22 permissive supplier shall collect the tax imposed by this Code section from the person who
23 orders the withdrawal at the loading rack.

24 (c) The tax imposed by this Code section shall be imposed at the time motor fuel is
25 imported into this state, other than by a bulk transfer, for delivery to a destination in this
26 state. The permissive supplier shall collect the tax imposed by this Code section from the
27 person who imports the motor fuel into this state. If the seller is not a permissive supplier,
28 then the person who imports the motor fuel into this state shall pay the tax imposed by this
29 Code section.

30 (d) The tax imposed by this Code section shall be imposed on the sale or transfer of motor
31 fuel in the bulk motor fuel transfer or terminal system in this state by a supplier to any
32 person. The supplier shall collect the tax imposed by this Code section from the person
33 who orders the sale or transfer in the bulk motor fuel transfer or terminal system.

34 (e) The tax imposed by this Code section shall be imposed on the blending of motor fuel
35 at the point blended fuel is made in this state outside the bulk motor fuel transfer or
36 terminal system. The blender shall pay the tax. The number of gallons of blended fuel on
37 which the tax shall be imposed is equal to the difference between the number of gallons of

1 blended fuel made and the number of gallons of previously taxed motor fuel used to make
 2 the blended fuel.

3 (f) In each subsequent sale of motor fuel on which the tax has been paid, the amount of the
 4 tax shall be added to the selling price so that the tax shall be paid ultimately by the person
 5 using or consuming the motor fuel. Motor fuel shall be considered to be used when it is
 6 delivered into a fuel supply tank of a licensed motor vehicle or a motor vehicle required to
 7 be licensed.

8 (g) A terminal operator in this state shall be considered a supplier for the purpose of the
 9 tax imposed under this Code section.

10 (h) There shall annually be levied a tax on taxable unaccounted for motor fuel losses at a
 11 terminal in this state. Accounted for motor fuel losses which have been approved by the
 12 department or motor fuel losses constituting part of a transmix shall not constitute
 13 unaccounted for motor fuel losses.

14 (i) The terminal operator whose motor fuel is unaccounted for shall be liable for the tax
 15 levied by this Code section. Motor fuel received by a terminal operator and not shown on
 16 an informational return filed by the terminal operator with the department as having been
 17 removed from the terminal shall be presumed to be unaccounted for motor fuel losses. A
 18 terminal operator may rebut this presumption by establishing that motor fuel received at
 19 a terminal, but not shown on an informational return as having been removed from the
 20 terminal, was an accounted for loss or constitutes part of a transmix.

21 (j) The collection, payment, and remittance of the tax imposed by this Code section shall
 22 be accomplished in the manner and at the time provided for in this article.

23 (k) The motor fuel subject to the excise tax levied by this Code section shall not be subject
 24 to any other excise tax levied by this state or county or municipal government."

25 **SECTION 3.**

26 Said article is further amended by adding a new Code section to read as follows:

27 "48-9-3.1.

28 (a) Each person operating a refinery or terminal in Georgia shall prepare and provide to
 29 the driver of every motor vehicle receiving motor fuel at the facility a shipping document
 30 setting out on its face the destination state as represented to the terminal operator by the
 31 shipper or the shipper's agent. Failure to comply with the provisions of this subsection
 32 may result in a department imposed penalty of not less than \$500.00 nor more than
 33 \$1,000.00. This penalty shall be multiplied by the sum of the current violation plus all prior
 34 violations of this subsection.

35 (b) Every person transporting motor fuel in Georgia in a motor vehicle other than in its
 36 supply tank shall carry on board a shipping document issued by the facility where the

1 motor fuel was obtained. The shipping document shall set out on its face the state of
2 destination of the motor fuel transported in the motor vehicle. Any person who violates
3 this subsection shall, upon conviction thereof, be guilty of a felony. Failure to comply with
4 the provisions of this subsection may result in a department imposed penalty of not less
5 than \$500.00 nor more than \$1,000.00. This penalty shall be multiplied by the sum of the
6 current violation plus any prior violations of this subsection.

7 (c) Every person transporting motor fuel in Georgia received from a terminal operator or
8 refiner shall provide the original or a copy of the terminal issued shipping document
9 accompanying the shipment to the operator of the retail outlet to which delivery of the
10 shipment is made. A person who knowingly violates or knowingly aids and abets another
11 person in violating this subsection shall, upon conviction thereof, be guilty of a felony.
12 Failure to comply with the provisions of this subsection may result in a department
13 imposed penalty of not less than \$500.00 nor more than \$1,000.00. This penalty shall be
14 multiplied by the sum of the current violation plus any prior violations of this subsection.

15 (d) Each operator of a retail outlet in Georgia shall receive, examine, and retain the
16 shipping document received from the transporter for every shipment of motor fuel that is
17 delivered to each location, with record retention of the shipping document at the location
18 for 30 days. At the end of 30 days, the shipping document shall be maintained with the
19 required books and records for a period of three years from the date of shipment. A person
20 who knowingly violates or knowingly aids and abets another person in violating this
21 subsection shall, upon conviction thereof, be guilty of a felony. Failure to comply with the
22 provisions of this subsection may result in a department imposed penalty of not less than
23 \$500.00 nor more than \$1,000.00. This penalty shall be multiplied by the sum of the
24 current violation plus any prior violations of this subsection.

25 (e) No bulk end user, retail dealer, or wholesale distributor shall knowingly accept delivery
26 of motor fuel into storage facilities in Georgia if that delivery is not accompanied by a
27 shipping document that sets out on its face Georgia as the state of destination of the motor
28 fuel. A person who knowingly violates or knowingly aids and abets another person in
29 violating this subsection shall, upon conviction thereof, be guilty of a felony. Failure to
30 comply with the provisions of this subsection may result in a department imposed penalty
31 of not less than \$500.00 nor more than \$1,000.00. This penalty shall be multiplied by the
32 sum of the current violation plus any prior violations of this subsection.

33 (f) The department shall provide for relief in a case where a shipment of motor fuel is
34 legitimately diverted from the represented destination state after the shipping document has
35 been issued by the terminal operator or where the terminal operator failed to cause proper
36 information to be printed on the shipping document. These relief provisions shall include

1 a provision requiring the shipper or its agent to provide notification as prescribed by the
2 department before the diversion or correction is to occur.

3 (g) A terminal operator or bulk plant operator may rely on the representation made by the
4 purchaser of the motor fuel or the purchaser's agent concerning the destination state of the
5 motor fuel. A purchaser shall be liable for any tax due as a result of the purchaser's
6 diversion of motor fuel from the represented destination state.

7 (h)(1) Every person hauling, transporting, or conveying motor fuel over any of the
8 navigable waters of this state shall, during the entire time so engaged, maintain
9 possession of an invoice, bill of sale, or shipping document showing the legal name and
10 physical address of the person from whom motor fuel was received and the legal name
11 and physical address of every person or persons to whom deliveries of motor fuel will be
12 made, along with the number of gallons delivered; that is, any person hauling,
13 transporting, or conveying motor fuel shall have in his or her possession record evidence
14 of the legal name and physical address of the person from whom motor fuel will be
15 delivered and the number of gallons to be delivered. The person hauling, transporting,
16 or conveying the motor fuel shall, at the request of any person authorized by law to
17 inquire into or investigate said matters, produce and offer for inspection the invoice, bill
18 of sale, or shipping document. Failure to produce the invoice, bill of sale, or shipping
19 document, or if, when produced, the required information is not clearly disclosed, shall
20 be prima-facie evidence of a violation of this Code section.

21 (2) No person shall haul, transport, or convey motor fuel in marine vessels over any
22 navigable waters of this state except in marine vessels plainly and visibly marked on both
23 sides and above the water line thereof the word 'gasoline' or other name of motor fuel
24 being transported, in letters at least four inches high and of correspondingly appropriate
25 width, together with the legal name and physical address of the owner of the boat or
26 barges in which the motor fuel is contained.

27 (3) The provisions of this subsection shall not apply to marine vessels transporting motor
28 fuel to be used solely for their own motive power.

29 (i)(1) Every motor vehicle being operated by private carriers for hire shall be marked as
30 specified in this Code section if that motor vehicle is transporting hazardous materials.

31 (2) Such marking shall display the following information:

32 (A) The name or trade name of the private carrier for hire operating the motor vehicle;

33 (B) The city or community and state abbreviation in which the carrier maintains its
34 principal office or in which the motor vehicle is customarily based; and

35 (C) If the name of a person other than the operating carrier appears on the motor
36 vehicle, the words 'operated by' immediately preceding the information required by this
37 Code section.

1 Other identifying information may be displayed on the motor vehicle if it is not
2 inconsistent with the information required by this Code section.

3 (3) Such marking shall meet the following requirements:

4 (A) Appear on both sides of the motor vehicle;

5 (B) Be in letters that contrast sharply in color with the background;

6 (C) Be readily legible during daylight hours from a distance of 50 feet while the motor
7 vehicle is stationary; and

8 (D) Be kept and maintained in a manner that retains the legibility required by this Code
9 section.

10 The marking may consist of a removable device if that device meets the identification and
11 legibility requirements of this Code section.

12 (j) Any person who willfully violates any of the provisions of subsection (h) or (i) of this
13 Code section shall, upon conviction thereof, be guilty of a felony.

14 (k) The marking provisions of this Code section as to the word 'gasoline' shall not apply
15 to a motor vehicle transporting gasoline in the fuel tank thereof supplied by the
16 manufacturer with the motor vehicle or carried in an auxiliary fuel tank connected directly
17 with the carburetor or fuel injection system of the motor vehicle and used exclusively for
18 propelling same, to motor vehicles transporting gasoline in quantities of not more than five
19 gallons for delivery in response to emergency calls, or to gasoline being transported by
20 common carriers in rail cars.

21 (l)(1) Officers or employees of the State of Georgia, or law enforcement officers of any
22 county or municipality in the State of Georgia, upon presenting appropriate credentials
23 and a written notice to the owner, operator, or agent in charge shall be authorized to enter
24 any place and to conduct inspections.

25 (2) Inspections shall be performed in a reasonable manner and at times that are
26 reasonable under the circumstances, taking into consideration the normal business hours
27 of the place to be entered. Inspections may be at any place at which taxable fuel is or
28 may be produced or stored or at any inspection site where evidence of activities may be
29 discovered. These places may include, but are not limited to:

30 (A) Any terminal;

31 (B) Any fuel storage facility that is not a terminal;

32 (C) Any retail fuel facility; or

33 (D) Any designated inspection site. A designated inspection site is any state or local
34 highway inspection station, weigh station, agricultural inspection station, mobile
35 station, or other location designated by the commissioner or his or her designated agent
36 to be used as a fuel inspection site. A designated inspection site shall be identified as
37 a fuel inspection site.

1 (3) Fuel inspections may also be conducted in the course of safety or other motor vehicle
2 inspections authorized by law.

3 (4) Officers or employees of the State of Georgia, or law enforcement officers of any
4 county or municipality in the State of Georgia, may physically inspect, examine, or
5 otherwise search any tank, reservoir, or other container that can or may be used for the
6 production, storage, or transportation of motor fuel, fuel dyes, or fuel markers. Inspection
7 may also be made of any equipment used for or in connection with production, storage,
8 or transportation of motor fuel, fuel dyes, or fuel markers. This includes any equipment
9 used for the dyeing or marking of fuel and shall include the inspection of related shipping
10 documents. Such officers or employees may detain any motor vehicle, train, or marine
11 vessel for the purpose of inspecting its fuel tanks and storage tanks. Detainment may
12 continue for any reasonable period of time, not to exceed one hour, necessary to
13 determine the amount and composition of the motor fuel. Such officers or employees
14 may take and remove samples of motor fuel in reasonable quantities necessary to
15 determine its composition.

16 (5)(A)(i) Any person that refuses to allow an inspection may be penalized \$1,000.00
17 for each refusal. This penalty is in addition to any other penalties or tax that may be
18 imposed upon that person or any other person liable for fuel excise taxes. The
19 authorized agent for the State of Georgia shall furnish an IRS Form 916 or similar
20 document prepared by the department stating the purpose of the inspection and
21 penalties for refusal to allow an inspection so requested. The following acts shall be
22 grounds for a civil penalty payable to the department:

23 (I) Transporting fuel in a railroad tank car or transport truck without a shipping
24 document or with a false or an incomplete shipping document; and

25 (II) Delivering fuel to a destination state other than that shown on the shipping
26 document.

27 (ii) The penalty imposed under this subparagraph shall be payable by the person in
28 whose name the conveyance is registered, tagged, or titled or the lessee if the
29 conveyance is a transport truck. It shall be payable by the person responsible for the
30 movement of fuel in the conveyance if the conveyance is a railroad tank car. The
31 amount of the penalty shall depend on the amount of motor fuel improperly
32 transported or diverted and whether the person against whom the penalty is assessed
33 has previously been assessed a penalty under this subparagraph. For a first
34 assessment under this subparagraph, the penalty shall be twice the amount of excise
35 tax payable on the improperly transported or diverted fuel. For a second or
36 subsequent assessment under this subparagraph, the penalty shall be the greater of
37 \$5,000.00 or five times the amount of excise tax payable on the improperly

1 transported or diverted fuel. A penalty imposed under this subparagraph shall be in
2 addition to any fuel excise tax assessed

3 (B) It is unlawful to use dyed fuel oils for highway use with the exception of a state,
4 county, or municipal government motor vehicle and those permitted under 26 U.S.C.
5 Section 4082. The operation of a motor vehicle on a highway with a supply tank
6 containing dyed fuel oils, the use of which is unlawful under this Code section, or the
7 use of other motor fuel on which the tax imposed by the state has not been paid shall
8 result in a civil penalty payable to the department which shall be payable by the person
9 in whose name the motor vehicle is registered or the driver of the motor vehicle. The
10 penalty shall be the greater of \$1,000.00 or \$10.00 per gallon of the motor fuel
11 involved. In the case of repeated violations, the penalty shall be multiplied by the
12 current violation plus any prior violations that have been imposed under this
13 subparagraph. The penalty imposed under this subparagraph shall be in addition to any
14 fuel tax assessed. A county or municipality shall be entitled to 25 percent of any penalty
15 authorized by this subparagraph if law enforcement officers in its employment provide
16 information that leads to the arrest and conviction of any person violating the provisions
17 of this subparagraph or to the assessment and collection of the excise taxes from any
18 person violating the provisions of this subparagraph."

19 **SECTION 4.**

20 All laws and parts of laws in conflict with this Act are repealed.