

N.J.S.A. 34:3A-4 et seq. RETAIL GASOLINE DISPENSING SAFETY

34:3A-4. Findings, declarations

The Legislature finds and declares that:

- a. Because of the fire hazards directly associated with dispensing fuel, it is in the public interest that gasoline station operators have the control needed over that activity to ensure compliance with appropriate safety procedures, including turning off vehicle engines and refraining from smoking while fuel is dispensed;
- b. At self-service gasoline stations in other states, cashiers are often unable to maintain a clear view of the activities of customers dispensing gasoline, or to give their undivided attention to observing customers; therefore, when customers, rather than attendants, are permitted to dispense fuel, it is far more difficult to enforce compliance with safety procedures;
- c. The State needs stronger measures to enforce both compliance by customers with the ban on self-service and compliance by attendants with safety procedures;
- d. The higher general liability insurance premium rates charged to self-service stations reflect the fact that customers who leave their vehicles to dispense gasoline or other inflammable liquids face significant inconveniences and dangers, including the risks of crime and fall-related personal injury, which are a special burden to drivers with physical infirmities, such as the handicapped and some senior citizens;
- e. Exposure to toxic gasoline fumes represents a health hazard when customers dispense their own gasoline, particularly in the case of pregnant women;
- f. The significantly higher prices usually charged for full-service gasoline in states where self-service is permitted results in discrimination against low income individuals, who are under greater economic pressure to undergo the inconvenience and hazards of dispensing their own gasoline;
- g. The increasing use of self-service has contributed to the diminished availability of repair facilities and maintenance services at gasoline stations;
- h. Even in filling stations which offer both self-service and full-service gasoline, customers are less likely, because of the much higher price usually charged for full service, to have attendants make needed maintenance checks, thus causing significant neglect of maintenance and danger both to the customers and to other motorists, as well as the unneeded costly repairs which often result from deferred maintenance;
- i. The prohibition of customer self-service does not constitute a restraint of trade in derogation of the general public interest because the Legislature finds no conclusive evidence that self-service gasoline provides a sustained reduction in gasoline prices charged to customers; and
- j. A prohibition of self-service gasoline will therefore promote the common welfare by providing increased safety and convenience without causing economic harm to the public in general.

34:3A-5. Definitions

As used in this act:

"Attendant" means a retail dealer or employee of a retail dealer.

"Commissioner" means the Commissioner of Labor.

"Fuel" means any liquid commonly or commercially known or sold as gasoline, or other inflammable liquid, which is sold for use as fuel in the internal combustion engines of motor vehicles.

"Gasoline station" or "station" means a place of business located in the State and used for the retail sale and dispensing of fuel into the tanks of motor vehicles.

"Retail dealer" means a person operating a gasoline station.

34:3A-6. Dispensing of fuel; regulations

It shall be unlawful for any attendant to:

- a. Dispense fuel into the tank of a motor vehicle while the vehicle's engine is in operation;
- b. Dispense fuel into any portable container not in compliance with regulations adopted pursuant to section 8 of this act;
- c. Dispense fuel while smoking; or
- d. Permit any person who is not an attendant to dispense fuel into the tank of a motor vehicle or any container.

34:3A-7. Training, supervision of attendants

No person shall dispense fuel at a gasoline station, unless the person is an attendant who has received instructions regarding the dispensing of fuel, had practical experience dispensing fuel under the direct supervision of an experienced operator for a period of not less than one full working day, and, upon examination at the end of that period, demonstrated his understanding of those instructions. The instructions shall include a full explanation of the prohibitions of section 3 of this act and any emergency procedures established pursuant to section 8 of this act.

34:3A-8. Certification of attendants

There shall be available at each station for inspection by the commissioner a certificate for each person who dispenses fuel at the station certifying that the person meets the requirements of section 4 of this act. The certificate shall be signed by the person and the retail dealer who operates the station.

34:3A-9. Pump shutoff switch; required

Each gasoline station shall be equipped, at a location remote from the dispensing pumps, with a clearly identified and easily accessible switch or circuit breaker to shut off the power to all dispensing pumps in the event of an emergency or of a customer or other unauthorized person operating or attempting to operate the pump.

34:3A-10. Penalties for violations; Retail Gasoline Dispensing Safety Account; established

A violator of any provision of this act shall be liable for a penalty of not less than \$50.00 and not more than \$250.00 for a first offense and not more than \$500.00 for each subsequent offense. Each day that a gasoline station operates in violation of the provisions of section 5 or 6 of this act is a separate violation by the retail dealer who operates the station. The penalties shall be sued for and recovered by the commissioner, in summary proceedings pursuant to "the penalty enforcement law," *N.J.S. 2A:58-1 et seq.*, in the county or municipality where the offense occurred.

There is established a nonlapsing dedicated account to be known as the Retail Gasoline Dispensing Safety Account. Penalties collected pursuant to this section shall be credited to the account and appropriated to fund expenses of effectuating the purposes of this act. If, at the close of a fiscal year, moneys are available beyond the funds necessary to meet those expenses, the commissioner shall determine an appropriate amount to be returned to the General Fund for general State purposes.

34:3A-11. Rules, regulations

The commissioner shall, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (*C.52:14B-1 et seq.*), adopt rules and regulations as are necessary to effectuate the purposes of this act, including regulations establishing emergency procedures and standards concerning pump shutoff switches and other safety equipment to be used at gasoline stations, and standards for portable containers for fuel dispensed at gasoline stations, which standards shall be consistent with other State and federal regulations.

N.J.A.C. 12:196-1.1 et seq.

CHAPTER 196. SAFE DISPENSING OF RETAIL GASOLINE

SUBCHAPTER 1. REQUIREMENTS

12:196-1.1 Purpose; scope

(a) The purpose of this chapter is to provide reasonable standards for:

1. The prohibition of the self service of gasoline and other inflammable liquids at retail gasoline stations;
2. The training and certification of attendants; and
3. The installation of safety signs and equipment and the establishment of procedures to enhance safety at retail gasoline stations.

(b) The provisions of this chapter shall be applicable to:

1. The operation of retail gasoline stations; and
2. The training and certification of attendants at retail gasoline stations.

(c) The provisions of this chapter will not be applicable to:

1. The operation of marine service stations;
2. The operation of service stations for the fueling of aircraft;
3. The dispensing of diesel fuel; or
4. The operation of employer gasoline stations that are solely for the use of a company's employees and are not open to the public.

12:196-1.2. Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Approved" means acceptable to the Commissioner.

"Attendant" means a retail dealer or employee of a retail dealer.

"Closed container" means a container so sealed by means of a lid or other device that neither liquid nor vapor will escape from it at ordinary temperatures.

"Commissioner" means the Commissioner, New Jersey Department of Labor and Workforce Development, or his or her designee.

"Container" means any vessel of 60 U.S. gallons (227 liters) or less capacity used for transporting or storing liquids.

"Flammable liquid" means a liquid having a flash point below 100 degrees Fahrenheit (37.8 degrees Centigrade) and having a vapor pressure not exceeding 40 pounds per square inch (psi) absolute (2.068 millimeters/mercury (mm/Hg) at 100 degrees Fahrenheit (37.8 degrees Centigrade) and shall be known as a Class I liquid.

"Fuel" means any liquid commonly or commercially known or sold as gasoline, or other inflammable liquid, which is sold for use as fuel in the internal combustion engines of motor vehicles.

"Gasoline station" means a place of business located in the State and used for the retail sale and dispensing of fuel into the tanks of motor vehicles.

"Inflammable liquid" means flammable liquid.

"Nationally recognized testing laboratory" means:

1. Underwriters Laboratories Incorporated, 333 Pfingsten Road, Northbrook, Illinois 60002;

2. Factory Mutual System, 1151 Boston-Providence Turnpike, Norwood, Massachusetts 02062;
3. *Applied Research Laboratories of Florida, Incorporated*, 5371 NW 161 Street, Miami, Florida 33014;
4. Any testing laboratory that may be accepted by the Commissioner as a nationally recognized testing laboratory upon submission of testing procedures and logo types supporting a request by a laboratory for such recognition.

"Safety can" means an approved container of not more than five gallons (18.9 liters) capacity, having a spring-closing lid and spout cover and designed so that it will safely relieve internal pressure when subjected to fire exposure.

"Station" means gasoline station.

12:196-1.3 Attendant duties

- (a) Service stations accessible to the public shall have an attendant on duty whenever the station is open for business.
- (b) Only an attendant shall dispense fuel into fuel tanks or into containers.
- (c) An attendant shall:
 1. Dispense fuel into the tank of a motor vehicle only when the vehicle's engine is not in operation;
 2. Only dispense fuel into portable containers that meet the requirements of *N.J.A.C. 12:196-1.6*;
 3. Prohibit any person who is not an attendant to dispense fuel into the tank of a motor vehicle or into any container; and
 4. Be prohibited from smoking while dispensing fuel.
- (d) Attendants shall require a motorcyclist to dismount his or her motorcycle while gasoline is being dispensed into their vehicle.

12:196-1.4 Training of attendants

- (a) An attendant shall dispense fuel at a gasoline station only if the attendant has:
 1. Received instructions from an experienced operator regarding the dispensing of fuel;
 2. Had practical experience dispensing fuel under the direct supervision of an experienced operator for a period of not less than one full working day; and
 3. Demonstrated his or her understanding of those instructions upon examination by the operator at the end of that period.
- (b) The instructions required pursuant to (a)1 above shall include:
 1. A full explanation of the dispensing standards set forth at *N.J.A.C. 12:196-1.3(c)*;
 2. The location and operation of the remote switch or circuit breaker installed in accordance with *N.J.A.C. 12:196-1.7*; and
 3. Training in the recognition of approved portable containers pursuant to *N.J.A.C. 12:196-1.6*.

12:196-1.5 Certification

- (a) Upon satisfactory completion of the attendant's training and examination, the retail dealer who operates the station shall prepare a certificate for each person who dispenses fuel at his or her station, certifying that the person has met the training requirements of *N.J.A.C. 12:196-1.4* above.
 1. The certificate shall be signed by the person who received the training and the retail dealer and shall indicate who gave the training;
 2. The certificate shall be available at each station for inspection by the Commissioner; and
 3. Should the attendant perform work for more than one station after training, the certificate shall be transferable to any station that employs the attendant.

12:196-1.6 Portable containers

- (a) An attendant shall only dispense fuel into a portable container which:

1. Is of sound metal construction or is of approved non-metal construction;
2. Has a tight closure with screwed or spring cover; and
3. Is fitted with a spout or so designed that the contents may be poured without spilling.

(b) Portable containers constructed of non-metallic materials shall conspicuously display an embossment by the manufacturer of the logogram of a nationally recognized testing laboratory.

(c) Gasoline shall not be dispensed into glass containers.

(d) Portable containers intended to hold 10 gallons (0.038 cubic meters) or less and to be used for gasoline or other flammable liquid shall be red in color as specified in the New Jersey Uniform Fire Code, N.J.A.C. 5:18. The name of the flammable liquid shall be prominently displayed on the container in bold letters of a contrasting color.

12:196-1.7 Remote emergency shut-off

(a) A clearly identified and easily accessible switch(es) or circuit breaker(s) shall be provided at a location remote from dispensing devices.

1. The devices shall be used to shut-off the power in conformance with article 514 of the National Electrical Code (National Fire Protection Association (NFPA-70) and NFPA-30A, each of which is incorporated herein by reference, to all dispensing devices in the event of an emergency, or when an individual other than an attendant attempts to operate the pump.

12:196-1.8 Sources of ignition

(a) No smoking or open flames shall be permitted in the areas used for fueling, servicing fuel systems for internal combustion engines, or receiving or dispensing of Class I liquids.

(b) The attendant shall assure that the motors of all vehicles being fueled are shut off during fueling operations.

12:196-1.9. Fire control

The station owner shall insure that at least one portable fire extinguisher with a minimum 2-A:40-B:C rating shall be located within 30 feet (9,144 mm) of travel distance in all service stations as required by the New Jersey Uniform Fire Code, N.J.A.C. 5:70.

12:196-1.10 Signs

(a) Warning signs shall be conspicuously posted in the dispensing area, incorporating all of the following or equivalent language:

1. It is unlawful to serve yourself. Wait for an attendant;
2. WARNING--It is unlawful and dangerous to dispense gasoline or other flammable liquid into any portable container unless the container is constructed of metal or is approved and is red in color;
3. No smoking; and
4. Stop motor.

12:196-1.11 Documents referred to by reference

(a) The full title and edition of each of the standards and publications referred to in this chapter are as follows:

1. N.J.S.A. 34:3A-4 et seq.--Retail Gasoline Dispensing Safety Act;
2. N.J.A.C. 5:18--New Jersey Uniform Fire Code;
3. National Electrical Code (National Fire Protection Association--(NFPA-70)); and
4. National Fire Protection Association (NFPA)-30A--(Automotive and Marine Service Stations Code (1987 Edition)).

12:196-1.12. Availability of documents for inspection

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days.

New Jersey Department of Labor and Workforce Development
Division of Workplace Standards
Office of Public Safety and Compliance
1 John Fitch Plaza
PO Box 386
Trenton, New Jersey 08625-0386

12:196-1.13 Violations/penalties

(a) A person who violates any of the provisions of the Act or this chapter shall be liable for an administrative penalty of:

1. Not less than \$50.00 nor more than \$250.00 for a first offense; and
2. Not more than \$500.00 for each subsequent offense.

(b) Each day that a gasoline station operates in violation of the provisions of the Act or this chapter shall constitute an additional, separate and distinct offense.

(c) Unsatisfied penalties shall be recovered by the Commissioner in a civil action by a summary proceeding pursuant to the Penalty Enforcement Law, *N.J.S.A. 2A:58-1 et seq.*, in the county or municipality where the violation occurred.

(d) In assessing the amount of the penalty to be imposed pursuant to the Act and to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular cited violation:

1. The seriousness of the cited violation;
2. The past record of compliance with the provisions of the Act, and the rules and regulations adopted thereunder, by the alleged violator;
3. The degree of cooperation afforded to the Commissioner's representatives by the alleged violator in securing compliance with the provisions of the Act and rules and regulations adopted thereunder; and
4. Whether the cited violation was willful in nature.

12:196-1.14 Hearings

(a) No administrative penalty shall be levied pursuant to this chapter unless the alleged violator is provided with:

1. Notification of the violation;
2. The amount of the penalty to be imposed and;
3. An opportunity to request a formal hearing.

(b) A request for a formal hearing must be made in writing and received within 10 calendar days following service of the Notice of Violation.

(c) All hearings shall be conducted pursuant to the Administrative Procedure Act, *N.J.S.A. 52:14B-1 et seq.*, and the Uniform Administrative Procedure Rules, *N.J.A.C. 1.1*.

(d) If a hearing is not requested, the Notice of Violation shall become the Final Order upon expiration of the 10 day period following receipt thereof.

(e) The operator may request the initiation of a settlement conference at the time that the request for a formal hearing is made. If a settlement conference is requested, or the Department determines that a settlement conference would be useful, the settlement conference shall be scheduled and conducted by the Department within 30 days of the receipt of the request for a formal hearing.

(f) If a settlement is not agreed upon or no settlement conference is scheduled, a request for formal hearing shall be transmitted to the Office of Administrative Law (OAL).

(g) Payment of the penalty shall be due when a final agency determination is issued or when a notification becomes a final decision because no appeal has been filed.

(h) All payments shall be made payable to the Department of Labor in the form of a certified check or money order, or such other form as the Department deems suitable.

(i) Upon entry of the final order, the penalty imposed may be recovered with costs in a summary proceeding commenced by the Commissioner pursuant to the Penalty Enforcement Law, *N.J.S.A. 2A:58-1 et seq.*