

AN ACT

ENTITLED, An Act to impose a fuel excise tax on ethyl alcohol and methyl alcohol used in motor vehicles on the public roads and highways, to repeal the fuel excise tax on ethanol blends and E85 and M85, and to revise certain provisions regarding the fuel excise tax.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That subdivision (2) of § 10-47B-3 be amended to read as follows:

- (2) "Blender," a person engaged in the activity of making blends. A person need not be a blender to mix two or more substances which have previously been subject to the fuel excise tax imposed by this chapter. A person need not be a blender to mix two or more substances which have not been subject to the fuel excise tax imposed by this chapter, if the mixed product does not result in producing a motor fuel or special fuel;

Section 2. That subdivision (10) of § 10-47B-3 be amended to read as follows:

- (10) "Ethanol blend," a blended motor fuel containing ethyl alcohol of at least ninety-nine percent purity typically derived from agricultural products which is blended exclusively with a product commonly or commercially known or sold as gasoline. The blending of casinghead or natural gasoline is not permitted in an ethanol blend fuel product in quantities larger than required to denature the ethyl alcohol;

Section 3. That subdivision (11) of § 10-47B-3 be repealed:

(11)

Section 4. That subdivision (12) of § 10-47B-3 be amended to read as follows:

- (12) "Ethanol producer," any person who engages in the business of producing ethyl alcohol for sale, use, or distribution;

Section 5. That subdivision (12A) of § 10-47B-3 be amended to read as follows:

- (12A) "Ethyl alcohol," a motor fuel typically derived from agricultural products that has been

denatured as prescribed in § 10-47B-166. This definition does not apply to § 10-47B-162 or 10-47B-166;

Section 6. That § 10-47B-3 be amended by adding thereto a NEW SUBDIVISION to read as follows:

"Methyl alcohol," a motor fuel typically derived from wood products;

Section 7. That § 10-47B-3 be amended by adding thereto a NEW SUBDIVISION to read as follows:

"Methanol producer," any person who engages in the business of producing methyl alcohol for sale, use, or distribution;

Section 8. That subdivision (26) of § 10-47B-3 be repealed:

(26)

Section 9. That subdivision (34A) of § 10-47B-3 be amended to read as follows:

(34A) "Racing fuel," a motor or special fuel that is specifically produced for use in race cars;

Section 10. That subdivision (40) of § 10-47B-3 be amended to read as follows:

(40) "Supplier or shipper," a person that imports or acquires upon import into this state motor fuel or special fuel by pipeline or marine vessel from another state, territory, or possession of the United States into a terminal within this state, or that imports motor fuel or special fuel into this state from a foreign country or that produces, manufactures, or refines motor fuel or special fuel within this state, or that owns motor fuel or special fuel in the pipeline and terminal distribution system in this state and makes sales or authorizes removal of motor fuel or special fuel from a terminal in this state at the rack or is the receiving exchange partner in a two party exchange or the final transferee in a book transfer, and is subject to the general taxing or police jurisdiction of this state, or is required to be registered under Section 4101 of the Internal Revenue Code for transactions in taxable

fuels in the bulk distribution system. The person need not be required to be registered under Section 4101 of the Internal Revenue Code if operating as a railroad company or utility company. A terminal operator may not be considered a supplier merely because the terminal operator handles motor fuel or special fuel consigned to it within a terminal. The name of the supplier or shipper shall be identified and prominently displayed on the bill of lading;

Section 11. That § 10-47B-4 be amended to read as follows:

10-47B-4. The fuel excise tax rates for the tax imposed by this chapter are as follows:

- (1) Motor fuel (except ethyl alcohol, methyl alcohol, and aviation gasoline)--\$.22 per gallon;
- (2) Special fuel (except jet fuel)--\$.22 per gallon;
- (3) Aviation gasoline--\$.06 per gallon;
- (4) Jet fuel--\$.04 per gallon;
- (5) Liquid petroleum gas--\$.20 per gallon;
- (6) Compressed natural gas--\$.10 per gallon;
- (7) Ethyl alcohol and methyl alcohol--\$.08 per gallon.

Section 12. That section 3 of chapter 54 of the 2008 Session Laws be amended to read as follows:

Section 3. That § 10-47B-4 be amended to read as follows:

10-47B-4. The fuel excise tax rates for the tax imposed by this chapter are as follows:

- (1) Motor fuel (except biodiesel, biodiesel blends, ethyl alcohol, methyl alcohol, and aviation gasoline)--\$.22 per gallon;
- (2) Special fuel (except jet fuel)--\$.22 per gallon;
- (3) Aviation gasoline--\$.06 per gallon;
- (4) Jet fuel--\$.04 per gallon;

- (5) Liquid petroleum gas--\$.20 per gallon;
- (6) Compressed natural gas--\$.10 per gallon;
- (7) Ethyl alcohol and methyl alcohol--\$.08 per gallon;
- (8) Biodiesel and biodiesel blends--\$.20 per gallon.

Section 13. That § 10-47B-5 be amended to read as follows:

10-47B-5. A fuel excise tax is imposed on all motor fuel and special fuel that is removed from a terminal in this state at the rack or used at the terminal. This tax is not imposed if the fuel is withdrawn from a terminal for export by the consignee, if the consignee is specifically licensed to export fuel from this state, into the state which is indicated as the destination state on the bill of lading which was issued by the terminal operator for the fuel. This tax is not imposed if the fuel removed is biodiesel which has been removed by a licensed blender or supplier, for resale over a terminal rack and is not sold as a biodiesel blend. The tax imposed shall be at the rate provided for in § 10-47B-4.

Section 14. That § 10-47B-6 be amended to read as follows:

10-47B-6. A fuel excise tax is imposed on all motor fuel or special fuel, except unblended biodiesel, imported into this state in the bulk cargo area of any motor vehicle, vessel rail car, or trailer by any means other than through a terminal located in this state, upon its entry into this state. The tax imposed shall be at the rate provided for in § 10-47B-4.

If the motor fuel imported into this state contains ethyl alcohol or methyl alcohol, the importer shall provide documentation as required by the secretary of the number of gallons that are ethyl alcohol, the number of gallons that are methyl alcohol, the number of gallons that are gasoline, or the number of gallons of any other motor fuel that are contained therein.

Section 15. That § 10-47B-8 be amended to read as follows:

10-47B-8. A fuel excise tax is imposed on all substances blended with motor fuel or undyed

special fuel unless the substance has previously been taxed by the provisions of this chapter. The tax imposed shall be at the rate provided for in § 10-47B-4 of the dominant motor fuel or undyed special fuel with which the substance is blended.

Section 16. That § 10-47B-9 be amended to read as follows:

10-47B-9. A fuel excise tax is imposed on unblended biodiesel sold by a licensed producer, supplier, importer, or blender unless the sale is made to a licensed supplier for resale, to a licensed blender, or to a licensed exporter for export to another state who is specifically licensed to export to that state. The tax imposed shall be at the rate provided for in § 10-47B-4.

Section 17. That chapter 10-47B be amended by adding thereto a NEW SECTION to read as follows:

A fuel excise tax is imposed on ethyl alcohol or methyl alcohol sold by an ethanol producer, methanol producer, supplier, importer, or blender, unless the sale is made to a licensed supplier for resale or to a licensed exporter for export to another state who is specifically licensed to export to that state. The tax imposed shall be at the rate provided for in § 10-47B-4.

Section 18. That § 10-47B-10 be amended to read as follows:

10-47B-10. A fuel excise tax is imposed on all motor fuel or special fuel which has been removed from a terminal in this state at the rack by a licensed exporter for which the bill of lading issued for the fuel by the terminal operator indicates a destination state other than South Dakota, and the fuel is later diverted by the exporter to a destination within this state for off-loading or is transferred or sold to another person within this state prior to off-loading in any destination state. This tax is not imposed if the fuel is biodiesel and the exporter is also licensed as a blender or supplier. The tax imposed shall be at the rate provided for in § 10-47B-4.

Section 19. That § 10-47B-11 be amended to read as follows:

10-47B-11. A fuel excise tax is imposed on liquid petroleum gas and compressed natural gas sold

or used by licensed vendors in this state for use in motor vehicles unless liquid petroleum gas is sold to a licensed liquid petroleum gas user. The tax imposed shall be at the rate provided for in § 10-47B-4.

Section 20. That § 10-47B-12 be amended to read as follows:

10-47B-12. A fuel excise tax is imposed on liquid petroleum gas used in the engine fuel supply tank of a motor vehicle owned or operated by a liquid petroleum user which is used on the public highways or roads of this state. The tax imposed shall be at the rate provided for in § 10-47B-4.

Section 21. That § 10-47B-13 be amended to read as follows:

10-47B-13. A fuel excise tax is imposed on all motor fuel, special fuel, and liquid petroleum gas used in the engine fuel supply tank of self-propelled machinery, equipment, or vehicles used in highway construction or repair work done in this state within the right-of-way, unless the self-propelled machinery, equipment, and vehicles are owned by this state or a county or municipality of this state. The tax imposed shall be at the rate provided for in § 10-47B-4.

Section 22. That § 10-47B-25 be amended to read as follows:

10-47B-25. The tax imposed on ethyl alcohol and methyl alcohol by section 17 of this Act and not exempted by § 10-47B-19 shall be remitted by the selling ethanol producer, methanol producer, supplier, importer, or blender.

Section 23. That § 10-47B-53 be amended to read as follows:

10-47B-53. The bill of lading issued by a terminal operator, bulk plant operator, or transporter as dictated by this chapter shall contain the following information:

- (1) The terminal or bulk plant name and address;
- (2) The date the fuel was withdrawn from the terminal;
- (3) The name and address of the supplier, shipper, or owner of fuel within a bulk plant if withdrawn from a bulk plant;

- (4) The name of the transporter or carrier;
- (5) The destination state. A petroex or similar number does not fulfill this requirement;
- (6) The bill-of-lading number;
- (7) The number of gross gallons of each type of fuel;
- (8) The type of fuel product transported;
- (9) If the fuel contains ethyl alcohol or methyl alcohol, the number of gallons of ethyl alcohol, the number of gallons of methyl alcohol, the number of gallons of gasoline, or the number of gallons of any other motor fuel that are contained therein;
- (10) The name and address of the consignee; and
- (11) Any other information which the secretary deems necessary for the administration and enforcement of this chapter.

Section 24. That § 10-47B-54 be amended to read as follows:

10-47B-54. The diversion ticket issued by a transporter shall contain the following information:

- (1) The transporter's or carrier's name and address;
- (2) The date and time the fuel was withdrawn from the terminal;
- (3) The diversion ticket number;
- (4) The name and address of the supplier or shipper indicated on the original bill of lading or the owner of fuel within a bulk plant if withdrawn from a bulk plant;
- (5) The destination state;
- (6) The original bill-of-lading number;
- (7) The terminal or bulk plant from which the product was withdrawn;
- (8) The number of gross gallons of each fuel type being diverted;
- (9) The type of fuel being diverted;
- (10) If the fuel contains ethyl alcohol or methyl alcohol, the number of gallons of ethyl alcohol,

the number of gallons of methyl alcohol, the number of gallons of gasoline, or the number of gallons of any other motor fuel that are contained therein; and

- (11) Any other information which the secretary deems necessary for the administration and enforcement of this chapter.

Section 25. That § 10-47B-55 be amended to read as follows:

10-47B-55. The drop load ticket issued by a transporter shall contain the following information:

- (1) The transporter's or carrier's name and address;
- (2) The date of delivery of the fuel;
- (3) The drop load ticket number;
- (4) The destination state on the original bill-of-lading, or diversion ticket, if issued;
- (5) The original bill of lading, and if available the diversion ticket number;
- (6) The destination state of each location at which the fuel was off-loaded;
- (7) The number of gross gallons off-loaded at each location;
- (8) The type of fuel off-loaded at each location;
- (9) If the fuel contains ethyl alcohol or methyl alcohol, the number of gallons of ethyl alcohol, the number of gallons of methyl alcohol, the number of gallons of gasoline, or the number of gallons of any other motor fuel that are contained therein; and
- (10) Any other information which the secretary deems necessary for the administration and enforcement of this chapter.

Section 26. That chapter 10-47B be amended by adding thereto a NEW SECTION to read as follows:

Any person acting in this state as a methanol producer shall be licensed as a methanol producer.

Section 27. That § 10-47B-113 be amended to read as follows:

10-47B-113. The blender report required pursuant to § 10-47B-111 shall contain the following



information, if deemed necessary by the secretary:

- (1) The number of gallons of any substances blended with motor fuel or special fuel;
- (2) A schedule of the names and addresses of all sales of blends in quantities of twenty-five gallons or more;
- (3) The number of gallons of biodiesel, the number of gallons of biodiesel blend, and the number of gallons of special fuel used to make a biodiesel blend; and
- (4) The number of gallons of unblended biodiesel sold, including the tax exempt sales made to licensed blenders, licensed suppliers for resale, and to licensed exports for export to a state for which the exporter is specifically licensed to export.

Section 28. That § 10-47B-136 be repealed.

Section 29. That chapter 10-47B be amended by adding thereto a NEW SECTION to read as follows:

A tax report credit for special fuel blended with biodiesel to create biodiesel blend shall be allowed to the licensed blender who performs the blending activity. The tax report credit shall be granted on a per gallon basis in the amount that the rate for special fuel exceeds the rate for biodiesel blend. The credit shall be used to off-set any tax liability resulting from the blending of previously untaxed biodiesel.

This credit is extended only for special fuel which is blended with biodiesel and for no other fuel product. The further blending of additional fuel products with a motor fuel, special fuel, or biodiesel blend as defined under this chapter shall cause this credit to be cancelled and the blended product shall be taxed at the rate of tax for motor fuel and special fuel provided for in § 10-47B-4.

Section 30. That § 10-47B-184 be repealed.

Section 31. That subdivision (14) of § 10-47B-187 be repealed:

- (14)

Section 32. That subdivision (18) of § 10-47B-187 be repealed:

(18)

Section 33. That § 34A-13-20 be amended to read as follows:

34A-13-20. A petroleum release compensation and tank inspection fee is imposed upon any petroleum products upon which the fuel excise tax is imposed by §§ 10-47B-5 to 10-47B-10, inclusive, section 17 of this Act, and 10-47B-13. None of the exemptions from fuel excise tax allowed in § 10-47B-19 apply to this fee. The parties required to pay the fuel excise tax under the provisions of §§ 10-47B-21 to 10-47B-26, inclusive, and 10-47B-29 and 10-47B-31 are liable for payment of the petroleum release and tank inspection fee. In cases where the fuel is exempt from the fuel excise tax under the provisions of subdivisions 10-47B-19(1), (3), and (5), the supplier shall pay the fee. Responsibility for payment of the fee ceases if the petroleum product is sold and delivered by a licensed exporter outside of the state. The amount of the fee imposed is twenty dollars per one thousand gallons of petroleum. Beginning January 1, 2003, fifty percent of the revenue collected pursuant to this section shall be deposited monthly in the ethanol fuel fund and fifty percent of the revenue collected pursuant to this section shall be distributed monthly in the following manner:

- (1) Beginning in fiscal year 2000 to December 31, 2002, inclusive, fifty percent shall be deposited in the state capital construction fund created in § 5-27-1. Beginning on January 1, 2003, seventy-eight and seven-tenths percent shall be deposited in the state capital construction fund; and
- (2) Beginning April 1, 2002, to December 31, 2002, inclusive, twenty-nine and one-tenth percent shall be deposited in the petroleum release compensation fund and twenty and nine-tenths percent shall be deposited in the state highway fund. Beginning on January 1, 2003, twenty-one and three-tenths percent shall be deposited in the petroleum release compensation fund.

An Act to impose a fuel excise tax on ethyl alcohol and methyl alcohol used in motor vehicles on the public roads and highways, to repeal the fuel excise tax on ethanol blends and E85 and M85, and to revise certain provisions regarding the fuel excise tax.

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I certify that the attached Act  
originated in the

SENATE as Bill No. 21

\_\_\_\_\_  
Secretary of the Senate  
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\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 21  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor  
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The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor  
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STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State