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HOUSE BILL NO. 534

House Amendments in [] - February 8, 2006

A BILL to amend and reenact §§ 58.1-2201, 58.1-2211, 58.1-2215, 58.1-2241, 58.1-2246, 58.1-2247, 58.1-2272, 58.1-2273, and 58.1-2280 of the Code of Virginia, relating to motor fuels tax; penalties.

Patron Prior to Engrossment—Delegate Parrish

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2201, 58.1-2211, 58.1-2215, 58.1-2241, 58.1-2246, 58.1-2247, 58.1-2272, 58.1-2273, and 58.1-2280 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2201. Definitions.

As used in this chapter, unless the context requires otherwise:

"Alternative fuel" means a combustible gas, liquid or other energy source that can be used to generate power to operate a highway vehicle and that is not a motor fuel.

"Assessment" means a written determination by the Department of the amount of taxes owed by a taxpayer. Assessments made by the Department shall be deemed to be made when a written notice of assessment is delivered to the taxpayer by the Department or is mailed by certified or registered mail to the taxpayer at the last known address appearing in the Commissioner's files.

"Aviation consumer" means any person who uses in excess of 100,000 gallons of aviation jet fuel in any fiscal year and is licensed pursuant to Article 2 (§ 58.1-2204 et seq.) of this chapter.

"Aviation fuel" means aviation gasoline or aviation jet fuel.

"Aviation gasoline" means fuel designed for use in the operation of aircraft other than jet aircraft, and sold or used for that purpose.

"Aviation jet fuel" means fuel designed for use in the operation of jet or turbo-prop aircraft, and sold or used for that purpose.

"Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a de minimis amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

"Blender" means a person who produces blended fuel outside the terminal transfer system.

"Bonded aviation jet fuel" means aviation jet fuel held in bonded storage under United States Customs Law and delivered into a fuel tank of aircraft operated by certificated air carriers on international flights.

"Bonded importer" means a person, other than a supplier, who imports, by transport truck or another means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in another state in which (i) the state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal either at that state's rate or the rate of the destination state; (ii) the supplier of the fuel is not an elective supplier; or (iii) the supplier of the fuel is not a permissive supplier.

"Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

"Bulk user" means a person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle, watercraft, or aircraft.

"Bulk user of alternative fuel" means a person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.

"Commercial watercraft" means a watercraft employed in the business of commercial fishing, transporting persons or property for compensation or hire, or any other trade or business unless the watercraft is used in an activity of a type generally considered entertainment, amusement, or recreation.

"Commissioner" means the Commissioner of the Department of Motor Vehicles.

"Corporate or partnership officer" means an officer or director of a corporation, partner of a partnership, or member of a limited liability company, who as such officer, director, partner or member is under a duty to perform on behalf of the corporation, partnership, or limited liability company the tax collection, accounting, or remitting obligations.

"Department" means the Department of Motor Vehicles, acting directly or through its duly authorized officers and agents.

"Designated inspection site" means any state highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the Commissioner or his designee to be used as a fuel inspection site.

ENGROSSED

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59 "Destination state" means the state, territory, or foreign country to which motor fuel is directed for
60 delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the
61 purpose of resale or use. The term shall not include a tribal reservation of any recognized Native
62 American tribe.

63 "Diesel fuel" means any liquid that is suitable for use as a fuel in a diesel-powered highway vehicle
64 or watercraft. The term shall include undyed #1 fuel oil and undyed #2 fuel oil, but shall not include
65 gasoline or aviation jet fuel.

66 "Distributor" means a person who acquires motor fuel from a supplier or from another distributor for
67 subsequent sale.

68 "Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of 26 U.S.C.
69 § 4082.

70 "Elective supplier" means a supplier who (i) is required to be licensed in the Commonwealth and (ii)
71 elects to collect the tax due the Commonwealth on motor fuel that is removed at a terminal located in
72 another state and has Virginia as its destination state.

73 "End seller" means the person who sells fuel to the ultimate user of the fuel.

74 "Export" means to obtain motor fuel in Virginia for sale or distribution in another state, territory, or
75 foreign country. Motor fuel delivered out-of-state by or for the seller constitutes an export by the seller,
76 and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

77 "Exporter" means a person who obtains motor fuel in Virginia for sale or distribution in another
78 state, territory, or foreign country.

79 "Fuel" includes motor fuel and alternative fuel.

80 "Fuel alcohol" means methanol or fuel grade ethanol.

81 "Fuel alcohol provider" means a person who (i) produces fuel alcohol or (ii) imports fuel alcohol
82 outside the terminal transfer system by means of a marine vessel, a transport truck, a tank wagon, or a
83 railroad tank car.

84 "Gasohol" means a blended fuel composed of gasoline and fuel grade ethanol.

85 "Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and
86 are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have
87 an American Society for Testing Materials octane number of less than 75 as determined by the motor
88 method; (ii) a petroleum product component of gasoline, such as naphtha, reformate, or toluene; (iii)
89 gasohol; and (iv) fuel grade ethanol. The term does not include aviation gasoline sold for use in an
90 aircraft engine.

91 "Governmental entity" means (i) the Commonwealth or any political subdivision thereof or (ii) the
92 United States or its departments, agencies, and instrumentalities.

93 "Gross gallons" means an amount of motor fuel measured in gallons, exclusive of any temperature,
94 pressure, or other adjustments.

95 "Heating oil" means any combustible liquid, including but not limited to dyed #1 fuel oil, dyed #2
96 fuel oil, and kerosene, that is burned in a boiler, furnace, or stove for heating or for industrial
97 processing purposes.

98 "Highway" means every way or place of whatever nature open to the use of the public for purposes
99 of vehicular travel in the Commonwealth, including the streets and alleys in towns and cities.

100 "Highway vehicle" means a self-propelled vehicle designed for use on a highway.

101 "Import" means to bring motor fuel into Virginia by any means of conveyance other than in the fuel
102 supply tank of a highway vehicle. Motor fuel delivered into Virginia from out-of-state by or for the
103 seller constitutes an import by the seller, and motor fuel delivered into Virginia from out-of-state by or
104 for the purchaser constitutes an import by the purchaser.

105 "Importer" means a person who obtains motor fuel outside of Virginia and brings that motor fuel
106 into Virginia by any means of conveyance other than in the fuel tank of a highway vehicle. For
107 purposes of this chapter, a motor fuel transporter shall not be considered an importer.

108 "In-state-only supplier" means (i) a supplier who is required to have a license and who elects not to
109 collect the tax due the Commonwealth on motor fuel that is removed by that supplier at a terminal
110 located in another state and has Virginia as its destination state or (ii) a supplier who does business only
111 in Virginia.

112 "Licensee" means any person licensed by the Commissioner pursuant to Article 2 (§ 58.1-2204 et
113 seq.) of this chapter or § 58.1-2244.

114 "Liquid" means any substance that is liquid above its freezing point.

115 "Motor fuel" means gasoline, diesel fuel, blended fuel, and aviation fuel.

116 "Motor fuel transporter" means a person who transports motor fuel for hire by means of a pipeline, a
117 tank wagon, a transport truck, a railroad tank car, or a marine vessel.

118 "Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of
119 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch.

120 "Occasional importer" means any person who (i) imports motor fuel by any means outside the

- 121 terminal transfer system and (ii) is not required to be licensed as a bonded importer.
- 122 "Permissive supplier" means an out-of-state supplier who elects, but is not required, to have a
 123 supplier's license under this chapter.
- 124 "Person" means any individual; firm; cooperative; association; corporation; limited liability
 125 corporation; trust; business trust; syndicate; partnership; limited liability partnership; joint venture;
 126 receiver; trustee in bankruptcy; club, society or other group or combination acting as a unit; or public
 127 body, including but not limited to the Commonwealth, any other state, and any agency, department,
 128 institution, political subdivision or instrumentality of the Commonwealth or any other state.
- 129 "Position holder" means a person who holds an inventory position of motor fuel in a terminal, as
 130 reflected on the records of the terminal operator. A person holds an "inventory position of motor fuel"
 131 when he has a contract with the terminal operator for the use of storage facilities and terminaling
 132 services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.
- 133 "Principal" means (i) if a partnership, all its partners; (ii) if a corporation, all its officers, directors,
 134 and controlling direct or indirect owners; (iii) if a limited liability company, all its members; and (iv) or
 135 an individual.
- 136 "Provider of alternative fuel" means a person who (i) acquires alternative fuel for sale or delivery to
 137 a bulk user or a retailer; (ii) maintains storage facilities for alternative fuel, part or all of which the
 138 person sells to someone other than a bulk user or a retailer to operate a highway vehicle; (iii) sells
 139 alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a
 140 fuel supply line from the cargo tank of the vehicle to the engine of the vehicle; or (iv) imports
 141 alternative fuel into Virginia, by a means other than the usual tank or receptacle connected with the
 142 engine of a highway vehicle, for sale or use by that person to operate a highway vehicle.
- 143 "Rack" means a facility that contains a mechanism for delivering motor fuel from a refinery,
 144 terminal, or bulk plant into a transport truck, railroad tank car, or other means of transfer that is outside
 145 the terminal transfer system.
- 146 "Refiner" means any person who owns, operates, or otherwise controls a refinery.
- 147 "Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum
 148 products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel
 149 or at a rack.
- 150 "Removal" means a physical transfer other than by evaporation, loss, or destruction. A physical
 151 transfer to a transport truck or other means of conveyance outside the terminal transfer system is
 152 complete upon delivery into the means of conveyance.
- 153 "Retailer" means a person who (i) maintains storage facilities for motor fuel and (ii) sells the fuel at
 154 retail or dispenses the fuel at a retail location.
- 155 "Retailer of alternative fuel" means a person who (i) maintains storage facilities for alternative fuel
 156 and (ii) sells or dispenses the fuel at retail, to be used to generate power to operate a highway vehicle.
- 157 "Supplier" means (i) a position holder, or (ii) a person who receives motor fuel pursuant to a
 158 two-party exchange. A licensed supplier includes a licensed elective supplier and licensed permissive
 159 supplier.
- 160 "System transfer" means a transfer (i) of motor fuel within the terminal transfer system or (ii) of fuel
 161 grade ethanol by transport truck or railroad tank car.
- 162 "Tank wagon" means a straight truck or straight truck/trailer combination designed or used to carry
 163 fuel and having a capacity of less than 6,000 gallons.
- 164 "Terminal" means a motor fuel storage and distribution facility (i) to which a terminal control
 165 number has been assigned by the Internal Revenue Service, (ii) to which motor fuel is supplied by
 166 pipeline or marine vessel, and (iii) from which motor fuel may be removed at a rack.
- 167 "Terminal operator" means a person who owns, operates, or otherwise controls a terminal.
- 168 "Terminal transfer system" means a motor fuel distribution system consisting of refineries, pipelines,
 169 marine vessels, and terminals, and which is a "bulk transfer/terminal system" under 26 C.F.R. Part
 170 48.4081-1.
- 171 "Transmix" means (i) the buffer or interface between two different products in a pipeline shipment or
 172 (ii) a mix of two different products within a refinery or terminal that results in an off-grade mixture.
- 173 "Transport truck" means a tractor truck/semitrailer combination designed or used to transport cargoes
 174 of motor fuel over a highway.
- 175 "Trustee" means a person who (i) is licensed as a supplier, an elective supplier, or a permissive
 176 supplier and receives tax payments from and on behalf of a licensed or unlicensed distributor, or other
 177 person pursuant to § 58.1-2231 or (ii) is licensed as a provider of alternative fuel and receives tax
 178 payments from and on behalf of a bulk user of alternative fuel, retailer of alternative fuel or other
 179 person pursuant to § 58.1-2252.
- 180 "Two-party exchange" means a transaction in which fuel is transferred from one licensed supplier to
 181 another licensed supplier pursuant to an exchange agreement, which transaction (i) includes a transfer

182 from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on
 183 the records of the terminal operator and (ii) is completed prior to removal of the product from the
 184 terminal by the receiving exchange partner.

185 "Undyed diesel fuel" means diesel fuel that is not subject to the United States Environmental
 186 Protection Agency or Internal Revenue Service fuel-dyeing requirements.

187 "Use" means the actual consumption or receipt of motor fuel by any person into a highway vehicle,
 188 aircraft, or watercraft.

189 "Watercraft" means any vehicle used on waterways.

190 § 58.1-2211. Bond or certificate of deposit requirements.

191 A. An applicant for a license as a terminal operator, supplier, importer, blender, permissive supplier,
 192 distributor, or aviation consumer shall file with the Commissioner a bond; *or* certificate of deposit; ~~or~~
 193 ~~irrevocable letter of credit~~. The bond; *or* certificate of deposit; ~~or~~ ~~irrevocable letter of credit~~ shall be
 194 conditioned upon compliance with the requirements of this chapter, be payable to the Commonwealth,
 195 and be in the form required by the Commissioner. The amount of the bond; *or* certificate of deposit; ~~or~~
 196 ~~irrevocable letter of credit~~ shall be as follows:

197 1. For an applicant for a license as a (i) terminal operator, (ii) supplier who is a position holder or a
 198 person who receives motor fuel pursuant to a two-party exchange, (iii) bonded importer, or (iv)
 199 permissive supplier, the amount shall be \$2,000,000; and

200 2. For an applicant for a license as (i) a supplier who is a fuel alcohol provider but is neither a
 201 position holder nor a person who receives motor fuel pursuant to a two-party exchange; (ii) an
 202 occasional importer; (iii) a distributor; (iv) a blender; or (v) an aviation consumer, the amount shall be
 203 three times the applicant's average expected monthly tax liability under this chapter, as determined by
 204 the Commissioner. The amount shall not be less than \$2,000 nor more than \$300,000.

205 B. An applicant for a license both as a distributor and as a bonded importer shall file only the bond;
 206 *or* certificate of deposit; ~~or~~ ~~irrevocable letter of credit~~ required of a bonded importer. An applicant for
 207 two or more of the licenses listed in subdivision A 2 may file one bond; *or* certificate of deposit; ~~or~~
 208 ~~irrevocable letter of credit~~ that covers the combined liabilities of the applicant under all the activities, in
 209 which event the amount of the bond; *or* certificate of deposit; ~~or~~ ~~irrevocable letter of credit~~ for the
 210 combined activities shall not exceed \$300,000.

211 C. When notified to do so by the Commissioner, a person who has filed a bond; *or* certificate of
 212 deposit; ~~or~~ ~~an irrevocable letter of credit~~ and who holds a license listed in subdivision A 2 shall file an
 213 additional bond; *or* certificate of deposit; ~~or~~ ~~irrevocable letter of credit~~ in the amount required by the
 214 Commissioner. The person shall file the additional bond; *or* certificate of deposit; ~~or~~ ~~irrevocable letter of~~
 215 ~~credit~~ within thirty days after receiving the notice from the Commissioner. However, the amount of the
 216 initial bond; *or* certificate of deposit; ~~or~~ ~~irrevocable letter of credit~~ and any additional bond; *or*
 217 certificate of deposit; ~~or~~ ~~irrevocable letter of credit~~ filed by the licensee shall not exceed \$300,000.

218 Any licensee who disagrees with the Commissioner's decision requiring new or additional security
 219 shall be entitled to a hearing. Such matter shall, within thirty days, be scheduled for a prompt hearing
 220 before the Commissioner after written request for such hearing is received by the Commissioner.

221 § 58.1-2215. License cancellation.

222 A. The Commissioner may cancel the license of any person licensed under this article, upon written
 223 notice sent by ~~registered~~ *certified* mail to the licensee's last known address appearing in the
 224 Commissioner's files, for any of the following reasons:

225 1. Filing by the licensee of a false report of the data or information required by this chapter;
 226 2. Failure, refusal, or neglect of the licensee to file a report required by this chapter;
 227 3. Failure of the licensee to pay the full amount of the tax due or pay any penalties or interest due as
 228 required by this chapter;

229 4. Failure of the licensee to keep accurate records of the quantities of motor fuel received, produced,
 230 refined, manufactured, compounded, sold, or used in Virginia;

231 5. Failure to file a new or additional bond or ~~irrevocable letter of credit~~ *certificate of deposit* upon
 232 request of the Commissioner pursuant to § 58.1-2211;

233 6. Conviction of the licensee or a principal of the licensee for any act prohibited under this chapter;

234 7. Failure, refusal, or neglect of a licensee to comply with any other provision of this chapter or any
 235 regulation promulgated pursuant to this chapter; or

236 8. A change in the ownership or control of the business.

237 B. Upon cancellation of any license for any cause listed in subsection A, the tax levied under this
 238 chapter shall become due and payable on (i) all untaxed motor fuel held in storage or otherwise in the
 239 possession of the licensee and (ii) all motor fuel sold, delivered, or used prior to the cancellation on
 240 which the tax has not been paid.

241 C. The Commissioner may cancel any license upon the written request of the licensee.

242 D. Upon cancellation of any license and payment by the licensee of all taxes due, including all
 243 penalties accruing due to any failure by the licensee to comply with the provisions of this chapter, the

244 Commissioner shall cancel and surrender the bond; *or* certificate of deposit; ~~or irrevocable letter of~~
245 ~~credit~~ filed by such licensee.

246 § 58.1-2241. Informational returns of motor fuel transporters.

247 A. A person who transports, by pipeline, marine vessel, railroad tank car, or transport truck, motor
248 fuel that is imported into Virginia or exported from Virginia *transporter* shall file a monthly
249 informational return with the Commissioner that shows motor fuel received or delivered for import or
250 export by the transporter during the month. This requirement does not apply to a distributor who is not
251 required to be licensed as a motor fuel transporter.

252 B. The return required by this section is due by the twentieth day of the second month following the
253 month covered by the return. The return shall contain the following information and any other
254 information required by the Commissioner:

255 1. The name and address of each person from whom the transporter received motor fuel outside
256 Virginia for delivery in Virginia, the amount of motor fuel received, the date the motor fuel was
257 received, and the destination state of the fuel; and

258 2. The name and address of each person from whom the transporter received motor fuel in Virginia
259 for delivery outside Virginia, the amount of motor fuel delivered, the date the motor fuel was delivered,
260 and the destination state of the fuel.

261 § 58.1-2246. Bond or certificate of deposit requirements.

262 A. An applicant for a license as a (i) provider of alternative fuel, (ii) retailer of alternative fuel or
263 bulk user of alternative fuel who stores highway and nonhighway alternative fuel in the same storage
264 tank, or (iii) retailer of alternative fuel or a bulk user of alternative fuel who wishes to defer the
265 remittance of tax to the provider until the date the provider of alternative fuel is required to pay the tax
266 to the Commonwealth, shall file with the Commissioner a bond; *or* certificate of deposit; ~~or an~~
267 ~~irrevocable letter of credit~~.

268 B. The amount of the bond; *or* certificate of deposit; ~~or irrevocable letter of credit~~ shall be three
269 times the applicant's average expected monthly tax liability under this article, as determined by the
270 Commissioner. The amount shall not be less than \$2,000 nor more than \$300,000. An applicant who is
271 also required to file a bond; *or* a certificate of deposit; ~~or an irrevocable letter of credit~~ under
272 § 58.1-2211 to obtain a license as a distributor of motor fuel may file a single bond; *or* certificate of
273 deposit; ~~or irrevocable letter of credit~~ under § 58.1-2211 for the combined amount and shall not be
274 required to file a bond; *or* certificate of deposit ~~or irrevocable letter of credit~~ for more than \$300,000 for
275 the combined amount.

276 C. A bond; *or* certificate of deposit; ~~or irrevocable letter of credit~~ filed under this section shall be
277 conditioned upon compliance with this chapter, be payable to the Commonwealth, and be in the form
278 required by the Commissioner. The Commissioner may require a bond; *or* a certificate of deposit; ~~or an~~
279 ~~irrevocable letter of credit~~ issued under this section to be adjusted in accordance with the procedure set
280 out in subsection C of § 58.1-2211 for adjusting a bond; *or* certificate of deposit; ~~or irrevocable letter of~~
281 ~~credit~~ filed by a distributor of motor fuel.

282 § 58.1-2247. Issuance, denial or cancellation of license.

283 A. The Commissioner shall issue a license to each applicant whose application is approved. A license
284 shall not be transferable and remains in effect until surrendered or canceled.

285 B. The Commissioner may refuse to issue a license under this article to an applicant if (i) the
286 applicant or (ii) any principal of the applicant that is a business entity has:

287 1. Had a license or registration issued under prior law or this chapter canceled by the Commissioner
288 for cause;

289 2. Had an alternative fuel license or registration issued by another state canceled for cause;

290 3. Had a federal Certificate of Registry issued under § 4101 of the Internal Revenue Code, or a
291 similar federal authorization, revoked;

292 4. Been convicted of any offense involving fraud or misrepresentation; or

293 5. Been convicted of any other offense that indicates that the applicant may not comply with this
294 chapter if issued a license.

295 C. The Commissioner may cancel the license of any person licensed under this article, upon written
296 notice sent by registered *certified* mail to the licensee's last known address appearing in the
297 Commissioner's files, for any of the following reasons:

298 1. Filing by the licensee of a false report of the data or information required by this article;

299 2. Failure, refusal, or neglect of the licensee to comply with any provision of this chapter or any
300 regulation promulgated pursuant to this chapter;

301 3. Failure of the licensee to pay the full amount of the tax required by this article;

302 4. Failure of the licensee to keep accurate records of the quantities of alternative fuel received,
303 produced, refined, manufactured, compounded, sold, or used in the Commonwealth;

304 5. Failure to file a new or additional bond or ~~irrevocable letter of credit~~ *certificate of deposit* upon

305 request of the Commissioner pursuant to § 58.1-2246; or

306 6. Conviction of the licensee or a principal of the licensee for any prohibited act listed under this
307 article.

308 D. Upon cancellation of any license for any cause listed in subsection C, the tax levied under this
309 chapter shall become due and payable on (i) all untaxed alternative fuel held in storage or otherwise in
310 the possession of the licensee and (ii) all alternative fuel sold, delivered, or used prior to the cancellation
311 on which the tax has not been paid.

312 E. The Commissioner may cancel any license upon the written request of the licensee.

313 F. Upon cancellation of any license and payment by the licensee of all taxes due, including all
314 penalties accruing due to any failure by the licensee to comply with the provisions of this article, the
315 Commissioner shall cancel and surrender the bond, *or* certificate of deposit, ~~or irrevocable letter of~~
316 ~~credit~~ filed by such licensee.

317 § 58.1-2272. Prohibited acts; criminal penalties.

318 A. Any person who commits any of the following acts shall be guilty of a Class 1 misdemeanor:

319 1. Failing to obtain a license required by this chapter;

320 2. Failing to file a return required by this chapter;

321 3. Failing to pay a tax when due under this chapter;

322 4. Failing to pay a tax collected on behalf of a destination state to that state when it is due;

323 5. Making a false statement in an application, return, ticket, invoice, statement, or any other
324 document required under this chapter;

325 6. Making a false statement in an application for a refund;

326 7. Failing to keep records as required under this chapter;

327 8. Refusing to allow the Commissioner or a representative of the Commissioner to examine the
328 person's books and records concerning fuel;

329 9. Failing to make a required disclosure of the correct amount of fuel sold or used in the
330 Commonwealth;

331 10. Failing to file a replacement or additional bond, *or* certificate of deposit, ~~or irrevocable letter of~~
332 ~~credit~~ as required under this chapter;

333 11. Failing to show or give a shipping document as required under this chapter;

334 12. Refusing to allow a licensed distributor, licensed exporter, or licensed importer to defer payment
335 of tax to the supplier, as required by § 58.1-2231;

336 13. Refusing to allow a bulk user of alternative fuel or a retailer of alternative fuel who has posted a
337 bond in accordance with § 58.1-2246 to defer payment of tax to the provider of alternative fuel, as
338 required by § 58.1-2252;

339 14. Refusing to allow a licensed distributor or a licensed importer to take a deduction or discount
340 allowed by § 58.1-2233 when remitting the tax to the supplier, or to allow a licensed retailer of
341 alternative fuel to take a deduction or discount allowed by § 58.1-2254 when remitting the tax to the
342 provider of alternative fuel;

343 15. Using, delivering, or selling any aviation fuel for use or intended for use in highway vehicles or
344 watercraft;

345 16. Violating the provisions of § 58.1-2278;

346 17. Interfering with or refusing to permit seizures authorized under § 58.1-2274; or

347 18. Delivering fuel from a transport truck or tank wagon to the fuel tank of a highway vehicle,
348 except in an emergency.

349 B. A person who knowingly commits any of the following acts shall be guilty of a Class 1
350 misdemeanor:

351 1. Dispenses any fuel on which tax levied pursuant to this chapter has not been paid into the supply
352 tank of a highway vehicle, watercraft, or aircraft; or

353 2. Allows any fuel on which tax levied pursuant to this chapter has not been paid to be dispensed
354 into the supply tank of a highway vehicle, watercraft, or aircraft.

355 § 58.1-2273. Willful commission of prohibited acts; criminal penalties.

356 Any person who willfully commits any of the following acts, with the intent to (i) evade or
357 circumvent the Commonwealth's fuels tax laws or (ii) assist any other person in efforts to evade or
358 circumvent such laws, shall be guilty of a Class 6 felony, if he:

359 1. Alters, manipulates, replaces, or in any other manner tampers or interferes with, or causes to be
360 altered, manipulated, replaced, tampered or interfered with, a totalizer attached to fuel pumps to measure
361 the dispensing of fuel;

362 2. Does not pay fuels taxes and diverts such tax proceeds for other purposes;

363 3. Is a licensee or the agent or representative of a licensee, converts or attempts to convert fuel tax
364 proceeds for the use of the licensee or the licensee's agent or representative, with the intent to defraud
365 the Commonwealth;

366 4. Illegally collects fuel taxes when not authorized or licensed by the Commissioner to do so;

367 5. Illegally imports fuel into the Commonwealth;
 368 6. Conspires with any other person or persons to engage in an act, plan, or scheme to defraud the
 369 Commonwealth of fuels tax proceeds;
 370 7. Uses any dyed diesel fuel for a use that the user knows or has reason to know is a taxable use of
 371 the fuel, or sells any dyed diesel fuel to a person who the seller knows or has reason to know will use
 372 the fuel for a taxable purpose; however, if the amount of fuel involved is not more than twenty gallons,
 373 such person shall be guilty of a Class 1 misdemeanor;
 374 8. Alters or attempts to alter the strength or composition of any dye or marker in any dyed diesel
 375 fuel intended to be used for a taxable purpose; or
 376 9. Fails to remit to the Commissioner any tax levied pursuant to this chapter, if he (i) has added, or
 377 represented that he has added, the tax to the sales price for the fuel and (ii) has collected the amount of
 378 the tax;,
 379 *10. Applies for or collects from the Department a refund for fuels tax when the person knows or has*
 380 *reason to know that fuel for which the refund is claimed has been or will be used for a taxable*
 381 *purpose; however, if the amount of fuel involved is not more than 20 gallons, such person shall be*
 382 *guilty of a Class 1 misdemeanor; or*
 383 *11. Uses any fuel for a taxable purpose for which the person knows or has reason to know that a*
 384 *refund of fuels tax has been issued; however, if the amount of fuel involved is not more than 20 gallons,*
 385 *such person shall be guilty of a Class 1 misdemeanor.*
 386 § 58.1-2280. Estimates of fuel subject to tax; assessments; notice of assessment.
 387 When any licensee neglects, fails or refuses to make and file any report as required by this chapter
 388 or files an incorrect or fraudulent report, the Commissioner shall determine, from any information
 389 obtainable, the number of gallons of fuel with respect to which the licensee has incurred liability under
 390 this chapter. The Commissioner is authorized to make an assessment for the tax and any penalty and
 391 interest properly due against such licensee. The notice of assessment shall be sent to the licensee by
 392 registered or certified mail or delivered by the Department to the last known address appearing in the
 393 Commissioner's files. Such notice, when sent or delivered in accordance with these requirements, shall
 394 be sufficient regardless of whether or not it was ever received.
 395 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
 396 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
 397 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**
 398 **periods of commitment to the custody of the Department of Juvenile Justice.**
 399 [3. Persons licensed pursuant to the Virginia Fuels Tax Act who have filed an irrevocable letter of
 400 credit with the Commissioner prior to June 30, 2006, shall not have to replace such letters of
 401 credit with bonds or certificates of deposit until such letters of credit expire.]