

## Amendment No. 194

Assembly Amendment to Assembly Bill No. 235

(BDR 32-897)

**Proposed by:** Assembly Committee on Transportation**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of A.B. 235 (§ 3 &amp; NRS 365.175-365.192, 373.030, 373.065, 590.120, 590.840, § 14, § 21 &amp; NRS 366.190, 366.195).

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) green bold dashed underlining is newly added transitory language.

MSN/TMC



Date: 4/17/2009

A.B. No. 235—Makes various changes to provisions governing the taxation of certain fuels and special fuels. (BDR 32-897)



ASSEMBLY BILL NO. 235—ASSEMBLYMEN HARDY, GOICOECHEA;  
AIZLEY, GRADY, KOIVISTO, SMITH AND STEWART

MARCH 4, 2009

Referred to Committee on Transportation

SUMMARY—Makes various changes to provisions governing the taxation of certain fuels and special fuels. (BDR 32-897)

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: 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 fuel taxes; providing for the taxation of ethanol **and methanol** as ~~fu~~ motor vehicle ~~fuel~~ **fuels** and biodiesel and blends of biodiesel and petroleum-based diesel as special fuels; making various changes concerning the licensure and regulation of persons who manufacture special fuel; providing a penalty; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law provides for the taxation of certain motor vehicle fuels, including gasoline. (NRS 365.060, 365.175-365.192) **Section 3** of this bill includes ethanol **and methanol** within the definition of "motor vehicle fuel" and thereby requires ethanol **and methanol** to be taxed in the same manner and at the same rate as gasoline. In addition, the inclusion of ethanol **and methanol** as ~~fu~~ motor vehicle ~~fuel~~ **fuels** will subject dealers, suppliers, exporters and transporters of ethanol **and methanol** to the same requirements and penalties currently applicable to dealers, suppliers, exporters and transporters of gasoline, including, without limitation, requirements concerning licensing, bonding, recordkeeping and the collection and payment of taxes. (NRS 365.270, 365.290, 365.322, 365.324, 365.330, 365.500-365.530, 365.570-365.605) **Sections 1.7 and 1.9 of this bill authorize the Department of Motor Vehicles to take certain administrative action against a person licensed pursuant to chapter 365 of NRS or a person who acts as a motor vehicle fuel supplier without a license, including the imposition of administrative fines and the suspension or revocation of the license of a licensee under certain circumstances.**

Existing law provides for the taxation of certain special fuels for motor vehicles, including any combustible gas or liquid other than the fuels which are taxed as motor vehicle fuels pursuant to chapter 365 of NRS, and any emulsion of water-phased hydrocarbon fuel used in a motor vehicle. (NRS 366.060, 366.190, 366.195) **Sections 5, 6 and 10** of this bill provide for the taxation of biodiesel and blends of biodiesel and **a** petroleum-based ~~diesel~~ **product** as special fuels.

**Section 7** of this bill defines a "special fuel manufacturer" as a person who manufactures, blends, produces, refines, prepares, distills or compounds only special fuel containing

biodiesel or biodiesel blend in this State for his personal use in this State or for sale or delivery in or outside of this State. **Section 11** of this bill exempts a special fuel manufacturer from regulation as a special fuel supplier. **Section 14** of this bill prohibits a person from acting as a special fuel manufacturer without first obtaining a license from the Department of Motor Vehicles. The Department is authorized to adopt regulations relating to the issuance of a license to a special fuel manufacturer and to collect fees for the issuance of such a license. (NRS 366.220)

~~[Section 19]~~ Sections 18.5 and 19.5 of this bill ~~[requires]~~ require a special fuel manufacturer to file ~~[quarterly]~~ tax returns with the Department ~~[i] in the same manner as a special fuel dealer.~~ (NRS 366.370, 366.386) **Section 21** of this bill requires a special fuel manufacturer to pay the taxes on special fuels imposed by chapter 366 of NRS. (NRS 366.540) **Section 8** of this bill requires a special fuel manufacturer to submit certain monthly reports to the Department. ~~[Section 20 of this bill provides for the imposition of delinquent fees, penalties and interest if a special fuel manufacturer fails to file a tax return or pay a tax by the date due.]~~ **Section 15** of this bill provides that the Department must require a special fuel manufacturer who is habitually delinquent in the payment of special fuel taxes to execute a bond payable to the State in an amount of not less than \$2,500. (NRS 366.235) **Section 22** of this bill requires a special fuel manufacturer to keep certain records as required by the Department. (NRS 366.685)

Sections 8.5 and 23.3 of this bill authorize the Department to take certain administrative action against a person licensed pursuant to chapter 366 of NRS or a person who acts as special fuel supplier without a license, including the imposition of administrative fines and the suspension or revocation of the license of a licensee under certain circumstances. (NRS 366.735) A special fuel manufacturer or any other person who makes a false or fraudulent report with the intent to evade the taxes imposed pursuant to chapter 366 of NRS is guilty of a gross misdemeanor. (NRS 366.710) A special fuel manufacturer who violates any other provision of chapter 366 of NRS as amended by this bill is guilty of a misdemeanor. (NRS 366.720, 366.730)

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

**Section 1.** Chapter 365 of NRS is hereby amended by adding thereto ~~[a new section to read as follows]~~ the provisions set forth as sections 1.3 to 1.9, inclusive, of this act.

**Sec. 1.3.** "Ethanol" means denatured ethyl alcohol [derived from agricultural products and] produced for use as a fuel.

**Sec. 1.5.** "Methanol" means anhydrous methyl alcohol produced for use as a fuel.

**Sec. 1.7. 1.** The Department may take disciplinary action in accordance with subsection 2 against any person who, below the terminal rack:

(a) Sells or stores for personal consumption any motor vehicle fuel for a use which the person selling or storing the fuel knows, or has reason to know, is a taxable use of the fuel and does not report and pay the applicable tax to the Department;

(b) Willfully alters the volume or composition of any motor vehicle fuel which is intended for a taxable use and does not report and pay the applicable tax to the Department; or

(c) Sells motor vehicle fuel which the person selling the fuel knows, or has reason to know, is formulated in a manner that violates any provision of state or federal law governing standards for the formulation of motor vehicle fuel.

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

(a) For a first violation within 4 years, impose an administrative fine of not more than \$2,500 and suspend any license issued to the person pursuant to the provisions of this chapter for not more than 30 days;

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

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

Sec. 1.9. 1. If the Department determines through an audit that a retailer has sold motor vehicle fuel which substantially exceeds the ethanol tolerance for motor vehicle fuel prescribed by federal law, the Department may:

(a) For a first violation and each subsequent violation committed during the first violation year, impose an administrative fine of not more than \$1,000 on the retailer and the supplier of the motor vehicle fuel. The total fines imposed on a person pursuant to this paragraph must not exceed \$100,000.

(b) For each violation committed during the second violation year, impose an administrative fine of not more than \$2,500 on the retailer and the supplier of the motor vehicle fuel and suspend any license issued to the retailer or the supplier pursuant to the provisions of this chapter for not more than 60 days. The total fines imposed on a person pursuant to this paragraph must not exceed \$250,000.

(c) For each violation committed during the third or subsequent violation year, impose an administrative fine of not more than \$5,000 on the retailer and the supplier of the motor vehicle fuel and permanently revoke any license issued to the retailer or the supplier pursuant to the provisions of this chapter. The total fines imposed on a person pursuant to this paragraph must not exceed \$500,000.

2. As used in this section:

(a) "Substantially exceeds" means that a motor vehicle fuel contains a concentration of alcohol or is formulated in a manner which exceeds the standards for the formulation of motor vehicle fuel established by federal law in an amount established by the Department.

(b) "Supplier" includes a person who acts as a supplier of motor vehicle fuel but who is not licensed to engage in business as a supplier pursuant to the provisions of this chapter.

(c) "Violation year" means any calendar year in which the retailer or supplier commits a violation.

**Sec. 2.** NRS 365.010 is hereby amended to read as follows:

365.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 365.015 to 365.092, inclusive, ~~and section 1.9~~ sections 1.3 and 1.5 of this act have the meanings ascribed to them in those sections.

**Sec. 3.** NRS 365.060 is hereby amended to read as follows:

365.060 "Motor vehicle fuel" means gasoline, natural gasoline, casing-head gasoline, , methanol, ethanol or any other inflammable or combustible liquid, regardless of the name by which the liquid is known or sold, the chief use of which in this State is for the propulsion of motor vehicles, motorboats or aircraft other than jet or turbine-powered aircraft. The term does not include kerosene, gas oil, fuel oil, fuel for jet or turbine-powered aircraft, diesel fuel, biodiesel, biodiesel blend, liquefied petroleum gas and an emulsion of water-phased hydrocarbon fuel, as that term is defined in NRS 366.026.

**Sec. 3.5. NRS 365.600 is hereby amended to read as follows:**

365.600 1. ~~The~~ Except as otherwise provided in sections 1.7 and 1.9 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 ~~who~~ fined pursuant to this section or section 1.7 or 1.9 of this act an opportunity for a hearing pursuant to the provisions of NRS 233B.121.

~~3.~~ 3. All administrative fines collected by the Department pursuant to subsection 1 or section 1.7 or 1.9 of this act must be deposited with the State Treasurer to the credit of the State Highway Fund.

~~4.~~ 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. 4.** Chapter 366 of NRS is hereby amended by adding thereto the provisions set forth as sections 5 to ~~8~~ 8.5, inclusive, of this act.

**Sec. 5.** "Biodiesel" means a fuel composed of mono-alkyl esters of long-chain fatty acids derived from vegetable oils or animal fats, including, without limitation, straight vegetable oil and lipid bearing algae, or any other fuel sold or labeled as biodiesel which is suitable for use as a fuel in a motor vehicle.

**Sec. 6.** "Biodiesel blend" means a blend of biodiesel and a petroleum-based diesel product suitable for use as a fuel in a motor vehicle.

**Sec. 7.** "Special fuel manufacturer" means a person who manufactures, blends, produces, refines, prepares, distills or compounds only special fuel containing biodiesel or biodiesel blend in this State for his personal use in this State or for sale or delivery in or outside of this State.

**Sec. 8.** Each special fuel manufacturer shall, not later than the last day of each month, submit to the Department a written report which sets forth:

1. The number of gallons of special fuel containing biodiesel or biodiesel blend the special fuel manufacturer manufactured, blended, produced, refined, prepared, distilled or compounded in this State;

2. The number of gallons of special fuel containing biodiesel or biodiesel blend the special fuel manufacturer manufactured, blended, produced, refined, prepared, distilled or compounded for personal use in this State;

3. The number of gallons of special fuel containing biodiesel or biodiesel blend the special fuel manufacturer sold or delivered in this State;

4. The name and mailing address of each person to whom the special fuel manufacturer sold or delivered special fuel containing biodiesel or biodiesel blend in this State; and

5. The number of gallons of special fuel containing biodiesel or biodiesel blend the special fuel manufacturer sold or distributed to each person described in subsection 4.

**Sec. 8.5.** 1. If the Department determines through an audit that a retailer has sold special fuel containing biodiesel or biodiesel blend which substantially exceeds the biodiesel tolerance for the biodiesel blend posted by the retailer, the Department may:

(a) For a first violation and each subsequent violation committed during the first violation year, impose an administrative fine of not more than \$1,000 on the retailer and the supplier of the special fuel. The total fines imposed on a person pursuant to this paragraph must not exceed \$100,000.

(b) For each violation committed during the second violation year, impose an administrative fine of not more than \$2,500 on the retailer and the supplier of the special fuel and suspend any license issued to the retailer or the supplier

pursuant to the provisions of this chapter for not more than 60 days. The total fines imposed on a person pursuant to this paragraph must not exceed \$250,000.

(c) For each violation committed during the third or subsequent violation year, impose an administrative fine of not more than \$5,000 on the retailer and the supplier of the special fuel and permanently revoke any license issued to the retailer or the supplier pursuant to the provisions of this chapter. The total fines imposed on a person pursuant to this paragraph must not exceed \$500,000.

2. As used in this section:

(a) "Substantially exceeds" means that a special fuel contains a biodiesel blend which exceeds the total volume displayed on the special fuel pump in an amount established by the Department.

(b) "Supplier" includes a person who acts as a supplier of special fuel but who is not licensed to engage in business as a supplier pursuant to the provisions of this chapter.

(c) "Violation year" means any calendar year in which the retailer or supplier commits a violation.

**Sec. 9.** NRS 366.020 is hereby amended to read as follows:

366.020 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 366.025 to 366.100, inclusive, *and sections 5, 6 and 7 of this act* have the meanings ascribed to them in those sections.

**Sec. 10.** NRS 366.060 is hereby amended to read as follows:

366.060 "Special fuel" means any combustible gas or liquid used for the generation of power for the propulsion of motor vehicles, including , without limitation, biodiesel, biodiesel blend and an emulsion of water-phased hydrocarbon fuel. The term does not include motor vehicle fuel as defined in chapter 365 of NRS.

**Sec. 11.** NRS 366.070 is hereby amended to read as follows:

366.070 *1.* "Special fuel supplier" means a person who:

~~1-1~~ (a) Imports or acquires immediately upon importation into this State special fuel from within or without a state, territory or possession of the United States or the District of Columbia into a terminal located in this State;

~~2-1~~ (b) Produces, manufactures or refines special fuel in this State; or

~~3-1~~ (c) Otherwise acquires for distribution in this State special fuel with respect to which there has been no previous taxable sale or use.


*2. The term does not include a special fuel manufacturer.*

**Sec. 12.** NRS 366.150 is hereby amended to read as follows:

366.150 *1.* The Department or its authorized agents may:

(a) Examine the books, papers, records and equipment of any special fuel supplier, special fuel dealer, special fuel exporter, special fuel transporter, special fuel user, *special fuel manufacturer* or any other person transporting or storing special fuel;

(b) Investigate the character of the disposition which any person makes of special fuel; and

(c) Stop and inspect a motor vehicle that is using or transporting special fuel,  to determine whether all excise taxes due pursuant to this chapter are being properly reported and paid.

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

*3.* If a special fuel supplier, special fuel dealer, special fuel exporter, special fuel transporter, ~~or~~ special fuel user *or special fuel manufacturer* wishes to keep

proper books and records pertaining to business done in Nevada elsewhere than within the State of Nevada for inspection as provided in this section, he must pay a fee for the examination in an amount per day equal to the amount set by law for out-of-state travel for each day or fraction thereof during which the examiner is actually engaged in examining those books and records, plus the actual expenses of the examiner during the time that the examiner is absent from this State for the purpose of making the examination, but the time must not exceed 1 day going to and 1 day coming from the place where the examination is to be made in addition to the number of days or fractions thereof the examiner is actually engaged in auditing those books and records. Not more than two such examinations may be charged against any special fuel supplier, special fuel dealer, special fuel exporter, special fuel transporter, ~~or~~ special fuel user *or special fuel manufacturer* in any year.

4. Any money received must be deposited by the Department to the credit of the fund or operating account from which the expenditures for the examination were paid.

5. Upon the demand of the Department, each special fuel supplier, special fuel dealer, special fuel exporter, special fuel transporter, ~~or~~ special fuel user *or special fuel manufacturer* shall furnish a statement showing the contents of the records to such extent and in such detail and form as the Department may require.

**Sec. 13.** NRS 366.160 is hereby amended to read as follows:

366.160 1. All records of mileage operated, origin and destination points within this State, equipment operated in this State, gallons or cubic feet consumed ~~and~~ and tax paid must at all reasonable times be open to the public.

2. All supporting schedules, invoices and other pertinent papers relative to the business affairs and operations of any special fuel supplier, special fuel dealer, special fuel exporter, special fuel transporter, ~~or~~ special fuel user ~~or~~ *or special fuel manufacturer*, and any information obtained by an investigation of the records and equipment of any special fuel supplier, special fuel dealer, special fuel exporter, special fuel transporter, ~~or~~ special fuel user ~~or~~ *or special fuel manufacturer*, shall be deemed confidential and must not be revealed to any person except as necessary to administer this chapter or as otherwise provided by NRS 239.0115 or by any other law.

**Sec. 14.** NRS 366.220 is hereby amended to read as follows:

366.220 1. Except as otherwise provided in this chapter:

(a) Before becoming a special fuel dealer, special fuel supplier, special fuel exporter, special fuel transporter, ~~or~~ special fuel user ~~or~~ *or special fuel manufacturer*, a person must apply to the Department, on forms to be prescribed by the Department, for a license authorizing the applicant to engage in business as a special fuel dealer, special fuel supplier, special fuel exporter, ~~or~~ special fuel transporter ~~or~~ *or special fuel manufacturer*, or to operate as a special fuel user.

(b) It is unlawful for any person to be:

(1) A special fuel dealer without holding a license as a special fuel dealer pursuant to this chapter.

(2) A special fuel supplier without holding a license as a special fuel supplier pursuant to this chapter.

(3) A special fuel exporter without holding a license as a special fuel exporter pursuant to this chapter.

(4) A special fuel transporter without holding a license as a special fuel transporter pursuant to this chapter.

(5) A special fuel user without holding a license as a special fuel user pursuant to this chapter.

*(6) A special fuel manufacturer without holding a license as a special fuel manufacturer pursuant to this chapter.*



2. The Department may adopt regulations relating to the issuance of any license pursuant to this chapter and the collection of fees therefor.

**Sec. 14.3. NRS 366.221 is hereby amended to read as follows:**

366.221 1. Except as otherwise provided in subsection 2, a special fuel user's license is not required of the following classes of special fuel users:

(a) Operators of motor vehicles who make occasional trips into this State for service or repair.

(b) Operators of house coaches as defined in NRS 484.067.

(c) Operators of motor vehicles having a declared gross weight of 26,000 pounds or less.

(d) Operators of unladen motor vehicles purchased in this State for the trip from the point of delivery to the state boundary.

(e) Operators of motor vehicles who make occasional trips into or across this State for nonprofit or eleemosynary purposes.

**(f) Operators of motor vehicles which are operated exclusively within this State.**

2. A person otherwise exempt pursuant to subsection 1 who does not purchase special fuel in this State in an amount commensurate with his consumption of special fuel in the propulsion of motor vehicles on the highways of this State shall secure a special fuel user's license.

**Sec. 14.7. NRS 366.223 is hereby amended to read as follows:**

366.223 1. A special fuel user may, in lieu of causing a motor vehicle that has a declared gross weight in excess of 26,000 pounds to be licensed pursuant to the provisions of NRS 366.220, obtain a temporary permit for special fuel from a vendor authorized to issue permits pursuant to NRS 481.051 before entering ~~the State or immediately upon entering~~ the State. The fee for a temporary permit for special fuel is \$30 and is not refundable.

2. Except as otherwise provided in subsection 3, a temporary permit for special fuel authorizes the operation of such a motor vehicle over the highways of this State from point of entry to point of exit for not more than 24 consecutive hours.

3. The Department may issue to the owner or operator of a common motor carrier of passengers a temporary permit for special fuel that authorizes the operation of the motor carrier for not more than 120 consecutive hours.

4. The Department may adopt regulations relating to the issuance of a temporary permit for special fuel pursuant to this section.

**Sec. 15. NRS 366.235 is hereby amended to read as follows:**

366.235 1. An applicant for or holder of a license as a special fuel supplier or special fuel dealer shall provide a bond executed by him as principal, and by a corporation qualified pursuant to the laws of this State as surety, payable to the State of Nevada, and conditioned upon the faithful performance of all the requirements of this chapter and upon the punctual payment of all excise taxes, penalties and interest due the State of Nevada. The total amount of the bond or bonds of any holder of such a license must be fixed by the Department at not less than three times the estimated maximum monthly tax, determined in such a manner as the Department deems proper, but the amount must not be less than \$1,000 for a special fuel supplier and must not be less than \$100 for a special fuel dealer. If a special fuel supplier or special fuel dealer is habitually delinquent in the payment of amounts due pursuant to this chapter, the Department may increase the amount of his security to not more than five times the estimated maximum monthly tax. When cash or a savings certificate, certificate of deposit or investment certificate is used, the amount required must be rounded off to the next larger integral multiple of \$100.



2. If a special fuel user *or special fuel manufacturer* is habitually delinquent in the payment of amounts due pursuant to this chapter, the Department shall require the special fuel user *or special fuel manufacturer* to provide a bond executed by him as principal, and by a corporation qualified pursuant to the laws of this State as surety, payable to the State of Nevada, and conditioned upon the faithful performance of all the requirements of this chapter and upon the punctual payment of all excise taxes, penalties and interest due the State of Nevada. The total amount of the bond must not be less than \$2,500.

3. No recovery on any bond, execution of any new bond or suspension or revocation of any license as a special fuel supplier, special fuel dealer, ~~for~~ special fuel user *or special fuel manufacturer* affects the validity of any bond.

4. In lieu of a bond or bonds, an applicant for or holder of a license as a special fuel supplier or special fuel dealer, or a person required to provide a bond pursuant to subsection 2, may deposit with the State Treasurer, under such terms as the Department may prescribe, an equivalent amount of lawful money of the United States or any other form of security authorized by NRS 100.065. If security is provided in the form of a savings certificate, certificate of deposit or investment certificate, the certificate must state that the amount is unavailable for withdrawal except upon order of the Department.

5. If the holder of a license as a special fuel supplier or special fuel dealer is required to provide a bond of more than \$5,000, the Department may reduce the requirements for the bond to not less than \$5,000 upon the faithful performance of the special fuel supplier or special fuel dealer of all the requirements of this chapter and the punctual payment of all taxes due the State of Nevada for the 3 preceding calendar years.

6. The Department shall immediately reinstate the original requirements for a bond for a holder of a license as a special fuel supplier or special fuel dealer upon his:

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

7. For the purposes of this section, a person is "habitually delinquent" if, within any 12-month period, the person commits each of the following acts or commits either of the following acts more than once:

(a) Fails timely to file a monthly or quarterly special fuel tax return, unless the Department determines that:

(1) The failure to file was caused by circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care; and

(2) The person has paid any penalty and interest imposed by the Department because of the failure to file.

(b) Fails timely to submit to the Department any tax collected by the person pursuant to this chapter.

**Sec. 16.** NRS 366.240 is hereby amended to read as follows:

366.240 1. Except as otherwise provided in subsection 2, the Department shall:

(a) Upon receipt of the application and bond in proper form, issue to the applicant a special fuel supplier's or special fuel dealer's license.

(b) Upon receipt of the application in proper form, issue to the applicant a special fuel exporter's, special fuel transporter's, ~~for~~ special fuel user's *or special fuel manufacturer's* license.

2. The Department may refuse to issue a license pursuant to this section to any person:

(a) Who formerly held a license issued pursuant to this chapter or a similar license of any other state, the District of Columbia, the United States, a territory or possession of the United States or any foreign country which, before the time of filing the application, has been revoked for cause;

(b) Who applies as a subterfuge for the real party in interest whose license, before the time of filing the application, has been revoked for cause;

(c) Who, if he is a special fuel supplier or special fuel dealer, neglects or refuses to furnish a bond as required by this chapter;

(d) Who is in default in the payment of a tax on special fuel in this State, any other state, the District of Columbia, the United States, a territory or possession of the United States or any foreign country;

(e) Who has failed to comply with any provision of this chapter; or

(f) Upon other sufficient cause being shown.

**Sec. 17.** NRS 366.250 is hereby amended to read as follows:

366.250 Any applicant whose application for a special fuel supplier's license, special fuel dealer's license, special fuel exporter's license, special fuel transporter's license, ~~for~~ special fuel user's license *or special fuel manufacturer's license* has been denied may petition the Department for a hearing. The Department shall:

1. Grant the applicant a hearing.

2. Provide to the applicant, not less than 10 days before the hearing, written notice of the time and place of the hearing.

**Sec. 18.** NRS 366.270 is hereby amended to read as follows:

366.270 If any person ceases to be a special fuel supplier, special fuel dealer, special fuel exporter, special fuel transporter, ~~for~~ special fuel user *or special fuel manufacturer* within this State by reason of the discontinuance, sale or transfer of his business, he shall:

1. Notify the Department in writing at the time the discontinuance, sale or transfer takes effect. The notice must give the date of the discontinuance, sale or transfer, and the name and address of any purchaser or transferee.

2. Surrender to the Department the license issued to him by the Department.

3. If he is:

(a) A special fuel user registered under the Interstate Highway User Fee Apportionment Act, ~~for a special fuel manufacturer,~~ file the tax return required pursuant to NRS 366.380 and pay all taxes, interest and penalties required pursuant to this chapter and chapter 360A of NRS, except that both the filing and payment are due on or before the last day of the month following the month of the discontinuance, sale or transfer of the business.

(b) A special fuel supplier, file the tax return required pursuant to NRS 366.383 and pay all taxes, interest and penalties required pursuant to this chapter and chapter 360A of NRS on or before the last day of the month following the month of the discontinuance, sale or transfer of the business.

(c) A special fuel dealer ~~or~~ *or special fuel manufacturer,* file the tax return required pursuant to NRS 366.386 and pay all taxes, interest and penalties required pursuant to this chapter and chapter 360A of NRS, except that both the filing and payment are due on or before the last day of the month following the month of the discontinuance, sale or transfer of the business.

(d) A special fuel exporter, file the report required pursuant to NRS 366.387 on or before the last day of the month following the month of the discontinuance, sale or transfer of the business.

(e) A special fuel transporter, file the report required pursuant to NRS 366.695 on or before the last day of the month following the month of the discontinuance, sale or transfer of the business.

1       **Sec. 18.5. NRS 366.370 is hereby amended to read as follows:**

2       366.370 1. Except as otherwise provided in this chapter, the excise tax  
3 imposed by this chapter with respect to the use or sale of special fuel during any  
4 calendar quarter is due on or before the last day of the first month following the  
5 quarterly period to which it relates.

6       2. If the due date falls on a Saturday, Sunday or legal holiday, the next  
7 business day is the final due date.

8       3. Payment shall be deemed received on the date shown by the cancellation  
9 mark stamped by the United States Postal Service or the postal service of any other  
10 country upon an envelope containing payment properly addressed to the  
11 Department.

12       4. A special fuel supplier shall pay the tax imposed by this chapter at the time  
13 he files his tax return pursuant to NRS 366.383.

14       5. A special fuel dealer or special fuel manufacturer shall pay the tax  
15 imposed by this chapter at the time he files his tax return pursuant to NRS 366.386.

16       **Sec. 19. ~~[NRS 366.380 is hereby amended to read as follows:~~**

17       ~~366.380 1. On or before the last day of January, April, July and October in~~  
18 ~~each year, each special fuel user registered under the Interstate Highway User Fee~~  
19 ~~Apportionment Act and each special fuel manufacturer shall file with the~~  
20 ~~Department a quarterly tax return for the preceding quarter, regardless of the~~  
21 ~~amount of excise tax due, on a form prescribed by the Department. The special fuel~~  
22 ~~user or special fuel manufacturer shall include with the tax return payment of any~~  
23 ~~excise tax due. If the due date falls on a Saturday, Sunday or legal holiday, the next~~  
24 ~~business day is the final due date.~~

25       ~~2. The return must show such information as the Department may reasonably~~  
26 ~~require for the proper administration and enforcement of this chapter.] (Deleted by~~  
27 ~~amendment.)~~

28       **Sec. 19.5. NRS 366.386 is hereby amended to read as follows:**

29       366.386 1. On or before the last day of the month following each reporting  
30 period, a special fuel dealer or special fuel manufacturer shall file with the  
31 Department a tax return for the preceding reporting period, regardless of the  
32 amount of tax collected, on a form prescribed by the Department.

33       2. The tax return must:

34       (a) Include information required by the Department for the administration and  
35 enforcement of this chapter; and

36       (b) Be accompanied by a remittance, payable to the Department, for the  
37 amount of the tax due.

38       3. Except as otherwise provided in this subsection, the reporting period for a  
39 special fuel dealer or special fuel manufacturer is a calendar month. Upon  
40 application by a special fuel dealer ~~or~~ or special fuel manufacturer, the  
41 Department may assign to the special fuel dealer or special fuel manufacturer for a  
42 specific calendar year:

43       (a) A reporting period consisting of that entire calendar year if the Department  
44 estimates, based upon the tax returns filed by the special fuel dealer or special fuel  
45 manufacturer for the preceding calendar year, that the special fuel dealer or special  
46 fuel manufacturer will sell not more than 200 gallons of special fuel in this State  
47 each calendar month of that reporting period.

48       (b) Two reporting periods consisting of 6 consecutive calendar months,  
49 commencing on the first day of January and July, respectively, if the Department  
50 estimates, based upon the tax returns filed by the special fuel dealer or special fuel  
51 manufacturer for the preceding calendar year, that the special fuel dealer or special  
52 fuel manufacturer will sell more than 200 gallons but not more than 500 gallons of  
53 special fuel in this State each calendar month during those reporting periods.

(c) Four reporting periods consisting of 3 consecutive months, commencing on the first day of January, April, July and October, respectively, if the Department estimates, based upon the tax returns filed by the special fuel dealer or special fuel manufacturer for the preceding calendar year, that the special fuel dealer or special fuel manufacturer will sell more than 500 gallons but less than 5,000 gallons of special fuel in this State each calendar month during those reporting periods.

**Sec. 20.** ~~NRS 366.395 is hereby amended to read as follows:~~  
~~366.395 1. Any special fuel user or special fuel manufacturer who fails to file a tax return or pay any excise tax by the date due shall pay, in addition to any tax that may be due, a delinquent filing fee of \$50 and a penalty of 10 percent of the amount of tax owed, plus interest on the amount of any tax that may be due at the rate of 1 percent per month or fraction thereof, from the date the tax was due until the date of payment.~~

~~2. A tax return, statement or payment is considered delinquent if it is not received by the Department on or before the date the tax return, statement or payment is due, as prescribed by the provisions of this chapter.~~

~~3. A tax return, statement or payment shall be deemed received on the date shown by the cancellation mark stamped by the United States Postal Service or the postal service of any country upon an envelope containing the tax return, statement or payment. (Deleted by amendment.)~~

**Sec. 21.** NRS 366.540 is hereby amended to read as follows:

366.540 1. The tax provided for by this chapter must be paid by special fuel suppliers, special fuel dealers, ~~and~~ special fuel users ~~and~~ and special fuel manufacturers. A special fuel supplier or special fuel dealer shall pay to the Department the excise tax he collects from purchasers of special fuel with the return filed pursuant to NRS 366.383 or 366.386, respectively. The tax paid by a special fuel user must be computed by multiplying the tax rate per gallon provided in this chapter by the amount that the number of gallons of special fuel consumed by the special fuel user in the propulsion of motor vehicles on the highways of this State exceeds the number of gallons of special fuel purchases by him. The tax paid by a special fuel manufacturer must be computed by multiplying the tax rate per gallon provided in this chapter by the number of gallons of special fuel that the special fuel manufacturer places into or sells for placement into the supply tank of a motor vehicle in this State.

2. If the Department determines that a special fuel supplier or special fuel dealer, or any unlicensed person who collects an excise tax, has failed to submit a tax return when due pursuant to this chapter or failed to pay the tax when due pursuant to this chapter, the Department may order the special fuel supplier, special fuel dealer or unlicensed person to hold the amount of all taxes collected pursuant to this chapter in a separate account in trust for the State. The special fuel supplier, special fuel dealer or unlicensed person shall comply with the order immediately upon receiving notification of the order from the Department.

3. A retailer who receives or sells special fuel for which the taxes imposed pursuant to this chapter have not been paid is liable for the taxes and any applicable penalty or interest if the retailer knew or should have known that the applicable taxes on the special fuel had not been paid.

**Sec. 22.** NRS 366.685 is hereby amended to read as follows:

366.685 1. Every special fuel supplier, special fuel dealer, special fuel exporter, special fuel transporter, special fuel user, special fuel manufacturer and retailer, and every other person transporting or storing special fuel in this State shall keep such records, receipts, invoices and other pertinent papers with respect thereto as the Department requires.

2. The records, receipts, invoices and other pertinent papers described in subsection 1 must be preserved for 4 years after the date on which the record, receipt, invoice or other pertinent paper was created or generated.

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

4. In addition to any other penalty that may be imposed, any violation of the provisions of this section constitutes grounds for the Department to deny any future application for a license pursuant to this chapter that is submitted by a person who is determined to be responsible for the violation.

**Sec. 22.5. NRS 366.692 is hereby amended to read as follows:**

366.692 1. Each special fuel supplier or special fuel manufacturer shall prepare and provide a record of shipment to each person who purchases more than 25 gallons of special fuel and transports the special fuel from the place of purchase. The record of shipment must include the:

- (a) Place where the special fuel was purchased;
- (b) Place to which the purchaser declares the special fuel will be transported;
- (c) Number of gallons of special fuel transported;
- (d) Color and concentration of the dye added to the special fuel, if any; and
- (e) Name and address of the purchaser of the special fuel.

2. Each person who transports special fuel in this State shall:

(a) Keep the record of shipment required by subsection 1 in the vehicle in which the special fuel is transported until the special fuel is delivered to the purchaser; and

(b) Upon request from a peace officer, allow the peace officer to inspect the record of shipment.

**Sec. 23. NRS 366.720 is hereby amended to read as follows:**

366.720 1. Any person who:

(a) Fails or refuses to pay the tax imposed by this chapter;

(b) Engages in business in this State as a special fuel manufacturer, special fuel user, special fuel exporter, special fuel dealer or special fuel supplier, or acts in this State as a special fuel transporter, without being the holder of a license to engage in that business or to act in that capacity;

(c) Fails to make any of the reports required by this chapter;

(d) Makes any false statement in any application, report or statement required by this chapter;

(e) Refuses to permit the Department or any authorized agent to examine records as provided by this chapter;

(f) Fails to keep proper records of quantities of special fuel received, produced, refined, manufactured, compounded, used or delivered in this State as required by this chapter;

(g) Makes any false statement in connection with an application for the refund of any money or taxes provided in this chapter;

(h) Violates the provisions of NRS 366.265;

(i) Fails or refuses to stop his motor vehicle for an inspection to determine if all excise taxes due pursuant to the provisions of this chapter are being properly reported and paid; or

(j) Refuses to allow the Department or an authorized agent to inspect a motor vehicle to determine whether all excise taxes due pursuant to the provisions of this chapter are being properly reported and paid,

is guilty of a misdemeanor.

2. Each day or part thereof during which any person engages in business as a special fuel manufacturer, special fuel dealer, special fuel supplier or special fuel exporter or acts as a special fuel transporter without being the holder of a license

authorizing him to engage in that business or to act in that capacity constitutes a separate offense within the meaning of this section.

**Sec. 23.3. NRS 366.735 is hereby amended to read as follows:**

366.735 1. The Department may take disciplinary action in accordance with subsection 2 against any person who ~~is~~ below the terminal rack:

(a) Sells or stores for personal consumption any dyed special fuel for a use which the person selling or storing such fuel knows, or has reason to know, is a taxable use of the fuel ~~is~~ and does not report and pay the applicable tax to the Department;

(b) Willfully ~~alters or attempts to alter the strength of composition~~ decreases or attempts to decrease the concentration of any dye in any special fuel intended to be used for a taxable purpose ~~is~~ and does not report and pay the applicable tax to the Department;

(c) Uses dyed special fuel for a taxable purpose ~~is~~ and does not report and pay the applicable tax to the Department;

(d) Willfully increases or attempts to increase the volume of any special fuel intended to be used for a taxable purpose by adding to the fuel any quantity of special fuel for which the tax imposed pursuant to this chapter has not been paid or any quantity of other product for which any tax imposed pursuant to the laws of this State has not been paid; or

(e) Willfully manufactures, sells, distributes for sale or attempts to manufacture, sell or distribute for sale any special fuel intended to be used for a taxable purpose and for which the tax imposed pursuant to this chapter has not been paid.

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. 23.7. NRS 366.740 is hereby amended to read as follows:**

366.740 1. Except as otherwise provided in NRS 366.733 and 366.735 ~~is~~ and section 8.5 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 or NRS 366.733 or 366.735 or section 8.5 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 or NRS 366.733 or 366.735 or section 8.5 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. 24. NRS 365.072 is hereby repealed.**

**Sec. 25. This act becomes effective upon passage and approval for the purpose of adopting regulations and performing any other preparatory**

- 1 administrative tasks that are necessary to carry out the provisions of this act and on  
2 October 1, 2009, for all other purposes.

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### TEXT OF REPEALED SECTION

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**365.072 “Petroleum-ethanol mixture” defined.** “Petroleum-ethanol mixture” means a fuel containing a minimum of 10 percent by volume of ethyl alcohol derived from agricultural products.