

IN THE SENATE

SENATE BILL NO. 1379

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO RULES OF THE ROAD; AMENDING CHAPTER 6, TITLE 49, IDAHO CODE, BY  
2 THE ADDITION OF A NEW SECTION 49-675, IDAHO CODE, TO PROVIDE FOR LEG-  
3 ISLATIVE INTENT AND TO AUTHORIZE JOINT EXERCISE OF POWERS AGREEMENTS  
4 BETWEEN SPECIFIED AGENCIES; AMENDING CHAPTER 6, TITLE 49, IDAHO CODE,  
5 BY THE ADDITION OF A NEW SECTION 49-676, IDAHO CODE, TO PROVIDE THAT  
6 CERTAIN VEHICLES SHALL BE SUBJECT TO INSPECTION FOR DYED FUEL IN SPEC-  
7 IFIED CIRCUMSTANCES; AMENDING SECTION 63-2425, IDAHO CODE, TO REVISE  
8 PROVISIONS REGARDING THE PROHIBITION OF CERTAIN FUELS ON A HIGHWAY;  
9 AMENDING SECTION 63-2460, IDAHO CODE, TO REVISE A PROVISION REGARDING  
10 CIVIL PENALTIES; AND AMENDING SECTION 40-510, IDAHO CODE, TO PROVIDE  
11 CERTAIN INSPECTION AUTHORITY AT PORTS OF ENTRY OR CHECKING STATIONS AND  
12 TO MAKE A TECHNICAL CORRECTION.  
13

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

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

18 49-675. LEGISLATIVE INTENT. The Idaho transportation department and  
19 the Idaho state police are authorized to enter into one (1) or more joint ex-  
20 ercise of powers agreements pursuant to sections 67-2328 through 67-2333,  
21 Idaho Code, as deemed necessary to implement the provisions of this act. The  
22 purpose of this legislation is to provide a practical inspection method to  
23 ensure regulation with a minimum amount of disruption.

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

27 49-676. DYED FUEL -- INSPECTION. (1) The provisions of this section  
28 shall be carried out through the use of existing state law enforcement and  
29 Idaho transportation department resources.

30 (2) When stopped at a fixed or portable check station or when otherwise  
31 lawfully stopped as described in this section, any commercial diesel-pow-  
32 ered motor vehicle that is within either of the definitions provided in sec-  
33 tion 49-123(2) (d) or (2) (e), Idaho Code, may be subject to visual inspection  
34 for dyed fuel in the diesel fuel tanks mounted to such vehicle when the opera-  
35 tor is requested to submit to such inspection:

36 (a) By any Idaho state police officer, when so requested as a secondary  
37 action when the operator of the motor vehicle has been detained for a  
38 suspected violation of another law;

1 (b) By any Idaho state police officer at a fixed or portable check sta-  
2 tion established by the Idaho transportation department pursuant to the  
3 provisions of section 40-510, Idaho Code; or

4 (c) By an authorized employee of the Idaho transportation depart-  
5 ment on duty at a fixed or portable check station established by the  
6 Idaho transportation department pursuant to the provisions of section  
7 40-510, Idaho Code.

8 (3) Neither the Idaho state police nor the Idaho transportation depart-  
9 ment shall set up random inspection stations for the purpose of testing for  
10 dyed diesel.

11 (4) No state agency shall report any violation of section 63-2425,  
12 Idaho Code, to any agency of the federal government.

13 (5) Inspection authority as provided in subsection (2) of this section  
14 shall be limited solely to the motor vehicle inspected and shall not serve as  
15 reasonable suspicion for any state agency to thereafter inspect other motor  
16 vehicles, facilities, or property of the motor vehicle's owner beyond the  
17 scope of subsection (2) of this section. Inspection authority shall not ap-  
18 ply to portable fuel tanks or slip tanks that may be in the motor vehicle be-  
19 ing inspected or to any bulk storage tanks.

20 (6) If dyed fuel is discovered pursuant to an inspection authorized by  
21 this section, a citation shall be issued to the operator of the vehicle. The  
22 applicable penalty shall be as provided for in section 63-2460(2), Idaho  
23 Code, except that the penalty for a refusal of inspection shall be one thou-  
24 sand dollars (\$1,000). No additional fines or penalties shall be imposed.  
25 The operator of the vehicle shall be responsible for any penalty pursuant to  
26 this section. All penalties collected shall be remitted to the state trea-  
27 surer and placed in the highway distribution account.

28 (7) The provisions of this section shall not apply in the event of a dis-  
29 aster or emergency declared by the governor under chapter 10, title 46, Idaho  
30 Code, or by the president of the United States under the provisions of the  
31 disaster relief act of 1974, 42 U.S.C. 5121 et seq., if the use of dyed fuel is  
32 necessary to assist with such disaster or emergency.

33 (8) For purposes of this section, "dyed fuel" means diesel fuel that  
34 has been dyed or marked at a refinery or terminal under the provisions of 26  
35 U.S.C. 4082 and regulations adopted thereunder or under the clean air act and  
36 regulations adopted thereunder on which the tax under section 63-2402, Idaho  
37 Code, has not been paid.

38 (9) For purposes of this section, "highways" shall have the same mean-  
39 ing as provided in section 63-2401, Idaho Code.

40 (10) By January 1, 2021, the Idaho transportation department and the  
41 Idaho state police shall enter into one (1) or more joint exercise of powers  
42 agreements pursuant to sections 67-2328 through 67-2333, Idaho Code, as  
43 necessary to implement the provisions of this section.

44 (11) Prior to conducting any inspections under the authority of this  
45 section, the Idaho state police and the Idaho transportation department, in  
46 collaboration with private groups, trade associations, and other dyed fuel  
47 user groups, shall provide outreach and education on the use of dyed fuels in  
48 Idaho for a period of six (6) months from the effective date of this section.

1 (12) The provisions of this section and associated funding shall be  
 2 evaluated by the legislature following a period of five (5) years after the  
 3 effective date of this section.

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

6 63-2425. DYED FUEL AND OTHER UNTAXED FUEL PROHIBITED FOR USE ON A HIGH-  
 7 WAY. (1) Except as provided in subsections (2) and (5) of this section, no  
 8 person shall operate a motor vehicle on a highway in this state if the fuel  
 9 supply tanks of the vehicle contain diesel fuel ~~which that~~ has been dyed or  
 10 marked at a refinery or terminal under the provisions of 26 U.S.C. ~~section~~  
 11 4082 and regulations adopted thereunder, or under the clean air act and regu-  
 12 lations adopted thereunder, or if the tanks contain other motor fuel on which  
 13 the tax under section 63-2402, Idaho Code, has not been paid.

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

17 (a) State and local government vehicles; and

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

20 (3) For the purposes of enforcement of this section, Idaho state police  
 21 officers or employees of the Idaho transportation department may conduct a  
 22 visual observation of fuel to detect the presence of dye. If dye is observed,  
 23 such officers or employees shall take a photograph of the dyed fuel. Such  
 24 photographs shall be preserved as evidence.

25 (4) In the event of a change of ownership or other disposal of a motor  
 26 vehicle authorized to use dyed fuel on the highway pursuant to subsection (2)  
 27 of this section but that no longer falls within the provisions of that sub-  
 28 section, the motor vehicle's owner, before selling or disposing of such ve-  
 29 hicle, shall remove the dyed fuel from the vehicle's fuel tanks and certify  
 30 that such dyed fuel has been removed.

31 (5) Incidental use or crossing of public roads or highways by vehicles  
 32 intended primarily for off-highway use, including as provided for in section  
 33 49-110(3), Idaho Code, with respect to an implement of husbandry, shall not  
 34 be considered a violation of this section.

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

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

45 (2) (a) In addition to Notwithstanding the provisions of subsection (1)  
 46 of this section, any person operating a vehicle licensed or required to

1 be licensed on a highway in this state with diesel fuel in violation of  
2 section 63-2425, Idaho Code, will be subject to the following:

- 3 (a) Upon the first violation, a civil penalty in the amount of two  
4 hundred fifty dollars (\$250);  
5 (b) Upon the second violation, a civil penalty in the amount of  
6 five hundred dollars (\$500); and  
7 (c) Upon the third or subsequent violation, a civil penalty in  
8 the amount of one thousand dollars (\$1,000) for each such viola-  
9 tion.

10 (b) Except for the penalties set forth in paragraph (a) of this subsec-  
11 tion, no additional fines or penalties shall be imposed.

12 (3) The commission may assess the penalties set forth in subsection  
13 (2) of this section as deficiencies in tax pursuant to sections 63-2434 and  
14 63-3045, Idaho Code.

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

19 SECTION 5. That Section 40-510, Idaho Code, be, and the same is hereby  
20 amended to read as follows:

21 40-510. PORTS OF ENTRY OR CHECKING STATIONS ESTABLISHED -- MOTOR VE-  
22 HICLE INVESTIGATOR ACTIVITIES -- AUTHORITY OF THE BOARD TO EMPLOY INDIVIDU-  
23 ALS. (1) To augment and help make more efficient and effective the enforce-  
24 ment of certain laws of the state of Idaho, the Idaho transportation depart-  
25 ment is hereby authorized and directed to establish from time to time tem-  
26 porary or permanent ports of entry or checking stations upon any highways in  
27 the state of Idaho, at such places as the Idaho transportation department  
28 shall deem necessary and advisable.

29 (2) The board is authorized to appoint and employ individuals who shall  
30 have limited peace officer authority for the enforcement of such motor vehi-  
31 cle-related laws as are herein specified:

- 32 (a) Sections 18-3906 and 18-8001, Idaho Code;  
33 (b) Sections 25-1105 and 25-1182(2), Idaho Code;  
34 (c) Sections 40-510 through 40-512, Idaho Code;  
35 (d) Chapters 1 through 5, 9, 10, 15 through 19, 22 and 24, title 49,  
36 sections 49-619, 49-660, 49-1407, 49-1418 and 49-1427 through 49-1430,  
37 Idaho Code;  
38 (e) Authorized use of motor fuel on the highways and international fuel  
39 tax agreement (IFTA) provisions of chapter 24, title 63, Idaho Code; and  
40 (f) Section 67-2901A, Idaho Code; and  
41 (g) Sections 49-676 and 63-2425, Idaho Code.

42 (3) Motor vehicle investigators shall have the authority to access con-  
43 fidential vehicle identification number information.

44 (4) Any employee so appointed shall have the authority to issue mis-  
45 demeanor traffic citations in accordance with the provisions of section  
46 49-1409, Idaho Code, and infraction citations in accordance with the provi-  
47 sions of chapter 15, title 49, Idaho Code.

1           (5) No employee of the department shall carry or use a firearm of any  
2 type in the performance of his duties unless specifically authorized in  
3 writing by the director of the Idaho state police to do so.

4           (6) The board is authorized to extend the authority as provided in this  
5 section to authorized employees of contiguous states upon approval of a bi-  
6 lateral agreement according to the provisions of section 40-317, Idaho Code.