

SENATE BILL NO. 349—SENATOR JACOBSEN

MARCH 10, 1999

Referred to Committee on Taxation

SUMMARY—Makes various changes to provisions governing special fuels. (BDR 32-1073)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to the tax on special fuel; authorizing the department of motor vehicles and public safety or its authorized agent to stop and inspect a motor vehicle that is using or transporting special fuel in violation of certain provisions; authorizing the department to impose an administrative fine under certain circumstances; requiring a person who resells special fuel that is exempt from the tax on special fuel to collect and remit the tax to the department of motor vehicles and public safety under certain circumstances; authorizing a special fuel supplier to retain a portion of the tax collected as a fee in certain circumstances; reducing the value of the bond that a special fuel dealer is required to provide in certain circumstances; providing a penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 366 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2, 3 and 4 of this act.
- 3 **Sec. 2.** *“Storage tank” means any container designed to transport or*
4 *store fuel, including, without limitation, a fuel tank on a motor vehicle*
5 *that is used to supply fuel for the propulsion of the motor vehicle.*
- 6 **Sec. 3.** *The department may impose an administrative fine of the*
7 *greater of \$1000 or \$10 per gallon of special fuel based on the maximum*
8 *storage capacity of the storage tank that contains the special fuel if a*
9 *person:*
- 10 1. *Sells or stores any special fuel that has been dyed for a use which*
11 *the person selling or storing such fuel knows, or has reason to know, is a*
12 *taxable use of the fuel;*

1 2. *Willfully alters or attempts to alter the strength or composition of*
2 *any dye in any special fuel intended to be used for a taxable purpose; or*

3 3. *Uses special fuel that has been dyed for a taxable purpose.*

4 **Sec. 4.** *A special fuel user who is required to hold a special fuel*
5 *user's license pursuant to the provisions of this chapter shall:*

6 1. *If he uses special fuel in a motor vehicle that is operated or*
7 *intended to operate interstate:*

8 (a) *Obtain an identifying device issued pursuant to a cooperative*
9 *agreement entered into pursuant to NRS 366.175; and*

10 (b) *Conspicuously display that identifying device on the exterior of the*
11 *motor vehicle in such location as is required pursuant to the cooperative*
12 *agreement.*

13 2. *At any time he is using special fuel in this state, ensure that his*
14 *license, or a reproduction of the license that is authorized by the*
15 *department, is located in the motor vehicle.*

16 **Sec. 5.** NRS 366.020 is hereby amended to read as follows:

17 366.020 As used in this chapter, unless the context otherwise requires,
18 the words and terms defined in NRS 366.025 to 366.100, inclusive, *and*
19 *section 2 of this act* have the meanings ascribed to them in those sections.

20 **Sec. 6.** NRS 366.150 is hereby amended to read as follows:

21 366.150 1. The department or its authorized agents may:

22 (a) Examine the books, papers, records and equipment of any special
23 fuel supplier, special fuel dealer, special fuel user or person transporting or
24 storing special fuel as defined in NRS 366.060; ~~and~~

25 (b) Investigate the character of the disposition which any person makes
26 of ~~that fuel,~~ *special fuel; and*

27 (c) *Stop and inspect a motor vehicle that is using or transporting*
28 *special fuel,*

29 to determine whether all excise taxes due pursuant to this chapter are being
30 properly reported and paid.

31 2. The fact that ~~those~~ *the* books, papers, records and equipment
32 *described in paragraph (a) of subsection 1* are not maintained in this state
33 at the time of demand does not cause the department to lose any right of
34 examination pursuant to this chapter at the time and place those books,
35 papers, records and equipment become available.

36 **Sec. 7.** (Deleted by amendment.)

37 **Sec. 8.** NRS 366.207 is hereby amended to read as follows:

38 366.207 1. Except as otherwise provided in subsections 2 and 3, each
39 special fuel supplier who sells or distributes special fuel to which dye has
40 not been added shall, at the time the special fuel is purchased, collect the tax
41 imposed pursuant to NRS 366.190.

2. A special fuel supplier may sell special fuel to a purchaser without collecting the tax imposed pursuant to NRS 366.190 if the purchaser of the special fuel:

(a) Has been issued a permit by the department pursuant to NRS 366.397; and

(b) Elects to defer payment of the tax.

3. A special fuel supplier shall not collect the tax imposed pursuant to NRS 366.190 if the purchaser of the special fuel is:

(a) A special fuel supplier;

(b) A special fuel exporter; or

(c) A special fuel dealer.

4. A special fuel supplier who sells special fuel to any other special fuel supplier or special fuel dealer shall keep such records of the transaction as the department may require. The department shall adopt regulations setting forth:

(a) The records which must be kept by the special fuel supplier pursuant to this subsection; and

(b) The period for which those records must be kept by the special fuel supplier.

5. If, within a period of 6 months, a person purchases not less than 200 gallons of special fuel in this state which is used for a purpose that is exempt from the payment of the tax on special fuel pursuant to NRS 366.200, he may apply to the department for a refund in the manner prescribed in subsection 6 of NRS 366.650.

6. Any person who resells, for a taxable purpose, special fuel that was exempt from the tax imposed by this chapter and to which dye has not been added shall collect the tax and remit it to the department.

Sec. 9. NRS 366.390 is hereby amended to read as follows:

366.390 1. Except as otherwise provided in subsection ~~[3,]~~ 2, the department shall allow each special fuel supplier ~~[or special fuel dealer]~~ to retain an amount equal to 2 percent of the amount of the tax collected by the special fuel supplier ~~[or special fuel dealer]~~ as a fee for making the collection.

2. ~~[If the special fuel for which the tax was collected by the special fuel supplier is sold to a purchaser who has been issued a permit pursuant to NRS 366.397, the special fuel supplier:~~

~~—(a) Is entitled to retain one-half of the fee; and~~

~~—(b) Shall distribute one-half of the fee to the purchaser. If the fuel is resold by that purchaser to another purchaser who has been issued a permit pursuant to NRS 366.397, the purchaser who sells the special fuel to the subsequent purchaser shall distribute to that subsequent purchaser one-half of the fee he received from the special fuel supplier.~~

1 ~~3.1~~ A special fuel supplier who fails to submit a tax return pursuant to
2 NRS 366.383 or a special fuel dealer who fails to submit a tax return
3 pursuant to NRS 366.386 is not entitled to the fee authorized pursuant to
4 subsection 1 for any month for which a tax return is not filed.

5 **Sec. 10.** NRS 366.550 is hereby amended to read as follows:

6 366.550 1. An applicant for or holder of a special fuel supplier's or
7 special fuel dealer's license shall provide a bond executed by him as
8 principal, and by a corporation qualified pursuant to the laws of this state as
9 surety, payable to the State of Nevada, and conditioned upon the faithful
10 performance of all of the requirements of this chapter and upon the
11 punctual payment of all excise taxes, penalties and interest due to the State
12 of Nevada. The total amount of the bond or bonds of any holder of a
13 special fuel supplier's or special fuel dealer's license must be fixed by the
14 department at not less than three times the estimated maximum monthly
15 tax, determined in such a manner as the department deems proper, but the
16 amount must not be less than \$1,000 ~~H~~ *for a special fuel supplier and*
17 *must not be less than \$100 for a special fuel dealer.* If the department
18 determines that a person is habitually delinquent in the payment of amounts
19 due to the department, it may increase the amount of his security to not
20 more than five times the estimated maximum monthly tax. When cash or a
21 savings certificate, certificate of deposit or investment certificate is used,
22 the amount required must be rounded off to the next larger integral multiple
23 of \$100.

24 2. No recovery on any bond, nor the execution of any new bond, nor
25 the suspension or revocation of any special fuel supplier's or special fuel
26 dealer's license affects the validity of any bond.

27 3. In lieu of a bond or bonds, an applicant for or holder of a special
28 fuel supplier's or special fuel dealer's license may deposit with the state
29 treasurer, under such terms as the department may prescribe, a like amount
30 of lawful money of the United States or any other form of security
31 authorized by NRS 100.065. If security is provided in the form of a savings
32 certificate, certificate of deposit or investment certificate, the certificate
33 must state that the amount is unavailable for withdrawal except upon order
34 of the department.

35 4. If the holder of a special fuel supplier's or special fuel dealer's
36 license is required to provide a bond of more than \$5,000, the department
37 may reduce the requirements for the bond to not less than \$5,000 upon the
38 supplier's or dealer's faithful performance of all the requirements of this
39 chapter and the punctual payment of all taxes due the State of Nevada for
40 the 3 preceding calendar years.

41 5. The department shall immediately reinstate the original requirements
42 for a bond for a holder of a special fuel supplier's or special fuel dealer's
43 license upon

his:

- 1 (a) Lack of faithful performance of the requirements of this chapter; or
- 2 (b) Failure to pay punctually all taxes, fees, penalties and interest due
- 3 the State of Nevada.

4 **Sec. 11.** NRS 366.720 is hereby amended to read as follows:

5 366.720 Any person who:

- 6 1. Fails or refuses to pay the tax imposed by this chapter;
- 7 2. Engages in business in this state as a special fuel user, special fuel
- 8 dealer or special fuel supplier without being the holder of a license to
- 9 engage in that business;
- 10 3. Fails to make any of the reports required by this chapter;
- 11 4. Makes any false statement in any application, report or statement
- 12 required by this chapter;
- 13 5. Refuses to permit the department or any authorized agent to examine
- 14 records as provided by this chapter;
- 15 6. Fails to keep proper records of quantities of special fuel received,
- 16 produced, refined, manufactured, compounded, used or delivered in this
- 17 state as required by this chapter; ~~{or}~~
- 18 7. Makes any false statement in connection with an application for the
- 19 refund of any money or taxes provided in this chapter ~~{;}~~ ;
- 20 8. *Violates the provisions of section 4 of this act;*
- 21 9. *Fails or refuses to stop his motor vehicle for an inspection to*
- 22 *determine if all excise taxes due pursuant to the provisions of this*
- 23 *chapter are being properly reported and paid; or*
- 24 10. *Refuses to allow the department or an authorized agent to inspect*
- 25 *a motor vehicle to determine whether all excise taxes due pursuant to the*
- 26 *provisions of this chapter are being properly reported and paid,*
- 27 is guilty of a misdemeanor.

28 **Sec. 12.** NRS 366.740 is hereby amended to read as follows:

- 29 366.740 1. ~~{The}~~ *Except as otherwise provided in section 3 of this*
- 30 *act, the* department may impose an administrative fine, not to exceed
- 31 \$2,500, for a violation of any provision of this chapter, or any regulation or
- 32 order adopted or issued pursuant thereto.
- 33 2. The department shall afford to any person ~~{so}~~ fined *pursuant to*
- 34 *this section or section 3 of this act* an opportunity for a hearing pursuant to
- 35 the provisions of NRS 233B.121.
- 36 ~~{2.}~~ 3. All administrative fines collected by the department pursuant to
- 37 subsection 1 *or section 3 of this act* must be deposited with the state
- 38 treasurer to the credit of the state highway fund.
- 39 ~~{3.}~~ 4. In addition to any other remedy provided by this chapter, the
- 40 department may compel compliance with any provision of this chapter and
- 41 any regulation or order adopted or issued pursuant thereto by injunction or
- 42 other appropriate remedy. The department may institute and maintain in the
- 43 name of the State of Nevada any such enforcement proceedings.

- 1 **Sec. 13.** The amendatory provisions of this act do not apply to
- 2 offenses that were committed before July 1, 1999.
- 3 **Sec. 14.** This act becomes effective on July 1, 1999.

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