

20 but not limited to, the furnishing of a proper and valid certificate of  
 21 title to the motor vehicle involved in any such transaction, and that  
 22 such bond shall be filed with the department prior to the issuance of  
 23 license provided by law. The aggregate liability of the surety of all  
 24 persons, however, shall in no event exceed the amount of said bond.

1 SEC. 2. Section three hundred twenty-two point six (322.6), un-  
 2 numbered paragraph one (1), Code 1973, is amended to read as fol-  
 3 lows:

4 The department ~~shall~~ *may* deny the application of any person for a  
 5 license as a motor vehicle dealer and refuse to issue a license to him  
 6 as such, if, after reasonable notice and a hearing, the department  
 7 determines that such applicant:

1 SEC. 3. Section three hundred twenty-two point seven (322.7),  
 2 subsection four (4), Code 1973, is amended to read as follows:

3 4. The motor vehicle dealer license provided for in this chapter shall  
 4 be renewed annually ~~in the same manner and on~~ *upon application in*  
 5 *such form and content as prescribed by the department and upon pay-*  
 6 *ment of the same required fee as in the case of the original license.*  
 7 Such renewal shall take effect on the first day of January of each year.

Approved March 29, 1974

## CHAPTER 1198

### MARKETING MOTOR FUEL

#### H. F. 1402

AN ACT to provide for fair trade practices in the marketing and distribution of motor fuel and special fuel and providing a penalty.

*Be It Enacted by the General Assembly of the State of Iowa:*

1 SECTION 1. NEW SECTION. **Definitions.** When used in this Act,  
 2 unless the context otherwise requires:

3 1. "Distributor" means a person who holds a motor fuel distribu-  
 4 tor's license or a special fuel distributor's license issued as provided in  
 5 chapter three hundred twenty-four (324) of the Code.

6 2. "Franchiser" means a person who is engaged in the importation,  
 7 refining or distribution of motor fuel or special fuel and who has en-  
 8 tered into a distributor franchise or a dealer franchise.

9 3. "Distributor franchise" means a written agreement or contract,  
 10 either written or oral, between a franchiser and a distributor when all  
 11 of the following conditions are included:

12 a. A commercial relationship of definite duration or continuing in-  
 13 definite duration is involved.

14 b. The distributor is granted the right to offer and sell motor fuel  
 15 or special fuel that is imported, refined, or distributed by the fran-  
 16 chiser.

17 c. The distributor, as an independent business, constitutes a compo-  
 18 nent of the franchiser's distribution system.

19 d. The distributor's business, or a portion of it which is related to  
20 motor fuel or special fuel purchased from the franchiser is substan-  
21 tially reliant on the franchiser for the continued supply of motor fuel  
22 or special fuel.

23 e. The distributor's business or a portion of it which is related to  
24 motor fuel or special fuel purchased from the franchiser is substan-  
25 tially associated with the franchiser's trademark, service mark, trade  
26 name, advertising, or other commercial symbol designating the fran-  
27 chiser.

28 4. "Dealer" means a person, other than an employee of a distributor  
29 or franchiser, who operates, maintains or conducts a place of business  
30 from which motor fuel or special fuel is sold or offered for sale at  
31 retail to the ultimate consumer, and who holds a license, issued as  
32 provided in chapter two hundred fourteen (214) of the Code, for each  
33 pump and meter operated upon the retail premises.

34 5. "Dealer franchise" means an agreement or contract, either writ-  
35 ten or oral, between a franchiser and a dealer or between a distribu-  
36 tor and a dealer when all of the following conditions are included:

37 a. A commercial relationship of definite duration or continuing in-  
38 definite duration is involved.

39 b. The dealer is granted the right to offer and sell motor fuel or  
40 special fuel that is imported, refined, or distributed by the franchiser  
41 or by the distributor.

42 c. The dealer's business is substantially reliant on the franchiser  
43 or distributor for the continued supply of motor fuel or special fuel.

44 6. "Motor fuel" means "motor fuel" as defined in chapter three hun-  
45 dred twenty-four (324) of the Code.

46 7. "Special fuel" means "special fuel" as defined in chapter three  
47 hundred twenty-four (324) of the Code.

48 8. "Retaliatory action" means action contrary to the purpose or  
49 intent of this Act and may include a refusal to continue to sell or lease,  
50 a reduction in the quality or quantity of services or products custom-  
51 arily available for sale or lease, a violation of privacy, or an induce-  
52 ment of others to retaliate.

53 9. "Retail premises" means real estate either owned or leased by  
54 the dealer and used primarily for the sale at retail to the ultimate  
55 consumer of motor fuel or special fuel.

56 10. "Commission" means the Iowa state commerce commission.

1 SEC. 2. NEW SECTION. **Discontinuing distributor franchise.** Not-  
2 withstanding the terms, provisions, or conditions of any distributor  
3 franchise, a franchiser shall not terminate or refuse to renew a distribu-  
4 tor franchise except as provided in this Act. A franchiser shall not  
5 terminate or refuse to renew a distributor franchise unless the fran-  
6 chiser gives to the distributor thirty days' written notice of fran-  
7 chiser's intent to terminate or not renew. Notice shall be given by re-  
8 stricted certified mail, as defined in section six hundred eighteen point  
9 fifteen (618.15) of the Code. If a distributor, within thirty days after  
10 the date of delivery of the notice from the franchiser, applies to the  
11 commission for a hearing under this Act, the distributor franchise  
12 shall remain in effect pending a final order by the commission. The  
13 application filed by the distributor shall state, under oath, that the  
14 distributor's license as a motor fuel or special fuel distributor, as the  
15 case may be, has not been canceled pursuant to the provisions of chap-

16 ter three hundred twenty-four (324) of the Code, that the distributor  
17 has not filed a petition in bankruptcy or been declared bankrupt with-  
18 in six months preceding the filing of the application, that the fran-  
19 chiser has not withdrawn entirely from the sale for resale of motor  
20 fuel and special fuel in this state, that there are no past due sums  
21 owing by the distributor to the franchiser, and that the distributor has  
22 not consented in writing to the termination or nonrenewal of the dis-  
23 tributor franchise.

1     **SEC. 3. NEW SECTION. Discontinuing dealer franchise.** Notwith-  
2 standing the terms, provisions, or conditions of any dealer franchise,  
3 a distributor or franchiser shall not terminate or refuse to renew a  
4 dealer franchise except as provided in this Act. A distributor or fran-  
5 chiser shall not terminate or refuse to renew a dealer franchise unless  
6 the distributor or franchiser gives to the dealer thirty days' written  
7 notice of distributor's or franchiser's intent to terminate or not renew.  
8 Notice shall be given by restricted certified mail, as defined in section  
9 six hundred eighteen point fifteen (618.15) of the Code. If a dealer,  
10 within thirty days after the date of delivery of the notice from the  
11 distributor or franchiser, applies to the commission for a hearing  
12 under this Act, the dealer franchise shall remain in effect pending a  
13 final order by the commission. The application filed by the dealer  
14 shall state, under oath, that the dealer's license, issued pursuant to  
15 chapter two hundred fourteen (214) of the Code, for pumps and met-  
16 ters located on the retail premises occupied by the dealer has not been  
17 canceled, that the dealer has not filed a petition in bankruptcy or been  
18 declared bankrupt within six months preceding the filing of the appli-  
19 cation, that the franchiser or distributor has not withdrawn entirely  
20 from the sale for resale of motor fuel and special fuel in this state,  
21 that there are no past due sums owing by the dealer to the franchiser  
22 or distributor, and that the dealer has not consented in writing to the  
23 termination or nonrenewal of the dealer franchise.

1     **SEC. 4. NEW SECTION. Commission to hold hearings.** Upon receiv-  
2 ing an application, the commission shall enter an order fixing a time  
3 and place of hearing, which shall be within thirty days from the date  
4 the commission receives the application, and shall send by restricted  
5 certified mail a copy of the order to the franchiser or distributor. The  
6 commission may also give notice of the application to any other party  
7 the commission deems an interested person. The notice shall be in  
8 the form and substance and given in the manner determined by the  
9 commission.

10 Any person who can show an interest in the application may be-  
11 come a party to the hearing, whether or not he receives notice; but  
12 a party not receiving notice shall be limited to participation at the  
13 hearing on the question of the public interest in the termination or  
14 continuation of the franchise.

1     **SEC. 5. NEW SECTION. Continuance.** The commission may con-  
2 tinue the date of hearing for a period of thirty days, and may upon  
3 application, but not ex parte, continue the date of hearing for an addi-  
4 tional period of thirty days.

1     **SEC. 6. NEW SECTION. Burden of proof.** Upon hearing, if the  
 2 commission finds the statements contained in the application are true,  
 3 then the franchiser or distributor that intends to terminate or not  
 4 renew the distributor franchise or dealer franchise shall have the  
 5 burden of proof to establish that the franchiser or distributor, as the  
 6 case may be, has good cause for terminating or not renewing the fran-  
 7 chise.

8     If the commission finds the statements contained in the application  
 9 are not true, the application shall be denied. Nothing contained in  
 10 this Act shall be construed to require or authorize any investigation  
 11 by the commission of any matter before the commission under this  
 12 Act. Upon hearing the commission shall hear the evidence intro-  
 13 duced by the parties and shall make its decision solely upon the record  
 14 made. If the commission denies the termination or nonrenewal of  
 15 the franchise, it may make such further order as may be necessary  
 16 to require compliance with the terms of the franchise and to prevent  
 17 retaliatory action.

1     **SEC. 7. NEW SECTION. Rules of evidence.** The Iowa rules of civil  
 2 procedure relating to discovery and inspection shall apply to hear-  
 3 ings held under the provisions of this Act, and the commission may  
 4 issue orders to give effect to such rules. In the event issues are raised  
 5 which would involve violations of a mandatory federal petroleum allo-  
 6 cation law, all discovery and inspection proceedings which would be  
 7 available under the federal law shall be available to the parties to the  
 8 hearing, and the commission may issue orders to give effect to the  
 9 proceedings. Costs may be apportioned between the parties as the  
 10 commission determines.

1     **SEC. 8. NEW SECTION. Conditions barring change in distributor**  
 2 **franchise.** Notwithstanding the terms, provisions or conditions of a  
 3 distributor franchise, the following shall not constitute good cause for  
 4 the termination or refusal to renew a distributor franchise:

5     1. The sole fact that the franchiser desires further penetration of  
 6 the market.

7     2. The change of executive management of the distributor, unless  
 8 the franchiser, having the burden of proof, proves that the change of  
 9 executive management will be substantially detrimental to the distri-  
 10 bution of the franchiser's motor fuels or special fuels in the area  
 11 served by the distributor.

12     3. The sale or change of ownership of the distributor's business,  
 13 unless the transfer of the distributor's license pursuant to chapter  
 14 three hundred twenty-four (324) of the Code is denied or the new  
 15 owner is unable to obtain a license under chapter three hundred  
 16 twenty-four (324) of the Code.

1     **SEC. 9. NEW SECTION. Commission's guidelines.** In determining  
 2 whether good cause has been established for terminating or not re-  
 3 newing a distributor franchise or dealer franchise, the commission  
 4 shall take into consideration the existing circumstances, including,  
 5 but not limited to:

6     1. Amount of business transacted by the distributor or dealer.

7     2. Investments made and obligations incurred by the distributor or  
 8 dealer in performance of the franchise.

- 9       3. Permanency of the investment.  
10       4. Whether it is injurious to the public welfare for the business of  
11 the distributor or dealer to be disrupted.  
12       5. Ability of the distributor or dealer to timely pay his financial  
13 obligations.  
14       6. Whether the distributor or dealer has adequate equipment and  
15 qualified personnel to reasonably provide for the distribution and mar-  
16 keting of the motor fuel or special fuel sold to him.  
17       7. Except as provided in section eight (8) of this Act, failure of  
18 the distributor to substantially comply with those requirements of the  
19 distributor franchise that are determined by the commission to be  
20 reasonable and material.  
21       8. Failure of the dealer to substantially comply with those require-  
22 ments of the dealer franchise that are determined by the commission  
23 to be reasonable and material.

1       SEC. 10. NEW SECTION. **Compulsory attendance at hearings.** The  
2 commission may issue subpoenas, administer oaths, compel the attend-  
3 ance of witnesses and production of books, papers, documents and  
4 other evidence. The commission may apply to the district court of  
5 the county in which the hearing is to be held for a court order to en-  
6 force actions taken under this section.

1       SEC. 11. NEW SECTION. **Appeal.** Appeal may be taken from the  
2 final order of the commission by either the distributor, franchiser,  
3 dealer or any person served with notice pursuant to section four (4)  
4 of this Act, to the district court of the county where the distributor  
5 or dealer either resides or maintains his principal place of business,  
6 within thirty days from the time the decision is filed with the com-  
7 mission, by giving at least ten-days' notice to the commission to be  
8 served on its chairman or secretary in the same manner as original  
9 notices are now served, and by filing with the clerk of court a bond  
10 for costs in the sum of not less than two hundred dollars.

1       SEC. 12. NEW SECTION. **Transcript on appeal.** Upon appeal being  
2 taken, the secretary of the commission shall make and certify a tran-  
3 script of all papers, records, and proceedings in connection with such  
4 application and hearing and file the same with the clerk of the court  
5 within twenty days following the taking of such appeal.

1       SEC. 13. NEW SECTION. **Trial on appeal.** The appeal shall be sub-  
2 mitted upon the transcript of the evidence and the record made before  
3 the commission and the district court shall either affirm or reverse the  
4 order of the commission.

1       SEC. 14. NEW SECTION. **Violations.** Any person violating the  
2 provisions of this Act is guilty of a misdemeanor and shall be pun-  
3 ished by a fine not to exceed one hundred dollars or imprisonment in  
4 the county jail for a period of not to exceed thirty days.

1       SEC. 15. **Intent.** The provisions of this Act are enacted in the  
2 exercise of the police powers of this state for the purpose of pro-  
3 tecting the health, safety and general welfare of the people of this  
4 state and because methods and practices in the marketing and distri-  
5 bution of motor fuel and special fuel have impaired the availability to  
6 the public of the fuel and the services supplied by distributors and

7 dealers who have entered into a franchise agreement with their re-  
8 spective suppliers.

1 SEC. 16. NEW SECTION. **Hearing.** Upon receiving an application,  
2 the commission shall order a hearing. The hearing shall be held  
3 within thirty days of receipt of the application and in accordance with  
4 the Iowa Administrative Procedure Act. The commission shall notify  
5 the franchiser or distributor of the time and place of the hearing. The  
6 commission may also give notice of the application to any other party  
7 the commission deems an interested person. The notice shall be in  
8 the form and substance and given in the manner determined by the  
9 commission.

10 Any person who can show an interest in the application may become  
11 a party to the hearing, whether or not he receives notice; but a party  
12 not receiving notice shall be limited to participation at the hearing  
13 on the question of the public interest in the termination or continua-  
14 tion of the franchise.

1 SEC. 17. NEW SECTION. **Appeal.** Appeal may be taken from the  
2 final order of the commission by either the distributor, franchiser,  
3 dealer or any person served with notice pursuant to section four (4) of  
4 this Act, to the district court of the county where the distributor or  
5 dealer either resides or maintains his principal place of business, with-  
6 in thirty days from the time the decision is filed with the commission,  
7 by giving at least ten-days' notice to the commission to be served on  
8 its chairman or secretary in the same manner as original notices are  
9 now served, and by filing with the clerk of court a bond for costs in  
10 the sum of not less than five hundred dollars. Appeal shall be taken  
11 in accordance with the provisions of the Iowa Administrative Proce-  
12 dure Act.

1 SEC. 18. NEW SECTION. **Waiver.** Any provision of a dealer fran-  
2 chise or distributor franchise which is an attempted waiver of the  
3 benefits of this Act shall be void and unenforceable.

1 SEC. 19. Sections sixteen (16) and seventeen (17) of this Act  
2 shall become effective July 1, 1975.

3 Sections four (4), seven (7), eleven (11), twelve (12) and thir-  
4 teen (13) of this Act are repealed effective July 1, 1975.

Approved May 29, 1974

## CHAPTER 1199

### TAX REPORTS PENALTIES

S. F. 1197

AN ACT revising penalties imposed on additional taxes due, failure to file reports, and filing of fraudulent reports under the income, sales and use, chain store, and motor vehicle fuel tax laws.

*Be It Enacted by the General Assembly of the State of Iowa:*

1 SECTION 1. Section three hundred twenty-four point fifteen  
2 (324.15), subsection three (3), Code 1973, is amended to read as  
3 follows: