

By: Representative Miles

To: Transportation

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1083

1 AN ACT TO AMEND SECTION 27-55-7, MISSISSIPPI CODE OF 1972, TO
2 INCREASE THE MAXIMUM BOND AMOUNT FOR GASOLINE DISTRIBUTORS; TO
3 AMEND SECTION 27-55-33, MISSISSIPPI CODE OF 1972, TO MAKE IT
4 UNLAWFUL FOR SHIP, BOAT, TOWBOAT, VESSEL OR BARGE TO OFFLOAD ANY
5 TAXABLE PETROLEUM PRODUCT EXCEPT AT A TERMINAL REGISTERED WITH THE
6 INTERNAL REVENUE SERVICE; TO AMEND SECTION 27-55-53, MISSISSIPPI
7 CODE OF 1972, TO MAKE IT UNLAWFUL FOR CARRIERS OR TRANSPORTERS TO
8 DIVERT GASOLINE TO A DESTINATION OTHER THAN THE DESTINATION ON THE
9 MANIFEST OR BILL OF LADING, AND TO PROVIDE PENALTIES THEREFOR; TO
10 AMEND SECTION 27-55-507, MISSISSIPPI CODE OF 1972, TO INCREASE THE
11 MAXIMUM BOND AMOUNT FOR SPECIAL FUEL DISTRIBUTORS; TO AMEND
12 SECTION 27-55-559, MISSISSIPPI CODE OF 1972, TO MAKE IT UNLAWFUL
13 FOR CARRIERS OR TRANSPORTERS TO DIVERT SPECIAL FUEL SHIPMENTS TO A
14 DESTINATION OTHER THAN THE DESTINATION ON THE MANIFEST OR BILL OF
15 LADING, AND TO PROVIDE PENALTIES THEREFOR; AND FOR RELATED
16 PURPOSES.

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

18 **SECTION 1.** Section 27-55-7, Mississippi Code of 1972, is
19 amended as follows:

20 27-55-7. Before any person shall engage in business as a
21 distributor of gasoline in this state, he shall first make
22 application to the commission, upon forms prescribed by the
23 commission, for a permit to engage in the business.

24 If the application is approved by the commission, the
25 applicant shall enter into a good and sufficient surety bond,
26 written by a company qualified to write such bonds in this state.
27 The bond shall be made payable to the State of Mississippi in a
28 sum of not less than One Thousand Dollars (\$1,000.00) nor more
29 than Five Hundred Thousand Dollars (\$500,000.00), the amount to be
30 determined by the commission; or, in lieu thereof, the applicant
31 may deposit with the commission a cash bond in the amount so
32 determined. A personal bond in the amount so determined shall
33 also be acceptable in lieu of a surety bond if the same is
34 adequately secured by the pledge or assignment of a pledgeable or

35 assignable bond or bonds of the State of Mississippi or the United
36 States Government. Such bond or bonds shall be in an amount not
37 to exceed Five Hundred Thousand Dollars (\$500,000.00), and not to
38 exceed the gasoline tax estimated to become due by the * * *
39 distributor of gasoline for any ninety-day period. The bond
40 herein required shall be increased within the limits hereinabove
41 set forth from time to time if deemed insufficient by the
42 commission, giving to the distributor of gasoline fifteen (15)
43 days' notice, in writing, to increase the bond. The notice shall
44 state the amount of increase demanded.

45 The condition of the bond shall be that the distributor of
46 gasoline shall fully comply with all laws pertaining to
47 distributors of gasoline and pertaining to the transportation of
48 gasoline as regulated by this article, and that he shall pay the
49 gasoline tax and the penalties provided. Provided, however, any
50 person who, prior to the effective date of this article, has
51 furnished bond to meet the requirements of any petroleum tax law
52 administered by the commission, shall not be required to furnish
53 an additional bond provided his existing bond is adequate, but
54 such person shall be subject to all the other provisions of this
55 article regulating and governing distributors of gasoline.

56 Provided further, that any person who purchases all of his
57 gasoline on a tax-paid basis and from a qualified bonded
58 distributor of gasoline for sale or distribution to retailers for
59 resale to consumers shall not be required to make bond for the
60 gasoline purchased, but shall be subject to all the other
61 provisions of this article regulating and governing distributors
62 of gasoline.

63 **SECTION 2.** Section 27-55-33, Mississippi Code of 1972, is
64 amended as follows:

65 27-55-33. Every common or contract carrier transporting
66 gasoline by whatever means, from a point outside this state to any
67 point in this state, shall report, in writing, all deliveries of

68 gasoline to points within this state to the commission on forms
69 prescribed by the commission or, with the approval of the
70 commission, furnish the required information on machine-prepared
71 schedules, and such other information as may be necessary for the
72 proper administration of this article.

73 The reports required in this section shall be for information
74 purposes only and the commission may, in its discretion, waive the
75 filing of any of these reports not necessary for proper
76 administration of this article. The reports required in this
77 section shall be signed and contain a declaration that the
78 statements contained therein are true and are made under penalty
79 of perjury. Such reports required in this section shall be filed
80 with the commission on or before the 20th day of each month
81 following the month in which the transaction occurred.

82 Any such person failing or refusing to file said report on or
83 before the date required by law, or who shall omit any shipment of
84 gasoline from said report, shall be subject to a penalty which
85 shall be a percentage of the tax imposed by law on the total
86 amount of the taxable products involved as follows:

87 (a) Not more than ten percent (10%) for the first
88 failure, refusal or omission; and

89 (b) Not more than twenty percent (20%) for the second
90 and any subsequent failure, refusal or omission.

91 The commission may waive the penalty imposed in the preceding
92 paragraph upon good cause shown.

93 All ships, boats, towboats, vessels or barges delivering
94 taxable petroleum products into this state shall have all inlets
95 and outlets sealed with different numbered seals, the number of
96 which shall be recorded on the invoices, manifests, bills of
97 lading, or other records accompanying the shipment. Any captain
98 of a ship, boat, barge, towboat or vessel found in violation of
99 this provision shall be guilty of a misdemeanor and fined not less
100 than One Hundred Dollars (\$100.00) nor more than Two Hundred Fifty

Dollars (\$250.00) for the first offense, and not less than Two Hundred Fifty Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00) for each offense thereafter.

It shall be unlawful for any ship, boat, towboat, vessel or barge delivering taxable petroleum products into this state to unload such taxable petroleum products in this state unless the delivery is to a terminal approved by and registered with the Internal Revenue Service. Any captain of a ship, boat, barge, towboat or vessel who violates this provision shall be fined One Thousand dollars (\$1,000.00) per offense and the entire amount of the state excise tax upon such taxable petroleum product shall be deemed due and payable, plus a penalty of twenty-five percent (25%) of the amount of such tax, and any authorized representative of the commission or the enforcement officers of the Mississippi Department of Transportation shall have the right to seize or impound such ship, boat, towboat, vessel or barge until such excise tax and penalty have been paid.

SECTION 3. Section 27-55-53, Mississippi Code of 1972, is amended as follows:

27-55-53. Every person hauling, transporting or conveying more than fifty (50) gallons of gasoline over the highways, streets, alleys or waters of this state, or into this state over any highway, street, alley or water route, shall, during the entire time he is so engaged, have in his possession a bill of sale, bills of lading, invoices or other written evidence, each of which shall be serially numbered, showing the kind and amount of gasoline being transported, the name and address of the person from whom said gasoline was received, and the name and address of the person to whom delivery is to be made. The vehicle or boat conveying said gasoline shall have clearly printed on it the name and address of the person transporting such gasoline on both sides of the vehicle, or boat, in well-balanced letters of not less than two (2) inches in height on a contrasting background.

134 Any person transporting gasoline without a shipping document
135 containing the information set forth in this section or who
136 diverts a shipment of gasoline to a destination other than the
137 destination listed on such shipping document or who alters a
138 shipping document without notice to the commission shall be liable
139 for a fine of One Thousand Dollars (\$1,000.00) per offense and the
140 entire amount of the state excise tax upon such gasoline shall be
141 deemed due and payable, plus a penalty of twenty-five percent
142 (25%) of the amount of such tax. Any authorized representative
143 of the commission or the enforcement officers of the Mississippi
144 Department of Transportation shall have the right to seize or
145 impound such vehicle or boat until the excise tax and penalty have
146 been paid. Notice to the commission shall consist of contacting
147 the National Diversion Registry, reporting the diversion and
148 obtaining a registration number.

149 The commission, its employees or agents, including the
150 enforcement officers of the Mississippi Department of
151 Transportation, or any sheriff, deputy sheriff, constable or
152 police officer of this state is hereby authorized to inspect any
153 vehicle or boat transporting gasoline over the highways, streets,
154 alleys or waters of this state, to examine the contents of any
155 such vehicle or boat, to take a sample of each grade of gasoline
156 contained in said vehicle or boat provided no sample shall exceed
157 one (1) gallon, and to inspect the bills of lading, invoices or
158 other records pertaining to the gasoline being transported in such
159 vehicle or boat.

160 Any person other than a common or contract carrier bringing
161 gasoline into this state in quantities of more than fifty (50)
162 gallons shall give notice to the commission of his intent to
163 import such gasoline. The commission is authorized to promulgate
164 rules setting forth the manner in which such notice is to be
165 given. However, if information on gasoline imported into this

state can be accurately secured from other sources by the commission, it may waive the requirements of such notice.

If any person, other than a common or contract carrier, shall transport gasoline over the highways of this state by motor vehicle without having given the notice required by this section, or if a copy of such notice is not carried in such motor vehicle as required by this section, the entire amount of the state excise tax upon such gasoline being transported shall be deemed due and payable, plus a penalty of twenty-five percent (25%) of the amount of such tax, and any authorized representative of the commission or the enforcement officers of the Mississippi Department of Transportation shall have the right to seize or impound the motor vehicle in which such gasoline is being transported until such excise tax together with the penalty thereon has been paid.

Provided, however, that said penalty shall not apply when the driver of the truck stops at the first weighing station in the line of travel and secures the signature of the officer on duty on the import notice.

SECTION 4. Section 27-55-507, Mississippi Code of 1972, is amended as follows:

27-55-507. Before any person shall engage in business as a distributor of special fuel in this state, he shall first make application to the commission, upon forms prescribed by the commission, for a permit to engage in said business.

If the application is approved by the commission, the applicant shall enter into a good and sufficient surety bond, written by a company qualified to write such bonds in this state. The bond shall be made payable to the State of Mississippi in a sum not less than One Thousand Dollars (\$1,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00), the amount to be determined by the commission; or, in lieu thereof, the applicant may deposit with the commission a cash bond in the amount so determined. A personal bond in the amount so determined shall

199 also be acceptable in lieu of a surety bond if the same is
200 adequately secured by the pledge or assignment of a pledgeable or
201 assignable bond, or bonds, of the State of Mississippi or the
202 United States government. Such bond or bonds shall be in an
203 amount not to exceed Five Hundred Thousand Dollars (\$500,000.00),
204 and not to exceed the special fuel taxes estimated to become due
205 by the distributor of special fuel for any ninety-day period. The
206 bond required by this section shall be increased within the limits
207 hereinabove set forth from time to time if deemed insufficient by
208 the commission, giving to the distributor of special fuel fifteen
209 (15) days' notice, in writing, to increase such bond, such notice
210 to state the amount of increase demanded.

211 The condition of such bond shall be that the distributor of
212 special fuel shall fully comply with all laws pertaining to
213 distributors of special fuel and pertaining to the transportation
214 of special fuel as regulated by this article, and that he shall
215 pay the special fuel taxes, and the penalties provided.

216 **SECTION 5.** Section 27-55-559, Mississippi Code of 1972, is
217 amended as follows:

218 27-55-559. Every person hauling, transporting or conveying
219 more than five hundred (500) gallons of special fuel over the
220 highways, streets, alleys or waters of this state, or into this
221 state over any highway, street, alley or water route, shall,
222 during the entire time he is so engaged, have in his possession a
223 bill of sale, bills of lading, invoices or other written evidence,
224 each of which shall be serially numbered, showing the kind and
225 amount of special fuel being transported, the name and address of
226 the person from whom such special fuel was received, and the name
227 and address of the person to whom delivery is to be made. The
228 vehicle or boat conveying such special fuel shall have clearly
229 printed on it the name and address of the person transporting the
230 special fuel on both sides of the vehicle or boat in well-balanced

231 letters of not less than two (2) inches in height on a contrasting
232 background.

233 Any person transporting special fuel without a shipping
234 document containing the required information or who diverts a
235 shipment of special fuel to a destination other than the
236 destination listed on such shipping document or who alters a
237 shipping document without notice to the commission shall be liable
238 for a fine of One Thousand dollars (\$1,000.00) per offense and the
239 entire amount of the state excise tax upon such special fuel shall
240 be deemed due and payable, plus a penalty of twenty-five percent
241 (25%) of the amount of such tax. Any authorized representative of
242 the commission or the enforcement officers of the Mississippi
243 Department of Transportation shall have the right to seize or
244 impound such vehicle or boat until the excise tax and penalty have
245 been paid. Notice to the commission shall consist of contacting
246 the National Diversion Registry, reporting the diversion and
247 obtaining a registration number.

248 Any person other than a common or contract carrier bringing
249 special fuel into this state in quantities of more than five
250 hundred (500) gallons shall give notice to the commission of his
251 intent to import such special fuel. The commission is authorized
252 to promulgate rules setting forth the manner in which such notice
253 is to be given. However, if information on special fuel imported
254 into this state can be accurately secured from other sources by
255 the commission, it may waive the requirements of such notice.

256 If any person, other than a common or contract carrier, shall
257 transport special fuel over the highways of this state by motor
258 vehicle without having given the notice required by this section,
259 or if a copy of such notice is not carried in such motor vehicle
260 as required by this section, the entire amount of the state excise
261 tax upon such special fuel being transported shall be deemed due
262 and payable, plus a penalty of twenty-five percent (25%) of the
263 amount of such tax, and any authorized representative of the

264 commission or enforcement officers of the Mississippi Department
265 of Transportation shall have the right to seize or impound the
266 motor vehicle in which such special fuel is being transported
267 until such excise tax together with the penalty thereon has been
268 paid. Provided, however, that the penalty shall not apply when
269 the driver of the truck stops at the first weighing station in the
270 line of travel and secures the signature of the officer on duty on
271 the import notice.

272 **SECTION 6.** Nothing in this act shall affect or defeat any
273 claim, assessment, appeal, suit, right or cause of action for
274 taxes due or accrued under Chapter 55, Title 27, Mississippi Code
275 of 1972, before the date on which this act becomes effective,
276 whether such claims, assessments, appeals, suits or actions have
277 been begun before the date on which this act becomes effective or
278 are begun thereafter; and the provisions of such laws are
279 expressly continued in full force, effect and operation for the
280 purpose of the assessment, collection and enrollment of liens for
281 any taxes due or accrued and the execution of any warrant under
282 such laws before the date on which this act becomes effective, and
283 for the imposition of any penalties, forfeitures or claims for
284 failure to comply with such laws.

285 **SECTION 7.** This act shall take effect and be in force from
286 and after July 1, 2004.