



AN ACT ENCOURAGING ECONOMIC DEVELOPMENT BY CREATING AN ENERGY MARKET DEMAND IN MONTANA FOR AGRICULTURAL-BASED BIOFUELS; TAXING GASOHOL AND BIODIESEL AT A PERCENTAGE OF THE RATE FOR GASOLINE OR SPECIAL FUELS; DEFINING "GASOHOL" AND "BIODIESEL"; PROVIDING THAT BIOFUEL PUMPS BE LABELED WITH A STATEMENT OF THE TAX ADVANTAGE OF THE FUEL; AMENDING SECTIONS 15-70-201, 15-70-202, 15-70-204, 15-70-301, 15-70-304, 15-70-321, 15-70-326, AND 15-70-341, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE.

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

**Section 1.** Section 15-70-201, MCA, is amended to read:

**"15-70-201. (Temporary) Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

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

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline terminals is considered to be "distributed", for the purpose

of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) "Gasohol" means a fuel blend containing at least 10% alcohol, with the balance being gasoline and other additives. Gasohol is also known as "E-10".

~~(9)(10)~~ (a) "Gasoline" includes:

(i) all petroleum products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) except for alcohol blended into gasohol, any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

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

~~(11)~~(12) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

~~(12)~~(13) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and ~~(9)~~(10) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

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

~~(13)~~(14) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

~~(14)~~(15) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

~~(15)~~(16) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state. (Terminates June 30, 2001--sec. 7, Ch. 461, L. 1999.)

**15-70-201. (Effective July 1, 2001) Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source of earned income is from the business of farming or ranching.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks,

gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline terminals is considered to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) "Gasohol" means a fuel blend containing at least 10% alcohol, with the balance being gasoline and other additives. Gasohol is also known as "E-10".

~~(9)~~(10) (a) "Gasoline" includes:

(i) all petroleum products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) except for alcohol blended into gasohol, any other type of additive when the additive is mixed or

blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

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

~~(11)~~(12) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

~~(12)~~(13) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and ~~(9)~~(10) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

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

~~(13)~~(14) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

~~(14)~~(15) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

~~(15)~~(16) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state."

**Section 2.** Section 15-70-202, MCA, is amended to read:

**"15-70-202. License and security of gasoline distributors.** (1) (a) All gasoline distributors, including exporters, as defined in 15-70-201, and a person who imports, as defined in 15-70-201, prior to the commencement of doing business, shall file:

(i) an application for a license with the department of transportation on forms prescribed and furnished by the department setting forth the information as may be requested by the department; and

(ii) security with the department in an amount to be determined by the department. The required amount of security may not exceed twice the estimated amount of gasoline taxes the distributor will pay to this state each month.

(b) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or canceled.

(2) "Security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under conditions as the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(3) Failure to obtain a gasoline distributor license as required in this section subjects the distributor to the provisions of 15-70-233 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(4) A distributor who blends gasohol must be licensed with the department. If a distributor cannot be licensed, the distributor is required to buy preblended gasohol."

**Section 3.** Section 15-70-204, MCA, is amended to read:

**"15-70-204. (Temporary) Gasoline license tax -- rate.** (1) Every distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents, ~~beginning July 1, 1994,~~ for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

~~(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1).~~

(3) Gasohol, as defined in 15-70-201, is subject to 85% of the tax imposed in subsection (1)(b).

(Terminates on occurrence of contingency--sec. 17, Ch. 642, L. 1993.)

**15-70-204. (Effective on occurrence of contingency) Gasoline license tax -- rate.** (1) Every distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 3 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

~~(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)~~

(3) Gasohol, as defined in 15-70-201, is subject to 85% of the tax imposed in subsection (1)(b)."

**Section 4. Tax label on ethanol pumps.** A fuel pump at a retail outlet that dispenses gasohol must have a decal designed and produced by the department. The department shall provide the decals, which must be affixed to both sides of the fuel pump and state that the price of the ethanol fuel reflects a 15% reduction in the amount of state taxes when compared to gasoline. The department may impose a civil penalty for failure to mark a pump that dispenses gasohol without the appropriate decal. The penalty for each violation is \$100 for each fuel pump. The department shall give notice of a violation and, if requested, hold a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a violation occurred.

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

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

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

(2) "Biodiesel" means:

(a) (i) a fuel sold for use in motor vehicles operating upon the public roads and highways within the state that contains at least 20% esterified vegetable oil, at least 10% alcohol, or an equivalent mixture of both oil and alcohol, with the balance being diesel fuel or any other petroleum-based volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test and other additives; or

(ii) a monoalkyl ester that:

(A) is derived from domestically produced vegetable oils, renewable lipids, rendered animal fats, or any combination of those ingredients; and

(B) meets the requirements of ASTM PS 121, also known as the Provisional Specification for Biodiesel

Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society of testing and materials.

(b) Biodiesel is also known as "B-20".

~~(2)~~(3) "Bond" means:

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

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

~~(3)~~(4) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

~~(4)~~(5) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

~~(5)~~(6) "Department" means the department of transportation.

~~(6)~~(7) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

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

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

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

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

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

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

(a) a person who engages in the business in this state of producing, refining, manufacturing, or



compounding special fuel for sale, use, or distribution;

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

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

(d) an exporter.

~~(8)~~(9) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

~~(9)~~(10) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

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

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

~~(12)~~(13) "Improperly imported fuel" means special fuel as defined in subsection ~~(16)~~ (17) that is:

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

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

~~(13)~~(14) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

~~(14)~~(15) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

~~(15)~~(16) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

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

- (b) dedicated to public use;
- (c) acquired by eminent domain; or
- (d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision of the state.

~~(16)~~(17) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes biodiesel and all other types of additives of all types when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

~~(17)~~(18) "Special fuel dealer" means:

- (a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;
- (b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or
- (c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

~~(18)~~(19) "Special fuel user" means a person other than the U.S. government, a state, or a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

~~(19)~~(20) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state. (Terminates June 30, 2001--sec. 7, Ch. 461, L. 1999.)

**15-70-301. (Effective July 1, 2001) Definitions.** As used in this part, the following definitions apply:

- (1) "Agricultural use" means use of special fuel by a person whose major endeavor is the business of farming or ranching and whose primary source of earned income is from the business of farming or ranching.
- (2) "Biodiesel" means:
  - (a) (i) a fuel sold for use in motor vehicles operating upon the public roads and highways within the state that contains at least 20% esterified vegetable oil, at least 10% alcohol, or an equivalent mixture of both oil and alcohol, with the balance being diesel fuel or any other petroleum-based volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test and other additives; or

(ii) a monoalkyl ester that:

(A) is derived from domestically produced vegetable oils, renewable lipids, rendered animal fats, or any combination of those ingredients; and

(B) meets the requirements of ASTM PS 121, also known as the Provisional Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society of testing and materials.

(b) Biodiesel is also known as "B-20".

~~(2)~~(3) "Bond" means:

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

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

~~(3)~~(4) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

~~(4)~~(5) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

~~(5)~~(6) "Department" means the department of transportation.

~~(6)~~(7) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

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

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

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

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

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

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

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

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

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

(d) an exporter.

~~(8)~~(9) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

~~(9)~~(10) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

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

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

~~(12)~~(13) "Improperly imported fuel" means special fuel as defined in subsection ~~(16)~~ (17) that is:

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

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

~~(13)~~(14) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

~~(14)~~(15) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

~~(15)~~(16) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

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

(b) dedicated to public use;

(c) acquired by eminent domain; or

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

~~(16)~~(17) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes biodiesel and all other types of additives of all types when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

~~(17)~~(18) "Special fuel dealer" means:

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

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

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

~~(18)~~(19) "Special fuel user" means a person other than the U.S. government, a state, or a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

~~(19)~~(20) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state."

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

**"15-70-304. Bonding, release of surety, and additional bond.** (1) Except as provided in this section, a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished a bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this

part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to the provisions of subsection (2)(a) or (2)(b).

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

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

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

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

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

(3) A surety on a bond furnished by a special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and discharged, but this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the special fuel user who furnished the bond, and unless the special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301~~(2)~~(3), the department shall cancel the special fuel user's permit.

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

**Section 7.** Section 15-70-321, MCA, is amended to read:

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

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas and

biodiesel, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state;

(b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas and biodiesel, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions; ~~and~~

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

(d) for each gallon of biodiesel delivered into the fuel supply tank of a highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

(2) (a) The tax imposed in ~~subsection (1)~~ subsections (1)(a) through (1)(c) is 27 3/4 cents per gallon.

(b) The tax imposed in subsection (1)(d) is 85% of the amount provided for in subsection (2)(a)."

**Section 8. Tax label on biodiesel pumps.** A fuel pump at a retail outlet that dispenses biodiesel must have a decal designed and produced by the department. The department shall provide the decals, which must be affixed to both sides of the fuel pump and state that the price of the biodiesel fuel reflects a 15% reduction in the amount of state taxes when compared to special fuels. The department may impose a civil penalty for failure to mark a pump that dispenses biodiesel without the appropriate decal. The penalty for each violation is \$100 for each fuel pump. The department shall give notice of a violation and, if requested, hold a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a violation occurred.

**Section 9.** Section 15-70-326, MCA, is amended to read:

**"15-70-326. Computation.** The tax imposed by this part must be computed, with respect to special fuel for which the tax has not been paid in this state and that has been consumed by the purchaser as a special fuel user, by multiplying the appropriate tax rate per gallon provided in this part by the number of gallons of the type of special fuel consumed by the special fuel user in the operation of motor vehicles on the highways of this state."

**Section 10.** Section 15-70-341, MCA, is amended to read:

**"15-70-341. License, reissuance fee, and security of special fuel distributors.** (1)(a) All special fuel distributors, including importers and exporters as defined in 15-70-301, prior to the commencement of doing business, shall file:

(i) an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) The required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that continues in force until surrendered or revoked.

(2) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of \$100.

(3) Failure to obtain a special fuel distributor license as required in this section subjects the distributor to the provisions of 15-70-357 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(4) As used in this section, "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(5) A distributor who blends biodiesel must be licensed with the department. If the distributor cannot be licensed, the distributor is required to buy preblended biodiesel."

**Section 11. Codification instruction.** (1) [Section 4] is intended to be codified as an integral part of Title 15, chapter 70, part 2, and the provisions of Title 15, chapter 70, part 2, apply to [section 4].

(2) [Section 8] is intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to [section 8].

**Section 12. Contingent effective date.** [This act] is effective 30 days after the director of the



department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

- (1) an ethanol plant is operational and producing fuel in Montana; and
- (2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least \$20 million on June 30 following the date on which the condition in subsection (1) is complied with.

**Section 13. Contingent termination.** [This act] terminates June 30 of the fourth year following [the effective date of this act].

- END -

I hereby certify that the within bill,  
HB 0644, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

HOUSE BILL NO. 644

INTRODUCED BY J. PATTISON, COLE

AN ACT ENCOURAGING ECONOMIC DEVELOPMENT BY CREATING AN ENERGY MARKET DEMAND IN MONTANA FOR AGRICULTURAL-BASED BIOFUELS; TAXING GASOHOL AND BIODIESEL AT A PERCENTAGE OF THE RATE FOR GASOLINE OR SPECIAL FUELS; DEFINING "GASOHOL" AND "BIODIESEL"; PROVIDING THAT BIOFUEL PUMPS BE LABELED WITH A STATEMENT OF THE TAX ADVANTAGE OF THE FUEL; AMENDING SECTIONS 15-70-201, 15-70-202, 15-70-204, 15-70-301, 15-70-304, 15-70-321, 15-70-326, AND 15-70-341, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE.

