

SENATE BILL NO. 116

INTRODUCED BY ARTHUN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SPECIAL FUEL USER PERMIT LAWS; REPEALING THE
5 SPECIAL FUEL USER'S PERMIT; REMOVING THE REQUIREMENT THAT CONSTRUCTION MATERIALS
6 FOR A PUBLIC CONTRACT BE PRODUCED USING SPECIAL FUEL ON WHICH STATE FUEL TAX HAS
7 BEEN PAID; PROVIDING THAT CERTAIN NONRESIDENTS OBTAIN CERTAIN SPECIAL FUEL USER'S
8 TEMPORARY PERMITS; CLARIFYING THE APPLICABILITY OF THE TAX ON SPECIAL FUEL AND VOLATILE
9 LIQUIDS; AMENDING SECTIONS 15-70-301, 15-70-311, 15-70-314, 15-70-321, 15-70-330, 15-70-356, AND
10 15-70-372, MCA; REPEALING SECTIONS 7-5-2316, 7-5-4316, 15-70-302, 15-70-303, 15-70-304, 15-70-305,
11 15-70-306, 15-70-307, 15-70-317, 15-70-323, 15-70-325, 15-70-327, 15-70-328, 15-70-329, 15-70-331,
12 15-70-332, 15-70-333, 15-70-334, 15-70-335, 15-70-336, 20-6-630, AND 60-2-118, MCA; AND PROVIDING AN
13 IMMEDIATE EFFECTIVE DATE."

14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16

17 **Section 1.** Section 15-70-301, MCA, is amended to read:18 **"15-70-301. Definitions.** As used in this part, the following definitions apply:

19 (1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the
20 business of farming or ranching and who files farm or income reports for tax purposes as required by the United
21 States internal revenue service.

22 (2) (a) "Biodiesel" means a fuel produced from monoalkyl esters of long-chain fatty acids derived from
23 vegetable oils, renewable lipids, animal fats, or any combination of those ingredients. The fuel must meet the
24 requirements of ASTM D6751, also known as the Standard Specification for Biodiesel Fuel (B100) Blend Stock
25 for Distillate Fuels, as adopted by the American society for testing and materials.

26 (b) Biodiesel is also known as "B-100".

27 ~~(3) "Biodiesel blend" means a blend of biodiesel and petroleum diesel fuel that is at least 2% biodiesel.~~

28 ~~(4) "Bond" means:~~

29 ~~(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws~~
30 ~~of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of~~

1 this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out
2 of this part; or

3 ~~———— (b) a deposit with the department by the special fuel user, under terms and conditions that the~~
4 ~~department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured~~
5 ~~by the federal deposit insurance corporation.~~

6 ~~(5)(3)~~ "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The
7 term does not mean special fuel delivered into the supply tank of a motor vehicle.

8 ~~(6)(4)~~ "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's
9 unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique
10 device.

11 ~~(7)(5)~~ "Department" means the department of transportation.

12 ~~(8)(6)~~ (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage
13 tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than
14 by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

15 (i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks
16 in this state;

17 (ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the
18 refinery or terminal; or

19 (iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

20 (b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only
21 by a person who is the holder of a valid distributor's license.

22 (c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or
23 pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

24 ~~(9)(7)~~ (a) "Distributor" means:

25 (i) a person who engages in the business in this state of producing, refining, manufacturing, or
26 compounding special fuel for sale, use, or distribution;

27 (ii) an importer who imports special fuel for sale, use, or distribution;

28 (iii) a person who engages in the wholesale distribution of special fuel in this state and chooses to
29 become licensed to assume the Montana state special fuel tax liability; and

30 (iv) an exporter.

1 (b) The term does not include a special biodiesel fuel producer who produces biodiesel from waste
2 vegetable oil feedstock in this state for the operation of motor vehicles owned or controlled by the person upon
3 the public roads and highways of the state.

4 ~~(10)~~(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of
5 a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

6 ~~(11)~~(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle,
7 special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale,
8 use, or consumption outside Montana.

9 ~~(12)~~(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming
10 to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from
11 a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

12 ~~(13)~~(11) "Importer" means a person who transports or arranges for the transportation of special fuel into
13 Montana for sale, use, or distribution.

14 ~~(14)~~(12) "Improperly imported fuel" means special fuel that is:

15 (a) consigned to a Montana destination and imported into the state without the distributor first having
16 obtained a Montana special fuel distributor license as required in 15-70-341; or

17 (b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15,
18 chapter 70.

19 ~~(15)~~(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this
20 state and that are operated in whole or in part by the combustion of special fuel.

21 ~~(16)~~(14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership,
22 or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both,
23 as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied
24 to joint-stock companies and corporations, the officers.

25 ~~(17)~~(15) "Public roads and highways of this state" means all streets, roads, highways, and related
26 structures:

27 (a) built and maintained with appropriated funds of the United States, the state of Montana, or any
28 political subdivision of the state;

29 (b) dedicated to public use;

30 (c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

1 (d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any
2 political subdivision of the state.

3 ~~(18)~~(16) "Special biodiesel fuel producer" means a person who produces less than 2,500 gallons annually
4 of biodiesel fuel from waste vegetable oil feedstock for the operation of motor vehicles owned or controlled by
5 the person upon the public roads and highways of the state.

6 ~~(19)~~(17) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel
7 or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid
8 petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within
9 the state of Montana. The term special fuel includes biodiesel and additives of all types when the additive is mixed
10 or blended into special fuel, regardless of the additive's classifications or uses.

11 ~~(20)~~(18) "Special fuel dealer" means:

12 (a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply
13 tank or tanks of a motor vehicle not then owned or controlled by the person;

14 (b) a person who sells special fuel at a location unattended by the dealer through an unattended pump
15 by use of a cardrol, keylock, or similar device; or

16 (c) a person who provides a facility, with or without attended services, from which more than one special
17 fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

18 ~~(24)~~(19) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation
19 of motor vehicles owned or controlled by the person upon the highways of this state.

20 (b) The term does not include:

21 (i) the U.S. government, a state, a county, an incorporated city or town, or a school district of this state;

22 or

23 (ii) a special biodiesel fuel producer who produces biodiesel from waste vegetable oil feedstock for the
24 operation of motor vehicles owned or controlled by the person upon the public roads and highways of the state.

25 ~~(22)~~(20) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user
26 of special fuels in the operation of a motor vehicle on the highways of this state.

27 ~~(23)~~(21) "Waste vegetable oil" means used cooking oil gathered from restaurants or commercial food
28 processors."

29

30 **Section 2.** Section 15-70-311, MCA, is amended to read:

1 **"15-70-311. Special NONRESIDENT SPECIAL fuel user's temporary trip permits -- nonresident**
 2 **agricultural harvesting equipment special fuel permit -- NONRESIDENT special fuel user's agricultural**
 3 **product temporary trip permit.** (1) Any NONRESIDENT person operating a special fuel-powered vehicle over
 4 26,000 pounds gross vehicle weight or registered gross vehicle weight upon the public roads and highways of
 5 this state ~~who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by 15-70-302;~~
 6 WHO IS NOT COVERED UNDER THE INTERNATIONAL FUEL TAX AGREEMENT PROVIDED FOR IN 15-70-121 is required to purchase
 7 a special fuel user's temporary trip permit. The permits must be issued by motor carrier services division
 8 employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by
 9 order or rule.

10 (2) Any nonresident PERSON upon entering the state with agricultural harvesting equipment that is over
 11 26,000 pounds gross vehicle weight or registered gross vehicle weight and that is powered by special fuel and
 12 operating upon the public roads and highways of this state ~~who fails or neglects to carry in or on equipment a~~
 13 ~~valid special fuel vehicle permit, as provided by 15-70-302;~~ is not covered under the International Fuel Tax
 14 Agreement provided for in 15-70-121 is required to purchase a nonresident agricultural harvesting equipment
 15 special fuel permit. The permit must be issued by motor carrier services division employees, Montana highway
 16 patrol officers, and other enforcing agents that the department may prescribe by order or rule.

17 (3) Any NONRESIDENT person operating a special fuel-powered vehicle over 26,000 pounds gross vehicle
 18 weight or registered gross vehicle weight upon the public roads and highways of this state who is using the
 19 vehicle for the movement of that person's agricultural products, as defined in 80-11-101, and ~~who fails or neglects~~
 20 ~~to carry in the vehicle a valid special fuel vehicle permit, as provided by 15-70-302;~~ who is not covered under the
 21 International Fuel Tax Agreement provided for in 15-70-121 is required to purchase a special fuel user's
 22 agricultural product temporary trip permit. The permit is not valid for contract custom haulers. The permit is valid
 23 for a radius of 70 miles from a point specified on the permit. The permit must be issued by motor carrier services
 24 division employees, Montana highway patrol officers, and other enforcing agents that the department may
 25 prescribe by order or rule. A permit application may be submitted electronically, and the permit may be
 26 subsequently issued when the appropriate fee required in 15-70-312(3) is received by the permit issuer. Any
 27 costs associated with the electronic application process may be added to the total cost of the permit."
 28

29 **Section 3.** Section 15-70-314, MCA, is amended to read:

30 **"15-70-314. Penalty for operation without temporary permit -- compliance bond -- policy**

1 **continued.** (1) Any ~~unlicensed~~ user of special fuel vehicles operating within the state of Montana ~~without making~~
 2 who does not make application for ~~said a~~ temporary permit required by 15-70-311 and ~~paying pay~~ the specified
 3 fee ~~shall be~~ is guilty of committing a misdemeanor and upon conviction shall be fined \$50.

4 (2) Nothing contained ~~herein shall affect~~ in this section affects the existing policy of accepting a
 5 compliance bond to be retained for use by the department and to be imposed at the discretion of the enforcing
 6 agency."

7

8 **Section 4.** Section 15-70-321, MCA, is amended to read:

9 **"15-70-321. Tax on special fuel and volatile liquids.** (1) The department shall, under the provisions
 10 of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as
 11 provided in subsection ~~(2)~~ (3):

12 (a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas, of less than
 13 46 degrees A.P.I. (American petroleum institute) gravity test ~~when actually~~ sold or used to produce motor power
 14 to operate motor vehicles upon the public roads and highways of this state; and

15 (b) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway
 16 vehicle, regardless of weight, operating upon the public roads and highways of this state.

17 ~~(b)(2) for each gallon of All~~ special fuel or other volatile liquid, except liquid petroleum gas, of less than
 18 46 degrees A.P.I. (American petroleum institute) gravity test ~~when actually~~ sold or used in motor vehicles,
 19 motorized equipment, and the internal combustion of any engines, including stationary engines, and used in
 20 connection with any work performed under any contracts pertaining to the construction, reconstruction, or
 21 improvement of any highway or street and their appurtenances awarded by any public agencies, including federal,
 22 state, county, municipal, or other political subdivisions; and, must be undyed fuel on which state fuel tax has been
 23 paid.

24 ~~———— (c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway~~
 25 ~~vehicle, regardless of weight, operating upon the public roads and highways of this state.~~

26 ~~(2)(3)~~ The tax imposed in subsection (1) is 27 3/4 cents per gallon.

27 ~~———— (3) Material used for construction, reconstruction, or improvement in connection with work performed~~
 28 ~~under a contract as provided in subsection (1)(b) must be produced using special fuel on which state fuel tax has~~
 29 ~~been paid.~~

30 (4) MATERIAL USED FOR CONSTRUCTION, RECONSTRUCTION, OR IMPROVEMENT IN CONNECTION WITH WORK

1 PERFORMED UNDER A CONTRACT AS PROVIDED IN SUBSECTION (2) MUST BE PRODUCED USING SPECIAL FUEL ON WHICH
 2 STATE FUEL TAX HAS BEEN PAID."

3
 4 **Section 5.** Section 15-70-330, MCA, is amended to read:

5 **"15-70-330. Special fuel penalties.** (1) ~~In the case of a special fuel user who refuses or fails to file a~~
 6 ~~return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is imposed a penalty~~
 7 ~~of \$25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the~~
 8 ~~tax due for each calendar month or fraction of a month during which the refusal or failure continues. However,~~
 9 ~~if any special fuel user establishes to the satisfaction of the department that the failure to file a return within the~~
 10 ~~time prescribed was due to reasonable cause, the department shall waive the penalty provided by this section.~~

11 ~~———(2) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under this~~
 12 ~~part, interest at the rate of 1% a month or fraction of a month from the date on which the tax was due to the date~~
 13 ~~of payment in full must be added to the amount due and unpaid.~~

14 ~~(3)(2) (a) A special fuel user person~~ may not use dyed special fuel to operate a motor vehicle upon the
 15 public roads and highways of this state unless the use is permitted pursuant to rules adopted under subsection
 16 ~~(3)(b) (2)(b).~~ The purposeful or knowing use of dyed special fuel in a motor vehicle operating upon the public
 17 roads and highways of this state in violation of this subsection is subject to the civil penalty imposed under
 18 15-70-372(2). Each use is a separate offense.

19 (b) The department shall adopt and enforce reasonable rules for the movement of off-highway vehicles
 20 traveling from one location to another on public highways, public roads, or streets when using dyed fuel or
 21 nontaxed fuel.

22 ~~(4)(3)~~ The operator of the vehicle is liable for the tax imposed in 15-70-321. If the operator refuses or
 23 fails to pay the tax, in whole or in part, the seller of the special fuel is jointly and severally liable for the tax
 24 imposed under 15-70-321 and for the penalties described in this section if the seller knows or has reason to know
 25 that the fuel will be used for a taxable purpose."

26
 27 **Section 6.** Section 15-70-356, MCA, is amended to read:

28 **"15-70-356. Refund or credit authorized.** (1) A person who purchases and uses any special fuel on
 29 which the Montana special fuel license tax has been paid for operating stationary special fuel engines used off
 30 the public highways and streets or for any commercial use other than operating vehicles upon any of the public

1 highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the special
2 fuel used if the person has records, as provided in ~~15-70-323~~ 15-70-361, to prove nontaxable use. The refund
3 may not exceed the tax paid or to be paid to the state.

4 (2) (a) The United States government, the state of Montana, any other state, or any county, incorporated
5 city, town, or school district of this state is entitled to a refund of the taxes paid on special fuel regardless of the
6 use of the special fuel.

7 (b) (i) A nonpublic school may use dyed special fuel in buses that are owned by the nonpublic school
8 if the buses are used for the transportation of pupils solely for nonsectarian school-related purposes.

9 (ii) For the purposes of this subsection (2)(b), nonpublic schools are those schools that have been
10 accredited pursuant to 20-7-102.

11 (3) A distributor who pays the special fuel license tax to this state erroneously is allowed a credit or
12 refund of the amount of tax paid.

13 (4) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of special fuel
14 with a tax liability of \$200 or greater for which the distributor has not received consideration from or on behalf of
15 the purchaser and for which the distributor has not forgiven any liability. The distributor shall have declared the
16 accounts of the purchaser worthless not more than once during a 3-year period and claimed those accounts as
17 bad debts for federal or state income tax purposes.

18 (b) If a credit has been granted under subsection (4)(a), any amount collected on the accounts declared
19 worthless must be reported to the department and the tax due must be prorated on the collected amount and
20 must be paid to the department.

21 (c) The department may require a distributor to submit periodic reports listing accounts that are
22 delinquent for 90 days or more.

23 (5) A person who purchases and exports for sale, use, or consumption outside Montana any special fuel
24 on which the Montana special fuel tax has been paid is entitled to a credit or refund of the amount of tax paid
25 unless the person is not licensed and is not paying the tax to the state where fuel is destined. Upon completion
26 of the reports required under 15-70-351, the department shall authorize the credit or refund."
27

28 **Section 7.** Section 15-70-372, MCA, is amended to read:

29 **"15-70-372. Civil penalties.** (1) Except as provided in subsection (2), the department may, after giving
30 notice and holding a hearing, if requested, pursuant to Title 2, chapter 4, part 6, impose a civil penalty not to

1 exceed \$100 for any violation of this part. The civil penalty may be in addition to the criminal penalties imposed
 2 under ~~15-70-330, 15-70-336, and 15-70-366.~~

3 (2) The department shall, after giving notice and holding a hearing, if requested, impose a civil penalty
 4 not to exceed \$1,000 for the first offense and \$5,000 for the second offense for using dyed special fuel in violation
 5 of the provisions of ~~15-70-317 and 15-70-330(3)(2).~~"

6
 7 **NEW SECTION. Section 8. Repealer.** The following sections of the Montana Code Annotated are
 8 repealed:

- 9 7-5-2316. Listing special fuel permit number.
 10 7-5-4316. Listing special fuel permit number.
 11 15-70-302. Special fuel user's permits required -- exceptions.
 12 15-70-303. Application for permit.
 13 15-70-304. Bonding, release of surety, and additional bond.
 14 15-70-305. Issuance of permit -- grounds for refusal -- hearing.
 15 15-70-306. Revocation, suspension, and cancellation.
 16 15-70-307. Surrender of permit upon use discontinuance.
 17 15-70-317. Use of dyed special fuel allowed for certain projects -- temporary permit -- tax and penalty
 18 imposed for unauthorized use -- grounds for refusal -- rules.
 19 15-70-323. Special fuel user's records.
 20 15-70-325. Returns.
 21 15-70-327. Payment.
 22 15-70-328. Credits.
 23 15-70-329. Procedures for credits -- deadline.
 24 15-70-331. Deficiency.
 25 15-70-332. Determination if no return made.
 26 15-70-333. Fraudulent return -- penalty.
 27 15-70-334. Warrant for distraint.
 28 15-70-335. Statute of limitation.
 29 15-70-336. Criminal penalties.
 30 20-6-630. Listing special fuel permit number.

1 60-2-118. Listing special fuel permit number.

2

3 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

4 - END -