

1 SB BILL NO. 188
 2 INTRODUCED BY Mark Sliter Mark Sliter

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CERTAIN EMPLOYEES OF THE DEPARTMENT OF
 5 TRANSPORTATION TO SEIZE FUEL THAT IS BEING IMPROPERLY IMPORTED INTO THE STATE; DEFINING
 6 "CONVEYANCE", "IMPROPERLY IMPORTED FUEL", AND "PEACE OFFICER"; DIRECTING THE
 7 DEPARTMENT OF TRANSPORTATION TO ESTABLISH RULES GOVERNING A BIDDING PROCESS AMONG
 8 LICENSED MONTANA FUEL DISTRIBUTORS FOR THE PURCHASE OF SEIZED FUEL; PROVIDING FOR A
 9 HEARING TO DETERMINE THE RECIPIENT OF SEIZED FUEL; AMENDING SECTIONS 15-70-104, 15-70-201,
 10 15-70-202, 15-70-301, AND 15-70-341, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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 12 STATEMENT OF INTENT

13 A statement of intent is required for this bill because it requires the department of transportation
 14 to establish rules to govern the bidding process determining the licensed Montana distributor that will be
 15 allowed to purchase improperly imported fuel seized by the department.

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

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 19 Section 1. Section 15-70-104, MCA, is amended to read:

20 "15-70-104. Rules to be established by department. (1) The department of transportation shall
 21 adopt, publish, and enforce the rules consistent with and necessary for carrying out the provisions of this
 22 chapter.

23 (2) The department may prescribe, adopt, and enforce reasonable rules relating to the
 24 administration and enforcement of:

- 25 (a) part 2;
- 26 ~~(a)~~(b) part 3;
- 27 ~~(b)~~(c) part 7; and
- 28 ~~(e)~~(d) the International Fuel Tax Agreement authorized by 15-70-121."

29
 30 Section 2. Section 15-70-201, MCA, is amended to read:



1 **"15-70-201. Definitions.** As used in this part, unless the context requires otherwise, the following
2 definitions apply:

3 (1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source
4 of earned income is from the business of farming or ranching.

5 (2) "Aviation dealer" means ~~any~~ a person in this state engaged in the business of selling aviation
6 fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor
7 as provided in this section.

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

12 (4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean
13 gasoline delivered into the supply tank of a motor vehicle.

14 (5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks,
15 gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline
16 imported into this state and placed in storage at refineries or pipeline terminals is considered to be
17 "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery,
18 or terminal storage for sale or use in this state or for the transportation to destinations in this state other
19 than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks,
20 refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid
21 distributor's license.

22 (b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or
23 pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

24 (6) "Distributor" means:

25 (a) ~~any~~ a person who engages in the business in this state of producing, refining, manufacturing,
26 or compounding gasoline for sale, use, or distribution;

27 (b) ~~any~~ a person who imports gasoline for sale, use, or distribution;

28 (c) ~~any~~ a person who engages in the wholesale distribution of gasoline in this state and chooses
29 to become licensed to assume the Montana state gasoline tax liability;

30 (d) ~~any~~ an exporter as defined in subsection (8);

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

2 (f) ~~any~~ a person in Montana who blends alcohol with gasoline.

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

5 (8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor
6 vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana
7 for sale, use, or consumption beyond the boundaries of this state.

8 (9) (a) "Gasoline" includes:

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

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

15 (b) Gasoline does not include special fuels as defined in 15-70-301.

16 (10) "Import" means to receive into ~~any~~ a person's possession or custody first after its arrival and
17 coming to rest at destination within the state of ~~any~~ gasoline shipped or transported into this state from
18 a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

19 (11) "Importer" means a person who transports or arranges for the transportation of gasoline into
20 Montana for sale, use, or distribution in this state.

21 (12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and
22 (9) that:

23 (a) is consigned to a Montana destination and imported into the state without the distributor first
24 having obtained a Montana gasoline distributor license as required in 15-70-202; or

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

27 ~~(12)~~(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or
28 streets of this state in whole or in part by the combustion of gasoline.

29 ~~(13)~~(14) "Person" means any person, firm, association, joint-stock company, syndicate, or
30 corporation.

1 ~~(14)~~(15) "Use" means the operation of motor vehicles upon the public roads or highways of the
2 state or of any political subdivision of the state."

3
4 **Section 3.** Section 15-70-202, MCA, is amended to read:

5 **"15-70-202. License, fee, and security of gasoline distributors.** (1) (a) All gasoline distributors,
6 including exporters, as defined in 15-70-201, and a person who imports, as defined in 15-70-201, prior to
7 the commencement of doing business, shall file;

8 (i) an application for a license with the department of transportation on forms prescribed and
9 furnished by the department setting forth the information as may be requested by the department; and

10 ~~Each distributor shall at the same time file~~

11 (ii) security with the department in an amount to be determined by the department. ~~However, the~~
12 The required amount of security may not exceed twice the estimated amount of gasoline taxes the
13 distributor will pay to this state each month.

14 (b) Upon approval of the application, the department shall issue to the distributor a nonassignable
15 license that is in force until surrendered or canceled.

16 (2) ~~Any~~ A person who engages in the wholesale distribution of gasoline in this state exercising the
17 option under 15-70-201(6)(c) shall pay an annual license fee of \$200.

18 (3) "Security" means:

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

22 (b) a deposit made by the distributor with the department, under conditions as the department may
23 prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the
24 federal deposit insurance corporation.

25 (4) Failure to obtain a gasoline distributor license as required in this section subjects the distributor
26 to the provisions of [section 6] allowing for the seizure, confiscation, and possible forfeiture of the fuel."

27
28 **Section 4.** Section 15-70-301, MCA, is amended to read:

29 **"15-70-301. Definitions.** As used in this part, the following definitions apply:

30 (1) "Agricultural use" means use of special fuel by a person whose major endeavor is the business

1 of farming or ranching and whose primary source of earned income is from the business of farming or
2 ranching.

3 (2) "Bond" means:

4 (a) a bond executed by a special fuel user as principal with a corporate surety qualified under the
5 laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all
6 requirements of this part, including the payment of all taxes, penalties, and other obligations of the special
7 fuel user arising out of this part; or

8 (b) a deposit with the department by the special fuel user, under terms and conditions that the
9 department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and
10 insured by the federal deposit insurance corporation.

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

13 (4) "Cardtrol" or "keylock" means ~~any~~ a unique device intended to allow access to a special fuel
14 dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user
15 of the unique device.

16 (5) "Department" means the department of transportation.

17 (6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a
18 storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the
19 transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of
20 the following:

21 (i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage
22 tanks in this state;

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

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

26 (b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be
27 distributed only by a person who is the holder of a valid distributor's license.

28 (c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery
29 or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

30 (7) "Distributor" means:

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

3 (b) an importer who imports special fuel for sale, use, or distribution;

4 (c) a person who engages in the wholesale distribution of special fuel in this state and chooses to
5 become licensed to assume the Montana state special fuel tax liability; and

6 (d) an exporter.

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

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

12 (10) "Import" means to first receive special fuel into possession or custody after its arrival and
13 coming to rest at a destination within the state or to first receive any special fuel shipped or transported
14 into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

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

17 (12) "Improperly imported fuel" means special fuel as defined in subsection (16) that is:

18 (a) consigned to a Montana destination and imported into the state without the distributor first
19 having obtained a Montana special fuel distributor license as required in 15-70-341; or

20 (b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title
21 15, chapter 70.

22 ~~(13)~~ (13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets
23 of this state and that are operated in whole or in part by the combustion of special fuel.

24 ~~(14)~~ (14) "Person" includes any person, firm, association, joint-stock company, syndicate,
25 partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or
26 imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners
27 or members and, as applied to joint-stock companies and corporations, the officers.

28 ~~(15)~~ (15) "Public roads and highways of this state" means all streets, roads, highways, and related
29 structures:

30 (a) built and maintained with appropriated funds of the United States, the state of Montana, or any

1 political subdivision of the state;

2 (b) dedicated to public use;

3 (c) acquired by eminent domain; or

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

6 ~~(15)~~(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel
7 fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test,
8 except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads
9 and highways within the state of Montana. The term special fuel includes all other types of additives when
10 the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

11 ~~(16)~~(17) "Special fuel dealer" means:

12 (a) ~~any~~ a person in the business of handling special fuel who delivers any part of the fuel into the
13 fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

14 (b) ~~any~~ a person who sells special fuel at a location unattended by the dealer through an
15 unattended pump by use of a cardtrol, keylock, or similar device; or

16 (c) ~~any~~ a person who provides ~~any~~ a facility, with or without attended services, from which more
17 than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then
18 controlled by the dealer.

19 ~~(17)~~(18) "Special fuel user" means ~~any~~ a person other than the U.S. government, a state, or a
20 county, incorporated city or town, or school district of this state who consumes in this state special fuel
21 for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

22 ~~(18)~~(19) "Use", when the term relates to a special fuel user, means the consumption by a special
23 fuel user of special fuels in the operation of a motor vehicle on the highways of this state."
24

25 **Section 5.** Section 15-70-341, MCA, is amended to read:

26 **"15-70-341. License, fee, and security of special fuel distributors.** (1) (a) All special fuel
27 distributors, including importers and exporters as defined in 15-70-301, prior to the commencement of
28 doing business, shall file:

29 (i) an application for a license with the department, on forms prescribed and furnished by the
30 department, setting forth the information that may be requested by the department; and ~~Each distributor~~

1 ~~shall at the same time file~~

2 ~~(ii) security with the department in an amount to be determined by the department. However, the~~

3 ~~(b) The~~ required amount of security may not exceed twice the estimated amount of special fuel
4 taxes the distributor will pay to this state each month.

5 ~~(c) Upon approval of the application, the department shall issue to the distributor a nonassignable~~
6 license that continues in force until surrendered or revoked.

7 (2) A person who engages in the wholesale distribution of special fuel in this state exercising the
8 option under 15-70-301(7)(c) and not already licensed under 15-70-202 shall pay an annual license fee of
9 \$200.

10 (3) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee
11 of \$100.

12 ~~(4) Failure to obtain a special fuel distributor license as required in this section subjects the~~
13 ~~distributor to the provisions of [section 6], allowing for the seizure, confiscation, and possible forfeiture of~~
14 ~~the fuel.~~

15 ~~(4)(5)~~ As used in this section, "security" means:

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

19 (b) (i) a deposit made by the distributor with the department, under the conditions that the
20 department may prescribe; or

21 (ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal
22 deposit insurance corporation."

23

24 **NEW SECTION. Section 6. Improperly imported fuel -- seizure.** (1) As used in this section, the
25 following definitions apply:

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

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

28 (c) "peace officer" means an employee of the department of transportation appointed as a peace
29 officer under 61-12-201.

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

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

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

6 (3) The peace officer shall obtain authorization from the administrator of the department's motor
7 carrier services division or the administrator of the department's administration division before seizing fuel.

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

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

13 (b) unload the fuel; and

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

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

17 (a) the original owner of the fuel;

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

19 (c) any other interested party.

20 (6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest
21 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
22 fuel, the department shall:

23 (a) provide the opportunity for a hearing;

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

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

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

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

30 (i) sell the fuel to the licensed Montana distributor predetermined through a bidding process

1 established in department administrative rule; or

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

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

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

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

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

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

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

14 (b) return the fuel.

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

16 (a) fails to file a claim for the seized fuel within the time allowed in subsection (5); or

17 (b) is determined to be guilty of violating fuel tax laws.

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

20

21 **NEW SECTION. Section 7. Codification instruction.** [Section 6] is intended to be codified as an
22 integral part of Title 15, chapter 70, part 2, and Title 15, chapter 70, part 3, and the provisions of Title 15,
23 chapter 70, part 2, and Title 15, chapter 70, part 3, apply to [section 6].

24

25 **NEW SECTION. Section 8. Effective date.** [This act] is effective on passage and approval.

26

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0188, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

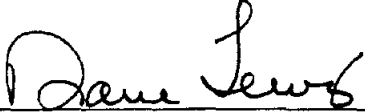
A bill allowing certain employees of the Montana Department of Transportation (MDT) to seize fuel that is being improperly imported into the state.

ASSUMPTIONS:

1. The following scenario and cost data assumes that one full tanker truck will be seized each year, and the contents properly distributed. The MDT has no information to support more or less activity if this bill passes.
2. Assume the vehicle seized contains 10,000 gallons of fuel, and it is sold to an approved vendor at a market price, assumed to be \$1.20/gallon, or sales amount of \$12,000.
3. From the \$12,000, the following amounts would be paid: 1) \$2,700 gasoline tax; 2) \$75 petroleum storage cleanup fee; 3) \$600 transportation costs (assumed to be \$.06/gallon; and 4) \$400 administrative cost.
4. The net amount remaining (\$8,225) would be transferred to the general fund.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Operating Expenses	1,075	1,075
<u>Funding:</u>		
Highway Special Rev. (02)	1,075	1,075
<u>Revenues:</u>		
Sale of gasoline	12,000	12,000
<u>Net Impact on Fund Balance:</u> (revenue minus expense)		
General fund (01)	\$8,225	\$8,225
Highway state special (02)	<u>2,700</u>	<u>2,700</u>
Total	\$10,925	\$10,925

 1.21.97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 1/21/97
 ARNIE MOHL, PRIMARY SPONSOR DATE

Fiscal Note for SB0188, as introduced

SB 188

APPROVED BY COM ON
HIGHWAYS & TRANSPORTATION

1 SENATE BILL NO. 188

2 INTRODUCED BY MOHL, SLITER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CERTAIN EMPLOYEES OF THE DEPARTMENT OF
5 TRANSPORTATION TO SEIZE FUEL THAT IS BEING IMPROPERLY IMPORTED INTO THE STATE; DEFINING
6 "CONVEYANCE", "IMPROPERLY IMPORTED FUEL", AND "PEACE OFFICER"; DIRECTING THE
7 DEPARTMENT OF TRANSPORTATION TO ESTABLISH RULES GOVERNING A BIDDING PROCESS AMONG
8 LICENSED MONTANA FUEL DISTRIBUTORS FOR THE PURCHASE OF SEIZED FUEL; PROVIDING FOR A
9 HEARING TO DETERMINE THE RECIPIENT OF SEIZED FUEL; AMENDING SECTIONS 15-70-104, 15-70-201,
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14 to establish rules to govern the bidding process determining the licensed Montana distributor that will be
15 allowed to purchase improperly imported fuel seized by the department.
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21 adopt, publish, and enforce the rules consistent with and necessary for carrying out the provisions of this
22 chapter.

23 (2) The department may prescribe, adopt, and enforce reasonable rules relating to the
24 administration and enforcement of:

25 (a) part 2;

26 ~~(b)~~ (b) part 3;

27 ~~(c)~~ (c) part 7; and

28 ~~(d)~~ (d) the International Fuel Tax Agreement authorized by 15-70-121."
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30 **Section 2.** Section 15-70-201, MCA, is amended to read:

1 **"15-70-201. Definitions.** As used in this part, unless the context requires otherwise, the following
2 definitions apply:

3 (1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source
4 of earned income is from the business of farming or ranching.

5 (2) "Aviation dealer" means ~~any~~ a person in this state engaged in the business of selling aviation
6 fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor
7 as provided in this section.

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

12 (4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean
13 gasoline delivered into the supply tank of a motor vehicle.

14 (5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks,
15 gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline
16 imported into this state and placed in storage at refineries or pipeline terminals is considered to be
17 "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery,
18 or terminal storage for sale or use in this state or for the transportation to destinations in this state other
19 than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks,
20 refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid
21 distributor's license.

22 (b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or
23 pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

24 (6) "Distributor" means:

25 (a) ~~any~~ a person who engages in the business in this state of producing, refining, manufacturing,
26 or compounding gasoline for sale, use, or distribution;

27 (b) ~~any~~ a person who imports gasoline for sale, use, or distribution;

28 (c) ~~any~~ a person who engages in the wholesale distribution of gasoline in this state and chooses
29 to become licensed to assume the Montana state gasoline tax liability;

30 (d) ~~any~~ an exporter as defined in subsection (8);

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

2 (f) ~~any~~ a person in Montana who blends alcohol with gasoline.

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

5 (8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor
6 vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana
7 for sale, use, or consumption beyond the boundaries of this state.

8 (9) (a) "Gasoline" includes:

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

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

15 (b) Gasoline does not include special fuels as defined in 15-70-301.

16 (10) "Import" means to receive into ~~any~~ a person's possession or custody first after its arrival and
17 coming to rest at destination within the state of ~~any~~ gasoline shipped or transported into this state from
18 a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

19 (11) "Importer" means a person who transports or arranges for the transportation of gasoline into
20 Montana for sale, use, or distribution in this state.

21 (12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and
22 (9) that:

23 (a) is consigned to a Montana destination and imported into the state without the distributor first
24 having obtained a Montana gasoline distributor license as required in 15-70-202; or

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

27 ~~(12)~~(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or
28 streets of this state in whole or in part by the combustion of gasoline.

29 ~~(13)~~(14) "Person" means any person, firm, association, joint-stock company, syndicate, or
30 corporation.

1 ~~(14)~~(15) "Use" means the operation of motor vehicles upon the public roads or highways of the
2 state or of any political subdivision of the state."

3
4 **Section 3.** Section 15-70-202, MCA, is amended to read:

5 "**15-70-202. License, fee, and security of gasoline distributors.** (1) (a) All gasoline distributors,
6 including exporters, as defined in 15-70-201, and a person who imports, as defined in 15-70-201, prior to
7 the commencement of doing business, shall file:

8 (i) an application for a license with the department of transportation on forms prescribed and
9 furnished by the department setting forth the information as may be requested by the department; and
10 ~~Each distributor shall at the same time file~~

11 (ii) security with the department in an amount to be determined by the department. ~~However, the~~
12 The required amount of security may not exceed twice the estimated amount of gasoline taxes the
13 distributor will pay to this state each month.

14 (b) Upon approval of the application, the department shall issue to the distributor a nonassignable
15 license that is in force until surrendered or canceled.

16 (2) ~~Any~~ A person who engages in the wholesale distribution of gasoline in this state exercising the
17 option under 15-70-201(6)(c) shall pay an annual license fee of \$200.

18 (3) "Security" means:

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

22 (b) a deposit made by the distributor with the department, under conditions as the department may
23 prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the
24 federal deposit insurance corporation.

25 (4) Failure to obtain a gasoline distributor license as required in this section subjects the distributor
26 to the provisions of [section 6] allowing for the seizure, confiscation, and possible forfeiture of the fuel."

27
28 **Section 4.** Section 15-70-301, MCA, is amended to read:

29 "**15-70-301. Definitions.** As used in this part, the following definitions apply:

30 (1) "Agricultural use" means use of special fuel by a person whose major endeavor is the business

1 of farming or ranching and whose primary source of earned income is from the business of farming or
2 ranching.

3 (2) "Bond" means:

4 (a) a bond executed by a special fuel user as principal with a corporate surety qualified under the
5 laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all
6 requirements of this part, including the payment of all taxes, penalties, and other obligations of the special
7 fuel user arising out of this part; or

8 (b) a deposit with the department by the special fuel user, under terms and conditions that the
9 department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and
10 insured by the federal deposit insurance corporation.

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

13 (4) "Cardtrol" or "keylock" means ~~any~~ a unique device intended to allow access to a special fuel
14 dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user
15 of the unique device.

16 (5) "Department" means the department of transportation.

17 (6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a
18 storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the
19 transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of
20 the following:

21 (i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage
22 tanks in this state;

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

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

26 (b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be
27 distributed only by a person who is the holder of a valid distributor's license.

28 (c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery
29 or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

30 (7) "Distributor" means:

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

3 (b) an importer who imports special fuel for sale, use, or distribution;

4 (c) a person who engages in the wholesale distribution of special fuel in this state and chooses to
5 become licensed to assume the Montana state special fuel tax liability; and

6 (d) an exporter.

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

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

12 (10) "Import" means to first receive special fuel into possession or custody after its arrival and
13 coming to rest at a destination within the state or to first receive any special fuel shipped or transported
14 into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

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

17 (12) "Improperly imported fuel" means special fuel as defined in subsection (16) that is:

18 (a) consigned to a Montana destination and imported into the state without the distributor first
19 having obtained a Montana special fuel distributor license as required in 15-70-341; or

20 (b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title
21 15, chapter 70.

22 ~~(12)~~(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets
23 of this state and that are operated in whole or in part by the combustion of special fuel.

24 ~~(13)~~(14) "Person" includes any person, firm, association, joint-stock company, syndicate,
25 partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or
26 imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners
27 or members and, as applied to joint-stock companies and corporations, the officers.

28 ~~(14)~~(15) "Public roads and highways of this state" means all streets, roads, highways, and related
29 structures:

30 (a) built and maintained with appropriated funds of the United States, the state of Montana, or any

1 political subdivision of the state;

2 (b) dedicated to public use;

3 (c) acquired by eminent domain; or

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

6 ~~(15)~~(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel
7 fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test,
8 except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads
9 and highways within the state of Montana. The term special fuel includes all other types of additives when
10 the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

11 ~~(16)~~(17) "Special fuel dealer" means:

12 (a) ~~any~~ a person in the business of handling special fuel who delivers any part of the fuel into the
13 fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

14 (b) ~~any~~ a person who sells special fuel at a location unattended by the dealer through an
15 unattended pump by use of a cardtrol, keylock, or similar device; or

16 (c) ~~any~~ a person who provides ~~any~~ a facility, with or without attended services, from which more
17 than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then
18 controlled by the dealer.

19 ~~(17)~~(18) "Special fuel user" means ~~any~~ a person other than the U.S. government, a state, or a
20 county, incorporated city or town, or school district of this state who consumes in this state special fuel
21 for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

22 ~~(18)~~(19) "Use", when the term relates to a special fuel user, means the consumption by a special
23 fuel user of special fuels in the operation of a motor vehicle on the highways of this state."
24

25 **Section 5.** Section 15-70-341, MCA, is amended to read:

26 **"15-70-341. License, fee, and security of special fuel distributors.** (1) (a) All special fuel
27 distributors, including importers and exporters as defined in 15-70-301, prior to the commencement of
28 doing business, shall file:

29 (i) an application for a license with the department, on forms prescribed and furnished by the
30 department, setting forth the information that may be requested by the department; and ~~Each distributor~~

1 ~~shall at the same time file~~

2 (ii) security with the department in an amount to be determined by the department. ~~However, the~~

3 (b) The required amount of security may not exceed twice the estimated amount of special fuel
4 taxes the distributor will pay to this state each month.

5 (c) Upon approval of the application, the department shall issue to the distributor a nonassignable
6 license that continues in force until surrendered or revoked.

7 (2) A person who engages in the wholesale distribution of special fuel in this state exercising the
8 option under 15-70-301(7)(c) and not already licensed under 15-70-202 shall pay an annual license fee of
9 \$200.

10 (3) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee
11 of \$100.

12 (4) Failure to obtain a special fuel distributor license as required in this section subjects the
13 distributor to the provisions of [section 6], allowing for the seizure, confiscation, and possible forfeiture of
14 the fuel.

15 ~~4~~(5) As used in this section, "security" means:

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

19 (b) (i) a deposit made by the distributor with the department, under the conditions that the
20 department may prescribe; or

21 (ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal
22 deposit insurance corporation."

23

24 **NEW SECTION. Section 6. Improperly imported fuel -- seizure.** (1) As used in this section, the
25 following definitions apply:

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

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

28 (c) "peace officer" means an employee of the department of transportation appointed as a peace
29 officer under 61-12-201.

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

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

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

6 (3) The peace officer shall obtain authorization from the ~~administrator of the department's motor~~
7 ~~carrier services division or the administrator of the department's administration division~~ DIRECTOR OF THE
8 DEPARTMENT OF TRANSPORTATION OR THE DIRECTOR'S DESIGNEE before seizing fuel.

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

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

14 (b) unload the fuel; and

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

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

18 (a) the original owner of the fuel;

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

20 (c) any other interested party.

21 (6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest
22 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
23 fuel, the department shall:

24 (a) provide the opportunity for a hearing;

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

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

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

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

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

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

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

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

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

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

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

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

15 (b) return the fuel.

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

17 (a) fails to file a claim for the seized fuel within the time allowed in subsection (5); or

18 (b) is determined to be guilty of violating fuel tax laws.

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

21
22 **NEW SECTION. Section 7. Codification instruction.** [Section 6] is intended to be codified as an
23 integral part of Title 15, chapter 70, part 2, and Title 15, chapter 70, part 3, and the provisions of Title 15,
24 chapter 70, part 2, and Title 15, chapter 70, part 3, apply to [section 6].

25
26 **NEW SECTION. Section 8. Effective date.** [This act] is effective on passage and approval.

27 -END-

1 SENATE BILL NO. 188

2 INTRODUCED BY MOHL, SLITER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CERTAIN EMPLOYEES OF THE DEPARTMENT OF
5 TRANSPORTATION TO SEIZE FUEL THAT IS BEING IMPROPERLY IMPORTED INTO THE STATE; DEFINING
6 "CONVEYANCE", "IMPROPERLY IMPORTED FUEL", AND "PEACE OFFICER"; DIRECTING THE
7 DEPARTMENT OF TRANSPORTATION TO ESTABLISH RULES GOVERNING A BIDDING PROCESS AMONG
8 LICENSED MONTANA FUEL DISTRIBUTORS FOR THE PURCHASE OF SEIZED FUEL; PROVIDING FOR A
9 HEARING TO DETERMINE THE RECIPIENT OF SEIZED FUEL; AMENDING SECTIONS 15-70-104, 15-70-201,
10 15-70-202, 15-70-301, AND 15-70-341, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11

12 STATEMENT OF INTENT

13 A statement of intent is required for this bill because it requires the department of transportation
14 to establish rules to govern the bidding process determining the licensed Montana distributor that will be
15 allowed to purchase improperly imported fuel seized by the department.

16

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

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

1 SENATE BILL NO. 188

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7 DEPARTMENT OF TRANSPORTATION TO ESTABLISH RULES GOVERNING A BIDDING PROCESS AMONG
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9 HEARING TO DETERMINE THE RECIPIENT OF SEIZED FUEL; AMENDING SECTIONS 15-70-104, 15-70-201,
10 15-70-202, 15-70-301, AND 15-70-341, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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15 allowed to purchase improperly imported fuel seized by the department.

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CERTAIN EMPLOYEES OF THE DEPARTMENT OF
5 TRANSPORTATION TO SEIZE FUEL THAT IS BEING IMPROPERLY IMPORTED INTO THE STATE; DEFINING
6 "CONVEYANCE", "IMPROPERLY IMPORTED FUEL", AND "PEACE OFFICER"; DIRECTING THE
7 DEPARTMENT OF TRANSPORTATION TO ESTABLISH RULES GOVERNING A BIDDING PROCESS AMONG
8 LICENSED MONTANA FUEL DISTRIBUTORS FOR THE PURCHASE OF SEIZED FUEL; PROVIDING FOR A
9 HEARING TO DETERMINE THE RECIPIENT OF SEIZED FUEL; AMENDING SECTIONS 15-70-104, 15-70-201,
10 15-70-202, 15-70-301, AND 15-70-341, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
11

12 STATEMENT OF INTENT

13 A statement of intent is required for this bill because it requires the department of transportation
14 to establish rules to govern the bidding process determining the licensed Montana distributor that will be
15 allowed to purchase improperly imported fuel seized by the department.
16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
18

19 **Section 1.** Section 15-70-104, MCA, is amended to read:

20 **"15-70-104. Rules to be established by department.** (1) The department of transportation shall
21 adopt, publish, and enforce the rules consistent with and necessary for carrying out the provisions of this
22 chapter.

23 (2) The department may prescribe, adopt, and enforce reasonable rules relating to the
24 administration and enforcement of:

25 (a) part 2;

26 ~~(b)~~ (b) part 3;

27 ~~(c)~~ (c) part 7; and

28 ~~(d)~~ (d) the International Fuel Tax Agreement authorized by 15-70-121."
29

30 **Section 2.** Section 15-70-201, MCA, is amended to read:

1 **"15-70-201. Definitions.** As used in this part, unless the context requires otherwise, the following
2 definitions apply:

3 (1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source
4 of earned income is from the business of farming or ranching.

5 (2) "Aviation dealer" means ~~any~~ a person in this state engaged in the business of selling aviation
6 fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor
7 as provided in this section.

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

12 (4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean
13 gasoline delivered into the supply tank of a motor vehicle.

14 (5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks,
15 gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline
16 imported into this state and placed in storage at refineries or pipeline terminals is considered to be
17 "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery,
18 or terminal storage for sale or use in this state or for the transportation to destinations in this state other
19 than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks,
20 refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid
21 distributor's license.

22 (b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or
23 pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

24 (6) "Distributor" means:

25 (a) ~~any~~ a person who engages in the business in this state of producing, refining, manufacturing,
26 or compounding gasoline for sale, use, or distribution;

27 (b) ~~any~~ a person who imports gasoline for sale, use, or distribution;

28 (c) ~~any~~ a person who engages in the wholesale distribution of gasoline in this state and chooses
29 to become licensed to assume the Montana state gasoline tax liability;

30 (d) ~~any~~ an exporter as defined in subsection (8);

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

2 (f) ~~any~~ a person in Montana who blends alcohol with gasoline.

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

5 (8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor
6 vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana
7 for sale, use, or consumption beyond the boundaries of this state.

8 (9) (a) "Gasoline" includes:

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

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

15 (b) Gasoline does not include special fuels as defined in 15-70-301.

16 (10) "Import" means to receive into ~~any~~ a person's possession or custody first after its arrival and
17 coming to rest at destination within the state of ~~any~~ gasoline shipped or transported into this state from
18 a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

19 (11) "Importer" means a person who transports or arranges for the transportation of gasoline into
20 Montana for sale, use, or distribution in this state.

21 (12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and
22 (9) that:

23 (a) is consigned to a Montana destination and imported into the state without the distributor first
24 having obtained a Montana gasoline distributor license as required in 15-70-202; or

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

27 ~~(12)~~(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or
28 streets of this state in whole or in part by the combustion of gasoline.

29 ~~(13)~~(14) "Person" means any person, firm, association, joint-stock company, syndicate, or
30 corporation.

1 ~~(14)~~(15) "Use" means the operation of motor vehicles upon the public roads or highways of the
2 state or of any political subdivision of the state."

3
4 **Section 3.** Section 15-70-202, MCA, is amended to read:

5 **"15-70-202. License, fee, and security of gasoline distributors.** (1) (a) All gasoline distributors,
6 including exporters, as defined in 15-70-201, and a person who imports, as defined in 15-70-201, prior to
7 the commencement of doing business, shall file:

8 (i) an application for a license with the department of transportation on forms prescribed and
9 furnished by the department setting forth the information as may be requested by the department; and
10 ~~Each distributor shall at the same time file~~

11 (ii) security with the department in an amount to be determined by the department. ~~However, the~~
12 The required amount of security may not exceed twice the estimated amount of gasoline taxes the
13 distributor will pay to this state each month.

14 (b) Upon approval of the application, the department shall issue to the distributor a nonassignable
15 license that is in force until surrendered or canceled.

16 (2) ~~Any~~ A person who engages in the wholesale distribution of gasoline in this state exercising the
17 option under 15-70-201(6)(c) shall pay an annual license fee of \$200.

18 (3) "Security" means:

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

22 (b) a deposit made by the distributor with the department, under conditions as the department may
23 prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the
24 federal deposit insurance corporation.

25 (4) Failure to obtain a gasoline distributor license as required in this section subjects the distributor
26 to the provisions of [section 6] allowing for the seizure, confiscation, and possible forfeiture of the fuel."

27
28 **Section 4.** Section 15-70-301, MCA, is amended to read:

29 **"15-70-301. Definitions.** As used in this part, the following definitions apply:

30 (1) "Agricultural use" means use of special fuel by a person whose major endeavor is the business

1 of farming or ranching and whose primary source of earned income is from the business of farming or
2 ranching.

3 (2) "Bond" means:

4 (a) a bond executed by a special fuel user as principal with a corporate surety qualified under the
5 laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all
6 requirements of this part, including the payment of all taxes, penalties, and other obligations of the special
7 fuel user arising out of this part; or

8 (b) a deposit with the department by the special fuel user, under terms and conditions that the
9 department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and
10 insured by the federal deposit insurance corporation.

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

13 (4) "Cardtrol" or "keylock" means ~~any~~ a unique device intended to allow access to a special fuel
14 dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user
15 of the unique device.

16 (5) "Department" means the department of transportation.

17 (6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a
18 storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the
19 transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of
20 the following:

21 (i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage
22 tanks in this state;

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

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

26 (b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be
27 distributed only by a person who is the holder of a valid distributor's license.

28 (c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery
29 or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

30 (7) "Distributor" means:

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

3 (b) an importer who imports special fuel for sale, use, or distribution;

4 (c) a person who engages in the wholesale distribution of special fuel in this state and chooses to
5 become licensed to assume the Montana state special fuel tax liability; and

6 (d) an exporter.

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

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

12 (10) "Import" means to first receive special fuel into possession or custody after its arrival and
13 coming to rest at a destination within the state or to first receive any special fuel shipped or transported
14 into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

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

17 (12) "Improperly imported fuel" means special fuel as defined in subsection (16) that is:

18 (a) consigned to a Montana destination and imported into the state without the distributor first
19 having obtained a Montana special fuel distributor license as required in 15-70-341; or

20 (b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title
21 15, chapter 70.

22 ~~(12)~~(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets
23 of this state and that are operated in whole or in part by the combustion of special fuel.

24 ~~(13)~~(14) "Person" includes any person, firm, association, joint-stock company, syndicate,
25 partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or
26 imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners
27 or members and, as applied to joint-stock companies and corporations, the officers.

28 ~~(14)~~(15) "Public roads and highways of this state" means all streets, roads, highways, and related
29 structures:

30 (a) built and maintained with appropriated funds of the United States, the state of Montana, or any

1 political subdivision of the state;

2 (b) dedicated to public use;

3 (c) acquired by eminent domain; or

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

6 ~~(15)~~(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel
7 fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test,
8 except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads
9 and highways within the state of Montana. The term special fuel includes all other types of additives when
10 the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

11 ~~(16)~~(17) "Special fuel dealer" means:

12 (a) ~~any~~ a person in the business of handling special fuel who delivers any part of the fuel into the
13 fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

14 (b) ~~any~~ a person who sells special fuel at a location unattended by the dealer through an
15 unattended pump by use of a cardtrol, keylock, or similar device; or

16 (c) ~~any~~ a person who provides ~~any~~ a facility, with or without attended services, from which more
17 than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then
18 controlled by the dealer.

19 ~~(17)~~(18) "Special fuel user" means ~~any~~ a person other than the U.S. government, a state, or a
20 county, incorporated city or town, or school district of this state who consumes in this state special fuel
21 for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

22 ~~(18)~~(19) "Use", when the term relates to a special fuel user, means the consumption by a special
23 fuel user of special fuels in the operation of a motor vehicle on the highways of this state."

24

25 **Section 5.** Section 15-70-341, MCA, is amended to read:

26 **"15-70-341. License, fee, and security of special fuel distributors.** (1) (a) All special fuel
27 distributors, including importers and exporters as defined in 15-70-301, prior to the commencement of
28 doing business, shall file;

29 (i) an application for a license with the department, on forms prescribed and furnished by the
30 department, setting forth the information that may be requested by the department; and ~~Each distributor~~

1 ~~shall at the same time file~~

2 (ii) security with the department in an amount to be determined by the department. ~~However, the~~

3 (b) The required amount of security may not exceed twice the estimated amount of special fuel
4 taxes the distributor will pay to this state each month.

5 (c) Upon approval of the application, the department shall issue to the distributor a nonassignable
6 license that continues in force until surrendered or revoked.

7 (2) A person who engages in the wholesale distribution of special fuel in this state exercising the
8 option under 15-70-301(7)(c) and not already licensed under 15-70-202 shall pay an annual license fee of
9 \$200.

10 (3) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee
11 of \$100.

12 (4) Failure to obtain a special fuel distributor license as required in this section subjects the
13 distributor to the provisions of [section 6], allowing for the seizure, confiscation, and possible forfeiture of
14 the fuel.

15 ~~(4)~~(5) As used in this section, "security" means:

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

19 (b) (i) a deposit made by the distributor with the department, under the conditions that the
20 department may prescribe; or

21 (ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal
22 deposit insurance corporation."

23

24 NEW SECTION. Section 6. Improperly imported fuel -- seizure. (1) As used in this section, the
25 following definitions apply:

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

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

28 (c) "peace officer" means an employee of the department of transportation appointed as a peace
29 officer under 61-12-201.

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

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

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

6 (3) The peace officer shall obtain authorization from the ~~administrator of the department's motor~~
7 ~~carrier services division or the administrator of the department's administration division~~ DIRECTOR OF THE
8 DEPARTMENT OF TRANSPORTATION OR THE DIRECTOR'S DESIGNEE before seizing fuel.

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

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

14 (b) unload the fuel; and

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

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

18 (a) the original owner of the fuel;

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

20 (c) any other interested party.

21 (6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest
22 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
23 fuel, the department shall:

24 (a) provide the opportunity for a hearing;

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

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

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

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

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

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

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

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

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

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

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

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

15 (b) return the fuel.

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

17 (a) fails to file a claim for the seized fuel within the time allowed in subsection (5); or

18 (b) is determined to be guilty of violating fuel tax laws.

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

21

22 **NEW SECTION.** **Section 7. Codification instruction.** [Section 6] is intended to be codified as an
23 integral part of Title 15, chapter 70, part 2, and Title 15, chapter 70, part 3, and the provisions of Title 15,
24 chapter 70, part 2, and Title 15, chapter 70, part 3, apply to [section 6].

25

26 **NEW SECTION.** **Section 8. Effective date.** [This act] is effective on passage and approval.

27

-END-