

1 HOUSE BILL NO. 46
2 INTRODUCED BY . DURAM
3 BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT MOVING THE POINT OF TAXATION ON GASOLINE AND
6 SPECIAL FUELS TAXES TO THE FIRST RECEIVER; REVISING DEFINITIONS; AMENDING SECTIONS 15-
7 70-401, 15-70-402, 15-70-403, 15-70-404, 15-70-410, 15-70-425, 15-70-432, 15-70-434, AND 15-70-441,
8 MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11

12 **Section 1.** Section 15-70-401, MCA, is amended to read:

13 **"15-70-401. Definitions.** As used in this part, the following definitions apply:

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

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

21 (3) (a) "Biodiesel" means a fuel produced from monoalkyl esters of long-chain fatty acids derived
22 from vegetable oils, renewable lipids, animal fats, or any combination of those ingredients. The fuel must meet
23 the requirements of ASTM D6751, also known as the Standard Specification for Biodiesel Fuel (B100) Blend
24 Stock for Distillate Fuels, as adopted by the American society for testing and materials.

25 (b) Biodiesel is also known as "B-100".

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

28 (5) "Cardrol" or "keylock" means a unique device intended to allow access to a fuel dealer's

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1 unattended pump or dispensing unit for the purpose of delivery of gasoline or special fuel to an authorized user
2 of the unique device.

3 (6) "Department" means the department of transportation.

4 (7) (a) "Distributed" means the withdrawal of gasoline or special fuel from a refinery or terminal
5 storage, other than by pipeline, by a licensed distributor for sale or use in this state, including:

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

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

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

12 (b) Gasoline or special fuel imported into this state, other than gasoline or special fuel placed in
13 storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in ~~and is brought to~~
14 ~~rest in~~ this state.

15 (8) (a) "Distributor" means:

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

18 (ii) an importer who imports gasoline or special fuel for sale, use, or distribution;

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

21 (iv) an exporter; ~~or~~

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

23 ~~(vi)~~(v) a person in ~~Montana~~ this state who blends ethanol with gasoline.

24 (b) The term does not include a special biodiesel fuel producer who produces biodiesel from waste
25 vegetable oil feedstock in this state for the operation of motor vehicles owned or controlled by the person on the
26 public roads and highways of the state.

27 (9) "Ethanol" means nominally anhydrous ethyl alcohol that has been denatured as specified in 27
28 CFR, parts 20 and 21, and that meets the standards for ethanol adopted pursuant to 82-15-103.

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1 (10) "Ethanol-blended gasoline" means gasoline blended with ethanol. The percentage of ethanol in
2 the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured
3 ethanol and 90% gasoline would be reflected as E-10. A blend that is 85% denatured ethanol and 15% gasoline
4 would be reflected as E-85.

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

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

10 (13) "First receiver" means:

11 (a) the first licensed distributor who receives physical possession of gasoline or special fuel from
12 the rack at a terminal or refinery within this state; or

13 (b) an importer or exporter who is the owner of gasoline or special fuel at the time the fuel crosses
14 the border of this state. the licensed distributor who first purchases gasoline or special fuel, except for gasoline
15 or special fuel destined for another terminal or refinery within this state, from the terminal, refinery, or importer
16 after withdrawal from the terminal rack, refinery, or importer; or

17 (b) the terminal, refinery, or importer when selling gasoline or special fuel, except for gasoline or
18 special fuel destined for another terminal or refinery within this state, to an unlicensed distributor.

19 ~~(13)~~(14)– (a) "Gasoline" includes:

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

24 (ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the
25 additive's classifications or uses.

26 (b) ~~"Gasoline"~~The term does not include special fuels as defined in this section.

27 ~~(14)~~(15) "Import" means to first receive gasoline or special fuel into possession or custody after its
28 arrival and coming to rest at a destination within the state or to first receive any gasoline or special fuel shipped

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1 or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor
2 vehicle.

3 ~~(15)(16)~~ "Importer" means a person who transports or arranges for the transportation of gasoline or
4 special fuel into Montana for sale, use, or distribution.

5 ~~(16)(17)~~ "Improperly imported fuel" means gasoline or special fuel that is:

6 (a) consigned to a Montana destination and imported into the state without the distributor first
7 having obtained a Montana distributor license as required in 15-70-402; or

8 (b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title
9 15, chapter 70.

10 (18) "Licensed distributor" means a distributor who has obtained a license under the provisions of
11 15-70-402 and is:

12 ~~(a) the first receiver as defined in this section; or~~

13 ~~(c) a supplier as defined in this section.~~

14 ~~(17)(19)~~ "Motor vehicle" means all vehicles that are operated on the public roads and highways of this
15 state and that are operated in whole or in part by the combustion of gasoline or special fuel.

16 ~~(18)(20)~~ "Person" includes any person, firm, association, joint-stock company, syndicate, partnership,
17 or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or
18 both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as
19 applied to joint-stock companies and corporations, the officers.

20 ~~(19)(21)~~ "Public roads and highways of this state" means all streets, roads, highways, and related
21 structures:

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

24 (b) dedicated to public use;

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

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

28 (22) "Rack" means a mechanism for loading or dispensing accountable product from a refinery or

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1 terminal into a tank truck, railroad tank car, or marine vessel.

2 ~~(23) "Received" means physical possession of the gasoline or special fuel has been taken at the~~
3 ~~terminal or refinery by the first licensed distributor.~~

4 ~~(20)(24)(23)~~ "Special biodiesel fuel producer" means a person who produces less than 2,500 gallons
5 annually of biodiesel fuel from waste vegetable oil feedstock for the operation of motor vehicles owned or
6 controlled by the person on the public roads and highways of the state.

7 ~~(21)(25)(24)~~ "Special fuel" means those combustible gases and liquids commonly referred to as diesel
8 fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except
9 liquid petroleum gas, when actually sold for use in motor vehicles operating on the public roads and highways
10 of this state. The term "special fuel" includes biodiesel and additives of all types when the additive is mixed or
11 blended into special fuel, regardless of the additive's classifications or uses.

12 ~~(22)(26)(25)~~ (a) "Special fuel user" means a person who consumes special fuel for the operation of
13 motor vehicles owned or controlled by the person on the public roads and highways of this state.

14 (b) The term does not include:

- 15 (i) the U.S. government, a state, a county, an incorporated city or town, or a school district of this
16 state; or
17 (ii) a special biodiesel fuel producer who produces biodiesel from waste vegetable oil feedstock for
18 the operation of motor vehicles owned or controlled by the person on the public roads and highways of this
19 state.

20 ~~(27) "Supplier" means a licensed distributor who receives and sells gasoline or special fuel at the~~
21 ~~rack but does not take physical possession of the fuel before the fuel leaves the terminal or refinery.~~

22 ~~(23)(28)(26)~~ "Use" means the operation of a motor vehicle on the public roads and highways of this
23 state or of any political subdivision of this state.

24 ~~(24)(29)(27)~~ "Waste vegetable oil" means used cooking oil gathered from restaurants or commercial
25 food processors."

26

27 **Section 2.** Section 15-70-402, MCA, is amended to read:

28 **"15-70-402. License and security of distributors -- denial or disciplinary action.** (1) (a) Prior to

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1 disciplinary action, the applicant or distributor has the right to appeal the department's decision pursuant to Title
2 2, chapter 4, part 6.

3 ~~(5)(6)~~ Only a licensed distributor may withdraw gasoline or special fuel from a refinery or terminal.

4 ~~(6)(7)~~ Failure to obtain a distributor license as required in this section subjects the distributor to the
5 provisions of 15-70-419 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

6 ~~(7)(8)~~ As used in this section, "security" means:

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

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

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

14 ~~(8)(9)~~ The owner of a commercial motor vehicle that is engaged in transporting gasoline or special
15 fuel for a distributor is not subject to the provisions of this section.

16 ~~(9)(10)~~ A distributor who blends biodiesel must be licensed with the department. If the distributor
17 cannot be licensed, the distributor is required to buy biodiesel fuel on which the special fuel tax has been paid.

18 ~~(10)(11)~~ A distributor who blends ethanol with gasoline must be licensed by the department. If the
19 distributor cannot be licensed, the distributor is required to buy ethanol-blended gasoline on which the gasoline
20 tax has been paid."

21

22 **Section 3.** Section 15-70-403, MCA, is amended to read:

23 **"15-70-403. Gasoline, special fuel, and aviation fuel tax -- incidence -- rates.** (1) The incidence of
24 the fuel tax is on the distributor first receiver for the privilege of engaging in and carrying on business in this
25 state. Each distributor first receiver shall pay to the department of transportation a tax in an amount equal to:

26 (a) for each gallon of gasoline distributed received distributed by the distributor within the state
27 and ~~upon~~ on which the gasoline tax has not been paid by any other distributor:

28 (i) 31.5 cents in fiscal years 2018 and 2019;

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- 1 (ii) 32 cents in fiscal years 2020 and 2021;
- 2 (iii) 32.5 cents in fiscal year 2022; and
- 3 (iv) 33 cents in fiscal year 2023 and thereafter;
- 4 (b) for each gallon of special fuel ~~distributed~~ received-distributed by the distributor within the state
- 5 and on which the special fuel tax has not been paid by any other distributor:
- 6 (i) 29.25 cents in fiscal years 2018 and 2019;
- 7 (ii) 29.45 cents in fiscal years 2020 and 2021;
- 8 (iii) 29.55 cents in fiscal year 2022; and
- 9 (iv) 29.75 cents in fiscal year 2023 and thereafter; and
- 10 (c) 5 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply
- 11 center, which is allocated to the department as provided by 67-1-301.
- 12 (2) The gasoline tax provided for in subsection (1)(a) must be deposited as follows:
- 13 (a) the revenue from 23 cents of the tax less the allocations provided for in 60-3-201(1)(a) through
- 14 (1)(d) to the highway restricted account provided for in 15-70-126;
- 15 (b) the revenue from 4 cents of the tax less the allocations provided for in 60-3-201(1)(a) through
- 16 (1)(d) to the highway patrol administration state special revenue account established in 44-1-110; and
- 17 (c) the remaining revenue from the tax less the allocations provided for in 60-3-201(1)(a) through
- 18 (1)(d) to the bridge and road safety and accountability restricted account provided for in 15-70-127.
- 19 (3) The special fuel tax provided for in subsection (1)(b) must be deposited as follows:
- 20 (a) the revenue from 23 3/4 cents of the tax to the highway restricted account provided for in 15-
- 21 70-126;
- 22 (b) the revenue from 4 cents of the tax to the highway patrol administration state special revenue
- 23 account established in 44-1-110; and
- 24 (c) the remaining revenue from the tax to the bridge and road safety and accountability restricted
- 25 account provided for in 15-70-127.
- 26 (4) Gasoline or special fuel may not be included in the measure of the distributor's tax if it is sold
- 27 for export unless the distributor is not licensed and is not paying the tax to the state where the fuel is destined.
- 28 If the fuel is exported out of state and there is no verification that the tax in the state where the fuel is destined

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1 ~~has been paid, both the distributor and the supplier are liable for the license tax on the fuel.~~

2 (5) The taxes provided for in subsections (1)(a) and (1)(b) are imposed ~~when:~~

3 (a) ~~the fuel is removed from a refinery in this state; on the licensed distributor who first purchases~~
4 ~~gasoline or special fuel, except for gasoline or special fuel destined for another terminal or refinery within this~~
5 ~~state, from the terminal, refinery, or importer after withdrawal from the terminal rack, refinery, or importer; or~~

6 (b) ~~the fuel is removed from a terminal in this state; or on the terminal, refinery, or importer when~~
7 ~~selling gasoline or special fuel to an unlicensed distributor.~~

8 (c) ~~fuel that is destined for Montana arrives in this state. For the purposes of this subsection (5)(c),~~
9 ~~"arrives" means when the destined fuel crosses the Montana border.~~

10 (5)(6) Special fuel may not be included in the measure of the distributor's tax if it is dyed by injector at
11 a refinery or terminal for off-highway use.

12 (6)(7) When no Montana fuel tax has been paid by a distributor or any other person, the department
13 shall collect or cause to be collected from the owners or operators of motor vehicles operating on the public
14 roads and highways of this state a tax equal to the tax rate provided for in subsection (1)(a) for gasoline and
15 subsection (1)(b) for dyed or undyed special fuel. The tax must be paid for each gallon of gasoline or special
16 fuel as defined in this part, or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I.
17 (American petroleum institute) gravity test sold or used to produce motor power to operate motor vehicles on
18 the public roads and highways of this state.

19 (7)(8) The tax may not be imposed on dyed special fuel delivered into the fuel supply tank of a
20 vehicle that is equipped with a feed delivery box if:

21 (a) the feed delivery box is permanently affixed to the vehicle;

22 (b) the vehicle is used exclusively for the feeding of livestock; and

23 (c) the gross vehicle weight of the vehicle, exclusive of any towed units, is greater than 12,000
24 pounds.

25 (8)(9) All special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees
26 A.P.I. (American petroleum institute) gravity test sold or used in motor vehicles, motorized equipment, and the
27 internal combustion of any engines, including stationary engines, and used in connection with any work
28 performed under any contracts pertaining to the construction, reconstruction, or improvement of a highway or

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1 street and its appurtenances awarded by any public agencies, including federal, state, county, municipal, or
2 other political subdivisions, must be fuel on which Montana fuel tax has been paid.

3 ~~(9)~~(10) Material used for construction, reconstruction, or improvement in connection with work
4 performed under a contract as provided in subsection ~~(8)~~(9) must be produced using fuel on which Montana
5 fuel tax has been paid."

6

7 **Section 4.** Section 15-70-404, MCA, is amended to read:

8 **"15-70-404. Computation.** (1) The tax imposed on the distributor under 15-70-403(1) may be
9 rounded to the nearest whole dollar amount.

10 (2) The tax imposed under ~~15-70-403(6)~~15-70-403(7) on owners or operators of the motor
11 vehicles operating on the public roads and highways of this state must be computed, with respect to gasoline or
12 special fuel for which the tax has not been paid in this state and that has been consumed by the purchaser, by
13 multiplying the corresponding tax rate per gallon as provided in 15-70-403(1) by the number of gallons of
14 gasoline or special fuel consumed by the person in the operation of motor vehicles on the public roads and
15 highways of this state."

16

17 **Section 5.** Section 15-70-410, MCA, is amended to read:

18 **"15-70-410. Distributor's statement and payment -- confidentiality.** (1) Each licensed distributor
19 shall, not later than the 25th day of each calendar month, except as provided in 15-70-113(3), render to the
20 department of transportation a signed statement that specifies all gasoline or special fuel distributed and
21 received by the distributor in this state during the preceding calendar month and that contains other information
22 the department may reasonably require in order to administer the fuel tax law. The statement must be
23 accompanied by a payment in an amount equal to the tax imposed by 15-70-403, less any refund credit issued
24 under 15-70-425 and less 1% of the total tax that may be deducted by the distributor as an allowance for
25 collection. An allowance may not be deducted from the tax on aviation fuel.

26 (2) A distributor engaged in or carrying on a business at more than one location in this state may
27 include all places of business in one statement.

28 (3) The department or a deputy, assistant, agent, clerk, or other employee of the department may