

1944 Supplement  
To  
**Mason's Minnesota Statutes, 1927**  
and  
**Mason's 1940 Supplement**

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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## CHAPTER 20

### Inspector of Oils

#### 3773. Inspection districts—Compensation of inspectors. [Repealed.]

Repealed. Laws 1941, c. 495.

#### 3773-1. Appointment and removal of deputy, etc.

If deputy oil inspector discharged before Civil Service Act went into effect had a civil service status under existing statute, such status was abolished by going into effect of such act and mandamus would not lie to enforce such right, though petition was filed and alternative writ was issued prior to effective date. *Reed v. T.*, 209M 348, 296NW535.

#### 3784. Statements of amounts due, etc.

Gasoline taxes are a direct charge upon "distributor", and a three percent allowance for evaporation and loss fixes total amount of tax, and state cannot require dis-

tributor to account for taxes paid to it by retailer in excess of that amount, and such method of taxation is constitutional. *Arneson v. W. H. Barber Co.*, 210M42, 297 NW335. See *Dun. Dig.* 9142.

#### 3787-1. Definitions. [Repealed.]

Repealed. Laws 1941, c. 495.

A railroad is not negligent for failure to warn a spectator, standing on a highway witnessing a fire caused by a wreck, of the danger that a tank car full of gasoline engulfed in the flames is likely to explode, risk being obvious. *Wiseman v. N. P. Ry. Co.*, 214M101, 7NW (2d) 672, 13NCCA(NS)526. See *Dun. Dig.* 3699.

#### 3787-2 to 3787-21. [Repealed.]

Repealed. Laws 1941, c. 495.

## CHAPTER 20A

### Inspection of Petroleum Products and other Combustible Fluids

#### 3787-25. Meanings of particular words and phrases.

—Unless the language or context clearly indicates that a different meaning is intended, the following words, terms and phrases shall, for the purpose of this act and Mason's Supplement 1940, Section 2720-71, as amended, be given the meanings hereinafter subjoined to them:

Subdivision 1. "Petroleum products" means gasoline fuel oil and farm tractor fuel.

Subdivision 2. "Gasoline" means any petroleum product or other substance which is capable of use as a carburant in internal combustion engines and which has a flash point of less than 100 degrees Fahrenheit when tested with a Tagliabue closed cup tester or an initial boiling point of less than 300 degrees Fahrenheit or a 95 per cent distillation point of less than 464 degrees Fahrenheit when tested by the methods of the American Society for Testing Materials, except farm tractor fuels and special use fuel as defined by law, and except fuel oil or kerosene when the ten per cent distillation point is more than 347 degrees Fahrenheit.

Subdivision 3. "Fuel oil" means any petroleum product other than gasoline as herein defined which is received in this state for distribution to retail consumers and which when tested with a Cleveland open cup tester shall not flash below 120 degrees Fahrenheit and which has a viscosity of not more than 50 to 100 degrees Fahrenheit by the Saybolt universal process, and any product designated for such use outside this range which is to be blended with other products or processed to produce a resulting product coming within this range. (Act Apr. 28, 1941, c. 495, §1; as amended Apr. 6, 1943, c. 320, §1.)

Subdivision 4. "Distributor" means any person who (1) brings or causes to be brought into this state petroleum products or (2) produces, manufactures, refines or blends petroleum products in this state or (3) receives petroleum products from a refinery, marine terminal or pipeline terminal in this state, for storage and subsequent sale and distribution by tank cars or tank trucks or both.

Subdivision 5. "Person" means any individual, firm, trust, estate, partnership, association, cooperative association, joint stock company or corporation, public or private, or any representative appointed by order of any court.

Subdivision 6. "Dealer" means any person except a distributor, engaged in the business of buying and selling gasoline for use in motor vehicles.

Subdivision 7. "Blender" means any person who mixes together any petroleum product with any other

petroleum product or other substance to produce gasoline.

Subdivision 8. "Motor vehicles used on the public highways of this state" means every vehicle operated upon the highways of this state the power for the operation of which is produced or generated in an internal combustion engine, but does not include tractors used solely for agricultural purposes. (Act Apr. 28, 1941, c. 495, §1; as amended Apr. 6, 1943, c. 320, §2.)

Subdivision 9. "For use in motor vehicles" means for use in producing or generating power for propelling motor vehicles on the public highways of this state or in machinery operated on the public highways of this state for the purpose of constructing, reconstructing or maintaining such public highways. (Act Apr. 28, 1941, c. 495, §1; as amended Apr. 6, 1943, c. 320, §3.)

Subdivision 10. "Commissioner" means the commissioner of taxation of the state of Minnesota.

Subdivision 11. Petroleum products brought into this state shall be deemed to be "received" in this state at the time and place where the same shall be unloaded by the person who at such time shall be the owner thereof; provided, however, that petroleum products produced, manufactured, refined or blended, at a refinery in this state and stored thereat, or brought into the state by boat or barge or like form of transportation and delivered at a marine terminal in this state for storage, or brought into the state by pipeline and delivered at a pipeline terminal in this state for storage, shall not be considered received until loaded at such refinery, marine terminal or pipeline terminal into railroad tank cars, tank trucks, tank wagons, transports or other vehicles for delivery or shipment to points within this state. Petroleum products produced, manufactured, refined or blended at a refinery in this state and petroleum products stored at a marine terminal or a pipeline terminal in this state may be sold, shipped or delivered to distributors who are the holders of unrevoked distributors' licenses issued by the commissioner as in this act provided without liability on the part of the seller for the gasoline tax and inspection fees, but such purchasers shall be liable for the gasoline tax and inspection fees on such petroleum products and shall for the purpose of this act be deemed to be the distributors of the petroleum products so received. (Act Apr. 28, 1941, c. 495, §1; Apr. 6, 1943, c. 320, §§1-3.)

[296.01]

Subd. 5.

State highway department is not "person" subject to tax. *Op. Atty. Gen.*, (324e), Oct. 28, 1941.

Municipalities are not exempt from excise tax on gasoline. Op. Atty. Gen. (324m), July 26, 1943.

**3787-26. Inspection—Test—Records.—**

Subdivision 1. The commissioner shall make inspection of petroleum products wherever processed, held, stored, or offered for sale or used, and he shall secure samples periodically from importations in their original containers to determine their specifications when tested by the methods of the American Society for Testing Materials. Every person holding, storing, offering for sale or using petroleum products shall upon the request of the commissioner permit the commissioner to take for testing free samples of not to exceed 32 ounces each of all such products whenever necessary for the purposes of this act. The commissioner shall test samples of petroleum products received and submitted by any licensed distributor and shall inform the distributor of the results of the tests. (Act Apr. 28, 1941, c. 495, §2; as amended Apr. 6, 1943, c. 320, §4.)

Subdivision 2. A record of each inspection shall be made and any material not meeting the specifications hereinafter provided shall be sealed in the container from which the sample was secured or placed in separate storage under seal until a method of its disposition has been approved by the commissioner.

Subdivision 3. The general surroundings and conditions at all places where petroleum products are processed, held, stored or offered for sale shall be inspected and all storage tanks and other containers shall be inspected in order to ascertain that they are kept clean and free from all impurities.

Subdivision 4. The commissioner may enter into or upon the premises of all distributors and dealers of petroleum products to inspect the receptacles in which said products are stored; and it is made the duty of all distributors and dealers to keep the receptacles free from all impurities and when the receptacles are found to contain impurities they shall be sealed until a method of disposition of the material has been approved by the commissioner.

Subdivision 5. The commissioner shall make periodic examinations of all records kept by distributors or other persons collecting the gasoline excise tax. (Act Apr. 28, 1941, c. 495, §2; Apr. 6, 1943, c. 320, §4.) [296.04]

**3787-27. Specifications—Method of testing.—**

Subdivision 1. No gasoline shall be sold for use in motor vehicles unless it shall conform to the following specifications:

- (1) It shall be free from water, suspended matter and all impurities;
- (2) The initial boiling point shall not be higher than 131 degrees Fahrenheit;
- (3) When ten per cent has been recovered in the receiver, the temperature shall not be higher than 167 degrees Fahrenheit;
- (4) When 50 per cent has been recovered in the receiver, the temperature shall not be higher than 284 degrees Fahrenheit;
- (5) When 90 per cent has been recovered in the receiver, the temperature shall not be higher than 392 degrees Fahrenheit;
- (6) The end point shall not be higher than 437 degrees Fahrenheit;
- (7) The minimum recovery in the receiver shall be 95 per cent of the volume used for the test;
- (8) The sulphur content shall not be more than 25 hundredths of one per cent;
- (9) The residue shall not be more than two per cent.

Subdivision 2. No fuel oil shall be sold unless it shall conform to the following specifications:

- (1) It shall be free from water, suspended matter and all impurities;
- (2) It shall not flash below 120 degrees Fahrenheit when tested with the Cleveland open cup tester.

(3) When offered for sale or sold as kerosene, it shall be water white and upon complete distillation the end point shall not be higher than 600 degrees Fahrenheit. (Act Apr. 28, 1941, c. 495, §3; as amended Apr. 6, 1943, c. 320, §5.)

Subdivision 3. All tests shall be made in accordance with the methods of the American Society for Testing Materials.

Subdivision 4. Upon request of a licensed distributor, the shipper shall at the time of shipment supply the licensed distributor with the results of tests of each petroleum product shipped to him at destination in Minnesota. (Act Apr. 28, 1941, c. 495, §3; Apr. 6, 1943, c. 320, §5.) [296.05]

**3787-28. Distributor's license—Application—Bond—Exemption—Notification of discontinuation of business—**

Subdivision 1. No person shall engage in or purport to be engaged in or hold himself out as being engaged in the business of buying or selling petroleum products as a distributor in the state of Minnesota unless he shall have been licensed by the commissioner to carry on business as a distributor.

Subdivision 2. A distributor's license shall be issued to any responsible person qualifying under this act as a distributor who makes application therefor, and who shall pay to the commissioner at the time thereof and annually thereafter a license fee of \$1.00, and who shall further comply with the following conditions:

(1) A written application shall be made in a manner approved by the commissioner, who shall require the applicant or licensee to deposit with the state treasurer securities of the United States government or the state of Minnesota or to execute and file a bond, with a corporate surety approved by the commissioner, to the state of Minnesota in an amount to be determined by the commissioner and in a form to be fixed by the commissioner and approved by the attorney general, and which shall be conditioned for the payment when due of all gasoline excise taxes, inspection fees, penalties and accrued interest arising in the ordinary course of business or by reason of any delinquent money which may be due the state of Minnesota. The bond shall cover all places of business within the state where petroleum products are received by the licensee. All licenses and bonds executed and delivered hereunder shall be for the duration of one year, expiring May 31.

(2) An initial applicant for a distributor's license other than an exclusive industrial user shall furnish a bond in a minimum sum of \$3,000 for the first year.

(3) Whenever it is the opinion of the commissioner that the bond given by a licensee is inadequate in amount to fully protect the state, he shall require an additional bond in such amount as he deems sufficient.

(4) If any licensee desires to be exempt from depositing securities or furnishing such bond as hereinafter provided he shall furnish an itemized financial statement showing the assets and the liabilities of the applicant and if it shall appear to the commissioner from the financial statement or otherwise that the applicant is financially responsible then the commissioner may exempt such applicant from depositing such securities or furnishing such bond until the commissioner otherwise orders.

(5) The premium on any bond required under Subdivision 2 (1) and (2) and on any additional bond required under Subdivision 2 (3) shall be paid by the commissioner out of a bond premium fund which he shall set up from an appropriation by the Legislature from whatever funds are available. (Act Apr. 28, 1941, c. 495, §4; as amended Apr. 6, 1943, c. 320, §6.) [296.06]

Arrangement for bond is to be made by applicant for license and not by the state, and the premium therefor

is to be paid out of the bond premium fund, if reasonable, and no bids by the state are required. Op. Atty. Gen. (325a-5), Apr. 16, 1943.

**3787-29. Certificate of registration.**—No person shall engage in or purport to be engaged in or hold himself out as being engaged in the business of buying and selling gasoline or special use fuel for use in motor vehicles as a dealer in the state of Minnesota after August 31, 1941, unless he shall file a duly acknowledged certificate of registration in a manner approved by the commissioner. (Act Apr. 28, 1941, c. 495, §5.) [296.07]

**3787-30. Blenders' permits.**—A blender shall secure a permit from the commissioner who shall issue a blender's permit to any distributor or dealer who makes application therefor in a manner approved by the commissioner. The blender's permit shall expire annually on May 31. Blenders shall make reports in a manner approved by the commissioner. (Act Apr. 28, 1941, c. 495, §6.) [296.08]

**3787-31. Industrial user permit.**—An exclusive industrial user of gasoline for other than in motor vehicles who is not engaged in the business of selling gasoline may at the discretion of the commissioner secure an industrial user permit upon application in a manner approved by the commissioner.

The permit shall expire annually on May 31. (Act Apr. 28, 1941, c. 495, §7.) [296.09]

**3787-32. Interstate transport permit.**—Subdivision 1. A person who transports petroleum products from a point outside this state into this state for storage, sale, distribution or use therein, in truck transports, shall make application and secure from the commissioner an interstate transport permit which shall bear a distinctive number for each vehicle so used. The permit shall be carried in the cab while the transport is in this state, and the permit number shall be printed in six inch letters in a conspicuous place on both front and rear ends of the vehicle for which the permit number is issued. The permit shall expire annually on May 31.

Subdivision 2. A person who transports petroleum products in truck transports within this state for storage, sale, distribution or use therein, shall, at the discretion of the commissioner, before engaging in such operation, make application and secure from the commissioner an intrastate transport permit. The permit, when issued, shall bear a distinctive number and shall cover only one such transport. The permit shall be carried in the cab of the transport at all times, and the permit number shall be painted in six inch letters on the left front end and right rear end of the vehicle for which the permit is issued. The permit shall expire annually on May 31. (Act Apr. 28, 1941, c. 495, §8; as amended Apr. 6, 1943, c. 320, §7.)

[296.10]

**3787-33. Revocation of license or permit—Notice—Delinquent tax or fees.**—The commissioner may, after hearing, revoke any license or permit if the holder has directly or indirectly violated any of the provisions of this act or has failed to comply with any regulation that may be issued. Notice containing a statement of the alleged violation and the time and place of hearing shall be served upon the holder by registered mail at least ten days prior to the day set for hearing. Certification to the attorney general of delinquent tax or fees shall be sufficient cause for immediate revocation without hearing. (Act Apr. 28, 1941, c. 495, §9.)

[296.11]

**3787-34. Special use fuel—Records, reports, taxes.**—

Subdivision 1. "Special use fuel" shall mean all combustible gases and liquids, including liquefied

gases, which exist in the gaseous state at a temperature of 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute, and any liquid petroleum product or substitute therefor that is used in motor vehicles, except gasoline.

Subdivision 2. Persons using special use fuel in motor vehicles shall register and keep records, and shall report and pay the tax in a manner approved by the commissioner on special use fuel received in this state for use in motor vehicles. The reports shall be made by the 23rd day of each month and shall cover special use fuel received during the preceding calendar month. All provisions of this act relating to the calculation, collection and payment of the tax on gasoline and all provisions of this act relating to distributors except as to distributors' licenses, shall be applicable to persons using special use fuel on the public highways of this state.

Subdivision 3. The provisions of Section 4, Subdivision 2 (1), (3) and (4) relating to bonds shall apply to persons using special use fuel on the public highways of this state.

Subdivision 4. When an application for registration of a motor vehicle discloses that such motor vehicle uses special use fuel as defined in subdivision 1 hereof, the secretary of state shall not issue a number plate for such motor vehicle until and unless such motor vehicle shall have been registered and a permit issued therefor by the commissioner of taxation as provided in subdivision 2 hereof. (Act Apr. 28, 1941, c. 495, §10; as amended Apr. 6, 1943, c. 320, §8.)

[296.12]

**Subd. 2.**

State highway department is not "person" subject to tax. Op. Atty. Gen. (324e), Oct. 28, 1941.

**3787-35. Inspection fee.**—An inspection fee shall be charged on petroleum products when received by the distributor, the fee to be uniform and in an amount determined by the commissioner but not to exceed one and three-quarters cents per 50 gallons.

Credit shall be allowed by the commissioner for inspection fees previously paid on any material exported or sold for export from the state upon filing of a report in a manner approved by the commissioner. (Act Apr. 28, 1941, c. 495, §11.)

[296.13]

**3787-36. Monthly report—Payment of fees and taxes—Credit or refund.**—

Subdivision 1. On or before the 23rd day of each month, each distributor shall file in the office of the commissioner at St. Paul, Minnesota, a report in a manner approved by the commissioner showing the number of gallons as originally invoiced, of petroleum products received by him during the preceding calendar month and such other information as the commissioner may require. Each such report shall show the number of gallons of gasoline sold by the distributor for use for aeronautical or aviation purposes during such calendar month. The report shall be accompanied by remittance covering inspection fees on petroleum products and gasoline tax on gasoline received by him during the preceding month; provided that in computing such tax a deduction of three per cent of the quantity of gasoline received shall be made for evaporation and loss; provided further that at the time of remittance the distributor shall submit satisfactory evidence that one-third of such three per cent deduction shall have been credited or paid to dealers on quantities sold to them. The report and remittance shall be deemed to have been filed as herein required if postmarked on or before the 23rd day of the month in which payable.

Subdivision 2. The commissioner shall allow the distributor credit or refund of the tax paid on gasoline:

(1) Exported or sold for export from the state, other than in the supply tank of a motor vehicle;

(2) Sold to the United States government or to any "cost plus a fixed fee" contractor employed by the United States government on any national defense project;

(3) Sold to a holder of an industrial user permit or to another licensed distributor;

(4) Destroyed by accident while in the possession of the distributor;

(5) In such other cases as the commissioner may permit, not inconsistent with the provisions of this act and other laws relating to the gasoline excise tax. (Act Apr. 28, 1941, c. 495, §12; as amended Apr. 6, 1943, c. 320, §§9, 10.)

Subdivision 3. Upon proof satisfactory to the commissioner, he shall allow the distributor credit or refund of the tax paid on gasoline destroyed by accident while in possession of the distributor prior to the passage of this act and since July 1, 1939, provided, however, that no such claim shall be considered unless notice of claim is filed with the commissioner within 90 days after the effective date of this act. (Act Apr. 28, 1941, c. 495, §12; Apr. 6, 1943, c. 320, §§9, 10.)

**3787-37. Delinquent taxes and fees—Penalties—Actions to recover—Evidence—Appointment of receiver.—**

Subdivision 1. In case any tax or inspection fee is not paid when due, a penalty of one per cent per day for the first ten days of delinquency shall accrue, and thereafter the tax, fees and penalty shall bear interest at the rate of six per cent per year until paid.

Subdivision 2. Upon the failure of any person or distributor to pay the gasoline tax and inspection fees within the time provided by this act, all gasoline tax upon gasoline received and inspection fees shall become immediately due and payable, whether or not the person or distributor has previously reported the tax and inspection fees to the commissioner, and within ten days after the default in payment the commissioner shall deliver to the attorney general a certified statement of the amount due from each person or distributor hereunder whose excise tax and inspection fees are delinquent. The statement shall give the address of the person or distributor owing such tax and inspection fees, the month for which the tax and inspection fees are due, the date of the delinquency, and such other information as may be required by the attorney general. It shall be the duty of the attorney general, upon receipt of the statement, to bring an action in the district court of Ramsey County, or of the county in which the delinquent distributor or taxpayer resides, to recover the amount of such tax with penalty, interest and costs and disbursements, and the action may be tried in the county in which it is brought. The judgment of the court when so obtained shall draw interest at the rate of six per cent per year and shall be enforceable in the manner provided by law for the enforcement of judgments obtained in civil actions.

Subdivision 3. The commissioner's certified statement to the attorney general for delinquent taxes shall for all purposes and in all courts be prima facie evidence of the facts therein stated and that the amount shown therein is due from the person named in the statement.

Subdivision 4. In event suit is instituted as herein provided, the court shall upon application of the attorney general appoint a receiver of the property and business of the delinquent defendant for the purpose of impounding the same as security for any judgment which has been or may be recovered.

Subdivision 5. No gasoline or petroleum product shall be unloaded or sold by any person or distributor whose tax and inspection fees have been certified to the attorney general for collection.

Subdivision 6. No action shall be brought against a distributor for the collection of delinquent gasoline

taxes and inspection fees unless commenced within six years after the date of the filing of the distributor's report in the office of the commissioner, provided, however, that in the case of a false or fraudulent report with intent to evade tax or inspection fee or of a failure to file a report, action may be commenced at any time. (Act Apr. 28, 1941, c. 495, §13; as amended Apr. 6, 1943, c. 320, §11.)

**3787-38. All gasoline deemed intended for use in motor vehicles—Authorization to collect tax from consumer—Failure to pay tax a crime.—**

Subdivision 1. All gasoline received in this state and all gasoline produced in or brought into this state shall be deemed to be intended for use in motor vehicles in this state.

Subdivision 2. If the person directly or indirectly paying said tax shall not in fact use said gasoline in motor vehicles in this state, but shall sell or otherwise dispose of the same, except for use as provided in Section 12, Subdivision 2, of this act, he is hereby authorized to collect from the person to whom said gasoline is so sold or disposed of the tax so paid by him, and he is hereby required, upon request, to make, sign and deliver to such person an invoice of such sale or disposition.

Subdivision 3. The authorization for the collection of gasoline taxes by persons other than the commissioner for and in behalf of the state of Minnesota, shall be deemed to establish a fiduciary relation for the violation of which, in failure to make payment when due and payable, the person so authorized to collect gasoline taxes shall be deemed guilty of larceny by embezzlement, and punished accordingly. (Act Apr. 28, 1941, c. 495, §14.)

**3787-39. Duty to report and to pay tax—Applicable to certain gasoline acquired outside the state—Not applicable to transient users.—**

Subdivision 1. It shall be the duty of every distributor, dealer and person who sells or uses gasoline manufactured, produced, received or stored by him, and of every person using gasoline in motor vehicles, if the same has not been reported or if the tax on account thereof has not been paid to the commissioner, to report to the commissioner the quantity of such gasoline so sold or used by him, and such person shall become liable for the payment of the tax. All provisions of this act relating to the calculation, collection and payment of the tax shall be applicable to any such person, dealer or distributor.

Subdivision 2. This section shall apply to any resident of this state who, having acquired gasoline outside the state, shall use the same in motor vehicles in this state, or who shall possess the same within the state for such use, and to persons who, although not residents of this state, shall regularly or habitually use and operate motor vehicles upon the public highways of this state, and the tax shall be payable by such persons on gasoline used or held for use by them in motor vehicles in the state although the same shall have been acquired outside this state. It shall not apply to persons who, as transients, operate motor vehicles into or through the state using therein gasoline acquired outside of the state, providing such gasoline is wholly contained within the fuel supply tank of such vehicle, nor shall it apply to persons who, having acquired gasoline outside the state, shall transport the same into this state in the tank, or tanks, of a motor vehicle, the total capacity of which is not in excess of 20 gallons.

Subdivision 3. Every person regularly or habitually operating motor vehicles upon the public highways of any other state or states and using in said motor vehicles gasoline purchased or obtained in this state, shall be allowed a credit or refund equal to the tax on said gasoline actually paid to the state or states in which it is used, not to exceed, however, the tax

imposed on said gasoline by this state. No credit or refund shall be allowed under this subdivision for taxes paid to any state which imposes a tax upon gasoline purchased or obtained in this state and used on the highways of such other state, and which does not allow a similar credit or refund for the tax paid to this state on gasoline purchased or acquired in such other state and used on the highways of this state. Every person claiming a credit or refund under this subdivision shall file, within thirty days after the tax to such other state, or states, is paid, a report in such form as may be prescribed by the commissioner, together with such proof of the payment of the tax, and of the fact that it was paid on gasoline purchased or obtained within this state as the commissioner may require.

Subdivision 4. Every person who regularly or habitually uses or operates motor vehicles upon the highways of this state and is liable to tax under the provisions of Subdivision 2 of this section and is not otherwise licensed as a distributor under the provisions of this act shall apply for and obtain a license as a "user", which license shall be issued in the same manner and subject to the same limitations and provisions as provided in this act for distributors' licenses. (Act Apr. 28, 1941, c. 495, §15; as amended Apr. 6, 1943, c. 320, §12.) [296.17]

**3787-40. Refund of tax paid on gasoline not used in motor vehicles—False statements.—**

Subdivision 1. Any person who shall buy and use gasoline for any purpose other than use in motor vehicles, and who shall have paid the gasoline excise tax directly or indirectly through the amount of the tax being included in the price of the gasoline or otherwise, shall be reimbursed and repaid the amount of the tax paid by him upon presenting to the commissioner a verified claim in such form and containing such information as the commissioner shall require and accompanied by the original invoice thereof. The claim shall set forth the total amount of the gasoline so purchased and used by him other than in motor vehicles, and shall state when and for what purpose it was used. If the commissioner be satisfied that the claimant is entitled to payment, he shall approve the claim and transmit it to the state auditor. No repayment shall be made unless the claim and invoice shall be presented to the commissioner within six months from the date of the purchase.

Subdivision 2. Every person who shall make any false statement in any claim or invoice presented to the commissioner, or knowingly present to the commissioner any claim or invoice containing any false statement or collect or cause to be paid to him or to any other person a refund without being entitled thereto, shall forfeit the full amount of the claim and be guilty of a misdemeanor. (Act Apr. 28, 1941, c. 495, §16.) [296.18]

See note under §2720-79.

Tax on gasoline used for aeronautical or aviation purposes is placed in separate fund if no claim for refund is made within six months of date of purchase, providing such taxes are identified within six months by verified statements, and appropriation of \$10,000 from that fund is ineffective until that much has accumulated. Op. Atty. Gen. (234C), Aug. 9, 1941.

Taxes paid for gasoline used in stationary engines furnishing power for processing sand and gravel to be used in highway construction or repair work should be refunded. Op. Atty. Gen. (324k), Oct. 5, 1942.

Tax on substitutes for gasoline used in stationary engines to furnish power for processing sand and gravel to be used in highway construction or repair work should be refunded. Id.

**3787-41. Interstate commerce.—**Neither this act nor any of the provisions hereof shall apply to or be construed to apply to foreign or interstate commerce, except in so far as the same may be permitted under the Constitution and the laws of the United States. (Act Apr. 28, 1941, c. 495, §17.) [296.19]

**3787-42. Gasoline excise taxes—relation to other taxes.—**Gasoline excise taxes shall be in lieu of all other taxes imposed upon the business of selling or dealing in gasoline, whether imposed by the state or by any of its political subdivisions, but shall be in addition to all ad valorem taxes now imposed by law; provided, however, that nothing herein contained shall be construed as prohibiting the governing body of any city or village of this state from licensing and regulating such business wherever authority therefor is or may hereafter be conferred by state law or city or village charter. (Act Apr. 28, 1941, c. 495, §18.) [296.20]

**3787-43. Records kept by distributors—Reports to commissioner.—**

Subdivision 1. All distributors and dealers shall keep a true and accurate record of all purchases, transfers, sales and use of petroleum products in a manner approved by the commissioner, and shall retain all such records for two years.

Subdivision 2. The books and records of all common and all contract carriers of petroleum products, distributors, dealers, and persons selling or using special use fuel on the public highways of this state shall be made accessible to the commissioner or his authorized representative.

Subdivision 3. All common and all contract carriers of petroleum products shall file with the commissioner in a manner approved by him a report showing the unloading date of all shipments of petroleum products and such other information as he may require. (Act Apr. 28, 1941, c. 495, §19.) [296.21]

**3787-44. Safety rules and regulations.—**

Subd. 1. All barrels, cans or like containers used for storing, shipping or delivering gasoline or other petroleum products having a flash point of less than 100 degrees Fahrenheit when tested with the Tagliabue closed cup tester shall be painted red or identified in a manner approved by the commissioner, and such containers shall not be used for any other product.

Subd. 2. Tank wagons with separate compartments for gasoline, fuel oil or farm tractor fuel shall have red tags attached to the faucet from which are drawn gasoline and other petroleum products having a flash point of less than 100 degrees Fahrenheit when tested with the Tagliabue closed cup tester.

Subd. 3. Gasoline and other petroleum products having a flash point of less than 100 degrees Fahrenheit when tested with the Tagliabue closed cup tester shall not be pumped through the same pump or marketing lines as are used for other petroleum products except by special permission of the commissioner.

Subd. 4. All visible pipes through which are drawn gasoline and other petroleum products having a flash point of less than 100 degrees Fahrenheit when tested with the Tagliabue closed cup tester shall be painted red.

Subd. 5. Fuel tanks or motor vehicles shall not be filled while the motor is running nor while any of the occupants or attendants are smoking.

Subd. 6. Tank wagons and truck transports used in transporting petroleum products shall be identified with the name or recognized trademark of the company transporting petroleum products. The name or names shall be painted on the vehicle or tank with letters six inches in height or larger.

Subd. 7. No gasoline shall be unloaded by any person from truck transports between the hours of 9:00 P. M. and 5:30 A. M. except by special permission of the commissioner.

Subd. 8. Gasoline shall conform to the specifications by which it is offered for sale or sold.

Subd. 9. Charging a higher price for gasoline drawn from one pump than from another at the same place shall be prima facie evidence that the higher priced product is a better quality gasoline for the purpose for which it is to be used.

Subd. 10. Each gasoline pump in this state shall have the total sales price per gallon posted on the pump in a conspicuous manner. (Act Apr. 28, 1941, c. 495, §20; as amended Apr. 6, 1943, c. 320, §§13, 14.) [296.22]

Laws 1943, c. 320, §13, repealed Subd. 5, §20, of c. 495, Laws 1941.

**Subd. 5. [Repealed.]**

Repealed. Laws 1943, c. 320, §13.

Reenacted. Laws 1943, c. 320, §14.

It is the duty of owner of an underground gasoline storage tank installed by him in a public alley to remove it within a reasonable time after its use has been abandoned by a lessee thereof, or to seal it so as to remove danger from explosive vapors remaining therein. *Fjellman v. Weller*, 213M467, 7NW(2d)521. See Dun. Dig. 3699.

An owner of an underground gasoline storage tank who installs it and maintains it in a public alley is under a positive duty to inspect and properly maintain it so as to eliminate danger from explosion. *Id.*

**3787-45. Certain blending prohibited.**—The blending of gasoline on which the tax has been paid or the liability assessed therefor with any substance on which the tax has not been paid or the liability assessed therefor is prohibited. (Act Apr. 28, 1941, c. 495, §21.) [296.23]

**3787-46. State officer or employee engaging in business as a distributor or dealer, prohibited.**—Any officer or employee of the state of Minnesota charged with the enforcement of any provision of this act who is employed by or who engages in business as a distributor or dealer in petroleum products shall be guilty of a misdemeanor. (Act Apr. 28, 1941, c. 495, §22.) [296.24]

**3787-47. Failure to comply with act.**—Any person who fails to comply with any provisions of this act shall be guilty of a misdemeanor unless other penal-

ties are expressly provided. (Act Apr. 28, 1941, c. 495, §23.) [296.25]

**3787-48. Action for recovery of a penalty not a bar to action for recovery of another.**—No action or suit for recovery of one penalty shall be a bar to or affect the recovery of any other penalty or be a bar to any criminal prosecution against any licensee or any other person under the provisions of this act. (Act Apr. 28, 1941, c. 495, §24.) [296.26]

**3787-49. Commissioner to make rules and regulations.**—The commissioner may make rules and regulations relating to the administration and enforcement of this act and other laws regulating the sale, distribution and use of petroleum products. The rules and regulations shall be reasonable and not inconsistent with the law. They shall become effective from their publication by posting and keeping posted a copy thereof on a bulletin board in the office of the commissioner, and by the mailing of a copy to all licensed distributors. Rules and regulations heretofore issued and in force shall continue until amended or revoked. (Act Apr. 28, 1941, c. 495, §25.) [296.27]

**3787-50. Repealer**—Certain provisions subject to this act.—Mason's Supplement 1940, Sections 2720-70, 2720-71½, 2720-72, 2720-74, 2720-75, 2720-78, 2720-79, 2720-79½, 2720-81, 2720-86, 2720-87, 2720-88, 2720-89, 2720-90, 2720-91, 3773, 3787-1 to 3787-21, 10536-17 and 10536-18, and Mason's Minnesota Statutes of 1927, Sections 2720-76, 2720-77, 2720-80, 2720-82, 2720-84, 2720-85 and 10249 are hereby expressly repealed. The tax imposed by Mason's Supplement 1940, Section 2720-71, as amended, shall be paid by the person and collected in the manner prescribed herein. (Act Apr. 28, 1941, c. 495, §26.)

Sec. 27, Act Apr. 28, 1941, c. 495, provides that the act shall take effect Sept. 1, 1941.

## CHAPTER 21

### Inspection of Food and Other Articles

**3788. Minnesota Dairy and Food Law.**

Frozen food lockers. Laws 1943, c. 276.  
Horse meat. Laws 1943, c. 446.

**3789. Unlawful to sell certain food.**

In actions to recover damages for injuries caused by eating impure food products allegedly purchased at bakery, ownership of bakery held for jury. *Shindelous v. Sevcik*, 211M432, 1NW(2d)399. See Dun. Dig. 3782.

In an action to recover damages for injuries caused from eating impure food products purchased at bakery, evidence held to sustain finding that defendant, and not his son, was owner of the bakery. *Cermak v. Sevcik*, 215M203, 9NW(2d)508. See Dun. Dig. 3782.

One not the owner but holding himself out as the owner of a bakery may be held liable for damages for injuries caused from eating impure food products purchased at such bakery. *Id.* See Dun. Dig. 3782.

In action to recover damages for injuries caused from eating impure food products purchased at a bakery, evidence warranted finding that defendant held himself out as the owner of the bakery and that plaintiff and his wife relied upon such apparent ownership in making purchases. *Id.* See Dun. Dig. 3782.

In determining whether owner of restaurant sued in federal court for injuries to patron from unwholesome ham was entitled under the federal third party practice rule to have the packer who canned the ham made a third party defendant, fact that state law bars contribution to person who had been guilty of an intentional wrong or who is presumed to have known that he was doing an illegal act, does not warrant the court in indulging in such presumption, where defendant's position is that if the ham was unwholesome the packer was solely to blame since any violation of the state pure food statutes by the restaurant owner is technical only and not an intentional wrong if his position be sustained, and fact that the cause of action asserted by the defendant against the packer rests on a theory different from plaintiff's cause of action

against defendant is immaterial. *Jeub v. B/G Foods, Inc.*, (DC-Minn)2FRD238. See Dun. Dig. 1924, 3782, 7328, 7329.

**3790. Definition of food.**

Cited to the point that meat and fish intended for consumption by mink and other animals are "food" within statutes relating to cold storage warehouses. *Op. Atty. Gen.* (645b-8), June 29, 1942.

**3791. Where food deemed to be adulterated.**

The regulation of federal security administrator defining a food product and fixing a standard of quality should show that it was made to promote honesty and fair dealing in interest of consumers. *Twin City Milk Producers Ass'n v. McNutt*, (CCA8), 122F(2d)564, 123F(2d)396.

Failure to show the basis for a regulation defining and fixing a standard of quality for a food product would not invalidate the regulation where such omission could be corrected by the federal security administrator. *Id.*

French dressing may contain either mineral or vegetable oil. *Op. Atty. Gen.* (135b), May 20, 1941.

Delegation of authority to commissioner to make rules and regulations is not too indefinite to render it improper for commissioner to fix percentage of moisture that may be permitted in sale of oysters. *Op. Atty. Gen.* (135B-1), Feb. 18, 1942.

Use of benzoate of soda and sulphur dioxide to preserve unprocessed sauer kraut in glass jars is prohibited. *Op. Atty. Gen.* (135b-1), May 19, 1943.

Sale of orange and grapefruit marmalade in Minnesota containing a trace of sulphur dioxide is not prohibited. *Op. Atty. Gen.* (135b-1), June 16, 1943.

**3792. When food is deemed to be misbranded.**

Bottled root beer described as "draft" beer contains a false statement without misleading public and would hardly warrant a prosecution. *Op. Atty. Gen.* (135b-5), June 29, 1942.