

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995

A Bill

SENATE BILL 672

4 By: Senators Wilson and Mahony
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6

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE TITLE 26, CHAPTER 56,
9 SUBCHAPTER 2 TO REQUIRE THAT ALL DIESEL FUEL SOLD, USED OR
10 UTILIZED IN THIS STATE FOR OFF-ROAD PURPOSES SHALL BE
11 DYED; TO REQUIRE THAT ALL DIESEL FUEL SOLD, USED OR
12 UTILIZED IN THIS STATE THAT HAS NOT BEEN DYED SHALL BE
13 TAXED; TO PROVIDE FOR THE ASSESSMENT OF TAXES AND
14 PENALTIES FOR THE MISUSE OF DYED DIESEL FUELS; AND TO
15 REQUIRE ON OR BEFORE JULY 1, 1997 THAT ALL REPORTS AND
16 TAXES REQUIRED TO BE FILED AND REMITTED WITH AND TO THE
17 DIRECTOR OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION
18 PURSUANT TO THE FUEL TAX LAWS OF THIS STATE BE FILED AND
19 REMITTED BY ELECTRONIC MEANS; TO DECLARE AN EMERGENCY; AND
20 FOR OTHER PURPOSES."

Subtitle

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23 "AN ACT PERTAINING TO THE DYEING OF OFF-
24 ROAD DIESEL FUEL AND ELECTRONIC
25 REPORTING AND REMITTING OF FUEL TAXES
26 AND REPORTS."
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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30 SECTION 1. Arkansas Code Annotated Title 26, Chapter 56, Subchapter 2
31 is hereby amended by inserting the following additional sections to read as
32 follows:

33 "§26-56-223. For the purposes of this section through §26-56-231, the
34 words and terms utilized herein, which words and terms are ascribed meanings
35 in §26-56-102 shall have the same meanings ascribed to such words and terms

1 as set out in §26-56-102 unless the context clearly indicates a different
2 meaning, provided, the term *_distillate special fuel,_* as used in this
3 section through §26-56-231, shall have the same meaning as set out in §26-56-
4 102 and shall include diesel, but shall not include products commonly
5 referred to as kerosene, jet fuel, cutter stock nor light cycle oil.

6 §26-56-224.(a)All distillate special fuel sold, used or utilized in
7 this State for off-road purposes, and not for the purpose of fueling motor
8 vehicles, shall be dyed by the person or entity authorized to dye such fuels
9 in accordance and in conformance with Public Law 103-66, and United States
10 Internal Revenue Service Regulations made and promulgated pursuant to that
11 Public Law in effect on the effective date of this Act.

12 (b)All distillate special fuel which has not been dyed in accordance
13 with (a), above, and which is sold, used or utilized in this State for any
14 purpose or purposes shall be taxable at the total per gallon tax rates as set
15 out in this chapter.

16 (c) Off-road consumers purchasing dyed distillate special fuel shall
17 not be required to obtain the annual off-road consumer permits required by §
18 26-56-204(a)(2) and bulk sales of such dyed distillate special fuel may be
19 made to such off-road consumers notwithstanding the provisions of § 26-56-
20 218.

21 §26-56-225.Dyed distillate special fuel shall not be used nor utilized
22 in the fuel supply tank of any motor vehicle with the exception of: state
23 and local government vehicles; local transit buses; intercity buses; school
24 buses; vehicles owned by aircraft museums; vehicles used by nonprofit
25 educational organizations; and Red Cross vehicles, as such vehicles and buses
26 are defined in Public Law 103-66 and United States Internal Revenue Service
27 Regulations made and promulgated pursuant to that Public Law in effect on the
28 effective date of this Act.

29 §26-56-226.The Director, upon finding a motor vehicle using or
30 utilizing dyed distillate special fuel for the purpose of operating that
31 motor vehicle not excepted in §26-56-225, shall assess all taxes due the
32 State at the total per gallon tax rates set out in this chapter upon all fuel
33 that could be contained in the fuel supply tank or tanks of that motor
34 vehicle, if filled to capacity, and, additionally, shall assess a penalty of
35 ten dollars (\$10.00) per gallon on all such fuel that could be contained in

1 the fuel supply tank or tanks of such motor vehicle, if filled to capacity.
2 Further, if any dyed distillate special fuel is found in any fuel storage
3 tank or fuel storage facility outside of the terminal utilized by the
4 operator of that motor vehicle, or any other person, for the purpose of
5 fueling that motor vehicle, the Director shall, for taxation purposes, make
6 an assessment based on the entire amount of such fuel that could be contained
7 in such fuel storage tank or fuel storage facility, if filled to capacity, at
8 the total per gallon tax rates set out in this chapter. Additionally, the
9 Director shall assess a penalty of ten dollars (\$10.00) per gallon on all
10 such fuels that could be contained in any such fuel storage tank or fuel
11 storage facility, if filled to capacity, if such fuels are utilized by the
12 operator of that motor vehicle, or are utilized by any other person, for the
13 purpose of fueling that motor vehicle. The presence of any amount of dyed
14 distillate special fuel in the fuel supply tank of any motor vehicle not
15 excepted in §26-56-225, or in a fuel storage tank or fuel storage facility
16 outside of the terminal utilized by the operator of such motor vehicle, or
17 any other person, for the purpose of fueling that motor vehicle shall create
18 a rebuttable presumption that the entire amount of fuel that could be
19 contained in the fuel supply tank of such motor vehicle, or that could be
20 contained in such fuel storage tank or fuel storage facility, has been, or is
21 being, used or utilized for taxable purposes; thus, the entire amount of such
22 fuel that could be contained in such tanks and facilities, if filled to
23 capacity, shall be susceptible to full distillate special fuel taxation.
24 Such assessments shall be made against the operator or any other person the
25 Director deems responsible for the usage or utilization of such dyed
26 distillate special fuel in that motor vehicle. All penalties authorized by
27 this section shall be in addition to all other penalties provided in this
28 chapter and in the Arkansas Tax Procedure Act (§26-18-101, et seq.).

29 §26-56-227.(a) Dyed distillate special fuel shall not be mixed with
30 undyed distillate special fuel in the fuel supply tank of any motor vehicle,
31 other than in the fuel supply tank of a motor vehicle excepted in §26-56-225,
32 nor in any fuel storage tank nor fuel storage facility, other than fuel
33 storage tanks or fuel storage facilities utilized exclusively for the purpose
34 of fueling motor vehicles excepted in §26-56-225.

35 (b) The Director, upon finding any fuel supply tank of a motor vehicle,

1 fuel storage tank or fuel storage facility outside of the terminal containing
2 mixed dyed and undyed distillate special fuel, which fuel is being used or
3 utilized in a motor vehicle, or, is being stored for ultimate usage or
4 utilization in a motor vehicle not excepted in §26-56-225, shall assess, for
5 taxation purposes, the entire number of gallons of such fuel that could be
6 contained in those fuel supply tanks, fuel storage tanks, or fuel storage
7 facilities, if such tanks or facilities were filled to capacity, as taxable
8 gallons at the total per gallon tax rates set out in this chapter and,
9 additionally, shall assess a penalty of ten dollars (\$10.00) per gallon on
10 all such fuel. The presence of any amount of dyed distillate special fuel in
11 the fuel supply tank of any motor vehicle not excepted in §26-56-225 or in a
12 fuel storage tank or fuel storage facility outside of the terminal utilized
13 by the operator of such motor vehicle, or any other person, for the purpose
14 of fueling that motor vehicle, shall create a rebuttable presumption that the
15 entire amount of fuel that could be contained in the fuel supply tank of such
16 motor vehicle, or of a fuel storage tank or fuel storage facility, if mixed,
17 has been, or is being used or utilized for taxable purposes; thus, the entire
18 amount of such fuel that could be contained in such tanks and facilities, if
19 filled to capacity, shall be susceptible to full distillate special fuel
20 taxation. Such assessments shall be made against the operator of any motor
21 vehicle, or owner or operator of such fuel storage tank or fuel storage
22 facility, outside of the terminal, or any other person the Director deems
23 responsible for the usage or utilization of such distillate special fuel in
24 any motor vehicle involved in the assessment. All penalties authorized by
25 this section shall be in addition to all other penalties provided in this
26 chapter and in the Arkansas Tax Procedure Act (§26-18-101, et seq.).

27 §26-56-228.(a)The Director shall have the authority to stop motor
28 vehicles, take samples of the fuel used or utilized for the operation of
29 those motor vehicles, measure the amounts of fuel that could be contained in
30 the supply tanks of such motor vehicles, and test such fuel, regardless of
31 the location of such motor vehicles.

32 (b)The Director shall have the authority to take samples of distillate
33 special fuel stored in fuel storage tanks or fuel storage facilities, outside
34 of the terminal, which fuel may be used or utilized in motor vehicles, and
35 shall also have the authority to measure the amount of fuel that could be

1 contained in such tanks or facilities, if filled to capacity, and to test
2 such fuel, regardless of the location of such tanks or facilities.

3 (c)Any person who shall refuse to allow the Director to sample, test,
4 and measure the fuel that could be contained in any fuel supply tank of a
5 motor vehicle, or in any fuel storage tank, or in any fuel storage facility,
6 outside of the terminal, shall be assessed taxes at the total per gallon tax
7 rates set out in this chapter upon all fuels, as determined by the Director,
8 that could be contained in such fuel supply tank, fuel storage tank or fuel
9 storage facility, if filled to capacity. Additionally, a penalty of ten
10 dollars (\$10.00) per gallon on all such fuel shall be assessed. It shall be
11 prima facie evidence that the entire amount of such fuel in the fuel supply
12 tank, fuel storage tank or fuel storage facility outside of the terminal is
13 taxable and that, by the refusal to allow such sampling, measuring or
14 testing, distillate special fuel taxes have not been paid on such fuel.
15 Further, the Director shall add a penalty of twenty percent (20%) of the
16 total amount of the assessed taxes, excluding the ten dollars per gallon
17 penalty, to the total amount assessed for willful refusal to allow such
18 sampling, measuring or testing, which penalty shall be in addition to all
19 other penalties provided herein and provided in this chapter and in the
20 Arkansas Tax Procedure Act (§26-18-101, et seq.). Such assessments shall
21 be made against the operator of any motor vehicle, fuel storage tank, or fuel
22 storage facility outside of the terminal involved in the assessment, or any
23 other person the Director deems responsible for the use or utilization of
24 such fuel in any motor vehicle involved in the assessment.

25 §26-56-229.(a)In the event that assessments are made by the Director
26 against the same operator or the same person for violating the provisions of
27 §26-56-226, §26-56-227, or §26-56-228 within three (3) years of any
28 assessment made by the Director for previous violations of any of those
29 provisions, the Director shall assess a penalty of twenty dollars (\$20.00)
30 per gallon on all such fuel assessed and, for third and subsequent violations
31 within a three (3) year period by the same operator or the same person, the
32 Director shall assess a penalty of thirty dollars (\$30.00) per gallon on all
33 such fuel assessed. All assessments made pursuant to this paragraph shall be
34 in lieu of the ten dollars (\$10.00) per gallon penalty otherwise provided in
35 §26-56-226, §26-56-227 and §26-56-228, but shall be in addition to all other

1 penalties provided therein.

2 (b)All assessments and procedures related to assessments authorized by
3 §26-56-223, et seq., shall be conducted in accordance with and pursuant to
4 the "Arkansas Tax Procedure Act" (§26-18-101, et seq.).

5 §26-56-230.All taxes, fees, penalties and other amounts collected under
6 the provisions of §26-56-223 through §26-56-231 shall be classified as
7 special revenues and the net amount shall be distributed as provided by the
8 Arkansas Highway Revenue Distribution Law, Arkansas Code Annotated §§27-70-
9 201 to -203, -206, and -207.

10 §26-56-231.The Director of the Department of Finance and
11 Administration, in consultation with the Director of Highways and
12 Transportation, shall have the authority to make and promulgate rules and
13 regulations to fully implement and enforce the provisions of §§26-56-223
14 through 26-56-230. Provisions shall be included in such rules and
15 regulations to allow any user enumerated in §26-56-225, upon proper notice
16 and certification to the director that dyed distillate special fuel is
17 unavailable to that user at that time, to utilize untaxed undyed distillate
18 special fuels in motor vehicles belonging to such users."

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20 SECTION 2.(a) The Director of the Department of Finance and
21 Administration shall make all necessary preparations in order that all
22 reports submitted beginning July 1, 1997, and thereafter, or beginning before
23 that date, if possible, by: distributors of motor fuel, as required by the
24 Motor Fuel Tax Law (Ark. Code Ann. §26-55-201, et seq.); suppliers of
25 distillate special fuels and liquefied gas special fuels, as required by the
26 Special Motor Fuels Tax Law (Ark. Code Ann. §26-56-101, et seq.); alternative
27 fuel suppliers, as required by the Alternative Fuels Tax Law (Ark. Code Ann.
28 §26-62-101, et seq.) and; all other persons required to submit any type
29 reports to the Director pursuant to those tax laws shall be submitted by
30 electronic means and to insure that such reports shall be processed
31 electronically by the Department of Finance and Administration.

32 (b) The Director shall also make and promulgate rules and regulations
33 to insure that such distributors, suppliers and alternative fuel suppliers
34 beginning July 1, 1997, and thereafter, or beginning before that date, if
35 possible, remit all taxes due the State pursuant to those tax laws by

1 *electronic funds transfer.*

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3 *SECTION 3. All laws and parts of laws in conflict with this Act are*
4 *hereby repealed.*

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6 *SECTION 4. All provisions of this act of a general and permanent*
7 *nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas*
8 *Code Revision Commission shall incorporate the same in the Code.*

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10 *SECTION 5. If any provision of this act or the application thereof to*
11 *any person or circumstance is held invalid, such invalidity shall not affect*
12 *other provisions or applications of the act which can be given effect without*
13 *the invalid provision or application, and to this end the provisions of this*
14 *act are declared to be severable.*

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16 *SECTION 6. EMERGENCY CLAUSE. It is hereby found and determined by the*
17 *Eightieth General Assembly that the United States Congress, through the*
18 *passage of Public Law 103-66, has adopted legislation to curtail the illegal*
19 *usage of diesel fuel that has not been taxed for federal taxation purposes by*
20 *requiring the bulk of off-road non taxed diesel fuels be dyed and by*
21 *requiring the bulk of on-road taxable diesel fuels be undyed; that confusion*
22 *has arisen in this State due to the federal dyeing requirements and usage of*
23 *dyed and undyed diesel fuel and Arkansas laws, which are silent in the area*
24 *of dyed diesel fuels; that the federal government is experiencing success in*
25 *curtailing the abuse of nontaxable diesel fuels, due to the dyeing*
26 *requirements, and this State should realize more fuel tax revenues by*
27 *adopting mechanisms to curtail such abuses with regard to state fuel taxes by*
28 *adopting similar requirements; that the adoption of such mechanisms will more*
29 *equitably insure that highway users pay their fair share for the*
30 *construction, reconstruction and maintenance of highways and bridges in the*
31 *State, county and municipal highway, road, and street systems; and that the*
32 *provisions of this Act are essential to the continued operation of State*
33 *government. Therefore, an emergency is hereby declared to exist, and this*
34 *act being necessary for the immediate preservation of the public peace,*
35 *health and safety shall be in full force and effect on and after its passage*

1 and approval.

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/s/Wilson and Mahony

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