

SSB 5190 - H COMM AMD
By Committee on Transportation

ADOPTED 04/14/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 82.36 RCW
4 to read as follows:

5 SEIZURE AND FORFEITURE. (1) The following are subject to seizure
6 and forfeiture:

7 (a) Motor vehicle fuel imported into this state by a person not
8 licensed in this state in accordance with this chapter to import fuel;

9 (b) Motor vehicle fuel that is blended or manufactured by a person
10 not licensed in this state in accordance with this chapter to blend or
11 manufacture fuel;

12 (c) All conveyances that are used, or intended for use, to
13 transport, or in any manner to facilitate the transportation, for the
14 purpose of sale or receipt of property described in (a) and (b) of this
15 subsection, except where the owner of the conveyance neither had
16 knowledge of nor consented to the transportation of the fuel by an
17 unlicensed importer, blender, or manufacturer of fuel.

18 (2) Before seizing a common carrier conveyance, contract carrier
19 conveyance, or a conveyance secured by a bona fide security interest
20 where the secured party neither had knowledge of or consented to the
21 unlawful act or omission, the state patrol or the department of
22 licensing shall give the common carrier, contract carrier, or secured
23 party, or their representatives within twenty-four hours, a notice in
24 writing served by mail or other means to cease transporting fuel for
25 any person not licensed to import, blend, or manufacture fuel in this
26 state.

27 (3) Property subject to forfeiture under this chapter may be seized
28 by the state patrol upon process issued by a superior court or district
29 court having jurisdiction over the property. Seizure without process
30 may be made if:

1 (a) The seizure is incident to an arrest or a search under a search
2 warrant; or

3 (b) The state patrol has probable cause to believe that the
4 property was used or is intended to be used in violation of this
5 chapter and exigent circumstances exist making procurement of a search
6 warrant impracticable.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.36 RCW
8 to read as follows:

9 FORFEITURE PROCEDURE. In all cases of seizure of property made
10 subject to forfeiture under this chapter, the state patrol shall
11 proceed as follows:

12 (1) Forfeiture is deemed to have commenced by the seizure.

13 (2) The state patrol shall list and particularly describe in
14 duplicate the conveyance seized. After the appropriate appeal period
15 has expired, a seized conveyance must be sold at a public auction in
16 accordance with chapter 43.19 RCW.

17 (3) The state patrol shall list and particularly describe in
18 duplicate the fuel seized. The selling price of the fuel seized will
19 be the average terminal rack price for similar fuel, at the closest
20 terminal rack on the day of sale, unless circumstance warrants that a
21 different selling price is appropriate. The method used to value the
22 fuel must be documented. The fuel will be sold at the earliest point
23 in time, and the total price must include all appropriate state and
24 federal taxes. The state patrol or the department may enter into
25 contracts for the transportation, handling, storage, and sale of fuel
26 subject to forfeiture. The money received must be deposited in the
27 motor vehicle account, after deduction for expenses provided for in
28 sections 3 and 9 of this act.

29 (4) The state patrol shall, within five days after the seizure of
30 a conveyance or fuel, cause notice to be served on the owner of the
31 property seized, if known, on the person in charge of the property, and
32 on any other person having any known right or interest in the property,
33 of the seizure and intended forfeiture. The notice may be served by
34 any method authorized by law or court rule including but not limited to
35 service by mail. If service is by mail it must be by both certified

1 mail with return receipt requested and regular mail. Service by mail
2 is deemed complete upon mailing within the five-day period after the
3 date of seizure.

4 (5) If no person notifies the state patrol in writing of the
5 person's claim of ownership or right to possession of the items seized
6 within fifteen days of the date of the notice of seizure, the items
7 seized are considered forfeited.

8 (6) If any person notifies the state patrol, in writing, of the
9 person's claim of ownership or right to possession of the items seized
10 within fifteen days of the date of the notice of seizure, the person or
11 persons must be given a reasonable opportunity to be heard as to the
12 claim or right. The hearing must be before the director of licensing,
13 or the director's designee. A hearing and any appeals must be in
14 accordance with chapter 34.05 RCW. The burden of proof by a
15 preponderance of the evidence is upon the person claiming to be the
16 lawful owner or the person claiming to have the lawful right to
17 possession of the items seized. The state patrol and the department
18 shall promptly return the conveyance seized, and money from the sale of
19 fuel seized, to the claimant upon a determination that the claimant is
20 the present lawful owner and is lawfully entitled to possession of the
21 items seized.

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.36 RCW
23 to read as follows:

24 FORFEITED PROPERTY--RETENTION, SALE, OR DESTRUCTION--USE OF SALE
25 PROCEEDS. When property is forfeited under this chapter, the state
26 patrol or the department may use the proceeds of the sale and all
27 moneys forfeited for the payment of all proper expenses of any
28 investigation leading to the seizure and of the proceedings for
29 forfeiture and sale, including expenses of seizure, maintenance of
30 custody, advertising, and court costs. Proper expenses of
31 investigation include costs incurred by a law enforcement agency or a
32 federal, state, or local agency. The balance of the proceeds must be
33 deposited in the motor vehicle account.

34 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.36 RCW
35 to read as follows:

1 RETURN OF SEIZED PROPERTY--PENALTY, INTEREST. (1) The state patrol
2 and the department shall return property seized and proceeds from the
3 sale of fuel under this chapter when it is shown that there was no
4 intention to violate this chapter.

5 (2) When property is returned under this section, the state patrol
6 and the department shall return the goods to the parties from whom they
7 were seized if and when the parties pay all applicable taxes and
8 interest.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.36 RCW
10 to read as follows:

11 SEARCH AND SEIZURE. When the state patrol has good reason to
12 believe that motor vehicle fuel is being unlawfully imported, kept,
13 sold, offered for sale, blended, or manufactured in violation of this
14 chapter or rules adopted under it, the state patrol may make an
15 affidavit of that fact, describing the place or thing to be searched,
16 before a judge of any court in this state, and the judge shall issue a
17 search warrant directed to the state patrol commanding the officer
18 diligently to search any place or vehicle designated in the affidavit
19 and search warrant, and to seize the fuel and conveyance so possessed
20 and to hold them until disposed of by law, and to arrest the person in
21 possession or control of them.

22 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.36 RCW
23 to read as follows:

24 RULES. The department and the state patrol shall adopt rules
25 necessary to implement sections 1 through 5 of this act.

26 NEW SECTION. **Sec. 7.** A new section is added to chapter 82.38 RCW
27 to read as follows:

28 SEIZURE AND FORFEITURE. (1) The following are subject to seizure
29 and forfeiture:

30 (a) Special fuel imported into this state by a person not licensed
31 in this state in accordance with this chapter to import fuel;

32 (b) Special fuel that is blended or manufactured by a person not
33 licensed in this state in accordance with this chapter to blend or
34 manufacture fuel;

1 (c) All conveyances that are used, or intended for use, to
2 transport, or in any manner to facilitate the transportation, for the
3 purpose of sale or receipt of property described in (a) and (b) of this
4 subsection, except where the owner of the conveyance neither had
5 knowledge of nor consented to the transportation of the special fuel by
6 an unlicensed importer, blender, or manufacturer of fuel.

7 (2) Before seizing a common carrier conveyance, contract carrier
8 conveyance, or a conveyance secured by a bona fide security interest
9 where the secured party neither had knowledge of or consented to the
10 unlawful act or omission, the state patrol or the department of
11 licensing shall give the common carrier, contract carrier, or secured
12 party, or their representatives within twenty-four hours, a notice in
13 writing served by mail or other means to cease transporting fuel for
14 any person not licensed to import, blend, or manufacture fuel in this
15 state.

16 (3) Property subject to forfeiture under this chapter may be seized
17 by the state patrol upon process issued by a superior court or district
18 court having jurisdiction over the property. Seizure without process
19 may be made if:

20 (a) The seizure is incident to an arrest or a search under a search
21 warrant or an administrative inspection; or

22 (b) The state patrol has probable cause to believe that the
23 property was used or is intended to be used in violation of this
24 chapter and exigent circumstances exist making procurement of a search
25 warrant impracticable.

26 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.38 RCW
27 to read as follows:

28 **FORFEITURE PROCEDURE.** In all cases of seizure of property made
29 subject to forfeiture under this chapter, the state patrol shall
30 proceed as follows:

31 (1) Forfeiture is deemed to have commenced by the seizure.

32 (2) The state patrol shall list and particularly describe in
33 duplicate the conveyance seized. After the appropriate appeal period
34 has expired, a seized conveyance must be sold at a public auction in
35 accordance with chapter 43.19 RCW.

1 (3) The state patrol shall list and particularly describe in
2 duplicate the special fuel seized. The selling price of the fuel
3 seized will be the average terminal rack price for similar fuel, at the
4 closest terminal rack on the day of sale, unless circumstance warrants
5 that a different selling price is appropriate. The method used to
6 value the fuel must be documented. The fuel will be sold at the
7 earliest point in time, and the total price must include all
8 appropriate state and federal taxes. The state patrol or the
9 department may enter into contracts for the transportation, handling,
10 storage, and sale of fuel subject to forfeiture. The money received
11 must be deposited in the motor vehicle account, after deduction for
12 expenses provided for in sections 3 and 9 of this act.

13 (4) The state patrol shall, within five days after the seizure of
14 a conveyance or fuel, cause notice to be served on the owner of the
15 property seized, if known, on the person in charge of the property, and
16 on any other person having any known right or interest in the property,
17 of the seizure and intended forfeiture. The notice may be served by
18 any method authorized by law or court rule including but not limited to
19 service by mail. If service is by mail it must be by both certified
20 mail with return receipt requested and regular mail. Service by mail
21 is deemed complete upon mailing within the five-day period after the
22 date of seizure.

23 (5) If no person notifies the state patrol in writing of the
24 person's claim of ownership or right to possession of the items seized
25 within fifteen days of the date of the notice of seizure, the items
26 seized are considered forfeited.

27 (6) If any person notifies the state patrol, in writing, of the
28 person's claim of ownership or right to possession of the items seized
29 within fifteen days of the date of the notice of seizure, the person or
30 persons must be given a reasonable opportunity to be heard as to the
31 claim or right. The hearing must be before the director of licensing,
32 or the director's designee. A hearing and any appeals must be in
33 accordance with chapter 34.05 RCW. The burden of proof by a
34 preponderance of the evidence is upon the person claiming to be the
35 lawful owner or the person claiming to have the lawful right to
36 possession of the items seized. The state patrol and the department
37 shall promptly return the conveyance seized, and money from the sale of

1 fuel seized, to the claimant upon a determination that the claimant is
2 the present lawful owner and is lawfully entitled to possession of the
3 items seized.

4 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.38 RCW
5 to read as follows:

6 FORFEITED PROPERTY--RETENTION, SALE, OR DESTRUCTION--USE OF SALE
7 PROCEEDS. When property is forfeited under this chapter, the state
8 patrol or the department may use the proceeds of the sale and all
9 moneys forfeited for the payment of all proper expenses of any
10 investigation leading to the seizure and of the proceedings for
11 forfeiture and sale, including expenses of seizure, maintenance of
12 custody, advertising, and court costs. Proper expenses of
13 investigation include costs incurred by a law enforcement agency or a
14 federal, state, or local agency. The balance of the proceeds must be
15 deposited in the motor vehicle fund. Property forfeited and sold under
16 this chapter is sold "as is, where is," and the state expresses no
17 warranty or representation of quality or fitness as to the condition of
18 the property. The state will be held harmless with no recourse against
19 the state from any claims arising after the date of the sale of the
20 property.

21 NEW SECTION. **Sec. 10.** A new section is added to chapter 82.38 RCW
22 to read as follows:

23 RETURN OF SEIZED PROPERTY--PENALTY, INTEREST. (1) The state patrol
24 and the department shall return property seized and proceeds from the
25 sale of fuel under this chapter when it is shown that there was no
26 intention to violate this chapter.

27 (2) When property is returned under this section, the state patrol
28 and the department shall return the goods to the parties from whom they
29 were seized if and when the parties pay all applicable taxes and
30 interest.

31 NEW SECTION. **Sec. 11.** A new section is added to chapter 82.38 RCW
32 to read as follows:

33 SEARCH AND SEIZURE. When the state patrol has good reason to
34 believe that special fuel is being unlawfully imported, kept, sold,

1 offered for sale, blended, or manufactured in violation of this chapter
2 or rules adopted under it, the state patrol may make an affidavit of
3 that fact, describing the place or thing to be searched, before a judge
4 of any court in this state, and the judge shall issue a search warrant
5 directed to the state patrol commanding the officer diligently to
6 search any place or vehicle designated in the affidavit and search
7 warrant, and to seize the fuel and conveyance so possessed and to hold
8 them until disposed of by law, and to arrest the person in possession
9 or control of them.

10 NEW SECTION. **Sec. 12.** A new section is added to chapter 82.38 RCW
11 to read as follows:

12 **RULES.** The department and the state patrol shall adopt rules
13 necessary to implement sections 7 through 11 of this act.

14 **Sec. 13.** RCW 82.36.380 and 2000 2nd sp.s. c 4 s 9 are each amended
15 to read as follows:

16 (1) It is unlawful for a person or corporation to:

17 (a) Evade a tax or fee imposed under this chapter;

18 (b) File a false statement of a material fact on a motor fuel
19 license application or motor fuel refund application;

20 (c) Act as a motor fuel importer, motor fuel blender, or motor fuel
21 supplier unless the person holds an uncanceled motor fuel license
22 issued by the department authorizing the person to engage in that
23 business;

24 (d) Knowingly assist another person to evade a tax or fee imposed
25 by this chapter;

26 (e) Knowingly operate a conveyance for the purpose of hauling,
27 transporting, or delivering motor vehicle fuel in bulk and not possess
28 an invoice, bill of sale, or other statement showing the name, address,
29 and tax license number of the seller or consignor, the destination, the
30 name, address, and tax license number of the purchaser or consignee,
31 and the number of gallons.

32 (2) (~~Evasion of taxes or fees under this chapter~~) A violation of
33 subsection (1) of this section is a class C felony under chapter 9A.20
34 RCW. In addition to other penalties and remedies provided by law, the

1 court shall order a person or corporation found guilty of violating
2 subsection (1) of this section to:

3 (a) Pay the tax or fee evaded plus interest, commencing at the date
4 the tax or fee was first due, at the rate of twelve percent per year,
5 compounded monthly; and

6 (b) Pay a penalty of one hundred percent of the tax evaded, to the
7 multimodal transportation account of the state.

8 **Sec. 14.** RCW 82.38.270 and 2000 2nd sp.s. c 4 s 10 are each
9 amended to read as follows:

10 (1) It is unlawful for a person or corporation to:

11 (a) Have dyed diesel in the fuel supply tank of a vehicle that is
12 licensed or required to be licensed for highway use or maintain dyed
13 diesel in bulk storage for highway use, unless the person or
14 corporation maintains an uncanceled dyed diesel user license or is
15 otherwise exempted by this chapter;

16 (b) Evade a tax or fee imposed under this chapter;

17 (c) File a false statement of a material fact on a special fuel
18 license application or special fuel refund application;

19 (d) Act as a special fuel importer, special fuel blender, or
20 special fuel supplier unless the person holds an uncanceled special
21 fuel license issued by the department authorizing the person to engage
22 in that business;

23 (e) Knowingly assist another person to evade a tax or fee imposed
24 by this chapter;

25 (f) Knowingly operate a conveyance for the purpose of hauling,
26 transporting, or delivering special fuel in bulk and not possess an
27 invoice, bill of sale, or other statement showing the name, address,
28 and tax license number of the seller or consignor, the destination, the
29 name, address, and tax license number of the purchaser or consignee,
30 and the number of gallons.

31 (2) (~~Evasion of taxes or fees under this chapter is~~) (a) A single
32 violation of subsection (1)(a) of this section is a gross misdemeanor
33 under chapter 9A.20 RCW.

34 (b) Multiple violations of subsection (1)(a) of this section and
35 violations of subsections (1)(b) through (f) of this section are a
36 class C felony under chapter 9A.20 RCW.

1 (3) In addition to other penalties and remedies provided by law,
2 the court shall order a person or corporation found guilty of violating
3 subsection (1)(b) through (f) of this section to:

4 (a) Pay the tax or fee evaded plus interest, commencing at the date
5 the tax or fee was first due, at the rate of twelve percent per year,
6 compounded monthly; and

7 (b) Pay a penalty of one hundred percent of the tax evaded, to the
8 multimodal transportation account of the state.

9 NEW SECTION. Sec. 15. RCW 82.36.306 (Remedies for violation of
10 RCW 82.36.305--Rules--Coloring of fuel exclusively for marine use,
11 samples may be taken) and 1973 c 96 s 4 & 1961 c 15 s 82.36.306 are
12 each repealed.

13 NEW SECTION. Sec. 16. Captions used in this act are not part of
14 the law.

15 NEW SECTION. Sec. 17. If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected."

19 Correct the title.

--- END ---