

HOUSE BILL NO. 661
INTRODUCED BY J. COHENOUR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING MOTOR CARRIER SAFETY STANDARD RULES AND THE ARREST AUTHORITY OF PEACE OFFICERS APPOINTED BY THE DEPARTMENT OF TRANSPORTATION; ALLOWING THE PEACE OFFICERS TO MAKE ARRESTS FOR CERTAIN SPEED LIMIT VIOLATIONS AND VEHICLE EQUIPMENT VIOLATIONS; AND AMENDING SECTIONS 15-70-233, 15-70-357, 61-10-154, AND 61-12-206, MCA."

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

Section 1. Section 15-70-233, MCA, is amended to read:

"15-70-233. Improperly imported fuel -- seizure. (1) As used in this section, the following definitions apply:

(a) "conveyance" means a tank car, vehicle, or vessel that is used to transport fuel;

(b) "department" means the department of transportation; and

(c) "peace officer" means an employee of the department of transportation designated or appointed as a peace officer under 61-10-154 or 61-12-201.

(2) Pursuant to ~~61-12-206(5)~~ 61-12-206(8), a peace officer may:

(a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax responsibilities; and

(b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid Montana gasoline or special fuel distributor license as required in 15-70-202 and 15-70-341.

(3) The peace officer shall obtain authorization from the director of the department of transportation or the director's designee before seizing fuel.

(4) Upon seizing the fuel that the peace officer believes to be improperly imported, the peace officer may:

(a) direct the rerouting or transfer of the fuel to a location designated by the department. The department shall reimburse the carrier for transportation costs from the point of seizure to the location designated by the department.

(b) unload the fuel; and

(c) take three samples of the fuel from the cargo tank for examination.

(5) Within 48 hours after seizure of the improperly imported fuel, the department shall issue a notice of right to file claim for the return of interest or title to the fuel. The notice must be issued to:

(a) the original owner of the fuel;

(b) the owner of the transportation company that conveyed the fuel; and

(c) any other interested party.

(6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest or title to the fuel within 30 days after the date of seizure. If a claim is filed for interest or title to the seized fuel, the department shall:

(a) provide the opportunity for a hearing;

(b) if requested, conduct the hearing within 5 days after receiving the claim;

(c) make a final determination of the party to take interest or title to the fuel within 2 working days after the hearing; and

(d) mail notice of the department's determination to interested parties.

(7) (a) The department may determine that the seized fuel be forfeited by the original owner and may:

(i) sell the fuel to the licensed Montana distributor predetermined through a bidding process established in department administrative rule; or

(ii) use the forfeited fuel for a public purpose determined by the department.

(b) The department shall issue a certificate of sale to the licensed distributor who purchases the seized fuel.

(c) The net proceeds from the sale of the fuel must be deposited in the general fund, less:

(i) the applicable taxes, fees, and penalties, which the department shall deposit in a highway revenue account in the state special revenue fund, as required in 15-70-101; and

(ii) the administrative costs incurred in conjunction with the seizure and disposal of the improperly imported fuel.

(8) If the department determines that the original owner of the fuel may reclaim interest or title to the fuel, the department may:

(a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day of the seizure; or

(b) return the fuel.

(9) A person forfeits the interest, right, and title to improperly imported fuel if the person:

- (a) fails to file a claim for the seized fuel within the time allowed in subsection (5); or
- (b) is determined to be guilty of violating fuel tax laws.

(10) A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal fuel importation in Title 15, chapter 70."

Section 2. Section 15-70-357, MCA, is amended to read:

"15-70-357. Improperly imported fuel -- seizure. (1) As used in this section, the following definitions apply:

- (a) "conveyance" means a tank car, vehicle, or vessel that is used to transport fuel;
- (b) "department" means the department of transportation; and
- (c) "peace officer" means an employee of the department of transportation designated or appointed as a peace officer under 61-10-154 or 61-12-201.

(2) Pursuant to ~~61-12-206(5)~~ 61-12-206(8), a peace officer may:

(a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax responsibilities; and

(b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid Montana gasoline or special fuel distributor license as required in 15-70-202 and 15-70-341.

(3) The peace officer shall obtain authorization from the director of the department of transportation or the director's designee before seizing fuel.

(4) Upon seizing the fuel that the peace officer believes to be improperly imported, the peace officer may:

(a) direct the rerouting or transfer of the fuel to a location designated by the department. The department shall reimburse the carrier for transportation costs from the point of seizure to the location designated by the department.

(b) unload the fuel; and

(c) take three samples of the fuel from the cargo tank for examination.

(5) Within 48 hours after seizure of the improperly imported fuel, the department shall issue a notice of right to file claim for the return of interest or title to the fuel. The notice must be issued to:

(a) the original owner of the fuel;

(b) the owner of the transportation company that conveyed the fuel; and

(c) any other interested party.

(6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest or title to the fuel within 30 days after the date of seizure. If a claim is filed for interest or title to the seized fuel, the department shall:

- (a) provide the opportunity for a hearing;
- (b) if requested, conduct the hearing within 5 days after receiving the claim;
- (c) make a final determination of the party to take interest or title to the fuel within 2 working days after the hearing; and
- (d) mail notice of the department's determination to interested parties.

(7) (a) The department may determine that the seized fuel be forfeited by the original owner and may:

- (i) sell the fuel to the licensed Montana distributor predetermined through a bidding process established in department administrative rule; or

- (ii) use the forfeited fuel for a public purpose determined by the department.
- (b) The department shall issue a certificate of sale to the licensed distributor who purchases the seized fuel.

(c) The net proceeds from the sale of the fuel must be deposited in the general fund, less:

- (i) the applicable taxes, fees, and penalties, which the department shall deposit in a highway revenue account in the state special revenue fund, as required in 15-70-101; and
- (ii) the administrative costs incurred in conjunction with the seizure and disposal of the improperly imported fuel.

(8) If the department determines that the original owner of the fuel may reclaim interest or title to the fuel, the department may:

- (a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day of the seizure; or
- (b) return the fuel.

(9) A person forfeits the interest, right, and title to improperly imported fuel if the person:

- (a) fails to file a claim for the seized fuel within the time allowed in subsection (5); or
- (b) is determined to be guilty of violating fuel tax laws.

(10) A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal fuel importation in Title 15, chapter 70."

Section 3. Section 61-10-154, MCA, is amended to read:

"61-10-154. Department of transportation to adopt motor carrier safety standards -- enforcement -- designation of peace officers -- duties -- violations. (1) As used in this section, the terms "for-hire motor carrier", "private motor carrier", "gross vehicle weight rating", and "gross combination weight rating" have the same meaning as provided in 49 CFR 390.5.

(2) The department of transportation shall adopt, by rule, standards for safety of operations of:

(a) any for-hire motor carrier or any private motor carrier;

(b) any motor vehicle or vehicle combination used in interstate or intrastate commerce that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight, whichever is greater, of ~~40,004~~ over 10,000 pounds ~~or more~~ and that is not a farm vehicle operating solely in Montana;

~~(c) any motor vehicle or vehicle combination used in intrastate commerce that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight, whichever is greater, of 26,001 pounds or more and that is not a farm vehicle operating solely in Montana;~~

~~———(d)(c)~~ any motor vehicle that is designed or used to transport at least 16 passengers, including the driver, and that is not used to transport passengers for compensation;

~~(e)(d)~~ any motor vehicle that is designed or used to transport at least nine passengers, including the driver, for compensation; or

~~(f)(e)~~ any motor vehicle that is used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with federal hazardous materials regulations in 49 CFR, part 172.

(3) Standards of safety adopted under this section must substantially comply, within allowed tolerance guidelines, to the federal motor carrier safety regulations and the federal hazardous material regulations as applied to motor carriers and vehicles transporting passengers or property in commerce.

(4) The department of transportation shall work with the highway patrol in the enforcement of safety standards adopted pursuant to this section. The highway patrol and the department of transportation shall cooperate to ensure minimum duplication and maximum coordination of enforcement efforts.

(5) In order to enforce compliance with safety standards adopted pursuant to this section, the department of transportation shall designate employees as peace officers. The designated employees must be employed in the administration of the motor carrier services functions of the department of transportation. Each employee designated as a peace officer may:

(a) issue citations and make arrests in connection with violations of safety standards adopted under this

section;

- (b) issue summons;
- (c) accept bail;
- (d) serve warrants for arrest;
- (e) make reasonable inspections of cargo carried by commercial motor vehicles;
- (f) enforce the provisions of Title 49 of the United States Code and regulations that have been adopted under Title 49 and make reasonable safety inspections of commercial motor vehicles used by motor carriers; and
- (g) require production of documents relating to the cargo, driver, routing, or ownership of commercial motor vehicles.

(6) In addition to other enforcement duties assigned under 61-10-141 and this section, an employee of the department of transportation who is appointed as a peace officer pursuant to 61-12-201 or this section has:

- (a) the same authority to enforce provisions of the motor carriers law as that granted to the public service commission under 69-12-203;
- (b) the duty to secure or make copies, or both, of all bills of lading or other evidence of delivery for shipment of agricultural seeds, as defined in 80-5-120, that have been sold or are intended for sale in Montana and to forward the copies to the department of agriculture within 24 hours of the date that the bill of lading was obtained; and
- (c) the authority, if probable cause exists, to stop and inspect a supply tank connected to the engine of any diesel-powered motor vehicle operating on the public highways of this state in order to determine compliance with Title 15, chapter 70, part 3.

(7) A violation of the standards adopted pursuant to this section is punishable as provided in 61-9-512, and the court, upon conviction, as defined in 61-5-213, shall forward a record of conviction to the department within 5 days in accordance with 61-11-101.

(8) The department of transportation shall report to the revenue and transportation interim committee at least once each year on its enforcement of the provisions of Title 15, chapter 70, part 3, pursuant to the authority provided in subsection (6)(c) and on any impacts that enforcement has had on the state special revenue fund."

Section 4. Section 61-12-206, MCA, is amended to read:

"61-12-206. Offenses for which arrest authorized. Employees designated or appointed as peace officers under 61-10-154 or 61-12-201 may make arrests for violations of the following statutory provisions:

- (1) chapters 3 and 5 of this title, but only if the vehicle involved is subject to 61-10-141;
- (2) 61-8-312(1) and (2);
- (3) 61-8-314, but only for vehicles weighing over 10,000 pounds;
- (4) chapter 9 of this title, but only for vehicles weighing over 10,000 pounds;
- ~~(2)~~(5) chapter 10 of this title;
- ~~(3)~~(6) part 3, chapter 4, of this title;
- ~~(4)~~(7) 15-24-201 through 15-24-205;
- ~~(5)~~(8) Title 15, chapter 70, parts 2 and 3;
- ~~(6)~~(9) 61-10-154 and safety rules adopted under that section;
- ~~(7)~~(10) Title 69, chapter 12."

- END -

