

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 09-0549.01 Ed DeCecco

SENATE BILL 09-098

SENATE SPONSORSHIP

Schwartz, Isgar, Brophy, Gibbs

HOUSE SPONSORSHIP

Vigil,

Senate Committees

Transportation
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING BLENDING DIESEL FUELS AFTER WITHDRAWAL AT THE**
102 **RACK, AND MAKING AN APPROPRIATION IN CONNECTION**
103 **THEREWITH.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Permits dyed diesel fuel to be blended by a licensed distributor with biodiesel fuel after withdrawal at a terminal or refinery rack up to the maximum federally allowable blend and still retain its exemption from the special fuels tax.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
March 19, 2009

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 39-27-101, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **39-27-101. Definitions - construction.** As used in this part 1,
5 unless the context otherwise requires:

6 (1.5) "BIODIESEL FUEL" MEANS A MOTOR VEHICLE FUEL THAT IS
7 PRODUCED FROM PLANT OR ANIMAL PRODUCTS OR WASTES, AS OPPOSED
8 TO FOSSIL FUEL SOURCES.

9 **SECTION 2.** 39-27-102.5 (1.5) and (2) (a), Colorado Revised
10 Statutes, are amended to read:

11 **39-27-102.5. Exemptions on tax imposed - ex-tax purchases.**

12 (1.5) Except as otherwise provided in ~~paragraph (b)~~ PARAGRAPHS (a) AND
13 (b) of subsection (2) of this section, paragraph (b) of subsection (3) of this
14 section, and section 39-27-102 (1) (b), indelible dye meeting federal
15 regulations must be added to special fuel before or upon withdrawal at a
16 terminal or refinery rack for that special fuel to be exempt from the excise
17 tax imposed pursuant to this part 1. Such tax-exempt special fuel shall
18 not be used for taxable purposes; except that dyed special fuel may be
19 used for a taxable purpose to the extent that such use is allowed under
20 federal law or regulations with such fuel being subject to the excise tax
21 imposed pursuant to this part 1. For purposes of this subsection (1.5),
22 "taxable purpose" means any use on which an excise tax on special fuel
23 is imposed pursuant to this part 1. The terminal operator shall ensure that
24 tax-exempt special fuel is dyed before it leaves the terminal. The seller
25 shall give notice to the purchaser in accordance with federal regulations
26 that the dyed special fuel is not legal for taxable use.

27 (2) (a) Dyed diesel fuel purchased to propel farm vehicles, when

1 the same are being used on farms and ranches, farm tractors, and
2 implements of husbandry only incidentally operated or moved on a
3 highway, when operated off the public highways, and vehicles or
4 construction equipment operated within the confines of highway
5 construction projects when the same are actually being used in the
6 construction of such highways shall be exempt from the excise tax
7 imposed pursuant to this part 1. IN ACCORDANCE WITH SECTION
8 39-27-104 (1)(d.5), SUCH EXEMPT DYED DIESEL FUEL MAY BE BLENDED BY
9 A LICENSED DISTRIBUTOR WITH BIODIESEL FUEL AFTER WITHDRAWAL AT
10 A TERMINAL OR REFINERY RACK UP TO THE MAXIMUM FEDERALLY
11 ALLOWABLE BLEND AND STILL BE EXEMPT FROM THE EXCISE TAX IMPOSED
12 PURSUANT TO THIS PART 1. A person who purchases undyed special fuel
13 for the purposes set forth in this paragraph (a) may, in accordance with
14 section 39-27-103, apply to the department of revenue for a refund of the
15 excise tax paid thereon.

16 **SECTION 3.** 39-27-104 (1), Colorado Revised Statutes, is
17 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

18 **39-27-104. License and deposit - exception.** (1) (d.5) **NO**
19 **PERSON SHALL BLEND EXEMPT DYED DIESEL FUEL WITH BIODIESEL FUEL**
20 **AFTER WITHDRAWAL AT A TERMINAL RACK OR REFINERY RACK UNLESS**
21 **SUCH PERSON IS A LICENSED BLENDER IN ACCORDANCE WITH PARAGRAPH**
22 **(d) OF THIS SUBSECTION (1) WHO HAS A VALID FEDERAL BLENDING PERMIT.**
23 **ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS PARAGRAPH (d.5) OR**
24 **THE REPORTING OR OTHER REQUIREMENTS OF THIS SECTION RELATING TO**
25 **SUCH BLENDING OR WHO MISREPRESENTS THE AMOUNT OF BIODIESEL FUEL**
26 **THAT IS BLENDED WITH DYED DIESEL FUEL SHALL BE SUBJECT TO THE**
27 **FOLLOWING CIVIL PENALTIES:**

- 1 (I) A FIVE-THOUSAND-DOLLAR FINE FOR THE FIRST VIOLATION;
- 2 (II) A TEN-THOUSAND-DOLLAR FINE FOR THE SECOND OR
- 3 SUBSEQUENT VIOLATION; AND
- 4 (III) IN ACCORDANCE WITH RULES PROMULGATED PURSUANT TO
- 5 THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24,
- 6 C.R.S., REVOCATION OF ANY LICENSE ISSUED IN ACCORDANCE WITH THE
- 7 PROVISIONS OF THIS SECTION FOR THE THIRD VIOLATION.

8 **SECTION 4.** 39-27-109.7, Colorado Revised Statutes, is
9 amended to read:

10 **39-27-109.7. Data collection services.** In order to track the
11 movement of gasoline or special fuel within this state and thereby
12 facilitate and expedite the collection of excise taxes imposed pursuant to
13 this part 1, the executive director of the department of revenue may enter
14 into a contract with one or more private entities for the provision of a
15 computer-based program to monitor and track the data that licensees are
16 required to report to the department pursuant to this part 1. Such
17 computer-based program shall be funded solely with moneys from the
18 highway users tax fund; EXCEPT THAT, FOR THE STATE FISCAL YEAR
19 2009-10, UP TO THIRTY-SEVEN THOUSAND SIX HUNDRED THIRTY DOLLARS
20 FOR THE COMPUTER-BASED PROGRAM TO MONITOR AND TRACK EXEMPT
21 DYED DIESEL FUEL THAT IS BLENDED WITH BIODIESEL FUEL AFTER
22 WITHDRAWAL AT A TERMINAL RACK OR REFINERY RACK PURSUANT TO
23 SECTION 39-27-102.5 (2) (a) MAY BE FUNDED BY MONEYS RECEIVED BY
24 THE GOVERNOR'S ENERGY OFFICE CREATED IN SECTION 24-38.5-101,
25 C.R.S., FROM THE UNITED STATES DEPARTMENT OF ENERGY.

26 **SECTION 5. Appropriation.** In addition to any other
27 appropriation, there is hereby appropriated, to the department of revenue

1 for allocation to the information technology division, for the fiscal year
2 beginning July 1, 2009, the sum of thirty-seven thousand six hundred
3 thirty dollars (\$37,630) federal funds, or so much thereof as may be
4 necessary, for the implementation of this act. Said sum shall be from
5 moneys received by the governor's energy office from the United States
6 department of energy.

7 **SECTION 6. Act subject to petition - effective date.** This act
8 shall take effect at 12:01 a.m. on the day following the expiration of the
9 ninety-day period after final adjournment of the general assembly that is
10 allowed for submitting a referendum petition pursuant to article V,
11 section 1 (3) of the state constitution, (August 4, 2009, if adjournment
12 sine die is on May 6, 2009); except that, if a referendum petition is filed
13 against this act or an item, section, or part of this act within such period,
14 then the act, item, section, or part, if approved by the people, shall take
15 effect on the date of the official declaration of the vote thereon by
16 proclamation of the governor.