

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-1127.01 Bart Miller x2173

SENATE BILL 16-166

SENATE SPONSORSHIP

Woods,

HOUSE SPONSORSHIP

Kagan,

Senate Committees
Finance

House Committees

A BILL FOR AN ACT

101 CONCERNING THE CREATION OF TRANSPORTATION FUEL
102 DISTRIBUTORS' TAX LIENS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill creates transportation fuel distributors' tax liens for distributors of transportation fuel. Under current law, the state collects tax on gasoline and special fuel from each licensed fuel distributor prior to delivery of the fuel to a retailer or other commercial user and the ultimate sale of the fuel to a vehicle owner. The bill authorizes licensed fuel distributors to file a lien for the amount of gasoline and special fuel tax

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

against the retailer or other commercial user of the fuel if the retailer or other commercial user fails to reimburse the distributor for the amount of the tax on fuel delivered. The bill establishes the priority of transportation fuel distributors' tax liens and the requirements for filing and enforcing the lien.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 24.7 to
3 title 38 as follows:

4 **ARTICLE 24.7**

5 **Transportation Fuel**

6 **Distributors' Tax Liens**

7 **38-24.7-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

9 (1) "DISTRIBUTOR" HAS THE SAME MEANING AS SET FORTH IN
10 SECTION 39-27-101, C.R.S.

11 (2) "RETAILER OR OTHER COMMERCIAL USER" MEANS A
12 COMMERCIAL ENTITY INVOLVED IN THE USE OF TRANSPORTATION FUEL FOR
13 A TAXABLE PURPOSE UNDER ARTICLE 27 OF TITLE 39, C.R.S.

14 (3) "TAXES" MEANS THE TAX ON GASOLINE AND SPECIAL FUEL
15 IMPOSED UNDER ARTICLE 27 OF TITLE 39, C.R.S.

16 (4) "TRANSPORTATION FUEL" MEANS ANY FLAMMABLE LIQUID
17 USED PRIMARILY AS A FUEL FOR THE PROPULSION OF MOTOR VEHICLES,
18 MOTOR BOATS, OR AIRCRAFT AND INCLUDES DIESEL FUEL.

19 **38-24.7-102. Who may have lien - amount.** WITHIN SIXTY DAYS
20 AFTER THE DATE OF DELIVERY OF TRANSPORTATION FUEL OR AN EARLIER
21 AGREED-UPON PAYMENT DATE, EVERY DISTRIBUTOR HAS A LIEN UPON THE
22 PROPERTY OF A RETAILER OR OTHER COMMERCIAL USER FOR THE AMOUNT
23 OF UNREIMBURSED TAXES PAID BY THE DISTRIBUTOR UNDER ARTICLE 27

1 OF TITLE 39, C.R.S., FOR EACH DELIVERY OF TRANSPORTATION FUEL TO
2 THAT RETAILER OR OTHER COMMERCIAL USER. THE LIEN EXTENDS TO ALL
3 BUSINESS ASSETS AND PROPERTY OF THE RETAILER OR OTHER
4 COMMERCIAL USER, INCLUDING STOCK IN TRADE, BUSINESS, FIXTURES,
5 AND EQUIPMENT OWNED OR USED BY THE RETAILER OR OTHER
6 COMMERCIAL USER IN THE CONDUCT OF BUSINESS, AS LONG AS A
7 DELINQUENCY IN THE REIMBURSEMENT CONTINUES.

8 **38-24.7-103. How lien obtained - lien statement.** EVERY
9 DISTRIBUTOR INTENDING TO AVAIL HIMSELF OR HERSELF OF THE BENEFITS
10 OF THIS ARTICLE SHALL SERVE ON THE RETAILER OR OTHER COMMERCIAL
11 USER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, OR
12 BY PERSONAL SERVICE, WITHIN SIXTY DAYS AFTER COMPLETING THE
13 DELIVERY OF TRANSPORTATION FUEL AND FILE IN THE OFFICE OF THE
14 COUNTY CLERK AND RECORDER OF THE COUNTY WHERE THE RETAILER OR
15 OTHER COMMERCIAL USER IS LOCATED, A STATEMENT CONTAINING A JUST
16 AND TRUE ACCOUNT OF THE AMOUNT DUE TO THE DISTRIBUTOR, AFTER
17 ALLOWING ALL JUST CREDITS AND OFFSETS, AND CONTAINING A CORRECT
18 DESCRIPTION OF THE TAXES PAID FOR THE DELIVERY OF TRANSPORTATION
19 FUEL TO THE RETAILER OR OTHER COMMERCIAL USER AND AN AFFIDAVIT
20 OF SERVICE OR MAILING OF THE STATEMENT. ANY IMMATERIAL ERROR OR
21 MISTAKE IN THE ACCOUNT OR DESCRIPTION OF THE TAXES PAID DOES NOT
22 INVALIDATE THE LIEN.

23 **38-24.7-104. Filing with county clerk and recorder.** THE
24 COUNTY CLERK AND RECORDER SHALL ENDORSE UPON A LIEN THE DAY OF
25 ITS FILING AND MAKE AN ABSTRACT OF THE LIEN IN A BOOK KEPT AND
26 INDEXED BY THE COUNTY CLERK AND RECORDER FOR THAT PURPOSE
27 CONTAINING THE DATE OF THE FILING, THE NAME OF THE DISTRIBUTOR

1 CLAIMING THE LIEN, THE AMOUNT OF THE LIEN, THE NAME OF ANY OTHER
2 PERSON AGAINST WHOSE PROPERTY THE LIEN IS FILED, AND A DESCRIPTION
3 OF THE PROPERTY TO BE CHARGED WITH THE LIEN.

4 **38-24.7-105. Priority.** THE LIEN FOR TAXES FOR THE DELIVERY OF
5 TRANSPORTATION FUEL SPECIFIED IN SECTION 38-24.7-102 IS NOT PRIOR
6 TO AND DOES NOT TAKE PRECEDENCE OVER ANY MORTGAGE,
7 ENCUMBRANCE, SECURITY INTEREST, OR OTHER VALID LIEN UPON THE
8 ASSETS AND PROPERTY OF THE RETAILER OR OTHER COMMERCIAL USER,
9 INCLUDING THE STOCK IN TRADE, BUSINESS FIXTURES, AND EQUIPMENT
10 OWNED OR USED BY THE RETAILER OR OTHER COMMERCIAL USER IN THE
11 CONDUCT OF THE RETAILER'S OR OTHER COMMERCIAL USER'S BUSINESS IF
12 THE OTHER MORTGAGE, ENCUMBRANCE, SECURITY INTEREST, OR VALID
13 LIEN ATTACHED OR WAS FILED PRIOR TO THE FILING OF A LIEN UNDER THIS
14 ARTICLE.

15 **38-24.7-106. Parties.** ANY PERSON INTERESTED IN THE MATTER IN
16 CONTROVERSY OR THE PROPERTY TO BE CHARGED WITH THE LIEN OR
17 HAVING A LIEN ON THE PROPERTY CHARGED MAY BE MADE A PARTY TO AN
18 ACTION FOR THE FORECLOSURE OF THE LIEN.

19 **38-24.7-107. Limitations of actions.** ANY ACTION FOR THE
20 FORECLOSURE AND ENFORCEMENT OF A LIEN AUTHORIZED IN SECTION
21 38-24.7-102 MUST BE COMMENCED, AND A NOTICE OF COMMENCEMENT OF
22 ACTION FILED IN THE SAME LOCATIONS AS THE LIEN STATEMENTS, WITHIN
23 TWENTY-FOUR MONTHS AFTER THE FILING OF THE LIEN AND MUST BE FILED
24 IN THE DISTRICT COURT FOR THE COUNTY IN WHICH THE LIEN AUTHORIZED
25 IN SECTION 38-24.7-102 IS FILED. THE FAILURE TO FILE SUCH AN ACTION
26 AND NOTICE ON A TIMELY BASIS RENDERS THE LIEN NULL AND VOID.

27 **38-24.7-108. Acknowledgment of satisfaction of lien - penalty.**

1 WHENEVER THE INDEBTEDNESS GIVING RISE TO A LIEN UNDER THIS
2 ARTICLE IS PAID AND SATISFIED, THE LIENOR HAS THE DUTY TO
3 ACKNOWLEDGE SATISFACTION OF THE INDEBTEDNESS AND TO DISCHARGE
4 THE LIEN OF RECORD. IF ANY LIENOR FAILS TO ACKNOWLEDGE
5 SATISFACTION AND DISCHARGE OF THE LIEN WITHIN THIRTY DAYS AFTER
6 BEING REQUESTED TO DO SO BY A PERSON HAVING A PROPERTY INTEREST
7 IN THE ASSETS AND PROPERTY OF THE RETAILER OR OTHER COMMERCIAL
8 USER, INCLUDING THE STOCK IN TRADE, BUSINESS FIXTURES, AND
9 EQUIPMENT OWNED OR USED BY THE RETAILER OR OTHER COMMERCIAL
10 USER IN THE CONDUCT OF THE RETAILER'S OR OTHER COMMERCIAL USER'S
11 BUSINESS, THE LIENOR IS LIABLE TO ANY PERSON INJURED IN THE AMOUNT
12 OF THE INJURY AND THE COSTS OF THE ACTION.

13 **SECTION 2. Act subject to petition - effective date -**
14 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
15 the expiration of the ninety-day period after final adjournment of the
16 general assembly (August 10, 2016, if adjournment sine die is on May 11,
17 2016); except that, if a referendum petition is filed pursuant to section 1
18 (3) of article V of the state constitution against this act or an item, section,
19 or part of this act within such period, then the act, item, section, or part
20 will not take effect unless approved by the people at the general election
21 to be held in November 2016 and, in such case, will take effect on the
22 date of the official declaration of the vote thereon by the governor.

23 (2) This act applies to transportation fuel distributors' tax liens on
24 or after the applicable effective date of this act.