

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5190

58th Legislature
2003 Regular Session

Passed by the Senate March 16, 2003
YEAS 45 NAYS 0

President of the Senate

Passed by the House April 26, 2003
YEAS 53 NAYS 44

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
SUBSTITUTE SENATE BILL 5190 as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5190

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By Senate Committee on Highways & Transportation (originally sponsored by Senators Jacobsen, Horn, Haugen and Franklin)

READ FIRST TIME 02/27/03.

1 AN ACT Relating to fuel tax evasion; amending RCW 82.36.380 and
2 82.38.270; adding new sections to chapter 82.36 RCW; adding new
3 sections to chapter 82.38 RCW; creating a new section; repealing RCW
4 82.36.306 and 82.38.182; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.36 RCW
7 to read as follows:

8 SEIZURE AND FORFEITURE. (1) The following are subject to seizure
9 and forfeiture:

10 (a) Motor vehicle fuel imported into this state by a person not
11 licensed in this state in accordance with this chapter to import fuel;

12 (b) Motor vehicle fuel that is blended or manufactured by a person
13 not licensed in this state in accordance with this chapter to blend or
14 manufacture fuel;

15 (c) All conveyances that are used, or intended for use, to
16 transport, or in any manner to facilitate the transportation, for the
17 purpose of sale or receipt of property described in (a) and (b) of this
18 subsection, except where the owner of the conveyance neither had

1 knowledge of nor consented to the transportation of the fuel by an
2 unlicensed importer, blender, or manufacturer of fuel.

3 (2) Before seizing a common carrier conveyance, contract carrier
4 conveyance, or a conveyance secured by a bona fide security interest
5 where the secured party neither had knowledge of or consented to the
6 unlawful act or omission, the state patrol or the department of
7 licensing shall give the common carrier, contract carrier, or secured
8 party, or their representatives within twenty-four hours, a notice in
9 writing served by mail or other means to cease transporting fuel for
10 any person not licensed to import, blend, or manufacture fuel in this
11 state.

12 (3) Property subject to forfeiture under this chapter may be seized
13 by the state patrol upon process issued by a superior court or district
14 court having jurisdiction over the property. Seizure without process
15 may be made if:

16 (a) The seizure is incident to an arrest or a search under a search
17 warrant; or

18 (b) The state patrol has probable cause to believe that the
19 property was used or is intended to be used in violation of this
20 chapter and exigent circumstances exist making procurement of a search
21 warrant impracticable.

22 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.36 RCW
23 to read as follows:

24 FORFEITURE PROCEDURE. In all cases of seizure of property made
25 subject to forfeiture under this chapter, the state patrol shall
26 proceed as follows:

27 (1) Forfeiture is deemed to have commenced by the seizure.

28 (2) The state patrol shall list and particularly describe in
29 duplicate the conveyance seized. After the appropriate appeal period
30 has expired, a seized conveyance must be sold at a public auction in
31 accordance with chapter 43.19 RCW.

32 (3) The state patrol shall list and particularly describe in
33 duplicate the fuel seized. The selling price of the fuel seized will
34 be the average terminal rack price for similar fuel, at the closest
35 terminal rack on the day of sale, unless circumstance warrants that a
36 different selling price is appropriate. The method used to value the
37 fuel must be documented. The fuel will be sold at the earliest point

1 in time, and the total price must include all appropriate state and
2 federal taxes. The state patrol or the department may enter into
3 contracts for the transportation, handling, storage, and sale of fuel
4 subject to forfeiture. The money received must be deposited in the
5 motor vehicle account, after deduction for expenses provided for in
6 this section.

7 (4) The state patrol shall, within five days after the seizure of
8 a conveyance or fuel, cause notice to be served on the owner of the
9 property seized, if known, on the person in charge of the property, and
10 on any other person having any known right or interest in the property,
11 of the seizure and intended forfeiture. The notice may be served by
12 any method authorized by law or court rule including but not limited to
13 service by mail. If service is by mail it must be by both certified
14 mail with return receipt requested and regular mail. Service by mail
15 is deemed complete upon mailing within the five-day period after the
16 date of seizure.

17 (5) If no person notifies the state patrol in writing of the
18 person's claim of ownership or right to possession of the items seized
19 within fifteen days of the date of the notice of seizure, the items
20 seized are considered forfeited.

21 (6) If any person notifies the state patrol, in writing, of the
22 person's claim of ownership or right to possession of the items seized
23 within fifteen days of the date of the notice of seizure, the person or
24 persons must be given a reasonable opportunity to be heard as to the
25 claim or right. The hearing must be before the director of licensing,
26 or the director's designee. A hearing and any appeals must be in
27 accordance with chapter 34.05 RCW. The burden of proof by a
28 preponderance of the evidence is upon the person claiming to be the
29 lawful owner or the person claiming to have the lawful right to
30 possession of the items seized. The state patrol and the department
31 shall promptly return the conveyance seized, and money from the sale of
32 fuel seized, to the claimant upon a determination that the claimant is
33 the present lawful owner and is lawfully entitled to possession of the
34 items seized.

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.36 RCW
36 to read as follows:

37 FORFEITED PROPERTY--RETENTION, SALE, OR DESTRUCTION--USE OF SALE

1 PROCEEDS. When property is forfeited under this chapter, the state
2 patrol or the department may use the proceeds of the sale and all
3 moneys forfeited for the payment of all proper expenses of any
4 investigation leading to the seizure and of the proceedings for
5 forfeiture and sale, including expenses of seizure, maintenance of
6 custody, advertising, and court costs. Proper expenses of
7 investigation include costs incurred by a law enforcement agency or a
8 federal, state, or local agency. The balance of the proceeds must be
9 deposited in the motor vehicle account.

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.36 RCW
11 to read as follows:

12 RETURN OF SEIZED PROPERTY--PENALTY, INTEREST. (1) The state patrol
13 and the department may return property seized and proceeds from the
14 sale of fuel under this chapter when it is shown that there was no
15 intention to violate this chapter.

16 (2) When property is returned under this section, the state patrol
17 and the department may return the goods to the parties from whom they
18 were seized if and when the parties pay all applicable taxes and
19 interest.

20 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.36 RCW
21 to read as follows:

22 SEARCH AND SEIZURE. When the state patrol has good reason to
23 believe that motor vehicle fuel is being unlawfully imported, kept,
24 sold, offered for sale, blended, or manufactured in violation of this
25 chapter or rules adopted under it, the state patrol may make an
26 affidavit of that fact, describing the place or thing to be searched,
27 before a judge of any court in this state, and the judge shall issue a
28 search warrant directed to the state patrol commanding the officer
29 diligently to search any place or vehicle designated in the affidavit
30 and search warrant, and to seize the fuel and conveyance so possessed
31 and to hold them until disposed of by law, and to arrest the person in
32 possession or control of them.

33 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.36 RCW
34 to read as follows:

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.38 RCW
2 to read as follows:

3 FORFEITURE PROCEDURE. In all cases of seizure of property made
4 subject to forfeiture under this chapter, the state patrol shall
5 proceed as follows:

6 (1) Forfeiture is deemed to have commenced by the seizure.

7 (2) The state patrol shall list and particularly describe in
8 duplicate the conveyance seized. After the appropriate appeal period
9 has expired, a seized conveyance must be sold at a public auction in
10 accordance with chapter 43.19 RCW.

11 (3) The state patrol shall list and particularly describe in
12 duplicate the special fuel seized. The selling price of the fuel
13 seized will be the average terminal rack price for similar fuel, at the
14 closest terminal rack on the day of sale, unless circumstance warrants
15 that a different selling price is appropriate. The method used to
16 value the fuel must be documented. The fuel will be sold at the
17 earliest point in time, and the total price must include all
18 appropriate state and federal taxes. The state patrol or the
19 department may enter into contracts for the transportation, handling,
20 storage, and sale of fuel subject to forfeiture. The money received
21 must be deposited in the motor vehicle account, after deduction for
22 expenses provided for in this section.

23 (4) The state patrol shall, within five days after the seizure of
24 a conveyance or fuel, cause notice to be served on the owner of the
25 property seized, if known, on the person in charge of the property, and
26 on any other person having any known right or interest in the property,
27 of the seizure and intended forfeiture. The notice may be served by
28 any method authorized by law or court rule including but not limited to
29 service by mail. If service is by mail it must be by both certified
30 mail with return receipt requested and regular mail. Service by mail
31 is deemed complete upon mailing within the five-day period after the
32 date of seizure.

33 (5) If no person notifies the state patrol in writing of the
34 person's claim of ownership or right to possession of the items seized
35 within fifteen days of the date of the notice of seizure, the items
36 seized are considered forfeited.

37 (6) If any person notifies the state patrol, in writing, of the
38 person's claim of ownership or right to possession of the items seized

1 within fifteen days of the date of the notice of seizure, the person or
2 persons must be given a reasonable opportunity to be heard as to the
3 claim or right. The hearing must be before the director of licensing,
4 or the director's designee. A hearing and any appeals must be in
5 accordance with chapter 34.05 RCW. The burden of proof by a
6 preponderance of the evidence is upon the person claiming to be the
7 lawful owner or the person claiming to have the lawful right to
8 possession of the items seized. The state patrol and the department
9 shall promptly return the conveyance seized, and money from the sale of
10 fuel seized, to the claimant upon a determination that the claimant is
11 the present lawful owner and is lawfully entitled to possession of the
12 items seized.

13 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.38 RCW
14 to read as follows:

15 FORFEITED PROPERTY--RETENTION, SALE, OR DESTRUCTION--USE OF SALE
16 PROCEEDS. When property is forfeited under this chapter, the state
17 patrol or the department may use the proceeds of the sale and all
18 moneys forfeited for the payment of all proper expenses of any
19 investigation leading to the seizure and of the proceedings for
20 forfeiture and sale, including expenses of seizure, maintenance of
21 custody, advertising, and court costs. Proper expenses of
22 investigation include costs incurred by a law enforcement agency or a
23 federal, state, or local agency. The balance of the proceeds must be
24 deposited in the motor vehicle fund.

25 NEW SECTION. **Sec. 10.** A new section is added to chapter 82.38 RCW
26 to read as follows:

27 RETURN OF SEIZED PROPERTY--PENALTY, INTEREST. (1) The state patrol
28 and the department may return property seized and proceeds from the
29 sale of fuel under this chapter when it is shown that there was no
30 intention to violate this chapter.

31 (2) When property is returned under this section, the state patrol
32 and the department may return the goods to the parties from whom they
33 were seized if and when the parties pay all applicable taxes and
34 interest.

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 82.38 RCW
2 to read as follows:

3 SEARCH AND SEIZURE. When the state patrol has good reason to
4 believe that special fuel is being unlawfully imported, kept, sold,
5 offered for sale, blended, or manufactured in violation of this chapter
6 or rules adopted under it, the state patrol may make an affidavit of
7 that fact, describing the place or thing to be searched, before a judge
8 of any court in this state, and the judge shall issue a search warrant
9 directed to the state patrol commanding the officer diligently to
10 search any place or vehicle designated in the affidavit and search
11 warrant, and to seize the fuel and conveyance so possessed and to hold
12 them until disposed of by law, and to arrest the person in possession
13 or control of them.

14 NEW SECTION. **Sec. 12.** A new section is added to chapter 82.38 RCW
15 to read as follows:

16 RULES. The department and the state patrol shall adopt rules
17 necessary to implement sections 7 through 11 of this act.

18 **Sec. 13.** RCW 82.36.380 and 2000 2nd sp.s. c 4 s 9 are each amended
19 to read as follows:

20 (1) It is unlawful for a person or corporation to:

21 (a) Evade a tax or fee imposed under this chapter;

22 (b) File a false statement of a material fact on a motor fuel
23 license application or motor fuel refund application;

24 (c) Act as a motor fuel importer, motor fuel blender, or motor fuel
25 supplier unless the person holds an uncanceled motor fuel license
26 issued by the department authorizing the person to engage in that
27 business;

28 (d) Knowingly assist another person to evade a tax or fee imposed
29 by this chapter;

30 (e) Knowingly operate a conveyance for the purpose of hauling,
31 transporting, or delivering motor vehicle fuel in bulk and not possess
32 an invoice, bill of sale, or other statement showing the name, address,
33 and tax license number of the seller or consignor, the destination, the
34 name, address, and tax license number of the purchaser or consignee,
35 and the number of gallons.

1 (2) (~~Evasion of taxes or fees under this chapter~~) A violation of
2 subsection (1) of this section is a class C felony under chapter 9A.20
3 RCW. In addition to other penalties and remedies provided by law, the
4 court shall order a person or corporation found guilty of violating
5 subsection (1) of this section to:

6 (a) Pay the tax or fee evaded plus interest, commencing at the date
7 the tax or fee was first due, at the rate of twelve percent per year,
8 compounded monthly; and

9 (b) Pay a penalty of one hundred percent of the tax evaded, to the
10 multimodal transportation account of the state.

11 **Sec. 14.** RCW 82.38.270 and 2000 2nd sp.s. c 4 s 10 are each
12 amended to read as follows:

13 (1) It is unlawful for a person or corporation to:

14 (a) Have dyed diesel in the fuel supply tank of a vehicle that is
15 licensed or required to be licensed for highway use or maintain dyed
16 diesel in bulk storage for highway use, unless the person or
17 corporation maintains an uncanceled dyed diesel user license or is
18 otherwise exempted by this chapter;

19 (b) Evade a tax or fee imposed under this chapter;

20 (c) File a false statement of a material fact on a special fuel
21 license application or special fuel refund application;

22 (d) Act as a special fuel importer, special fuel blender, or
23 special fuel supplier unless the person holds an uncanceled special
24 fuel license issued by the department authorizing the person to engage
25 in that business;

26 (e) Knowingly assist another person to evade a tax or fee imposed
27 by this chapter;

28 (f) Knowingly operate a conveyance for the purpose of hauling,
29 transporting, or delivering special fuel in bulk and not possess an
30 invoice, bill of sale, or other statement showing the name, address,
31 and tax license number of the seller or consignor, the destination, the
32 name, address, and tax license number of the purchaser or consignee,
33 and the number of gallons.

34 (2) (~~Evasion of taxes or fees under this chapter is~~) (a) A single
35 violation of subsection (1)(a) of this section is a gross misdemeanor
36 under chapter 9A.20 RCW.

1 (b) Multiple violations of subsection (1)(a) of this section and
2 violations of subsections (1)(b) through (f) of this section are a
3 class C felony under chapter 9A.20 RCW.

4 (3) In addition to other penalties and remedies provided by law,
5 the court shall order a person or corporation found guilty of violating
6 subsection (1)(b) through (f) of this section to:

7 (a) Pay the tax or fee evaded plus interest, commencing at the date
8 the tax or fee was first due, at the rate of twelve percent per year,
9 compounded monthly; and

10 (b) Pay a penalty of one hundred percent of the tax evaded, to the
11 multimodal transportation account of the state.

12 NEW SECTION. Sec. 15. The following acts or parts of acts are
13 each repealed:

14 (1) RCW 82.36.306 (Remedies for violation of RCW 82.36.305--Rules--
15 Coloring of fuel exclusively for marine use, samples may be taken) and
16 1973 c 96 s 4 & 1961 c 15 s 82.36.306; and

17 (2) RCW 82.38.182 (Exemption--Special authorization to farmers,
18 logging companies, construction companies for purchases--Application--
19 Card lock facility use--Refund--Forms--Termination of election--
20 Renewal--Records) and 1998 c 176 s 72.

21 NEW SECTION. Sec. 16. Captions used in this act are not part of
22 the law.

23 NEW SECTION. Sec. 17. If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

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