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(Original Signature of Member)

111TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To amend the Internal Revenue Code of 1986 to provide for a second generation biofuel producer credit, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. VAN HOLLEN introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend the Internal Revenue Code of 1986 to provide for a second generation biofuel producer credit, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Second Generation  
5 Biofuel Producer Tax Credit Act of 2009”.

1 **SEC. 2. SECOND GENERATION BIOFUEL PRODUCER CRED-**  
2 **IT.**

3 (a) CREDIT AMOUNT DETERMINED BASED ON BTU  
4 CONTENT OF FUEL.—Subparagraph (B) of section  
5 40(b)(6) of the Internal Revenue Code of 1986 is amended  
6 to read as follows:

7 “(B) APPLICABLE AMOUNT.—For purposes  
8 of this paragraph—

9 “(i) IN GENERAL.—The term ‘applica-  
10 ble amount’ means, with respect to any  
11 type of second generation biofuel, the dol-  
12 lar amount which bears the same ratio to  
13 \$1.01 as the BTU content of such type of  
14 fuel bears to the BTU content of ethanol.  
15 For purposes of the preceding sentence,  
16 the types of second generation biofuel and  
17 the BTU content of such types shall be de-  
18 termined in accordance with the table pre-  
19 scribed under clause (ii).

20 “(ii) BTU CONTENT DETERMINED BY  
21 SECRETARY.—The Secretary, after con-  
22 sultation with the Secretary of Energy,  
23 shall prescribe a table which lists the types  
24 of second generation biofuel and the BTU  
25 content of each such type.

1                   “(iii) COORDINATION WITH ALCOHOL  
2                   CREDITS.—In the case of second genera-  
3                   tion biofuel which is alcohol, the applicable  
4                   amount determined under clause (i) shall  
5                   be reduced by the sum of—

6                   “(I) the amount of the credit in  
7                   effect for such alcohol under sub-  
8                   section (b)(1) (without regard to sub-  
9                   section (b)(3)) at the time of the  
10                  qualified second generation biofuel  
11                  production, plus

12                  “(II) in the case of ethanol, the  
13                  amount of the credit in effect under  
14                  subsection (b)(4) at the time of such  
15                  production.”.

16                  (b) EXPANSION OF QUALIFIED FUELS.—

17                  (1) IN GENERAL.—Subclause (I) of section  
18                  40(b)(6)(E)(i) of such Code is amended to read as  
19                  follows:

20                         “(I) is derived solely from quali-  
21                         fied feedstocks, and”.

22                  (2) QUALIFIED FEEDSTOCK.—Paragraph (6) of  
23                  section 40(b) of such Code is amended by redesignig-  
24                  nating subparagraphs (F), (G) and (H) as subpara-  
25                  graphs (G), (H), and (I), respectively, and by insert-

1       ing after subparagraph (E) the following new sub-  
2       paragraph:

3               “(F) QUALIFIED FEEDSTOCK.—For pur-  
4       poses of this paragraph, the term ‘qualified  
5       feedstock’ means—

6               “(i) any lignocellulosic or  
7       hemicellulosic matter that is available on a  
8       renewable or recurring basis, and

9               “(ii) any cultivated algae,  
10       cyanobacteria, or lemna.”.

11       (3) CONFORMING AMENDMENTS.—

12       (A) Section 40 of such Code is amended—

13               (i) by striking “cellulosic biofuel” each  
14       place it appears in the text thereof and in-  
15       serting “second generation biofuel”,

16               (ii) by striking “CELLULOSIC” in the  
17       headings of subsections (b)(6), (b)(6)(E),  
18       and (d)(3)(D) and inserting “SECOND  
19       GENERATION”, and

20               (iii) by striking “CELLULOSIC” in the  
21       headings of subsections (b)(6)(C),  
22       (b)(6)(D), (b)(6)(F), (d)(6), and (e)(3)  
23       and inserting “SECOND GENERATION”.

24       (B) Clause (iii) of section 40(b)(6)(E) of  
25       such Code, as redesignated by paragraph (2), is

1 amended by striking “Such term shall not” and  
2 inserting “The term ‘second generation biofuel’  
3 shall not”.

4 (C) Paragraph (1) of section 4101(a) of  
5 such Code is amended by striking “cellulosic  
6 biofuel” and inserting “second generation  
7 biofuel”.

8 (c) EXCLUSION OF FUELS PRODUCED FROM CO-  
9 PROCESSING WITH NONQUALIFIED FEEDSTOCKS.—Sub-  
10 paragraph (E) of section 40(b)(6) of such Code is amend-  
11 ed by adding at the end the following new clause:

12 “(iii) EXCLUSION OF FUELS PRO-  
13 DUCED FROM COPROCESSING WITH NON-  
14 QUALIFIED FEEDSTOCKS.—The term ‘sec-  
15 ond generation biofuel’ shall not include  
16 any fuel derived from coprocessing a quali-  
17 fied feedstock with any feedstock which is  
18 not a qualified feedstock.”.

19 (d) EXCLUSION OF UNPROCESSED FUELS.—Sub-  
20 paragraph (E) of section 40(b)(6) of such Code, as amend-  
21 ed by subsection (c), is amended by adding at the end the  
22 following new clause:

23 “(iv) EXCLUSION OF UNPROCESSED  
24 FUELS.—The term ‘second generation  
25 biofuel’ shall not include any fuel if—

1                   “(I) more than 4 percent of such  
2                   fuel (determined by weight) is any  
3                   combination of water and sediment, or  
4                   “(II) the ash content of such fuel  
5                   is more than 1 percent (determined by  
6                   weight).”.

7           (e) LIQUID FUEL DEFINED.—

8                   (1) IN GENERAL.—Paragraph (6) of section  
9                   40(b) of such Code, as amended by subsection (b),  
10                   is amended by redesignating subparagraphs (G),  
11                   (H), and (I) as subparagraphs (H), (I), and (J), re-  
12                   spectively, and by inserting after subparagraph (F)  
13                   the following new subparagraph:

14                           “(G) LIQUID FUEL.—The term ‘liquid fuel’  
15                           shall not include any fuel unless such fuel  
16                           would be a liquid at room temperature after ex-  
17                           traction of all water from the fuel.”.

18                   (2) APPLICATION TO ALCOHOL MIXTURE CRED-  
19                   IT.—Paragraph (2) of section 40(d) of such Code is  
20                   amended by inserting “, within the meaning of sub-  
21                   section (b)(6)(G),” after “liquid fuel (other than  
22                   gasoline)”.

23                   (3) APPLICATION TO RENEWABLE DIESEL.—  
24                   Paragraph (3) of section 40A(f) of such Code is

1 amended by inserting “(within the meaning of sec-  
2 tion 40(b)(6)(G))” after “liquid fuel”.

3 (f) REGISTRATION OF FUELS.—Subparagraph (I) of  
4 section 40(b)(6) of such Code, as redesignated by sub-  
5 sections (b) and (e), is amended to read as follows:

6 “(I) REGISTRATION REQUIREMENTS.—No  
7 credit shall be determined under this paragraph  
8 with respect to any second generation biofuel  
9 produced by the taxpayer unless—

10 “(i) such taxpayer is registered with  
11 the Secretary as a producer of second gen-  
12 eration biofuel under section 4101, and

13 “(ii) such taxpayer provides the Sec-  
14 retary such information with respect to  
15 such second generation biofuel as the Sec-  
16 retary may (after consultation with the  
17 Secretary of Energy and the Administrator  
18 of the Environmental Protection Agency)  
19 require, including—

20 “(I) the type of such second gen-  
21 eration biofuel,

22 “(II) the feedstocks from which  
23 such second generation biofuel is de-  
24 rived, and

1                                   “(III) the BTU content of such  
2                                   second generation biofuel.”.

3           (g) APPLICATION OF BIOFUEL REFORMS TO BONUS  
4 DEPRECIATION FOR BIOFUEL PLANT PROPERTY.—

5           (1) IN GENERAL.—Subparagraph (A) of section  
6 168(l)(2) of such Code is amended by striking “sole-  
7 ly to produce cellulosic biofuel” and inserting “solely  
8 to produce second generation biofuel (as defined in  
9 section 40(b)(6)(E))”.

10           (2) CONFORMING AMENDMENTS.—Subsection  
11 (l) of section 168 of such Code is amended—

12                           (A) by striking “cellulosic biofuel” each  
13 place it appears in the text thereof and insert-  
14 ing “second generation biofuel”,

15                           (B) by striking paragraph (3) and redesign-  
16 ating paragraphs (4) through (8) as para-  
17 graphs (3) through (7), respectively,

18                           (C) by striking “CELLULOSIC” in the  
19 heading of such subsection and inserting “SEC-  
20 OND GENERATION”, and

21                           (D) by striking “CELLULOSIC” in the head-  
22 ing of paragraph (2) and inserting “SECOND  
23 GENERATION”.

24           (h) EFFECTIVE DATE.—

1           (1) IN GENERAL.—Except as provided in para-  
2           graph (2), the amendments made by this section  
3           shall apply to fuels sold or used after the date of the  
4           enactment of this Act.

5           (2) APPLICATION TO BONUS DEPRECIATION.—  
6           The amendments made by subsection (g) shall apply  
7           to property placed in service after the date of the en-  
8           actment of this Act.

9           (3) TEMPORARY RULE FOR DETERMINING  
10          CREDIT AMOUNT BASED ON BTU CONTENT OF  
11          FUEL.—With respect to any fuel sold or used after  
12          the date of the enactment of this Act and before the  
13          date on which the Secretary prescribes the table de-  
14          scribed in clause (ii) of section 40(b)(6)(B) of the  
15          Internal Revenue Code of 1986 (as amended by this  
16          Act), clause (i) of such section shall be applied by  
17          treating all second generation biofuel as though it  
18          were ethanol.