

CHAPTER 357

PROPERTY

SENATE BILL 16-166

BY SENATOR(S) Woods, Baumgardner, Lundberg, Scheffel, Scott, Tate;
also REPRESENTATIVE(S) Kagan, Becker J., Conti, Melton, Mitsch Bush, Hullinghorst.

AN ACT**CONCERNING THE CREATION OF TRANSPORTATION FUEL DISTRIBUTORS' TAX LIENS.**

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.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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.

38-24.7-107. Acknowledgment of satisfaction of lien - penalty. 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.

Approved: June 10, 2016