

1 **THEFT OF GASOLINE**

2 2003 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Greg J. Curtis**

5 **This act modifies the Criminal Code and the Public Safety Code by providing that if a**
6 **theft offense involves a "drive-away" taking of gasoline the driver license of the offender**
7 **may be suspended. This act also modifies the Judicial Code by providing civil liabilities**
8 **and penalties for the unlawful taking of gasoline. This act imposes joint civil liability on**
9 **a minor and the minor's guardian for the unlawful taking of gasoline. This act also**
10 **imposes civil liability on the owner of a vehicle used in the unlawful taking of gasoline**
11 **unless the owner can demonstrate that the vehicle was being used without his permission.**

12 This act affects sections of Utah Code Annotated 1953 as follows:

13 AMENDS:

14 **53-3-220**, as last amended by Chapter 213, Laws of Utah 1998

15 ENACTS:

16 **76-6-410.7**, Utah Code Annotated 1953

17 **78-11-301**, Utah Code Annotated 1953

18 **78-11-302**, Utah Code Annotated 1953

19 **78-11-303**, Utah Code Annotated 1953

20 **78-11-304**, Utah Code Annotated 1953

21 **78-11-305**, Utah Code Annotated 1953

22 **78-11-306**, Utah Code Annotated 1953

23 *Be it enacted by the Legislature of the state of Utah:*

24 Section 1. Section **53-3-220** is amended to read:

25 **53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**
26 **disqualification of license -- Offense requiring an extension of period -- Hearing --**
27 **Limited driving privileges.**



28 (1) (a) The division shall immediately revoke or, when this chapter or Title 41, Chapter
29 6, Traffic Rules and Regulations, specifically provides for denial, suspension, or
30 disqualification, the division shall deny, suspend, or disqualify the license of a person upon
31 receiving a record of his conviction for any of the following offenses:

32 (i) manslaughter or negligent homicide resulting from driving a motor vehicle, or
33 automobile homicide under Section 76-5-207;

34 (ii) driving or being in actual physical control of a motor vehicle while under the
35 influence of alcohol, any drug, or combination of them to a degree that renders the person
36 incapable of safely driving a motor vehicle as prohibited in Section 41-6-44 or as prohibited in
37 an ordinance that complies with the requirements of Subsection 41-6-43(1);

38 (iii) driving or being in actual physical control of a motor vehicle while having a blood
39 or breath alcohol content prohibited in Section 41-6-44 or as prohibited in an ordinance that
40 complies with the requirements of Subsection 41-6-43(1);

41 (iv) perjury or the making of a false affidavit to the division under this chapter, Title
42 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or
43 regulating driving on highways;

44 (v) any offense punishable as a felony under the motor vehicle laws of this state;

45 (vi) any other felony in which a motor vehicle is used;

46 (vii) failure to stop and render aid as required under the laws of this state if a motor
47 vehicle accident results in the death or personal injury of another;

48 (viii) two charges of reckless driving committed within a period of 12 months; but if
49 upon a first conviction of reckless driving the judge or justice recommends suspension of the
50 convicted person's license, the division may after a hearing suspend the license for a period of
51 three months;

52 (ix) failure to bring a motor vehicle to a stop at the command of a peace officer as
53 required in Section 41-6-13.5;

54 (x) any offense specified in Part 4, Uniform Commercial Driver License Act, of this
55 chapter that requires disqualification;

56 (xi) discharging or allowing the discharge of a firearm from a vehicle in violation of
57 Subsection 76-10-508(2);

58 (xii) using, allowing the use of, or causing to be used any explosive, chemical, or

59 incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b);

60 (xiii) operating or being in actual physical control of a motor vehicle while having any
61 measurable controlled substance or metabolite of a controlled substance in the person's body in
62 violation of Section 41-6-44.6; ~~and~~

63 (xiv) operating or being in actual physical control of a motor vehicle while having any
64 alcohol in the person's body in violation of Section 53-3-232[-]; and

65 (xv) theft of motor fuel in violation of Section 76-6-410.7 if the court orders
66 suspension of the license.

67 (b) The division shall immediately revoke the license of a person upon receiving a
68 record of an adjudication under Title 78, Chapter 3a, Juvenile ~~Courts~~ Court Act of 1996, for
69 any of the following offenses:

70 (i) discharging or allowing the discharge of a firearm from a vehicle in violation of
71 Subsection 76-10-508(2); and

72 (ii) using, allowing the use of, or causing to be used any explosive, chemical, or
73 incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b).

74 (c) Except when action is taken under Section 53-3-219 for the same offense, the
75 division shall immediately suspend for six months the license of a person upon receiving a
76 record of conviction for any of the following offenses:

77 (i) any violation of:

78 (A) Title 58, Chapter 37, Utah Controlled Substances Act;

79 (B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

80 (C) Title 58, Chapter 37b, Imitation Controlled Substances Act;

81 (D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

82 (E) Title 58, Chapter 37d, Clandestine Drug Lab Act; or

83 (ii) any criminal offense that prohibits:

84 (A) possession, distribution, manufacture, cultivation, sale, or transfer of any substance
85 that is prohibited under the acts described in Subsection (1)(c)(i); or

86 (B) the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or
87 transfer any substance that is prohibited under the acts described in Subsection (1)(c)(i).

88 (2) The division shall extend the period of the first denial, suspension, revocation, or
89 disqualification for an additional like period, to a maximum of one year, upon receiving:

90 (a) a record of the conviction of any person on a charge of driving a motor vehicle
91 while the person's license is denied, suspended, revoked, or disqualified;

92 (b) a record of a conviction of the person for any violation of the motor vehicle law in
93 which the person was involved as a driver;

94 (c) a report of an arrest of the person for any violation of the motor vehicle law in
95 which the person was involved as a driver; or

96 (d) a report of an accident in which the person was involved as a driver.

97 (3) When the division receives a report under Subsection (2)(c) or (d) that a person is
98 driving while the person's license is denied, suspended, disqualified, or revoked, the person is
99 entitled to a hearing regarding the extension of the time of denial, suspension, disqualification,
100 or revocation originally imposed under Section 53-3-221.

101 (4) (a) The division may extend to a person the limited privilege of driving a motor
102 vehicle to and from the person's place of employment or within other specified limits on
103 recommendation of the trial judge in any case where a person is convicted of any of the
104 offenses referred to in Subsections (1) and (2) except:

105 (i) automobile homicide under Subsection (1)(a)(i);

106 (ii) those offenses referred to in Subsections (1) (a)(ii), (a)(iii), (a)(xi), (a)(xii), (a)(xiii),
107 (1)(b), and (1)(c); and

108 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,
109 revocation, or disqualification was imposed because of a violation of Section 41-6-44, Section
110 41-6-44.6, a local ordinance which complies with the requirements of Subsection 41-6-43(1),
111 Section 41-6-44.10, or Section 76-5-207, or a criminal prohibition that the person was charged
112 with violating as a result of a plea bargain after having been originally charged with violating
113 one or more of these sections or ordinances.

114 (b) This discretionary privilege is limited to when undue hardship would result from a
115 failure to grant the privilege and may be granted only once to any individual during any single
116 period of denial, suspension, revocation, or disqualification, or extension of that denial,
117 suspension, revocation, or disqualification.

118 (c) A limited CDL may not be granted to an individual disqualified under Part 4,
119 Uniform Commercial Driver License Act, of this chapter or whose license has been revoked,
120 suspended, cancelled, or denied under this chapter.

121 Section 2. Section **76-6-410.7** is enacted to read:

122 **76-6-410.7. Theft of motor vehicle fuel.**

123 (1) As used in this section, "motor fuel" has the same meaning as in Section 13-16-2.

124 (2) A person commits theft of motor fuel if the person obtains motor fuel from a
125 business or establishment where motor fuel is offered for retail sale and knowingly fails to
126 remit payment for the fuel.

127 (3) (a) In addition to any penalties imposed under this part, a court may order the driver
128 license of a person convicted of a second or subsequent violation of Subsection (2) suspended
129 for a period of 90 days in accordance with Section 53-3-220.

130 (b) If a court orders suspension of a person's driver license under Subsection (2), the
131 court shall notify and provide a record of the conviction to the Driver License Division.

132 Section 3. Section **78-11-301** is enacted to read:

133 **Part 3. Wrongful Taking of Motor Fuel**

134 **78-11-301. Wrongful taking of motor fuel -- Definitions.**

135 As used in this part:

136 (1) "Merchant" means an owner or operator of premises where motor fuel is sold at
137 retail, and includes the merchant's employees and agents.

138 (2) "Minor" means a person under 18 years of age.

139 (3) "Motor fuel" has the same meaning as in Section 13-16-2.

140 (4) "Premises" means a business or establishment where motor fuel is offered for sale
141 at retail to the public.

142 (5) "Wrongful taking of motor fuel" means the taking of motor fuel that has not been
143 purchased from a merchant's premises without the permission of the merchant or one of his
144 employees or agents.

145 Section 4. Section **78-11-302** is enacted to read:

146 **78-11-302. Adult civil liability for wrongful taking of motor fuel.**

147 An adult who wrongfully takes motor fuel by any means, and with a purpose to deprive
148 a merchant of motor fuel or to avoid payment for the motor fuel, or both, is liable in a civil
149 action for:

150 (1) actual damages;

151 (2) a penalty to the merchant in the amount of the retail price of the motor fuel;

152 (3) an additional penalty as determined by the court of not less than \$100 nor more
153 than \$500; and

154 (4) court costs, collection costs, and reasonable attorneys' fees.

155 Section 5. Section **78-11-303** is enacted to read:

156 **78-11-303. Liability of owner of vehicle for wrongful taking -- Exception.**

157 (1) (a) The registered owner of a motor vehicle is liable in a civil action for any
158 wrongful taking of motor fuel by another person if:

159 (i) the vehicle is under the control of another person; and

160 (ii) (A) that person wrongfully takes motor fuel by placing the motor fuel in the
161 owner's vehicle; or

162 (B) that person is in control of the vehicle at the time a third person wrongfully takes
163 the motor fuel by placing the fuel in the vehicle.

164 (b) The registered owner of the vehicle is liable for the penalties under Subsections
165 76-11-302(1) through (4).

166 (2) The registered owner of a vehicle under Subsection (1) is not liable for the
167 wrongful taking of motor fuel under Subsection (1) if the owner demonstrates to the court that
168 the owner had not given express or implied permission for the person or persons wrongfully
169 taking the motor fuel under Subsection (1) to have possession or control of the vehicle.

170 Section 6. Section **78-11-304** is enacted to read:

171 **78-11-304. Joint liability of minor and parent or guardian for minor's wrongful**
172 **taking of motor fuel -- Exception.**

173 (1) A minor who wrongfully takes motor fuel with a purpose to deprive a merchant of
174 motor fuel or to avoid payment for the motor fuel, or both, and the parents or legal guardian
175 having legal custody of the minor, are jointly and severally liable in a civil action for:

176 (a) actual damages;

177 (b) a penalty to the merchant in the amount of the retail price of the motor fuel;

178 (c) an additional penalty as determined by the court of not less than \$50 nor more than
179 \$500; and

180 (d) court costs and reasonable attorneys' fees.

181 (2) (a) A parent or guardian under Subsection (1) is not liable for damages under this
182 section if the parent or guardian made a reasonable effort to restrain the wrongful taking and

183 did not fail to report it to the merchant involved or to the law enforcement agency having
184 primary jurisdiction after the parent or guardian knew of the minor's unlawful act.

185 (b) A report under this Subsection (2) is not required of a parent or guardian if the
186 minor was arrested or apprehended by a peace officer or by anyone acting on behalf of the
187 merchant involved.

188 Section 7. Section **78-11-305** is enacted to read:

189 **78-11-305. Criminal conviction for theft of motor fuel not prerequisite for civil**
190 **action -- Written notice required -- Award of penalty not subject to requirement of**
191 **compensatory or general damages.**

192 (1) A conviction in a criminal action for theft of motor fuel is not a condition precedent
193 to a civil action authorized under Sections 78-11-302 through 78-11-304.

194 (2) (a) A merchant demanding payment of a penalty under Sections 78-11-302 through
195 78-11-304 shall give written notice to the person or persons from whom the penalty is sought.
196 The notice shall state:

197 "IMPORTANT NOTICE: The payment of any penalty demanded of you does not
198 prevent criminal prosecution under a related criminal provision."

199 (b) This notice shall be boldly and conspicuously displayed, in at least the same size
200 type as is used in the demand, and shall be sent with the demand for payment of the penalty
201 described in Sections 78-11-302 through 78-11-304.

202 (3) The provision of Section 78-18-1 requiring that compensatory or general damages
203 be awarded in order to award punitive damages does not prohibit an award of a penalty under
204 Sections 78-11-302 through 78-11-304, whether or not restitution has been paid to the
205 merchant either prior to or as part of a civil action under Sections 78-11-302 through
206 78-11-304.

207 Section 8. Section **78-11-306** is enacted to read:

208 **78-11-306. Posting of notification of civil liability.**

209 Gas pumps or other dispensing equipment used for retail sale of motor fuel shall be
210 posted with a notice placed in a conspicuous location and printed in conspicuous and legible
211 type that is readily visible to customers, stating:

212 "The owner of any vehicle involved in the unlawful taking of motor fuel and any
213 individual involved in the unlawful taking of motor fuel are civilly liable for damages and

214 penalties ^h AND THE POSSIBLE SUSPENSION OF THE DRIVER'S LICENSE ^h as provided by state
214a law."

Legislative Review Note
as of 2-18-03 3:36 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel