

ASSEMBLY BILL NO. 255—ASSEMBLYWOMAN KIRKPATRICK
(BY REQUEST)

MARCH 21, 2005

Referred to Committee on Transportation

SUMMARY—Revises certain provisions relating to taxation of special fuels and dyed special fuels. (BDR 32-1258)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: No.

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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 taxation; expanding the circumstances under which the Department of Motor Vehicles may order the locking and sealing of a business; prohibiting a retailer or other person from selling or distributing dyed special fuel unless he controls the access to the dyed special fuel; requiring the retailer or other person to approve each purchaser of dyed special fuel; requiring the preservation of certain records; authorizing the Department of Motor Vehicles to take certain disciplinary action; providing penalties; 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.** NRS 360A.030 is hereby amended to read as
2 follows:
3 360A.030 1. If a person ~~{continues}~~ :
4 ***(a) Continues*** to engage in business in this State without a
5 permit or license as required by chapter 365 or 366 of NRS, or after
6 the license or permit has been suspended or revoked ~~{ }~~ ;



1 ***(b) Knowingly sells at retail any fuel that is subject to taxation***
2 ***pursuant to chapter 365 or 366 of NRS for which the tax imposed***
3 ***by chapter 365 or 366 of NRS is not remitted; or***

4 ***(c) Sells or otherwise distributes dyed special fuel in violation***
5 ***of section 6 of this act,***

6 ➔ the Department may, after providing notice to that person, order
7 any place of business of the person to be locked and sealed. If notice
8 is served by mail, it must be addressed to the person at his address
9 as it appears in the records of the Department.

10 2. The order to lock and seal a place of business must be
11 delivered to the sheriff of the county in which the business is
12 located. The sheriff shall assist in the enforcement of the order.

13 **Sec. 2.** Chapter 366 of NRS is hereby amended by adding
14 thereto the provisions set forth as sections 3 to 6, inclusive, of this
15 act.

16 **Sec. 3.** ***“Dyed special fuel” means special fuel which, in***
17 ***accordance with subsection 1 of NRS 366.203, must be dyed***
18 ***before it is removed for distribution from the rack.***

19 **Sec. 4.** ***“Retail station” means any fixed facility or location***
20 ***that:***

21 1. ***Operates in the retail business of selling or handling fuel;***
22 ***and***

23 2. ***Dispenses fuel from a stationary pump or metered tank for***
24 ***which the access to the fuel is not controlled.***

25 **Sec. 5.** ***“Retailer” means any person, other than a dealer or***
26 ***supplier, who is engaged in the business of selling or handling any***
27 ***special fuel at a retail station and who delivers or authorizes the***
28 ***delivery of fuel into the fuel supply tank of a motor vehicle that is***
29 ***not owned by that person.***

30 **Sec. 6.** 1. ***A retailer or any other person who sells or***
31 ***distributes dyed special fuel shall not sell or distribute the dyed***
32 ***special fuel unless the retailer or person controls the access to the***
33 ***dyed special fuel.***

34 2. ***A retailer or other person may sell or distribute the dyed***
35 ***special fuel only to a purchaser who has been approved to***
36 ***purchase the dyed special fuel from the retailer or other person.***
37 ***To be approved to purchase dyed special fuel from a retailer or***
38 ***other person, a purchaser must provide to the retailer or other***
39 ***person a written statement of acknowledgement and intended use***
40 ***on a form provided by the Department and completed by the***
41 ***purchaser that includes:***

42 ***(a) The full name and address of the purchaser;***

43 ***(b) A description of the manner in which the purchaser***
44 ***intends to use the dyed special fuel;***

45 ***(c) An attestation indicating that the purchaser:***



1 (1) Will only use the dyed special fuel for a purpose that is
2 not taxable pursuant to this chapter; and

3 (2) Is aware of the penalties set forth NRS 366.735, a copy
4 of which must be included on the statement; and

5 (d) The signature of the purchaser.

6 3. A retailer or other person who sells or distributes dyed
7 special fuel shall keep on file a completed statement of
8 acknowledgment and intended use for each person approved to
9 purchase dyed special fuel from the retailer or other person.

10 4. In addition to any action that may be taken pursuant to
11 chapter 360A of NRS, the Department may impose on a retailer or
12 any other person who violates the provisions of subsection 1 an
13 administrative fine of not more than \$10,000 for each violation.

14 **Sec. 7.** NRS 366.020 is hereby amended to read as follows:

15 366.020 As used in this chapter, unless the context otherwise
16 requires, the words and terms defined in NRS 366.025 to 366.100,
17 inclusive, *and sections 3, 4 and 5 of this act* have the meanings
18 ascribed to them in those sections.

19 **Sec. 8.** NRS 366.140 is hereby amended to read as follows:

20 366.140 1. Every special fuel supplier, special fuel dealer,
21 special fuel exporter, special fuel transporter, ~~for~~ special fuel user
22 *and retailer*, and every other person transporting or storing special
23 fuel in this State shall keep such records, receipts, invoices and other
24 pertinent papers with respect thereto as the Department requires.

25 2. The records, receipts, invoices and other pertinent papers
26 ~~used in the preparation of a report or return required pursuant to~~
27 ~~this chapter~~ *described in subsection 1* must be preserved for 4
28 years after the ~~report or return is filed with the Department.~~ *date*
29 *on which the record, receipt, invoice or other pertinent paper was*
30 *created or generated.*

31 3. The records, receipts, invoices and other pertinent papers
32 must be available at all times during business hours to the
33 Department or its authorized agents.

34 **Sec. 9.** NRS 366.203 is hereby amended to read as follows:

35 366.203 1. Special fuel, other than compressed natural gas,
36 liquefied petroleum gas or kerosene, which is exempt from the tax
37 pursuant to subsection 3 or 4 of NRS 366.200 must be dyed before it
38 is removed for distribution from a rack. The dye added to the
39 exempt special fuel must be of the color and concentration required
40 by the regulations adopted by the Secretary of the Treasury pursuant
41 to 26 U.S.C. § 4082.

42 2. Except as otherwise provided in subsections 3, 4 and 5, a
43 person shall not operate or maintain on any highway in this State a
44 motor vehicle which contains *dyed special fuel* in the fuel tank of
45 that vehicle. ~~special fuel which has been dyed.~~ A person who



operates or maintains a motor vehicle in violation of this subsection and the registered owner of the motor vehicle are jointly and severally liable for any taxes, penalties and interest payable to the Department.

3. A person who, pursuant to subsection 2, 3 or 4 of NRS 366.200, is exempt from the tax imposed by this chapter may operate or maintain a motor vehicle on a highway in this State which contains *dyed special fuel* in the fuel tank of that vehicle . ~~{special fuel which has been dyed.}~~

4. To the extent permitted by federal law, a person may operate or maintain on a highway in this State any special mobile equipment or farm equipment that contains *dyed special fuel* in the fuel tank of the special mobile equipment or farm equipment . ~~{special fuel which has been dyed.}~~ As used in this subsection:

(a) "Farm equipment" means any self-propelled machinery or motor vehicle that is designed solely for tilling soil or for cultivating, harvesting or transporting crops or other agricultural products from a field or other area owned or leased by the operator of the farm equipment and in which the crops or agricultural products are grown, to a field, yard, silo, cellar, shed or other facility which is:

(1) Owned or leased by the operator of the farm equipment; and

(2) Used to store or process the crops or agricultural products.

↳ The term includes a tractor, baler or swather or any implement used to retrieve hay.

(b) "Highway" does not include a controlled-access highway as defined in NRS 484.041.

5. To the extent authorized by federal law, a person may operate or maintain a motor vehicle on a highway in this State that contains *dyed special fuel* in the fuel tank ~~{special fuel which has been dyed}~~ if the motor vehicle is used only to cross the highway to travel from one parcel of land owned or controlled by the person to another parcel of land owned or controlled by the person.

6. There is a rebuttable presumption that all special fuel which ~~{has not been dyed}~~ *is not dyed special fuel* and which is sold or distributed in this State is for the purpose of propelling a motor vehicle.

Sec. 10. NRS 366.220 is hereby amended to read as follows:

366.220 1. Except as otherwise provided in this chapter, it is unlawful for any:

(a) Special fuel supplier, special fuel dealer or special fuel user to sell or use special fuel within this State unless the special fuel supplier, special fuel dealer or special fuel user is the holder of a



1 special fuel supplier's, special fuel dealer's or special fuel user's
2 license issued to him by the Department.

3 (b) Person to be a:

4 (1) Special fuel exporter unless the person is the holder of a
5 special fuel exporter's license issued to him by the Department.

6 (2) Special fuel transporter unless the person is the holder of
7 a special fuel transporter's license issued to him by the Department.

8 *(c) Retailer or other person to sell or distribute dyed special*
9 *fuel unless the retailer or person controls the access to the dyed*
10 *special fuel.*

11 2. The Department may adopt regulations relating to the
12 issuance of any special fuel supplier's, special fuel dealer's, special
13 fuel exporter's, special fuel transporter's or special fuel user's
14 license and the collection of fees therefor.

15 **Sec. 11.** NRS 366.360 is hereby amended to read as follows:

16 366.360 1. The Department shall cancel any license to act as
17 a special fuel supplier, special fuel dealer ~~for~~, *special fuel*
18 *exporter, special fuel transporter or* special fuel user immediately
19 upon the surrender thereof by the holder.

20 2. If a surety has lodged with the Department a written request
21 to be released and discharged of liability, the Department shall
22 immediately notify the special fuel supplier or special fuel dealer
23 who furnished the bond, and unless he files a new bond as required
24 by the Department within 30 days or makes a deposit in lieu thereof
25 as provided in NRS 366.235, the Department may cancel his license.

26 3. If a special fuel supplier or special fuel dealer becomes
27 delinquent in the payment of excise taxes as prescribed by this
28 chapter to the extent that his liability exceeds the total amount of
29 bond furnished by him, the Department may cancel his license
30 immediately.

31 **Sec. 12.** NRS 366.735 is hereby amended to read as follows:

32 366.735 1. The Department may ~~impose an administrative~~
33 ~~fine of the greater of \$1,000 or \$10 per gallon of special fuel based~~
34 ~~on the maximum storage capacity of the storage tank that contains~~
35 ~~the special fuel if a person:~~

36 ~~—1.} take disciplinary action in accordance with subsection 2~~
37 ~~against any person who:~~

38 (a) Sells or stores any *dyed* special fuel ~~[that has been dyed]~~ for
39 a use which the person selling or storing such fuel knows, or has
40 reason to know, is a taxable use of the fuel;

41 ~~[2.} (b) Willfully alters or attempts to alter the strength of~~
42 ~~composition of any dye in any special fuel intended to be used for a~~
43 ~~taxable purpose; or~~

44 ~~[3.} (c) Uses *dyed* special fuel [that has been dyed] for a taxable~~
45 ~~purpose.~~



2. For any violation described in subsection 1, the Department may:

(a) If the violation is a first offense, impose an administrative fine of not more than \$2,500 and suspend any license issued to that person pursuant to this chapter for not more than 30 days;

(b) If the violation is a second offense within a period of 4 years, impose an administrative fine of not more than \$5,000 and suspend any license issued to that person pursuant to this chapter for not more than 60 days; and

(c) If the violation is a third or subsequent offense within a period of 4 years, impose an administrative fine of not more than \$10,000 and revoke any license issued to that person pursuant to this chapter.

Sec. 13. NRS 366.740 is hereby amended to read as follows:

366.740 1. Except as otherwise provided in NRS 366.735 ~~and~~ **and section 6 of this act**, the Department may impose an administrative fine, not to exceed \$2,500, for a violation of any provision of this chapter, or any regulation or order adopted or issued pursuant thereto.

2. The Department shall afford to any person fined pursuant to this section, ~~for~~ NRS 366.735 **or section 6 of this act** an opportunity for a hearing pursuant to the provisions of NRS 233B.121.

3. All administrative fines collected by the Department pursuant to subsection 1, ~~for~~ NRS 366.735 **or section 6 of this act** must be deposited with the State Treasurer to the credit of the State Highway Fund.

4. In addition to any other remedy provided by this chapter, the Department may compel compliance with any provision of this chapter and any regulation or order adopted or issued pursuant thereto by injunction or other appropriate remedy. The Department may institute and maintain in the name of the State of Nevada any such enforcement proceedings.

Sec. 14. This act becomes effective:

1. Upon passage and approval for the purpose of adopting regulations and taking such other actions as are required to carry out the provisions of this act; and

2. On July 1, 2005, for all other purposes.



