

HOUSE BILL NO. 415

INTRODUCED BY M. MACDONALD

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REGULATION OF SPECIAL FUEL USERS
5 WHO PRODUCE MICROPROCESSED BIODIESEL; PROVIDING RULEMAKING AUTHORITY; REQUIRING
6 SPECIAL FUEL USERS TO PAY THE SPECIAL FUEL TAX FOR FUEL USED TO OPERATE MOTOR
7 VEHICLES ON PUBLIC ROADS AND HIGHWAYS; CLARIFYING THE REFUND AVAILABLE FOR TAXES PAID
8 ON BIODIESEL; AMENDING SECTIONS 15-70-301, 15-70-304, AND 15-70-369, MCA; AND PROVIDING
9 EFFECTIVES DATES AND AN APPLICABILITY DATE."

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

12
13 **NEW SECTION. Section 1. Legislative findings.** The legislature finds that, by developing regulations
14 to guide the microprocessing of biodiesel, biodiesel production will:

15 (1) increase the energy security of Montana and the United States by promoting a clean, renewable,
16 domestically produced nonpetroleum fuel;

17 (2) help diversify agricultural and forestry activities, improve food security, and add value to Montana
18 products;

19 (3) add value to Montana beef cattle and other livestock by promoting the growth of high protein,
20 nutritious, supplemental feed;

21 (4) provide conservation benefits to small grain producers by promoting the rotation of oilseed crops,
22 improving soil productivity, and reducing inputs, including a reduction in the need for herbicides, pesticides, and
23 fertilizers; and

24 (5) offer strong economic development potential both by stimulating the growth of crops that strengthen
25 the agricultural industry and by encouraging economic investment in Montana.

26
27 **NEW SECTION. Section 2. Microprocessed biodiesel -- standards.** (1) A special fuel user who
28 produces microprocessed biodiesel shall test each batch to ensure that it meets the following standards, as
29 adopted by the American society for testing and materials:

30 (a) free and total glycerin, ASTM D6584;

- 1 (b) flash point, ASTM D93;
2 (c) water and sediment, ASTM D2709;
3 (d) kinematic viscosity, ASTM D445; and
4 (e) acid number, ASTM D664.

5 (2) For the purposes of this section, "batch" means the amount stored in a single tank or other container.
6

7 **NEW SECTION. Section 3. Microprocessed biodiesel -- requirements.** (1) A special fuel user who
8 produces microprocessed biodiesel shall:

- 9 (a) annually register with the department;
10 (b) keep records in accordance with 15-70-323 [and showing compliance with [section 2]]; and
11 (c) pay the special fuel tax for microprocessed biodiesel used on the public roads and highways of this
12 state in accordance with 15-70-321.

13 (2) (a) Except as provided in subsection (1)(c), microprocessed biodiesel is exempt from the special fuel
14 tax pursuant to 15-70-321.

15 (b) Microprocessed biodiesel used in nonlicensed motorized equipment, off-highway vehicles, or internal
16 combustion engines, including stationary engines, must be fully accounted for by detailed records to accurately
17 show the manner in which it was used.

18 (c) This subsection (2) does not apply to special fuel used for agricultural uses pursuant to 15-70-362.
19

20 **NEW SECTION. Section 4. Department rulemaking.** (1) Before January 1, 2010, the department shall
21 adopt rules necessary to enforce the provisions of [section 3].

22 [(2) The department shall coordinate with the department of labor and industry in administering [section
23 2].]

24 (3) The department shall coordinate with the department of environmental quality in providing technical
25 support and assistance to special fuel users who produce microprocessed biodiesel.
26

27 **Section 5.** Section 15-70-301, MCA, is amended to read:

28 **"15-70-301. Definitions.** As used in this part, the following definitions apply:

29 (1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the
30 business of farming or ranching and who files farm or income reports for tax purposes as required by the United

1 States internal revenue service.

2 (2) (a) "Biodiesel" means a fuel produced from monoalkyl esters of long-chain fatty acids derived from
3 vegetable oils, renewable lipids, animal fats, or any combination of those ingredients: that:

4 ~~(i) The fuel must meet~~ meets the requirements standards of ASTM D6751, also known as the Standard
5 Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society for
6 testing and materials; or

7 (ii) in the case of microprocessed biodiesel, meets the standard required in subsection (2)(a)(i) [or
8 standards provided for in [section 2]].

9 (b) Biodiesel referred to in subsection (2)(a)(i) is also known as "B-100".

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

11 ~~(4)~~(3) "Bond" means:

12 (a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws
13 of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of
14 this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out
15 of this part; or

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

19 ~~(5)~~(4) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The
20 term does not mean special fuel delivered into the supply tank of a motor vehicle.

21 ~~(6)~~(5) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's
22 unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique
23 device.

24 ~~(7)~~(6) "Department" means the department of transportation.

25 ~~(8)~~(7) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage
26 tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than
27 by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

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

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

1 refinery or terminal; or

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

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

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

7 ~~(9)~~(8) (a) "Distributor" means:

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

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

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

13 ~~(d)~~(iv) an exporter.

14 (b) The term does not include a special fuel user who produces microprocessed biodiesel in this state
15 for the operation of motor vehicles owned or controlled by the person upon the public roads or highways of this
16 state or off-road.

17 ~~(10)~~(9) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of
18 a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

19 ~~(11)~~(10) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle,
20 special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale,
21 use, or consumption outside Montana.

22 ~~(12)~~(11) "Import" means to first receive special fuel into possession or custody after its arrival and coming
23 to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from
24 a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

25 ~~(13)~~(12) "Importer" means a person who transports or arranges for the transportation of special fuel into
26 Montana for sale, use, or distribution.

27 ~~(14)~~(13) "Improperly imported fuel" means special fuel that is:

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

30 (b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15,

1 chapter 70.

2 (14) "Microprocessed biodiesel" means more than 1,000 gallons and less than 50,000 gallons a year of
3 biodiesel produced by a special fuel user as defined in subsection (20)(a)(ii).

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

6 (16) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership,
7 cooperative, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or
8 imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or
9 members and, as applied to joint-stock companies and corporations, the officers.

10 (17) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

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

13 (b) dedicated to public use;

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

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

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

22 (19) "Special fuel dealer" means:

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

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

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

29 (20) (a) "Special fuel user" means a person who consumes in this state:

30 (i) special fuel for the operation of motor vehicles owned or controlled by the person upon the public

1 roads and highways of this state; or

2 (ii) microprocessed biodiesel for the operation of motor vehicles owned or controlled by the person upon
3 the public roads and highways of this state or off-road.

4 (b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or
5 a school district of this state.

6 (21) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user
7 of special fuels in the operation of a motor vehicle on the public roads and highways of this state."
8

9 **Section 6.** Section 15-70-304, MCA, is amended to read:

10 **"15-70-304. Bonding, release of surety, and additional bond.** (1) Except as provided in this section,
11 a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished
12 a bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this
13 part and the payment of any taxes, interest, and penalties due and to become due under this part. The
14 department shall waive the bond requirement of a special fuel user not subject to the provisions of subsection
15 (2)(a) or (2)(b).

16 (2) The total amount of the bond or bonds required of a special fuel user must be equivalent to twice the
17 special fuel user's estimated quarterly tax payments as provided in this part, determined as the department
18 considers proper. However, the total amount of the bond or bonds may not be less than:

19 (a) \$5,000 for a special fuel user awarded a contract in accordance with 15-70-321; and

20 (b) \$500 for any other special fuel user who:

21 (i) requests a special fuel user's permit to be reissued after being canceled for cause; or

22 (ii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327.

23 (3) A surety on a bond furnished by a special fuel user, as provided in this section, must be released and
24 discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when
25 the surety has lodged with the department a written request to be released and discharged, but this provision may
26 not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before
27 the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the
28 special fuel user who furnished the bond, and unless the special fuel user, on or before the expiration of the
29 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu
30 of a bond as ~~provided defined in 15-70-301(4)~~ 15-70-301(3), the department shall cancel the special fuel user's

1 permit.

2 (4) The department may require a special fuel user to give a new or additional surety bond or to deposit
3 additional securities of the character specified in ~~15-70-301(4)~~ 15-70-301(3) if, in its opinion, the security of the
4 surety bond previously filed by the special fuel user or the market value of the properties deposited as security
5 by the special fuel user becomes impaired or inadequate. Upon failure of the special fuel user to give a new
6 additional surety bond or to deposit additional securities within 30 days after being requested to do so by the
7 department, the department shall cancel the permit."

8

9 **Section 7.** Section 15-70-369, MCA, is amended to read:

10 **"15-70-369. Refund for taxes paid on biodiesel by distributor or retailer -- statement -- payment**
11 **-- appropriation -- records -- report to interim committee.** (1) A licensed distributor who pays the special fuel
12 tax under 15-70-343 on biodiesel, as defined in 15-70-301, may claim a refund equal to 2 cents a gallon on
13 biodiesel sold during the previous calendar quarter if the biodiesel is produced entirely from biodiesel ~~ingredients~~
14 feedstock produced in Montana.

15 (2) The owner or operator of a retail motor fuel outlet may claim a refund equal to 1 cent a gallon on
16 biodiesel on which the special fuel tax has been paid and that is purchased from a licensed distributor if the
17 biodiesel is produced entirely from biodiesel ~~ingredients~~ feedstock produced in Montana.

18 (3) (a) To receive the refund allowed under subsection (1) or (2), the licensed distributor or the owner
19 or operator of a motor fuel outlet shall file a statement within 30 days after the end of each calendar quarter on
20 a form provided by the department.

21 (b) The statement provided by a licensed distributor must set forth information required by the
22 department, including the gallons of biodiesel sold and the source of ~~ingredients~~ feedstock used to produce
23 biodiesel.

24 (c) The statement provided by the owner or operator of a retail motor fuel outlet must set forth information
25 required by the department, including the gallons of biodiesel purchased.

26 (4) The payment of the refund allowed by this section must be made by the department within 90 days
27 after the claim for a refund is filed by the licensed distributor or the owner or operator of a retail motor fuel outlet.
28 Tax refund payments under this section are statutorily appropriated, as provided in 17-7-502, from the state
29 general fund.

30 (5) The records of each licensed distributor or owner or operator of a retail motor fuel outlet must be kept

1 for a period of not more than 3 years and must include receipts, invoices, and other information as the department
2 may require.

3 (6) The department or its authorized representative may examine the books, papers, or records of any
4 licensed distributor or owner or operator of a retail motor fuel outlet.

5 (7) The department shall report to the revenue and transportation interim committee at least once each
6 year the number and type of taxpayers claiming the refund under this section, the total amount of the refund
7 claimed, and the department's cost associated with administering the refund."
8

9 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 4] are intended to be codified
10 as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to
11 [sections 1 through 4].
12

13 **NEW SECTION. Section 9. Effective dates -- contingency.** (1) Except as provided in subsection (2),
14 [this act] is effective on passage and approval.

15 (2) [Section 2] and the bracketed language in [sections 3, 4, and 5] are effective 30 days after the
16 department of labor and industry certifies to the governor that the federal standard requiring biodiesel or
17 microprocessed biodiesel to meet the ASTM D6751 standard, also known as the Standard Specification for
18 Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society for testing and
19 materials, is repealed.

20 (3) The department of labor and industry shall provide a copy of the certification provided for in
21 subsection (2) to the code commissioner.
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23 **NEW SECTION. Section 10. Applicability.** [This act] applies to microprocessed biodiesel produced
24 after January 1, 2010.
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- END -