

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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.**

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.

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

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.

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

3 **39-27-101. Definitions - construction.** As used in this part 1,
4 unless the context otherwise requires:

5 (1.5) "BIODIESEL FUEL" MEANS A MOTOR VEHICLE FUEL THAT IS
6 PRODUCED FROM PLANT OR ANIMAL PRODUCTS OR WASTES, AS OPPOSED
7 TO FOSSIL FUEL SOURCES.

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

10 **39-27-102.5. Exemptions on tax imposed - ex-tax purchases.**

11 (1.5) Except as otherwise provided in ~~paragraph (b)~~ PARAGRAPHS (a) AND
12 (b) of subsection (2) of this section, paragraph (b) of subsection (3) of this
13 section, and section 39-27-102 (1) (b), indelible dye meeting federal
14 regulations must be added to special fuel before or upon withdrawal at a
15 terminal or refinery rack for that special fuel to be exempt from the excise
16 tax imposed pursuant to this part 1. Such tax-exempt special fuel shall
17 not be used for taxable purposes; except that dyed special fuel may be
18 used for a taxable purpose to the extent that such use is allowed under
19 federal law or regulations with such fuel being subject to the excise tax
20 imposed pursuant to this part 1. For purposes of this subsection (1.5),
21 "taxable purpose" means any use on which an excise tax on special fuel
22 is imposed pursuant to this part 1. The terminal operator shall ensure that
23 tax-exempt special fuel is dyed before it leaves the terminal. The seller
24 shall give notice to the purchaser in accordance with federal regulations
25 that the dyed special fuel is not legal for taxable use.

26 (2) (a) Dyed diesel fuel purchased to propel farm vehicles, when
27 the same are being used on farms and ranches, farm tractors, and

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

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

17 **39-27-104. License and deposit - exception.** (1) (d.5) NO
18 PERSON SHALL BLEND EXEMPT DYED DIESEL FUEL WITH BIODIESEL FUEL
19 AFTER WITHDRAWAL AT A TERMINAL RACK OR REFINERY RACK UNLESS
20 SUCH PERSON IS A LICENSED BLENDER IN ACCORDANCE WITH PARAGRAPH
21 (d) OF THIS SUBSECTION (1) WHO HAS A VALID FEDERAL BLENDING PERMIT.
22 ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS PARAGRAPH (d.5) OR
23 THE REPORTING OR OTHER REQUIREMENTS OF THIS SECTION RELATING TO
24 SUCH BLENDING OR WHO MISREPRESENTS THE AMOUNT OF BIODIESEL FUEL
25 THAT IS BLENDED WITH DYED DIESEL FUEL SHALL BE SUBJECT TO THE
26 FOLLOWING CIVIL PENALTIES:

27 (I) A FIVE-THOUSAND-DOLLAR FINE FOR THE FIRST VIOLATION;

1 (II) A TEN-THOUSAND-DOLLAR FINE FOR THE SECOND OR
2 SUBSEQUENT VIOLATION; AND

3 (III) IN ACCORDANCE WITH RULES PROMULGATED PURSUANT TO
4 THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24,
5 C.R.S., REVOCATION OF ANY LICENSE ISSUED IN ACCORDANCE WITH THE
6 PROVISIONS OF THIS SECTION FOR THE THIRD VIOLATION.

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

9 **39-27-109.7. Data collection services.** In order to track the
10 movement of gasoline or special fuel within this state and thereby
11 facilitate and expedite the collection of excise taxes imposed pursuant to
12 this part 1, the executive director of the department of revenue may enter
13 into a contract with one or more private entities for the provision of a
14 computer-based program to monitor and track the data that licensees are
15 required to report to the department pursuant to this part 1. Such
16 computer-based program shall be funded solely with moneys from the
17 highway users tax fund; EXCEPT THAT, FOR THE STATE FISCAL YEAR
18 2009-10, UP TO THIRTY-SEVEN THOUSAND SIX HUNDRED THIRTY DOLLARS
19 FOR THE COMPUTER-BASED PROGRAM TO MONITOR AND TRACK EXEMPT
20 DYED DIESEL FUEL THAT IS BLENDED WITH BIODIESEL FUEL AFTER
21 WITHDRAWAL AT A TERMINAL RACK OR REFINERY RACK PURSUANT TO
22 SECTION 39-27-102.5 (2) (a) MAY BE FUNDED BY MONEYS RECEIVED BY
23 THE GOVERNOR'S ENERGY OFFICE CREATED IN SECTION 24-38.5-101,
24 C.R.S., FROM THE UNITED STATES DEPARTMENT OF ENERGY.

25 **SECTION 5. Act subject to petition - effective date.** This act
26 shall take effect at 12:01 a.m. on the day following the expiration of the
27 ninety-day period after final adjournment of the general assembly that is

1 allowed for submitting a referendum petition pursuant to article V,
2 section 1 (3) of the state constitution, (August 4, 2009, if adjournment
3 sine die is on May 6, 2009); except that, if a referendum petition is filed
4 against this act or an item, section, or part of this act within such period,
5 then the act, item, section, or part, if approved by the people, shall take
6 effect on the date of the official declaration of the vote thereon by
7 proclamation of the governor.