

HOUSE BILL NO. 502
INTRODUCED BY H. RASER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A MINIMUM CONTENT OF BIODIESEL IN ALL DIESEL FUEL SOLD OR OFFERED FOR SALE IN MONTANA FOR USE IN INTERNAL COMBUSTION ENGINES; EXEMPTING FUEL PRODUCED OR SOLD FOR USE IN RAILROAD LOCOMOTIVES; PROVIDING THAT A DISTRIBUTOR THAT BLENDS BIODIESEL MUST BE LICENSED WITH THE DEPARTMENT OF TRANSPORTATION; DEFINING THE TERM "BIODIESEL"; INCLUDING BIODIESEL AS A PETROLEUM PRODUCT FOR WHICH THE DEPARTMENT OF LABOR AND INDUSTRY SETS STANDARDS; AMENDING SECTIONS 15-70-341, 82-15-101, AND 82-15-103, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Biodiesel -- minimum content -- exemption.** (1) Except as otherwise provided in this section, all diesel fuel sold or offered for sale in Montana for use in internal combustion engines must contain at least 2% biodiesel by volume.

(2) The minimum content requirement of subsection (1) does not apply to fuel produced or sold for use in railroad locomotives.

Section 2. Section 15-70-341, MCA, is amended to read:

"15-70-341. (Temporary) License and security of special fuel distributors -- denial or revocation of license -- reissuance fee. (1) (a) Each special fuel distributor, including an exporter and importer, as those terms are 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) (i) Except as provided in subsection (1)(b)(ii), 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.

(ii) The minimum required security for a distributor who imports or exports special fuel, or both, is \$25,000.

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

(2) The department may deny the issuance of a special fuel distributor license or revoke a special fuel distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the special fuel license tax.

(3) If an application for a special fuel distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

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

(5) 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.

(6) 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.

(7) The owner of a commercial motor vehicle that is engaged in transporting special fuel for a distributor is not subject to the provisions of this section.

(8) 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.

15-70-341. (Effective on occurrence of contingency) License and security of special fuel distributors -- denial or revocation of license -- reissuance fee. (1) (a) Each special fuel distributor, including an exporter and importer, as those terms are 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) (i) Except as provided in subsection (1)(b)(ii), 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.

(ii) The minimum required security for a distributor who imports or exports special fuel, or both, is \$25,000.

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

(2) The department may deny the issuance of a special fuel distributor license or revoke a special fuel distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the special fuel license tax.

(3) If an application for a special fuel distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

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

(5) 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.

(6) 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.

(7) The owner of a commercial motor vehicle that is engaged in transporting special fuel for a distributor is not subject to the provisions of this section.

(8) 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. (Terminates June 30 of fourth year following date of occurrence of contingency--sec. 13, Ch. 568, L. 2001.)

15-70-341. (Effective July 1 of fourth year following date of occurrence of contingency) License and security of special fuel distributors -- denial or revocation of license -- reissuance fee. (1) (a) Each special fuel distributor, including an exporter and importer, as those terms are 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) (i) Except as provided in subsection (1)(b)(ii), 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.

(ii) The minimum required security for a distributor who imports or exports special fuel, or both, is \$25,000.

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

(2) The department may deny the issuance of a special fuel distributor license or revoke a special fuel distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the special fuel license tax.

(3) If an application for a special fuel distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

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

(5) 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.

(6) 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.

(7) The owner of a commercial motor vehicle that is engaged in transporting special fuel for a distributor is not subject to the provisions of this section.

(8) 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 3. Section 82-15-101, MCA, is amended to read:

"82-15-101. Definitions. As used in this part, the following definitions apply:

(1) "Biodiesel" means 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) subject to 82-15-103, meets the requirements of D6751-02, also known as the provisional specification for biodiesel fuel (B100) blend stock for distillate fuels, as adopted by the American society for testing and materials.

~~(+)(2)~~ "Dealer" means any person engaged in the petroleum business and includes petroleum dealers and liquefied petroleum dealers.

~~(2)(3)~~ "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

~~(3)(4)~~ "Liquefied petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or of selling or offering or advertising for sale or refining or manufacturing or keeping for sale in this state any petroleum product composed predominately of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and

butylenes but excluding prepackaged liquefied petroleum products.

~~(4)~~(5) "Liquefied petroleum product" means a product composed predominately of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and butylenes.

~~(5)~~(6) "Liquefied petroleum product container" means a container approved by the American society of mechanical engineers that can hold 110 gallons or more of a liquefied petroleum product.

~~(6)~~(7) "Mislabeled" means a package label or dispensing device of a product that bears any statement, design, or device regarding the product or regarding ingredients or substances in the product or regarding the properties, quality, or kind of products that is false or misleading in any manner.

~~(7)~~(8) "Owner" means a person:

(a) who is listed with the American society of mechanical engineers or with the manufacturer as owner by the serial number of the liquefied petroleum product container;

(b) who holds a written bill of sale or other instrument under which title to a liquefied petroleum product container was transferred; or

(c) who holds a paid invoice showing purchase of and payment for a liquefied petroleum product container.

~~(8)~~(9) "Person" means an individual, trust, estate, partnership, corporation, joint-stock company, firm, agency, association, or any receiver appointed by law.

~~(9)~~(10) "Petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or offering or advertising for sale, refining, manufacturing, or keeping for sale in this state any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil, or greases or any oil or gas or oil and gas product except prepackaged petroleum products and except as otherwise defined as a liquefied petroleum dealer in subsection ~~(3)~~ (4).

~~(10)~~(11) "Sell" and "sale" includes barter and exchange."

Section 4. Section 82-15-103, MCA, is amended to read:

"82-15-103. Standards for petroleum products. The standards and specifications for petroleum products, including but not limited to gasoline, fuel oils, diesel fuel, kerosene, biodiesel, and liquefied petroleum gases, ~~shall~~ must be determined by the department and ~~shall~~ must be based upon nationally recognized standards and specifications such as those that are published from time to time by the American society for testing and materials. When ~~se~~ determined by the department and adopted as rules, ~~such~~ the standards and

specifications are the standards and specifications for ~~such~~ products sold in this state and official tests of ~~such~~ those products ~~shall~~ must be based upon them."

NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 82, chapter 15, part 1, and the provisions of Title 82, chapter 15, part 1, apply to [section 1].

NEW SECTION. **Section 6. Contingent effective date.** [This act] is effective 6 months after the director of the department of transportation certifies to the governor that there are at least 10 million gallons of biodiesel available, from Montana resources, in the state. The director shall send a copy of the certification to the secretary of state and the code commissioner.

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