A BILL FOR AN ACT

CONCERNING THE CREATION OF TRANSPORTATION FUEL 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...
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.

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

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

ARTICLE 24.7
Transportation Fuel
Distributors' Tax Liens

38-24.7-101. Definitions. As used in this article, unless the context otherwise requires:

1. "Distributor" has the same meaning as set forth in section 39-27-101, C.R.S.
2. "Retailer or other commercial user" means a commercial entity involved in the use of transportation fuel for a taxable purpose under article 27 of title 39, C.R.S.
3. "Taxes" means the tax on gasoline and special fuel imposed under article 27 of title 39, C.R.S.
4. "Transportation fuel" means any flammable liquid used primarily as a fuel for the propulsion of motor vehicles, motor boats, or aircraft and includes diesel fuel.

38-24.7-102. Who may have lien - amount. Within sixty days after the date of delivery of transportation fuel or an earlier agreed-upon payment date, every distributor has a lien upon the property of a retailer or other commercial user for the amount of unreimbursed taxes paid by the distributor under article 27
OF TITLE 39, C.R.S., FOR EACH DELIVERY OF TRANSPORTATION FUEL TO
THAT RETAILER OR OTHER COMMERCIAL USER. THE LIEN EXTENDS TO ALL
BUSINESS ASSETS AND PROPERTY OF THE RETAILER OR OTHER
COMMERCIAL USER, INCLUDING STOCK IN TRADE, BUSINESS, FIXTURES,
AND EQUIPMENT OWNED OR USED BY THE RETAILER OR OTHER
COMMERCIAL USER IN THE CONDUCT OF BUSINESS, AS LONG AS A
DELINQUENCY IN THE REIMBURSEMENT CONTINUES.

38-24.7-103. How lien obtained - lien statement. Every
DISTRIBUTOR INTENDING TO AVAIL HIMSELF OR HERSELF OF THE BENEFITS
OF THIS ARTICLE SHALL SERVE ON THE RETAILER OR OTHER COMMERCIAL
USER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, OR
BY PERSONAL SERVICE, WITHIN SIXTY DAYS AFTER COMPLETING THE
DELIVERY OF TRANSPORTATION FUEL AND RECORD IN THE OFFICE OF THE
COUNTY CLERK AND RECORDER OF THE COUNTY WHERE THE RETAILER OR
OTHER COMMERCIAL USER IS LOCATED, A STATEMENT CONTAINING A JUST
AND TRUE ACCOUNT OF THE AMOUNT DUE TO THE DISTRIBUTOR, AFTER
ALLOWING ALL JUST CREDITS AND OFFSETS, AND CONTAINING A CORRECT
DESCRIPTION OF THE TAXES PAID FOR THE DELIVERY OF TRANSPORTATION
FUEL TO THE RETAILER OR OTHER COMMERCIAL USER AND AN AFFIDAVIT
OF SERVICE OR MAILING OF THE STATEMENT. ANY IMMATERIAL ERROR OR
MISTAKE IN THE ACCOUNT OR DESCRIPTION OF THE TAXES PAID DOES NOT
INVALIDATE THE LIEN. THE STATEMENT REQUIRED BY THIS SECTION MUST
INCLUDE THE NAME OF THE DISTRIBUTOR, THE NAME OF THE RETAILER OR
OTHER COMMERCIAL USER, AND THE PHYSICAL ADDRESS OF THE RETAILER
OR OTHER COMMERCIAL USER IN THE COUNTY WHERE THE RETAILER OR
OTHER COMMERCIAL USER IS LOCATED. THE STATEMENT MUST ALSO
INCLUDE THE NAME AND PHYSICAL ADDRESS OF ANY OTHER PERSON, IF
ANY, AGAINST Whose PROPERTY THE LIEN IS FILED AND A DESCRIPTION OF
THE PROPERTY TO BE CHARGED WITH THE LIEN.

38-24.7-104. Priority. The lien for Taxes for the delivery of
transportation fuel specified in section 38-24.7-102 is not prior
to and does not take precedence over any Mortgage,
Encumbrance, security interest, or other valid Lien upon the
assets and property of the Retailer or other commercial User,
including the stock in trade, business fixtures, and equipment
owned or used by the Retailer or other commercial User in the
conduct of the Retailer's or other commercial User's business if
the other Mortgage, Encumbrance, security interest, or valid
Lien attached or was filed prior to the filing of a Lien under this
article.

38-24.7-105. Parties. Any person interested in the matter in
controversy or the property to be charged with the Lien or
having a Lien on the property charged may be made a party to an
action for the foreclosure of the Lien.

38-24.7-106. Limitations of actions. Any action for the
foreclosure and enforcement of a Lien authorized in section
38-24.7-102 must be commenced, and a notice of commencement of
action filed in the same locations as the Lien statements, within
twenty-four months after the filing of the lien and must be filed
in the District court for the county in which the Lien authorized
in section 38-24.7-102 is filed. The failure to file such an action
and notice on a timely basis renders the lien null and void.

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

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

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