

paid by hunters shall be diverted for any other purpose than the administration of the State Game and Fish Department.

Approved March 1, 1939.

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## GAS AND OIL

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### CHAPTER 147

H. B. No. 70—(Jensen, Semerad and Lange)

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#### LICENSING PURCHASERS AND SELLERS OF GASOLINE

An act permitting the purchase of gasoline to be used solely for agricultural and industrial purposes without the payment of a gasoline tax on the purchase price thereof; licensing purchasers and sellers; providing penalties; repealing Chapter 189 of the Session Laws of North Dakota for 1931.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. DEFINITIONS.] When used in this act unless otherwise defined by the context:

(1) Persons or companies shall include very individual, partnership, society, incorporated association, joint stock company, corporations, trustees, executors, and administrators.

(2) Tax exempt gasoline shall mean such gasoline sold in this State to be used solely for agricultural and industrial purposes without the payment of a tax, except such tax as may be required by a general sales tax law.

§ 2. LICENSED DEALERS.] Gasoline may be sold for agricultural or industrial purposes in the State of North Dakota by licensed dealers as herein prescribed without the payment of the gasoline tax.

§ 3. LICENSE, HOW PROCURED.] Any person desiring to purchase tax exempt gasoline may procure a license so to do by applying to the State Auditor and by paying a fee fifty cents (50¢).

The applicant shall state in his application for license, which shall be filed in the office of the State Auditor, his name, occupation, residence and post office address; a description of the machinery or implement wherein the tax exempt gasoline is to be used; the rated horse-power, if an engine or tractor; the year purchased and the total probable amount of tax exempt gasoline to be used during the year together with the legal description of the land owned or operated by the applicant; the make and year of manufacture and rated

horse-power of each automobile and gasoline truck owned or operated by said applicant.

If the State Auditor is satisfied that the application is made in good faith and for the purposes herein stated, the State Auditor shall issue to said applicant, a license to purchase tax exempt gasoline for the calendar year, which license shall expire on the 31st day of December of the year in which the license is issued unless revoked as herein provided. The license shall be in book form containing the license number, name and address of the licensee and providing space to be filled in by the dealer for the date of purchase, from whom and the number of gallons purchased.

Prior to the expiration of said license, the licensee shall file with the State Auditor, under oath a statement of the amount of tax exempt gasoline purchased, the date of purchase, the price paid and the dealer's receipt shall be attached to the affidavit together with a detailed statement of all other gasoline purchased during the said period covered by the license which is subject to a gasoline tax and delivered in bulk by the dealer to the place of residence of said purchaser.

Any person desiring to sell tax exempt gasoline in the State of North Dakota shall procure a license so to do by making application to the State Auditor. The application shall be made on a form approved by the State Auditor stating the name and location of the station to be licensed.

If the State Auditor is satisfied that the applicant is a resident of the State of North Dakota, he may issue to said applicant a license to sell tax exempt gasoline as herein provided from a station designated in said license upon the payment of a fee of two dollars (\$2.00) for each station so licensed. A separate license shall be secured for each station where tax exempt gasoline is sold.

Delivery of tax exempt gasoline shall be made only from a duly licensed station and to a person permitted to buy tax exempt gasoline as provided in this act.

§ 4. RECEIPTS, HOW ISSUED.] The dealer shall issue receipts in triplicate for each sale of tax exempt gasoline, which receipt shall be in the form and colors prescribed by the State Auditor and shall show the date, name, residence, and license number of the dealer and the purchaser, and the number of gallons sold; Each receipt shall be signed by the purchaser.

Two of such triplicate receipts shall be retained by the licensed seller and one shall be delivered to the licensed purchaser. One of said receipts shall be delivered to the dealer importing gasoline into the State of North Dakota and originally liable for the payment of the gasoline tax. The original of such receipts shall be accepted by the State Auditor in lieu of the payment by the dealer importing gasoline into the State of North Dakota of the gasoline tax provided

by law to the extent of the number of gallons of gasoline shown on said receipts as having been sold for agricultural and industrial purposes to a licensed purchaser thereof.

§ 5. THE STATE AUDITOR MAY REFUSE OR CANCEL LICENSE FOR CAUSE.] The State Auditor in his discretion may refuse to issue a license or may revoke the same if the purchaser or seller named in said license has knowingly failed to comply with the provisions of this act.

§ 6. MONEY DEPOSITED IN STATE TREASURY.] All fees received by the State Auditor as herein provided shall be paid into the State Treasury.

§ 7. EXEMPTIONS DEFINED.] Nothing in this act shall be construed as exempting any gasoline used as motor fuel in propelling any gasoline truck or engine to be operating in whole or in part upon any public highway in the State or to exempt gasoline used for purposes not solely agricultural or industrial from the payment of the tax upon gasoline as herein provided.

§ 8. RULES AND REGULATIONS.] The State Auditor shall have the power to formulate rules and regulations for the administration of this act and it is hereby made the duty of all State's attorneys and peace officers to enforce the provisions hereof.

§ 9. REFUND.] All purchasers of tax exempt gasoline purchased prior to the passage and approval of this act shall be entitled to the refund as provided by Chapter 189 of the Session Laws of North Dakota for the year 1931.

§ 10. PENALTY.] Any person violating any of the provisions of this act, shall upon conviction thereof be guilty of a misdemeanor and their license shall be revoked.

§ 11. REPEAL.] All acts or parts of acts in conflict herewith are hereby repealed.

Approved March 18, 1939.

## CHAPTER 148

S. B. No. 61—(Committee on State Affairs)

SPECIFICATION REQUIREMENTS OF HEATING OIL  
OR DIESEL FUEL

An act to regulate the sale of heating oil and diesel fuel; to provide specifications therefor, and for inspection thereof; to provide for inspection fees, the collection and disposition thereof; to define the duties of the State Food Commissioner and Chemist as regards such inspection and providing penalties for violation of the act.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. It shall be unlawful to sell, offer or expose for sale any heating oil or diesel fuel which is adulterated within the meaning of this act. Heating oil or diesel fuel shall be deemed to be adulterated if it fails to meet the specifications hereinafter prescribed. Heating oil or diesel fuel shall be deemed to be misbranded, if it is not labeled as hereinafter prescribed.

§ 2. Every package, barrel, pump and every tank wagon, truck or car containing heating oil for sale or consignment, when held within this State or being transported into this State, shall be clearly and distinctly tagged, marked or labeled with the designation: "No. 1 light fuel oil, No. 2 medium fuel oil, No. 3 heavy fuel oil" as the case may be. Every package, barrel, pump and every tank wagon, truck or car containing diesel fuel for sale or consignment, when held within this State or being transported into this State, shall be clearly and distinctly tagged, marked, or labeled with the designation: "diesel fuel" together with its cetane number or diesel index.

§ 3. Heating oil is hereby defined to mean any petroleum product intended for use or offered for sale as a furnace oil, range oil, fuel oil for heating and cooking purposes and to be used in burners other than wick burners regardless whether the product be designated furnace oil, range oil, fuel oil, gas oil or be given any other name or designation. Such heating oil shall meet the following commercial standard specifications approved by the National Bureau of Standards, provided heavier grades may be sold if they meet the minimum flash point requirement given below and are properly labeled as to grade. If modifications of these specifications are approved by the National Bureau of Standards the State Food Commissioner and Chemist may, after due publication and notification incorporate such modifications in the specifications herein contained and the same shall become specifications for heating oil sold in North Dakota.

No. 1. Light Fuel Oil, a light distillate oil for use in burners requiring a high grade fuel.

A—The flash point shall not be lower than 115°F and shall not be higher than 165°F.

B—Water and sediment shall not exceed 0.05%.

C—The pour point shall not exceed 15°F.

D—Distillation Test:

When 10% has been recovered in the receiver the thermometer shall not read more than 420°F.

The end point shall not be higher than 600°F.

No. 2. Medium Fuel Oil, a medium distillate oil for use in burners requiring a high grade fuel.

A—The flash point shall not be lower than 115°F and shall not be higher than 190°F.

B—Water and sediment shall not exceed 0.05%.

C—The pour point shall not exceed 15°F.

D—Distillation test:

When 10% has been recovered in the receiver the thermometer shall not read more than 440°F.

When 90% has been recovered in the receiver the thermometer shall not read more than 620°F.

No. 3. Heavy Fuel Oil, a distillate fuel oil for use in burners where a low viscosity oil is required.

A—The flash point shall not be lower than 115°F and shall not be higher than 230°F.

B—Water and sediment shall not exceed 0.1%.

C—The pour point shall not exceed 15°F.

D—Distillation test: When 90% has been recovered in the receiver the thermometer shall not read more than 675°F.

E—The viscosity shall not be more than 55 seconds Saybolt Universal at 100°F.

Provided that pour points in all cases shall not be higher than zero degrees F whenever required by conditions of storage or use.

§ 4. Diesel fuel is hereby defined to mean any petroleum product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark. Such diesel fuel shall meet the following specifications:

A—The diesel fuel shall be free from harmful suspended matter and sediment. Water, suspended matter and sediment shall not exceed 0.05 per cent by volume. It shall be free from alkali or mineral acid.

B—The viscosity shall not be less than 35 seconds Saybolt Universal at 100°F.

C—Centane [Cetane] number shall not be less than 30.

or

C—The diesel index shall not be less than 30.

D—The flash point shall not be lower than 115°F Tag Closed Tester.

Provided that diesel fuel not meeting the above requirements may be sold if labeled in the manner provided by regulations issued by the commissioner to show wherein it differs from these requirements.

§ 5. Heating oil shall in case of dispute be sold on the basis of the United States gallon containing 231 cubic inches at 60°F, provided that the volume of the delivered oil may be calculated from its weight and gravity degrees API in accordance with the National Standard Petroleum Oil Tables prepared by the National Bureau of Standards.

§ 6. The State Food Commissioner and Chemist shall have authority to promulgate rules and regulations for the interpretation of the provisions and intent of this act and the same shall have the force and effect of law.

§ 7. Every person, firm or corporation shipping or transporting heating oil or diesel fuel into this State for sale or consignment or with intent to sell or consign the same, shall pay to the State Food Commissioner and Chemist an inspection fee of one-twentieth ( $1/20$ ) cent per gallon for each and every gallon of heating oil and diesel fuel so shipped or transported into the State, or that is held for sale within this State, provided nothing in this section shall be construed to require the payment of an inspection fee on any shipment or consignment of heating oil or diesel fuel when such inspection fee has already been paid by another dealer.

On the first day of each calendar month it shall be the duty of each and every receiver or consignee of any of the aforementioned products to send to the State Food Commissioner and Chemist a correct report of all shipments, consignments, or receipts, during the preceding month, and such report shall include the following: (a) the number of gallons of heating oil and diesel fuel received, (b) the grade or class of each shipment or consignment, (c) the date received, (d) consignor, and (e) the person, firm or corporation transporting or delivering the same to consignee. Such monthly report shall be accompanied by fees herein required due to the State on such heating oil and diesel fuel. Failure on the part of the consignee or receiver of such heating oil and diesel fuel to send such report and remittance as above specified shall be a violation of the act and punishable under it.

§ 8. Every person, firm or corporation importing any heating oil or diesel fuel for sale or consignment within this State or having

same in his possession with intent to sell, shall, before so doing, deposit with the State Food Commissioner and Chemist a surety bond payable to the State of North Dakota in the penal sum of five hundred (\$500.00) dollars or twice the amount of inspection fees due for any calendar month to guarantee to this State a truthful report of receipts of heating oil and diesel fuel herein required and the payment of fees herein required in Section 7 of this act. The said bond shall be approved as to its sufficiency by the State Food Commissioner and Chemist.

All inspection fees shall be due on the first day of each calendar month for the preceding month, and said fees shall become delinquent when ten days past due, and the person, firm or corporation bonding such delinquent, may, after twenty days, be called upon to make good the bond for the fees so delinquent.

Provided however, that where a person, firm or corporation who ships or transports heating oil and diesel fuel into this State for sale or consignment or with intent to sell or consign the same, also ships or imports kerosene or gasoline for like purposes and is required to furnish a bond under the provisions of the North Dakota Petroleum Products Inspection Act, to guarantee to the State a truthful report of receipts of gasoline and kerosene and the payment of the inspection fees upon such gasoline and kerosene that then, if such bond is furnished in the penal sum of five hundred (\$500.00) dollars or twice the amount of the inspection fees due for any calendar month for gasoline and kerosene and for heating oil and diesel fuel, and is conditioned so as to be applicable to and cover any and all inspection fees that may become due for the inspection fees upon the heating oil and diesel fuel as well as upon the kerosene or gasoline, that then no additional bond shall be required under this act.

§ 9. All fees received by the State Food Commissioner and Chemist as provided for in this act shall be promptly forwarded to the Treasurer of the State of North Dakota, for deposit in the General Fund.

§ 10. This statute is not intended to apply to the inspection of kerosene, gasoline or tractor fuel oil or in any manner change the existing laws, as regards the inspection and sale of kerosene, gasoline and tractor fuel in this State, but is intended to apply only to heating oil and diesel fuel.

§ 11. The primary object sought to be accomplished by this enactment is to regulate the sale of heating oil and diesel fuel, to prescribe the specifications of such heating oil and diesel fuel and to provide for the inspection thereof. The provisions relating to the manner in which this is to be accomplished do not form an inducement for the enactment, and it is hereby declared that if any of the provisions of the act contravene the provisions of the Constitu-

tion, the remaining provisions would have been enacted by the Legislative Assembly, even though such provisions had been eliminated from the act. Hence, if any of the provisions are found to be violative of the Constitution, the remaining provisions shall not be affected by such invalidity but remain in full force and effect.

§ 12. Any person, firm or corporation violating or failing to comply with any of the provisions of this act or any rule or regulation issued pursuant thereto, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five (\$25.00) dollars and not more than one hundred (\$100.00) dollars or by imprisonment for not less than ten days and not more than thirty days or both at the discretion of the court.

Approved March 15, 1939.

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## CHAPTER 149

H. B. No. 390—(Committee on Delayed Bills)

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### MINERAL, GAS AND OIL RIGHTS. STATE OWNED LANDS

An act reserving to the State of North Dakota five per cent (5%) of all rights to minerals, natural gas or oil which may be found or underlying all lands owned by the State of North Dakota or hereafter acquired by the State of North Dakota by foreclosure, quit claim deed or otherwise; declaring an emergency.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. In all transfers of land hereafter made by the State of North Dakota or any of the State departments or lands now owned by the State of North Dakota or which may hereafter be acquired by the State of North Dakota, or any of its departments by deed, quit claim deed, foreclosure or by any other method, and whether such transfers made by the State of North Dakota or any of its departments are made by deed, contract or lease, there shall be reserved to the State of North Dakota five per cent (5%) of all rights to any oil, natural gas or minerals which may be found on or underlying such land. Any transfer, deed or lease which does not contain such reservation shall be null and void and of no effect.

§ 2. EMERGENCY.] An emergency is hereby declared to exist, and this act shall be in full force and effect from and after its passage and approval.

Approved March 13, 1939.