

House Bill 2293

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Transportation)

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**.

Creates penalty for unbonded or unlicensed sale or distribution of use fuel. Increases penalty for late filing of motor vehicle fuel statement by dealer. Increases penalty for unlicensed use of fuel in motor vehicle. Imposes penalty for late filing of use fuel report by seller or user.

Changes description of Indian jurisdictions excluded from exported fuel exemption from motor vehicle fuel license tax. Creates presumption of nonpayment of tax on exported motor vehicle fuel upon failure to produce proof of payment of tax or exemption.

Advances sunset date of exemption for biodiesel blend fuel.

A BILL FOR AN ACT

1
2 Relating to motor vehicle fuel; creating new provisions; and amending ORS 319.190, 319.240, 319.611,
3 319.675 and 319.690 and section 4, chapter 648, Oregon Laws 2013.

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

5 **SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS 319.510 to**
6 **319.880.**

7 **SECTION 2. (1) If any seller of fuel sells or distributes any fuel without first filing the**
8 **bond, if required, and securing the license under ORS 319.621, the tax provided in ORS 319.665**
9 **shall immediately be due and payable on account of all fuel so sold or distributed.**

10 **(2) Except as otherwise provided in this subsection, the Department of Transportation**
11 **shall proceed forthwith to determine, from the best available sources, the amount of such**
12 **tax, and it shall immediately assess the tax and interest in the amount found due, together**
13 **with a penalty of 100 percent of the tax, and shall make its certificate of such assessment**
14 **and penalty. The department may waive all or part of a penalty imposed under this sub-**
15 **section if the department determines that a violation of the requirement under ORS 319.621**
16 **to file any bond or to secure the license was due to reasonable cause and without intent to**
17 **avoid payment of the tax. In any suit or proceeding to collect such tax, interest or penalty,**
18 **the certificate is prima facie evidence that the seller therein named is indebted to the State**
19 **of Oregon in the amount of the tax, interest and penalty therein stated.**

20 **SECTION 3. ORS 319.190 is amended to read:**

21 319.190. (1) Every dealer in motor vehicle fuel shall render to the Department of Transportation,
22 on or before the 25th day of each month, on forms prescribed, prepared and furnished by the de-
23 partment, and in the manner provided by the department by rule, a signed statement of the number
24 of gallons of motor vehicle fuel sold, distributed or used by the dealer during the preceding calendar
25 month. The statement shall be signed by one of the principal officers, or by an authorized agent in
26 case of a corporation; or by the managing agent or owner in case of a firm or association.

27 (2) The signed statement filed with the department as required by this section is a public record.
28 All other documents, including supporting schedules and information received from other taxing ju-

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 jurisdictions and entities, shall be kept confidential and exempt from public inspection except that
 2 such information may be shared with tax collecting entities in other jurisdictions on the condition
 3 that the receiving jurisdiction agrees to keep such information confidential. If a statement is not
 4 received on or before the 25th day of each month, a penalty shall be assessed pursuant to ORS
 5 319.180 or, if the department determines that no tax is due, a penalty of [~~\$25~~] **\$100** shall be assessed.

6 **SECTION 4.** ORS 319.611 is amended to read:

7 319.611. (1) If any person required to be licensed under ORS 319.550 uses fuel in a motor vehicle
 8 in this state at a time when the person does not hold a valid user's license or does not display a
 9 valid authorization or user's emblem issued by the Department of Transportation, a penalty of [25]
 10 **100** percent of the tax applicable to the fuel so used shall be imposed. The penalty so imposed shall
 11 be in addition to any other penalty imposed under the provisions of ORS 319.510 to 319.990.

12 (2) The department may waive any penalty provided by subsection (1) of this section that is
 13 imposed after January 1, 1998, if the department determines that there was reasonable cause for the
 14 failure to hold a valid user's license or display a valid authorization or user's emblem issued by the
 15 department and finds that there was no intent to avoid payment.

16 **SECTION 5.** ORS 319.675 is amended to read:

17 319.675. (1) Except as provided in ORS 319.692, the seller of fuel for use in a motor vehicle shall
 18 report to the Department of Transportation on or before the 20th day of each month, the amount
 19 of fuel sold, during the preceding calendar month, subject to the tax imposed under ORS 319.530 or
 20 exempt from the tax imposed under ORS 319.530 pursuant to ORS 319.535 and such other informa-
 21 tion pertaining to fuel handled as the department may require. The department may prescribe the
 22 form of the report. The seller shall deliver the report to the department in the manner provided by
 23 the department by rule.

24 **(2) If a report is not received on or before the due date, a penalty shall be assessed pur-**
 25 **suant to ORS 319.694 or, if the department determines that no tax is due, a penalty of \$100**
 26 **shall be assessed.**

27 **SECTION 6.** ORS 319.690 is amended to read:

28 319.690. (1) Except as provided in subsection (2) of this section and ORS 319.692, each user of
 29 fuel in a motor vehicle required to be licensed under ORS 319.550 shall, on or before the 20th day
 30 of each month, file with the Department of Transportation a report showing the amount of fuel used
 31 during the immediately preceding calendar month by the user and such other information as the
 32 department may require for the purposes of ORS 319.510 to 319.880. The department shall prescribe
 33 the form of the report. The user shall file the report with the department in the manner provided
 34 by the department by rule. Each report shall be accompanied by a remittance payable to the de-
 35 partment for the amount of all the tax shown by the report to be due and payable. Any tax paid
 36 to a seller is a credit against the amount of tax otherwise due and payable to the state under ORS
 37 319.510 to 319.880 or 818.225, 825.474, 825.476 and 825.480. Also, when filing a monthly tax report,
 38 a user may, in lieu of claiming a refund, take a deduction or credit for the tax on any fuel which
 39 would otherwise be subject to refund under ORS 319.831 (1).

40 (2) Each user of fuel in a motor vehicle with a light weight of less than 8,000 pounds required
 41 to be licensed under ORS 319.550 may file an annual report of all fuel used upon Oregon highways.
 42 The report for each calendar year shall be filed on or before March 1 of the year following and shall
 43 be accompanied by a remittance payable to the department of all the tax shown to be due and
 44 payable on the amount of fuel used.

45 **(3) If a report is not received on or before the due date, a penalty shall be assessed pur-**

1 **suant to ORS 319.694 or, if the department determines that no tax is due, a penalty of \$100**
 2 **shall be assessed.**

3 **SECTION 7.** ORS 319.240 is amended to read:

4 319.240. (1) The license tax imposed by ORS 319.020 may not be imposed on motor vehicle fuel
 5 that is exported by a dealer:

6 (a) From this state to another state, territory or country, not including [*a federally recognized*
 7 *Indian reservation located wholly or partially within the borders of this state*] **Indian country as**
 8 **defined in 18 U.S.C. 1151**, where the motor vehicle fuel is unloaded; and

9 (b) Who has a valid motor vehicle fuel dealer's license or its equivalent issued by the state,
 10 territory or country, **not including Indian country as defined in 18 U.S.C. 1151**, to which the fuel
 11 is exported and where it is unloaded.

12 (2)(a) In support of any exemption from license taxes claimed under this section other than in
 13 the case of stock transfers or deliveries in equipment, every dealer must execute and file with the
 14 Department of Transportation an export certificate in such form as shall be prescribed, prepared and
 15 furnished by the department, containing a statement, made by some person having actual knowledge
 16 of the fact of such exportation, that the motor vehicle fuel has been exported from the State of
 17 Oregon, and giving such details with reference to such shipment as the department may require.
 18 All export certificates in support of shipments to other states, territories or countries must be
 19 completed and on file in the principal office of the dealer in this state within three months after the
 20 close of the calendar month in which the shipments to which they relate are made, unless the state,
 21 territory or country of destination would not be prejudiced with respect to its collection of taxes
 22 thereon if the certificate is not filed within such time. The department may demand of any dealer
 23 such additional data as is deemed necessary in support of any such certificate, and failure to supply
 24 such data will constitute a waiver of all right to exemption claimed by virtue of such certificate.
 25 The department may, in a case where it believes no useful purpose would be served by filing of an
 26 export certificate, waive the certificate.

27 **(b) If a dealer claims an exemption under subsection (1) of this section and fails to**
 28 **produce proof of payment of tax to the destination of the motor vehicle fuel or proof that**
 29 **the transaction was exempt in the destination, the dealer is presumed not to have paid the**
 30 **tax of the destination or the state on the exported motor vehicle fuel and shall be assessed**
 31 **the license tax imposed by ORS 319.020 on the exported motor vehicle fuel.**

32 (3) Any motor vehicle fuel carried from this state in the fuel tank of a motor vehicle shall not
 33 be considered as exported from this state, except that a refund of the tax may be paid on such fuel
 34 as provided in ORS 319.280 (1)(d).

35 (4) No person shall, through false statement, trick or device, or otherwise, obtain motor vehicle
 36 fuel for export upon which the Oregon tax has not been paid and fail to export the same, or any
 37 portion thereof, or cause the motor vehicle fuel or any portion thereof not to be exported, or shall
 38 divert the motor vehicle fuel or any portion thereof, or shall cause it to be diverted from interstate
 39 or foreign transit begun in this state, or shall unlawfully return the motor vehicle fuel or any por-
 40 tion thereof to be used or sold in this state and fail to notify the department and the dealer from
 41 whom the motor vehicle fuel was originally purchased of the person's act.

42 (5) No dealer or other person shall conspire with any person to withhold from export, or divert
 43 from interstate or foreign transit begun in this state, or to return motor vehicle fuel to this state
 44 for sale or use so as to avoid any of the taxes imposed by ORS 319.010 to 319.430.

45 **SECTION 8. (1) Section 2 of this 2017 Act applies to fuel sold or distributed on or after**

1 **January 1, 2018.**

2 (2) **The amendments to ORS 319.190, 319.675 and 319.690 by sections 3, 5 and 6 of this 2017**
3 **Act apply to statements and reports that become due on or after January 1, 2018.**

4 (3) **The amendments to ORS 319.611 by section 4 of this 2017 Act apply to fuel used in a**
5 **motor vehicle on or after January 1, 2018.**

6 (4) **The amendments to ORS 319.240 by section 7 of this 2017 Act apply to motor vehicle**
7 **fuel exported on or after January 1, 2018.**

8 **SECTION 9.** Section 4, chapter 648, Oregon Laws 2013, is amended to read:

9 **Sec. 4.** The amendments to ORS 319.530 by [*section 3 of this 2013 Act*] **section 3, chapter 648,**
10 **Oregon Laws 2013, apply to fuel sold on or after January 1, [2020] 2018.**

11