

IN THE SENATE

SENATE BILL NO. 1044

BY TRANSPORTATION COMMITTEE

AN ACT

1 RELATING TO DYED FUEL; AMENDING CHAPTER 6, TITLE 49, IDAHO CODE, BY THE AD-  
2 DITION OF A NEW SECTION 49-675, IDAHO CODE, TO AUTHORIZE JOINT EXERCISE  
3 OF POWERS AGREEMENTS BETWEEN SPECIFIED AGENCIES; AMENDING CHAPTER 6,  
4 TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-676, IDAHO  
5 CODE, TO PROVIDE THAT THE PROVISIONS OF SPECIFIED LAW SHALL BE CARRIED  
6 OUT THROUGH THE USE OF EXISTING RESOURCES AND OTHER FUNDS, TO PROVIDE  
7 THAT CERTAIN VEHICLES SHALL BE SUBJECT TO INSPECTION FOR DYED FUEL, TO  
8 PROVIDE CONDITIONS UNDER WHICH INSPECTIONS MAY BE CONDUCTED, TO PRO-  
9 VIDE THAT SPECIFIED PROVISIONS OF LAW SHALL NOT BE CONSTRUED TO REQUIRE  
10 REPORTING OF VIOLATIONS TO THE FEDERAL GOVERNMENT UNLESS OTHERWISE  
11 REQUIRED TO DO SO, TO PROVIDE FOR THE LIMITATION OF INSPECTION AUTHOR-  
12 ITY, TO PROVIDE FOR OUTREACH AND EDUCATION, TO PROVIDE EXCEPTIONS TO  
13 APPLICABILITY, TO DEFINE A TERM, TO PROVIDE FOR LEGISLATIVE EVALU-  
14 ATION AND TO AUTHORIZE RULEMAKING; AMENDING SECTION 63-2425, IDAHO  
15 CODE, TO PROVIDE THAT THE PRESENCE OF DYE IN CERTAIN MOTOR VEHICLES AT  
16 A DESIGNATED CONCENTRATION OR GREATER SHALL CONSTITUTE A VIOLATION OF  
17 SPECIFIED LAW, TO PROVIDE AN EXCEPTION TO APPLICABILITY OF SPECIFIED  
18 VIOLATION PROVISIONS FOR CERTAIN VEHICLES, TO PROVIDE THAT CERTAIN PER-  
19 SONS MAY INSPECT, COLLECT AND SECURE SAMPLES OF SPECIAL FUEL TO DETECT  
20 THE PRESENCE OF DYE UNDER SPECIFIED CONDITIONS AND TO MAKE TECHNICAL  
21 CORRECTIONS; AND AMENDING SECTION 63-2460, IDAHO CODE, TO REVISE AND TO  
22 PROVIDE PENALTY PROVISIONS.  
23

24 Be It Enacted by the Legislature of the State of Idaho:

25 SECTION 1. That Chapter 6, Title 49, Idaho Code, be, and the same is  
26 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
27 ignated as Section 49-675, Idaho Code, and to read as follows:

28 49-675. LEGISLATIVE INTENT. The Idaho transportation department,  
29 Idaho state police and the Idaho state tax commission are authorized to enter  
30 into one (1) or more joint exercise of powers agreements pursuant to sec-  
31 tions 67-2328 through 67-2333, Idaho Code, as deemed necessary to implement  
32 the provisions of this act. The purpose of this legislation is to provide  
33 a practical inspection method to ensure regulation with a minimum amount of  
34 disruption.

35 SECTION 2. That Chapter 6, Title 49, Idaho Code, be, and the same is  
36 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
37 ignated as Section 49-676, Idaho Code, and to read as follows:

38 49-676. DYED FUEL -- INSPECTION. (1) The provisions of this section  
39 shall be carried out through the use of existing state, county and city law

1 enforcement and Idaho transportation department resources and other funding  
2 as may be available.

3 (2) When stopped at an inspection check station, or when otherwise law-  
4 fully stopped as described in this section, any noncommercial or commercial  
5 diesel-powered motor vehicle shall be subject to inspection for dyed fuel in  
6 the motor vehicle's diesel fuel tank when the operator is requested to submit  
7 to such inspection:

8 (a) By any state, county or city law enforcement officer, when so re-  
9 quested as a secondary action when the operator of the motor vehicle has  
10 been detained for a suspected violation of another law;

11 (b) By any state, county or city law enforcement officer at a fixed or  
12 portable check station established by the Idaho transportation depart-  
13 ment pursuant to the provisions of section 40-510, Idaho Code; or

14 (c) By an authorized employee of the Idaho transportation depart-  
15 ment on duty at a fixed or portable check station established by the  
16 Idaho transportation department pursuant to the provisions of section  
17 40-510, Idaho Code.

18 (3) The provisions of this section shall not be construed to require an  
19 agency of the state to report any violations to the federal government, un-  
20 less otherwise required to do so.

21 (4) Inspection authority as provided in subsection (2) of this section  
22 shall be limited solely to the motor vehicle inspected and shall not serve as  
23 reasonable suspicion for any state, county or city agency to thereafter in-  
24 spect other motor vehicles of the owner. Provided however, other motor vehi-  
25 cles of the owner may be subject to inspection in the event the provisions of  
26 subsection (2) of this section are met.

27 (5) Prior to conducting any inspections pursuant to the provisions of  
28 this section, county and city law enforcement and the Idaho state tax commis-  
29 sion, Idaho state police and Idaho transportation department, in conjunc-  
30 tion with private groups, trade associations and other affected user groups,  
31 shall provide outreach and education relating to the use of dyed fuels in the  
32 state of Idaho for a period of six (6) months.

33 (6) The provisions of this section shall not apply in the event of a dis-  
34 aster or emergency declared by the governor under chapter 10, title 46, Idaho  
35 Code, or by the president of the United States under the provisions of the  
36 disaster relief act of 1974, 42 U.S.C. 5121 et seq., and the fuel is necessary  
37 to assist in the disaster or emergency.

38 (7) For purposes of this section, "dyed fuel" and "highways" have the  
39 same meanings as provided in section 63-2401, Idaho Code.

40 (8) The provisions of this section and associated funding shall be  
41 evaluated by the legislature following a period of five (5) years from the  
42 effective date of this act.

43 (9) The Idaho transportation department, Idaho state police and the  
44 Idaho state tax commission are authorized to promulgate rules in compliance  
45 with chapter 52, title 67, Idaho Code, that may be necessary for the effi-  
46 cient implementation and enforcement of the provisions of this act.

47 SECTION 3. That Section 63-2425, Idaho Code, be, and the same is hereby  
48 amended to read as follows:

1           63-2425. DYED FUEL AND OTHER UNTAXED FUEL PROHIBITED FOR USE ON A  
 2 HIGHWAY. (1) Except as provided in subsection (2) of this section, no person  
 3 shall operate a motor vehicle on a highway in this state if the fuel sup-  
 4 ply tanks of the vehicle contain diesel fuel which has been dyed or marked  
 5 at a refinery or terminal under the provisions of 26 U.S.C. ~~section~~ 4082  
 6 and regulations adopted thereunder, or under the clean air act and regu-  
 7 lations adopted thereunder, or contain other motor fuel on which the tax  
 8 under section 63-2402, Idaho Code, has not been paid. The presence of dye  
 9 in a licensed, or required to be licensed, motor vehicle at a concentration  
 10 of 0.6 parts per million (PPM), or greater, is a violation of this section.  
 11 Provided however, in the event a vehicle that is authorized to use dyed fuel  
 12 on the highway pursuant to the provisions of subsection (2) of this section,  
 13 changes ownership and no longer falls within the provisions of subsection  
 14 (2) of this section, the new owner of the vehicle shall have a grace period of  
 15 three (3) months from the date of purchase of the vehicle during which time  
 16 they shall not be subject to the violation provisions of this section.

17           (2) The following vehicles may use dyed fuel on the highway but are sub-  
 18 ject to the tax under section 63-2402, Idaho Code, unless exempt under other  
 19 provisions of this chapter:

20           (a) State and local government vehicles;

21           (b) Any vehicles ~~which that~~ may use dyed fuel on the highway under the  
 22 provisions of 26 U.S.C. ~~section~~ 4082 or regulations adopted thereunder.

23           (3) For the purposes of enforcement of this section, state, county or  
 24 city law enforcement officers or employees of the Idaho transportation de-  
 25 partment authorized under section 49-676, Idaho Code, may inspect, collect  
 26 and secure samples of special fuel used in the propulsion of a vehicle li-  
 27 icensed or required to be licensed for operation upon the highways of this  
 28 state to detect the presence of dye.

29           SECTION 4. That Section 63-2460, Idaho Code, be, and the same is hereby  
 30 amended to read as follows:

31           63-2460. PENALTIES. (1) Any person who violates any provision of this  
 32 chapter or who violates any provision of Idaho law relating to the assess-  
 33 ment and collection of any unpaid tax or fee associated with this chapter is  
 34 guilty of a misdemeanor, unless the violation is declared a felony by any  
 35 other law of this state. Any person so convicted of a misdemeanor shall be  
 36 punished by a fine of not less than one hundred dollars (\$100) nor more than  
 37 one thousand dollars (\$1,000). Each day that an unlicensed person engages in  
 38 the activities of a licensed distributor constitutes a separate violation.

39           (2) In addition to the provisions of subsection (1) of this section, any  
 40 person operating a vehicle licensed or required to be licensed on a highway  
 41 in this state with diesel fuel in violation of section 63-2425, Idaho Code,  
 42 will be subject to the following:

43           (a) Upon the first violation, a civil penalty in the amount of two hun-  
 44 dred fifty dollars (\$250);

45           (b) Upon the second violation, a civil penalty in the amount of five  
 46 hundred dollars (\$500); ~~and~~

47           (c) Upon the third ~~or subsequent~~ violation, a civil penalty in the  
 48 amount of one thousand dollars (\$1,000) ~~for each such violation;~~ and

1       (d) Upon any subsequent violation, a civil penalty not to exceed ten  
2       thousand dollars (\$10,000) for each such violation.

3       Any person assessed a civil penalty pursuant to the provisions of this sec-  
4       tion may also be assessed administrative costs associated with enforcement.

5       (3) Any person who refuses to allow an inspection pursuant to the pro-  
6       visions of sections 49-676 and 63-2425, Idaho Code, may be subject to a civil  
7       penalty of one thousand dollars (\$1,000) for each refusal. This penalty is  
8       in addition to any other penalty or tax that may be imposed upon that person  
9       or any other person liable for tax or penalty.

10       (4) The commission may assess the penalties set forth in subsection  
11       (2) of this section as deficiencies in tax pursuant to sections 63-2434 and  
12       63-3045, Idaho Code.

13       (45) Penalties are cumulative and each violation of the provisions of  
14       this chapter is subject to a separate penalty. The penalties provided for in  
15       this section shall be in addition to any other penalty imposed by any other  
16       provision of Idaho law.