

House Bill 2272

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Transportation and Economic Development)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Increases tax on motor vehicle fuels. Dedicates amount of increase for funding of new projects to improve highways and for retraining of displaced fuel dispensary employees.

Allows retail customer to dispense gasoline or other flammable liquids if owner, operator or employee of dispensing facility is in immediate vicinity.

Takes effect 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to motor vehicle fuels; creating new provisions; amending ORS 319.020, 319.530, 366.739,
3 479.180, 480.340, 480.345, 480.347 and 480.355; repealing ORS 480.315, 480.320, 480.330 and
4 480.349; prescribing an effective date; and providing for revenue raising that requires approval
5 by a three-fifths majority.

6 **Be It Enacted by the People of the State of Oregon:**

7 **SECTION 1.** ORS 319.020 is amended to read:

8 319.020. (1) Subject to subsections (2) to (4) of this section, in addition to the taxes otherwise
9 provided for by law, every dealer engaging in the dealer's own name, or in the name of others, in
10 the first sale, use or distribution of motor vehicle fuel or aircraft fuel or withdrawal of motor vehicle
11 fuel or aircraft fuel for sale, use or distribution within areas in this state within which the state
12 lacks the power to tax the sale, use or distribution of motor vehicle fuel or aircraft fuel, shall:

13 (a) Not later than the 25th day of each calendar month, render a statement to the Department
14 of Transportation of all motor vehicle fuel or aircraft fuel sold, used, distributed or so withdrawn
15 by the dealer in the State of Oregon as well as all such fuel sold, used or distributed in this state
16 by a purchaser thereof upon which sale, use or distribution the dealer has assumed liability for the
17 applicable license tax during the preceding calendar month. The dealer shall render the statement
18 to the department in the manner provided by the department by rule.

19 (b) Except as provided in ORS 319.270, pay a license tax computed on the basis of [30] **33** cents
20 per gallon on the first sale, use or distribution of such motor vehicle fuel or aircraft fuel so sold,
21 used, distributed or withdrawn as shown by such statement in the manner and within the time pro-
22 vided in ORS 319.010 to 319.430.

23 (2) When aircraft fuel is sold, used or distributed by a dealer, the license tax shall be computed
24 on the basis of nine cents per gallon of fuel so sold, used or distributed, except that when aircraft
25 fuel usable in aircraft operated by turbine engines (turbo-prop or jet) is sold, used or distributed, the
26 tax rate shall be one cent per gallon.

27 (3) In lieu of claiming refund of the tax paid on motor vehicle fuel consumed by such dealer in
28 nonhighway use as provided in ORS 319.280, 319.290 and 319.320, or of any prior erroneous payment
29 of license tax made to the state by such dealer, the dealer may show such motor vehicle fuel as a

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 credit or deduction on the monthly statement and payment of tax.

2 (4) The license tax computed on the basis of the sale, use, distribution or withdrawal of motor
3 vehicle or aircraft fuel may not be imposed wherever such tax is prohibited by the Constitution or
4 laws of the United States with respect to such tax.

5 **SECTION 2.** ORS 319.530 is amended to read:

6 319.530. (1) To compensate this state partially for the use of its highways, an excise tax hereby
7 is imposed at the rate of [30] **33** cents per gallon on the use of fuel in a motor vehicle.

8 (2) Except as otherwise provided in subsections (3) and (4) of this section, 100 cubic feet of fuel
9 used or sold in a gaseous state, measured at 14.73 pounds per square inch of pressure at 60 degrees
10 Fahrenheit, is taxable at the same rate as a gallon of liquid fuel.

11 (3) One hundred twenty cubic feet of compressed natural gas used or sold in a gaseous state,
12 measured at 14.73 pounds per square inch of pressure at 60 degrees Fahrenheit, is taxable at the
13 same rate as a gallon of liquid fuel.

14 (4) One and three-tenths liquid gallons of propane at 60 degrees Fahrenheit is taxable at the
15 same rate as a gallon of other liquid fuel.

16 (5)(a) Except as provided in paragraph (b) of this subsection, the excise tax imposed under sub-
17 section (1) of this section does not apply to diesel fuel blended with a minimum of 20 percent
18 biodiesel that is derived from used cooking oil.

19 (b) The exemption provided under paragraph (a) of this subsection does not apply to fuel:

20 (A) Used in motor vehicles that have a gross vehicle weight rating of 26,001 pounds or more;

21 (B) That is not sold in retail operations; or

22 (C) That is sold in operations involving fleet fueling or bulk sales.

23 **SECTION 3.** ORS 319.530, as amended by section 3, chapter 648, Oregon Laws 2013, is amended
24 to read:

25 319.530. (1) To compensate this state partially for the use of its highways, an excise tax hereby
26 is imposed at the rate of [30] **33** cents per gallon on the use of fuel in a motor vehicle.

27 (2) Except as otherwise provided in subsections (3) and (4) of this section, 100 cubic feet of fuel
28 used or sold in a gaseous state, measured at 14.73 pounds per square inch of pressure at 60 degrees
29 Fahrenheit, is taxable at the same rate as a gallon of liquid fuel.

30 (3) One hundred twenty cubic feet of compressed natural gas used or sold in a gaseous state,
31 measured at 14.73 pounds per square inch of pressure at 60 degrees Fahrenheit, is taxable at the
32 same rate as a gallon of liquid fuel.

33 (4) One and three-tenths liquid gallons of propane at 60 degrees Fahrenheit is taxable at the
34 same rate as a gallon of other liquid fuel.

35 **SECTION 4. (1) The Department of Transportation shall use in the manner prescribed in**
36 **this section:**

37 **(a) Moneys from the increase in taxes by the amendments to ORS 319.020 by section 1**
38 **of this 2015 Act; and**

39 **(b) Moneys from the increase in taxes by the amendments to ORS 319.530 by sections 2**
40 **and 3 of this 2015 Act.**

41 **(2) The department shall use the amounts described in subsection (1) of this section to**
42 **fund new projects to improve Oregon highways as defined in ORS 319.010.**

43 **SECTION 5.** ORS 366.739 is amended to read:

44 366.739. Except as otherwise provided in ORS 366.744 **and section 4 of this 2015 Act**, the taxes
45 collected under ORS 319.020, 319.530, 803.090, 803.420, 818.225, 825.476 and 825.480, minus \$71.2

1 million per biennium, shall be allocated 24.38 percent to counties under ORS 366.762 and 15.57 per-
 2 cent to cities under ORS 366.800.

3 **SECTION 6.** ORS 366.739, as amended by section 7, chapter 13, Oregon Laws 2014, is amended
 4 to read:

5 366.739. Except as otherwise provided in ORS 366.744 **and section 4 of this 2015 Act**, the taxes
 6 collected under ORS 319.020, 319.530, 803.090, 803.420, 818.225, 825.476 and 825.480 and the special
 7 use fuel license fees collected under section 2, chapter 13, Oregon Laws 2014, minus \$71.2 million
 8 per biennium, shall be allocated 24.38 percent to counties under ORS 366.762 and 15.57 percent to
 9 cities under ORS 366.800.

10 **SECTION 7.** ORS 480.340 is amended to read:

11 480.340. (1) An owner, operator or employee of a filling station, service station, garage or other
 12 dispensary where Class 1 flammable liquids, except aviation fuels, are dispensed at retail may not
 13 install or use or permit the use of:

14 [(1)] (a) A coin-operated [*or self-service dispensing*] device for the liquids.

15 [(2)] (b) A device that permits the dispensing of the liquids when the hand of the operator of the
 16 discharge nozzle is removed from the control lever, except one equipped with an automatic nozzle
 17 of a type that has been approved by the State Fire Marshal and that has a latch-open device as an
 18 integral part of the assembly, capable of shutting off the flow of the liquids reliably when the tank
 19 is filled or when the nozzle falls or slips from the filling neck of the tank.

20 (2) A person may not [*use an automatic nozzle to*] dispense [*the*] **Class 1 flammable** liquids,
 21 **except aviation fuels**, unless the owner, operator or employee **of the dispensary** is in the imme-
 22 diate vicinity of the tank being filled.

23 **SECTION 8.** ORS 480.345 is amended to read:

24 480.345. [*Notwithstanding ORS 480.330 and 480.340, the owner, operator or employee of a dis-*
 25 *persing facility may permit nonretail customers other than the owner, operator or employee to*]
 26 **Notwithstanding ORS 480.340 (2), a nonretail customer may** use or manipulate at the dispensing
 27 facility a card activated or key activated device for dispensing Class 1 flammable liquids into the
 28 fuel tank of a motor vehicle or other container **at a fuel dispensing facility without an owner,**
 29 **operator or employee of the dispensing facility in the immediate vicinity** under the following
 30 conditions:

31 (1) The owner or operator [*shall hold*] **holds** a current nonretail facility license issued by the
 32 State Fire Marshal under ORS 480.350;

33 (2) [*After April 1, 1992, A*] **The** nonretail customer [*shall purchase*] **purchases** at least 900 gal-
 34 lons of Class 1 flammable liquids or diesel fuel from any source during a 12-month period or, if the
 35 amount of such liquids or fuel purchased is less than 900 gallons annually, [*file*] **files** documentation
 36 that:

37 (a) The fuel qualifies as a deductible farming expense on the customer's federal income tax re-
 38 turn; or

39 (b) The fuel was purchased by a governmental agency providing fire, ambulance or police ser-
 40 vices;

41 (3) The nonretail customer [*shall provide*] **provides** a federal employer identification number or
 42 equivalent documentation to indicate participation in a business or employment with a government
 43 agency or nonprofit or charitable organization;

44 (4) The nonretail customer[, *other than the owner or operator, dispensing Class 1 flammable liq-*
 45 *uids shall be*] **is** employed by a business, government agency or nonprofit or charitable organization

1 and *[shall dispense]* **dispenses** Class 1 flammable liquids only into the fuel tank of a motor vehicle
 2 or other container owned or used by the business, government agency or nonprofit or charitable
 3 organization;

4 (5) The nonretail customer~~*[, other than the owner, operator or employee, dispensing Class 1*~~
 5 *flammable liquids shall have]* **has** satisfied safety training requirements in compliance with rules of
 6 the State Fire Marshal; and

7 (6) The owner or operator *[shall enter]* **has entered** into a written agreement with nonretail
 8 customers permitted under this section to dispense fuel at the nonretail facility. Except as otherwise
 9 provided in ORS 480.355, the agreement shall at a minimum:

10 (a) Certify that the nonretail customer will purchase at least 900 gallons of Class 1 flammable
 11 liquids or diesel fuel from any source during a 12-month period or, if the amount of such liquids or
 12 fuel purchased is less than 900 gallons annually, file documentation that:

13 (A) The fuel qualifies as a deductible farming expense on the customer's federal income tax re-
 14 turn; or

15 (B) The fuel was purchased by a governmental agency providing fire, ambulance or police ser-
 16 vices;

17 (b) Provide a federal employer identification number or equivalent documentation to indicate
 18 participation in a business or employment with a government agency or nonprofit or charitable or-
 19 ganization;

20 (c) Certify that the nonretail customer is employed by a business, government agency or
 21 nonprofit or charitable organization and that the nonretail customer shall dispense Class 1
 22 flammable liquids only into the fuel tank of a motor vehicle or other container owned or used by
 23 the business, government agency or nonprofit or charitable organization;

24 (d) Certify that the nonretail customer has satisfied safety training requirements in compliance
 25 with rules of the State Fire Marshal; and

26 (e) Require the nonretail customer to submit a sworn statement, as defined in ORS 162.055, that
 27 the information supplied in the agreement is true and correct.

28 **SECTION 9.** ORS 480.347 is amended to read:

29 480.347. *[Notwithstanding ORS 480.330 and 480.340,]* During an emergency as defined in ORS
 30 401.025~~*[, the owner, operator or employee of a dispensing facility may permit nonretail customers, other*~~
 31 *than the owner, operator or employee, to use or manipulate at the dispensing facility]* **and**
 32 **notwithstanding ORS 480.340 (2), a nonretail customer may activate or use** a card activated
 33 or key activated device for dispensing Class 1 flammable liquids into the fuel tank of a vehicle or
 34 other container **at any fuel dispensing facility without an owner, operator or employee of the**
 35 **dispensing facility in the immediate vicinity** if:

36 *[(1) The owner or operator holds a current nonretail facility license issued by the State Fire Mar-*
 37 *shal under ORS 480.350;]*

38 *[(2)]* (1) The fuel is dispensed to an emergency service agency as defined in ORS 401.025 or to
 39 an entity authorized by an emergency service agency to provide services during an emergency;

40 *[(3)]* (2) The nonretail customer~~*[, other than the owner or operator,]*~~ dispensing Class 1 flammable
 41 liquids is a qualified emergency service volunteer as defined in ORS 401.358 or an owner or em-
 42 ployee of the entity authorized by the emergency service agency to provide services during an
 43 emergency and dispenses Class 1 flammable liquids only into the fuel tank of a vehicle or other
 44 container owned and used by the emergency service agency or the entity authorized by that agency
 45 to provide services during an emergency; and

1 [(4)] (3) The nonretail customer[, *other than the owner, operator or employee,*] dispensing Class
2 1 flammable liquids satisfies safety training requirements in compliance with rules of the State Fire
3 Marshal.

4 **SECTION 10.** ORS 480.355 is amended to read:

5 480.355. (1) Notwithstanding ORS **480.340 (2) and** 480.345, upon application from the owner or
6 operator of a nonretail facility, the State Fire Marshal may issue a conditional use license under
7 which the nonretail facility may permit persons who are not qualified as nonretail customers under
8 ORS 480.345 (2) to (4) to dispense Class 1 flammable liquids at a nonretail facility.

9 (2) In issuing a conditional use license, the State Fire Marshal may waive the nonretail cus-
10 tomer requirements of ORS 480.345 (2) to (4), but may not waive safety training requirements con-
11 tained in ORS 480.345.

12 (3) The State Fire Marshal may issue a conditional use license under this section if the State
13 Fire Marshal determines that:

14 (a) There is no facility where Class 1 flammable liquids are dispensed [*by attendants*] at retail
15 within seven miles of the nonretail facility, and other undue hardship conditions exist, as may be
16 determined by the State Fire Marshal by rule; or

17 (b) The nonretail facility exists on property used as a private, nonprofit golf club not open to
18 the general public and the private, nonprofit golf club members who are not qualified as nonretail
19 customers use the nonretail facility only for the fueling of vehicles that are used exclusively on the
20 property of the private, nonprofit golf club and are not designed for highway use.

21 (4) The State Fire Marshal shall consider comments of local residents or local government
22 bodies to determine if undue hardship exists.

23 (5) The provisions of ORS 480.345 and 480.350 apply to a license application made under this
24 section, except those provisions whose applicability is waived by the State Fire Marshal under this
25 section.

26 (6) The applicant for a conditional use license shall bear the burden of proof that the require-
27 ments of this section and of any rules of the State Fire Marshal adopted pursuant to this section
28 are satisfied.

29 (7) The State Fire Marshal shall investigate any application made under this section and hold
30 at least one public hearing to determine if the conditional use license should be issued. The State
31 Fire Marshal may waive the requirement for a hearing if the application for a conditional use li-
32 cense is made by a private, nonprofit golf club.

33 (8) Any person who makes application as provided for in this section, and whose application is
34 denied, shall be entitled to a hearing upon request. The hearing shall be conducted as a contested
35 case hearing pursuant to the applicable provisions of ORS 183.413 to 183.470.

36 (9) Judicial review of an order made after a hearing under subsection (7) of this section shall
37 be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

38 **SECTION 11.** ORS 479.180 is amended to read:

39 479.180. (1) If the owner, lessee, agent or occupant is aggrieved by the order of an officer under
40 the provisions of ORS 476.030, 479.170, 479.210 to 479.220, 480.122 to 480.160, [*480.330,*] 480.340,
41 480.420 to 480.434 or 480.450 and desires a hearing, the person may complain or appeal in writing
42 to the State Fire Marshal within 10 days from the service of the order. The complaint or appeal
43 shall set forth the specific grounds of the complaint or appeal and no other ground shall be consid-
44 ered thereafter. The complaint or appeal shall be accompanied by a fee of \$40 payable to the State
45 Fire Marshal, and the State Fire Marshal may refer the complaint or appeal to the regional appeal

1 advisory board established for that region by notifying the chairperson of that board and sending a
 2 copy of the notice to the complainant or appellant. The board shall fix a time for hearing and notify
 3 the complainant or appellant of the time and place thereof, which shall be within 10 days after such
 4 referral by the State Fire Marshal. If the State Fire Marshal does not refer the matter to a regional
 5 appeal advisory board, the State Fire Marshal shall fix a time and place, not less than five and not
 6 more than 10 days thereafter, when and where the complaint or appeal will be heard by the State
 7 Fire Marshal. Within 10 days after receiving a recommendation from the regional appeal advisory
 8 board, or if no referral was made to such board, within 10 days after the hearing before the State
 9 Fire Marshal, the State Fire Marshal may affirm, modify, revoke or vacate the order complained of
 10 or appealed from. Unless the order is modified, revoked or vacated by the State Fire Marshal, it
 11 shall remain in force and be complied with by the owner, lessee, agent or occupant, and within the
 12 time fixed in the order or fixed by the State Fire Marshal. If the State Fire Marshal vacates or re-
 13 vokes the order complained of or appealed from, or modified it in any particular other than ex-
 14 tending time for compliance, the fee paid with the complaint or appeal shall be refunded. Otherwise,
 15 it shall be credited to appropriate state funds, and the State Fire Marshal shall so notify the State
 16 Treasurer.

17 (2) If the complainant or appellant under subsection (1) of this section is aggrieved by the final
 18 order of the State Fire Marshal, and if such order necessitates the expenditure of money or involves
 19 statutory interpretation, the complainant or appellant may, within 10 days thereafter, appeal to the
 20 circuit court of the county in which the property is situated, notifying the State Fire Marshal of the
 21 appeal within 10 days thereafter, which notice shall be in writing and delivered personally or by
 22 registered letter to the marshal, or left at the principal office of the State Fire Marshal at the state
 23 capital. The party so appealing shall, within two days after filing the appeal, file with the circuit
 24 court in which appeal is made a bond in an amount to be fixed by the court or judge, but in no case
 25 less than \$100, with two sufficient sureties possessing the qualification of bail on arrest, the bond
 26 to be approved by the court and conditioned to pay all the costs on the appeal in case the appellant
 27 fails to sustain it or it is dismissed for any cause. In the case of an appeal involving an order under
 28 ORS 479.170, the circuit court shall hear and determine the appeal within 10 days after the date of
 29 filing the same.

30 (3) The State Fire Marshal shall make or have made a certified summary of the proceedings at
 31 the hearing before the regional appeal advisory board or before the State Fire Marshal, and together
 32 with all the evidentiary matter filed in the office of the State Fire Marshal or presented to the re-
 33 gional appeal advisory board, transmit them to the circuit court at least three days prior to the date
 34 fixed by the court for hearing when it shall be tried de novo.

35 **SECTION 12. ORS 480.315, 480.320, 480.330 and 480.349 are repealed.**

36 **SECTION 13. The Department of Transportation shall consult with the Employment De-**
 37 **partment to determine the best methods for retraining workers displaced as a consequence**
 38 **of the repeal of ORS 480.315, 480.320 and 480.330 by section 12 of this 2015 Act and the**
 39 **amendments to ORS 480.340 by section 7 of this 2015 Act.**

40 **SECTION 14. (1) The amendments to ORS 319.020 by section 1 of this 2015 Act apply to**
 41 **motor vehicle fuel sold, used or distributed on or after the effective date of this 2015 Act.**

42 **(2) The amendments to ORS 319.530 by sections 2 and 3 of this 2015 Act apply to fuel used**
 43 **in motor vehicles on or after the effective date of this 2015 Act.**

44 **SECTION 15. This 2015 Act takes effect on the 91st day after the date on which the 2015**
 45 **regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**

