

## HOUSE BILL NO. 502

INTRODUCED BY RASER, BERGREN, BOOKOUT-REINICKE, ELLINGSON, HEDGES, KITZENBERG,  
MAHLUM, MUSGROVE, PATTISON, TESTER, B. THOMAS, WANZENRIED, WITT

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 OF STATE VEHICLES THAT ARE PART OF THE MONTANA BIODIESEL PILOT PROGRAM; ESTABLISHING THE MONTANA BIODIESEL PILOT PROGRAM; ~~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~~ STANDARDIZING THE DEFINITIONS OF "BIODIESEL" AND DEFINING "BIODIESEL BLEND"; INCLUDING BIODIESEL AS A PETROLEUM PRODUCT FOR WHICH THE DEPARTMENT OF LABOR AND INDUSTRY SETS STANDARDS; AMENDING SECTIONS ~~15-70-341~~, 15-70-301, 15-70-304, 15-70-321, 82-15-101, AND 82-15-103, MCA; AND PROVIDING A ~~CONTINGENT EFFECTIVE~~ TERMINATION 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~~ ALL diesel fuel ~~sold or offered for sale in Montana for use~~ USED in internal combustion engines OF STATE VEHICLES THAT ARE PART OF THE MONTANA BIODIESEL PILOT PROGRAM 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."~~

**NEW SECTION. SECTION 2. MONTANA BIODIESEL PILOT PROGRAM.** (1) THE DEPARTMENT SHALL DEVELOP AND IMPLEMENT A PILOT PROGRAM UTILIZING A PORTION OF THE DEPARTMENT'S MOTOR VEHICLE FLEET AS A PILOT PROJECT TO RESEARCH THE USE OF BIODIESEL AS DEFINED IN 82-15-101.

(2) THE RESEARCH MUST FOCUS ON:

(A) EFFECTS OF BIODIESEL ON VEHICLE ENGINES;

(B) EFFECTS OF BIODIESEL ON THE ENVIRONMENT;

(C) COST OF BIODIESEL, INCLUDING DISTRIBUTION AND END-USE CONSUMER PRICE;

(D) STORAGE OF BIODIESEL; AND

(E) TAXATION RELATED TO BIODIESEL.

**NEW SECTION. SECTION 3. REPORTS REQUIRED ON MONTANA BIODIESEL PILOT PROGRAM.** THE DEPARTMENT SHALL REPORT ON A BIENNIAL BASIS OR UPON REQUEST TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE

REGARDING THE PROGRESS OF THE PILOT PROGRAM AND ANY RESULTS OF THE RESEARCH.**SECTION 4. 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 or income reports for tax purposes as required by the United States internal revenue service.

(2) "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) "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) "Cardrol" 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) "Department" means the department of transportation.

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

(12) "Improperly imported fuel" means special fuel 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) "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) "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) "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, as provided in Title 60, chapter 4, or Title 70, chapter 30; or
- (d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

(16) "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 all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(17) "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 cardrol, 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) (a) "Special fuel user" means a person 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.

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

(19) "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.

**15-70-301. (Effective on occurrence of contingency) 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 or 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": a fuel composed of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats and is also designated as B100.~~

(3) "Biodiesel blend" means a blend of biodiesel and petroleum diesel fuel.

~~(3)~~(4) "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.

~~(4)~~(5) "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.

~~(5)~~(6) "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.

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

~~(7)~~(8) (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.

~~(8)~~(9) "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.

~~(9)~~(10) "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.

~~(10)~~(11) "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.

~~(11)~~(12) "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.

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

~~(13)~~(14) "Improperly imported fuel" means special fuel 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.

~~(14)~~(15) "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.

~~(15)~~(16) "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.

~~(16)~~(17) "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, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

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

~~(17)~~(18) "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 additives of all types when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

~~(18)~~(19) "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 cardtroll, 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.

~~(19)~~(20) (a) "Special fuel user" means a person 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.

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

~~(20)~~(21) "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 of fourth year following date of occurrence of contingency--sec. 13, Ch. 568, L. 2001.)

**15-70-301. (Effective July 1 of fourth year following date of occurrence of contingency)**

**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) "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) "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) "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) "Department" means the department of transportation.

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

(12) "Improperly imported fuel" means special fuel 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) "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) "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) "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, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

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

(16) "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 all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(17) "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 cardrol, 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) (a) "Special fuel user" means a person 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.

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

(19) "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 5. SECTION 15-70-304, MCA, IS AMENDED TO READ:**

**"15-70-304. (Temporary) 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), 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) 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.

**15-70-304. (Effective on occurrence of contingency) 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(3)~~ the definition of bond in 15-70-301, 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(3)~~ the definition of bond in 15-70-301 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. (Terminates June 30 of fourth year following date of occurrence of contingency--sec. 13, Ch. 568, L. 2001.)

**15-70-304. (Effective July 1 of fourth year following date of occurrence of contingency) 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), 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) 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 6. SECTION 15-70-321, MCA, IS AMENDED TO READ:**

**"15-70-321. (Temporary) 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, 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, 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.

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

**15-70-321. (Effective on occurrence of contingency) 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;

(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 blend that is at least 20% biodiesel and that is 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 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). (Terminates June 30 of fourth year following date of occurrence of contingency--sec. 13, Ch. 568, L. 2001.)

**15-70-321. (Effective July 1 of fourth year following date of occurrence of contingency) 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, 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, 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.

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

**Section 7.** 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.~~ A FUEL COMPOSED OF MONO-ALKYL ESTERS OF LONG CHAIN FATTY ACIDS DERIVED FROM VEGETABLE OILS OR ANIMAL FATS AND IS ALSO DESIGNATED AS B100.

(2) "BIODIESEL BLEND" MEANS A BLEND OF BIODIESEL AND PETROLEUM DIESEL FUEL.

(1)(2)(3) "Dealer" means any person engaged in the petroleum business and includes petroleum dealers and liquefied petroleum dealers.

(2)(3)(4) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3)(4)(5) "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)(6) "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)(7) "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)(8) "Misabeled" 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)(9)~~ "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)(10)~~ "Person" means an individual, trust, estate, partnership, corporation, joint-stock company, firm, agency, association, or any receiver appointed by law.

~~(9)(10)(11)~~ "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)~~ (5).

~~(10)(11)(12)~~ "Sell" and "sale" includes barter and exchange."

**Section 8.** 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 ~~so~~ 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 9. Codification instruction. ~~[Section 4] is [SECTIONS 1 THROUGH 3] ARE~~ 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 4]~~ TITLE 60, CHAPTER 2, PART 2, AND THE PROVISIONS OF TITLE 60, CHAPTER 2, PART 2, APPLY TO [SECTIONS 1 THROUGH 3].

~~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.~~

NEW SECTION. SECTION 10. TERMINATION. [SECTIONS 1 THROUGH 3] TERMINATE DECEMBER 31, 2006.

- END -

