

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE SUBSTITUTE NO. 2 FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 204**  
94TH GENERAL ASSEMBLY

Reported from the Special Committee on Agri-Business May 7, 2007 with recommendation that House Committee Substitute for Senate Substitute No. 2 for Senate Committee Substitute for Senate Bill No. 204 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

0926L.12C

**AN ACT**

To repeal sections 142.031, 414.255, and 414.365, RSMo, and to enact in lieu thereof three new sections relating to biodiesel, with penalty provisions.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 142.031, 414.255, and 414.365, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 142.031, 414.255, and 414.365, to read as follows:

142.031. 1. As used in this section the following terms shall mean:

- (1) "Biodiesel", [fuel as defined in ASTM Standard D-6751 or its subsequent standard specifications for biodiesel fuel (B100) blend stock for distillate fuels] **a motor vehicle fuel which:**
- (a) **Meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under Section 7545 of the federal Clean Air Act;**
  - (b) **Is a mono-alkyl ester;**
  - (c) **Meets ASTM specification D-6751;**
  - (d) **Is intended for use in engines that are designed to run on conventional, petroleum-derived diesel fuel; and**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 (e) **Is derived from nonpetroleum renewable resources, including, but not limited**  
12 **to, animal wastes including poultry fats and poultry wastes, and other waste materials, or**  
13 **municipal solid waste and sludges and oils derived from wastewater and the treatments of**  
14 **wastewater;**

15 (2) "Missouri qualified biodiesel producer", a facility that produces biodiesel, is  
16 registered with the United States Environmental Protection Agency according to the  
17 requirements of 40 CFR 79, and:

18 (a) Is at least fifty-one percent owned by agricultural producers who are residents of this  
19 state and who are actively engaged in agricultural production for commercial purposes; or

20 (b) At least eighty percent of the feedstock used by the facility originates in the state of  
21 Missouri. For purposes of this section, "feedstock" means [a Missouri agricultural product as  
22 defined in section 348.400, RSMo] **an agriculture, horticulture, viticulture, vegetable,**  
23 **aquaculture, livestock, forestry or poultry product, either in its natural or processed state;**

24 (3) **"Nonester renewable diesel", a motor vehicle fuel which:**

25 (a) **Meets the registration requirements for fuels and fuel additives established by**  
26 **the Environmental Protection Agency under Section 7545 of the federal Clean Air Act;**

27 (b) **Is not a mono-alkyl ester;**

28 (c) **Is intended for use in engines that are designed to run on conventional,**  
29 **petroleum-derived diesel fuel; and**

30 (d) **Is derived from nonpetroleum renewable resources, including, but not limited**  
31 **to, animal wastes including poultry fats and poultry wastes, and other waste materials, or**  
32 **municipal solid waste and sludges and oils derived from wastewater and the treatments of**  
33 **wastewater.**

34 2. The "Missouri Qualified Biodiesel Producer Incentive Fund" is hereby created and  
35 subject to appropriations shall be used to provide economic subsidies to Missouri qualified  
36 biodiesel producers pursuant to this section. The director of the department of agriculture shall  
37 administer the fund pursuant to this section.

38 3. A Missouri qualified biodiesel producer shall be eligible for a monthly grant from the  
39 fund provided that one hundred percent of the feedstock originates in the United States.  
40 However, the director may waive the feedstock requirements on a month-to-month basis if the  
41 facility provides verification that adequate feedstock is not available. A Missouri qualified  
42 biodiesel producer shall only be eligible for the grant for a total of sixty months unless such  
43 producers during the sixty months fail, due to a lack of appropriations, to receive the full amount  
44 from the fund for which the producers were eligible, in which case such producers shall continue  
45 to be eligible for up to twenty-four additional months or until they have received the maximum  
46 amount of funding for which such producers were eligible during the original sixty-month time

47 period. The amount of the grant is determined by calculating the estimated gallons of qualified  
48 biodiesel produced during the preceding month from [Missouri agricultural products] **feedstock**,  
49 as certified by the department of agriculture, and applying such figure to the per-gallon incentive  
50 credit established in this subsection. Each Missouri qualified biodiesel producer shall be eligible  
51 for a total grant in any fiscal year equal to thirty cents per gallon for the first fifteen million  
52 gallons of qualified biodiesel produced from [Missouri agricultural products] **feedstock** in the  
53 fiscal year plus ten cents per gallon for the next fifteen million gallons of qualified biodiesel  
54 produced from [Missouri agricultural products] **feedstock** in the fiscal year. All such qualified  
55 biodiesel produced by a Missouri qualified biodiesel producer in excess of thirty million gallons  
56 shall not be applied to the computation of a grant pursuant to this subsection. The department  
57 of agriculture shall pay all grants for a particular month by the fifteenth day after receipt and  
58 approval of the application described in subsection 4 of this section.

59 4. In order for a Missouri qualified biodiesel producer to obtain a grant from the fund,  
60 an application for such funds shall be received no later than fifteen days following the last day  
61 of the month for which the grant is sought. The application shall include:

62 (1) The location of the Missouri qualified biodiesel producer;

63 (2) The average number of citizens of Missouri employed by the Missouri qualified  
64 biodiesel producer in the preceding month, if applicable;

65 (3) The number of bushel equivalents of Missouri [agricultural commodities] **feedstock**  
66 **and nonMissouri feedstock** used by the Missouri qualified biodiesel producer in the production  
67 of biodiesel in the preceding month;

68 (4) The number of gallons of qualified biodiesel the producer manufactures during the  
69 month for which the grant is applied;

70 (5) A copy of the qualified biodiesel producer license required pursuant to subsection  
71 5 of this section, name and address of surety company, and amount of bond to be posted pursuant  
72 to subsection 5 of this section; and

73 (6) Any other information deemed necessary by the department of agriculture to  
74 adequately ensure that such grants shall be made only to Missouri qualified biodiesel producers.

75 5. The director of the department of agriculture, in consultation with the department of  
76 revenue, shall promulgate rules and regulations necessary for the administration of the provisions  
77 of this section.

78 6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that  
79 is created under the authority delegated in this section shall become effective only if it complies  
80 with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section  
81 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers  
82 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the

83 effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the  
84 grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be  
85 invalid and void.

86 7. This section shall expire on December 31, 2009. However, Missouri qualified  
87 biodiesel producers receiving any grants awarded prior to December 31, 2009, shall continue to  
88 be eligible for the remainder of the original sixty-month time period under the same terms and  
89 conditions of this section unless such producer during such sixty months failed, due to a lack of  
90 appropriations, to receive the full amount from the fund for which he or she was eligible. In such  
91 case, such producers shall continue to be eligible for up to twenty-four additional months or until  
92 they have received the maximum amount of funding for which they were eligible during the  
93 original sixty-month time period.

414.255. 1. This section shall be known and may be cited as the "Missouri Renewable  
2 Fuel Standard Act".

3 2. For purposes of this section, the following terms shall mean:

4 (1) "Aviation fuel", any motor fuel specifically compounded for use in reciprocating  
5 aircraft engines;

6 (2) **"Biodiesel", a motor vehicle fuel which:**

7 (a) **Meets the registration requirements for fuels and fuel additives established by**  
8 **the Environmental Protection Agency under Section 7545 of the federal Clean Air Act;**

9 (b) **Is a mono-alkyl ester;**

10 (c) **Meets ASTM specification D-6751;**

11 (d) **Is intended for use in engines that are designed to run on conventional,**  
12 **petroleum-derived diesel fuel; and**

13 (e) **Is derived from nonpetroleum renewable resources, including, but not limited**  
14 **to, animal wastes including poultry fats and poultry wastes, and other waste materials, or**  
15 **municipal solid waste and sludges and oils derived from wastewater and the treatments of**  
16 **wastewater;**

17 (3) **"Biodiesel-blended fuel", a blend of biodiesel and conventional diesel fuel;**

18 (4) **"Conventional diesel fuel", a refined middle distillate suitable for use as a fuel**  
19 **in a compression-ignition (diesel) internal combustion engine. "Conventional diesel fuel"**  
20 **does not include biodiesel or biodiesel-blended fuel;**

21 (5) "Distributor", a person who either produces, refines, blends, compounds or  
22 manufactures motor fuel, imports motor fuel into a state or exports motor fuel out of a state, or  
23 who is engaged in distribution of motor fuel;

24 [(3)] (6) "Fuel ethanol-blended gasoline", a mixture of ninety percent gasoline and ten  
25 percent fuel ethanol in which the fuel ethanol meets ASTM International Specification D4806,  
26 as amended. The ten percent fuel ethanol portion may be derived from any agricultural source;

27 (7) "Nonester renewable diesel", a motor vehicle fuel which:

28 (a) Meets the registration requirements for fuels and fuel additives established by  
29 the Environmental Protection Agency under Section 7545 of the federal Clean Air Act;

30 (b) Is not a mono-alkyl ester;

31 (c) Is intended for use in engines that are designed to run on conventional,  
32 petroleum-derived diesel fuel; and

33 (d) Is derived from nonpetroleum renewable resources, including, but not limited  
34 to, animal wastes including poultry fats and poultry wastes, and other waste materials, or  
35 municipal solid waste and sludges and oils derived from wastewater and the treatments of  
36 wastewater;

37 [(4)] (8) "Position holder", the person who holds the inventory position in motor fuel in  
38 a terminal, as reflected on the records of the terminal operator. A person holds the inventory  
39 position in motor fuel when that person has a contract with the terminal operator for the use of  
40 storage facilities and terminating services for motor fuel at the terminal. The term includes a  
41 terminal operator who owns motor fuel in the terminal;

42 [(5)] (9) "Premium gasoline", gasoline with an antiknock index number of ninety-one  
43 or greater;

44 [(6)] (10) "Price", the cost of the fuel ethanol plus fuel taxes and transportation expenses  
45 less tax credits, if any; or the cost of the fuel ethanol-blended gasoline plus fuel taxes and  
46 transportation expenses less tax credits, if any; or the cost of the unblended gasoline plus fuel  
47 taxes and transportation expenses less tax credits, if any; **or the cost of the biodiesel plus fuel**  
48 **taxes and transportation expenses less tax credits, if any; or the cost of the biodiesel-**  
49 **blended fuel plus fuel taxes and transportation expenses less tax credits, if any; or the cost**  
50 **of the conventional diesel fuel plus fuel taxes and transportation expenses less tax credits,**  
51 **if any;**

52 [(7)] (11) "Qualified terminal", a terminal that has been assigned a terminal control  
53 number (tcn) by the Internal Revenue Service;

54 [(8)] (12) "Supplier", a person that is:

55 (a) Registered or required to be registered pursuant to 26 U.S.C., Section 4101, for  
56 transactions in motor fuels in the bulk transfer/terminal distribution system; and

57 (b) One or more of the following:

58 a. The position holder in a terminal or refinery in this state;

59 b. Imports motor fuel into this state from a foreign country;

60 c. Acquires motor fuel from a terminal or refinery in this state from a position holder  
61 pursuant to either a two-party exchange or a qualified buy-sell arrangement which is treated as  
62 an exchange and appears on the records of the terminal operator; or

63 d. The position holder in a terminal or refinery outside this state with respect to motor  
64 fuel which that person imports into this state. A terminal operator shall not be considered a  
65 supplier based solely on the fact that the terminal operator handles motor fuel consigned to it  
66 within a terminal. "Supplier" also means a person that produces fuel grade alcohol or  
67 alcohol-derivative substances in this state, produces fuel grade alcohol or alcohol-derivative  
68 substances for import to this state into a terminal, or acquires upon import by truck, rail car or  
69 barge into a terminal, fuel grade alcohol or alcohol-derivative substances. "Supplier" includes  
70 a permissive supplier unless specifically provided otherwise;

71 [(9)] (13) "Terminal", a bulk storage and distribution facility which includes:

72 (a) For the purposes of motor fuel, is a qualified terminal;

73 (b) For the purposes of fuel grade alcohol **and biodiesel**, is supplied by truck, rail car,  
74 boat, barge or pipeline and the products are removed at a rack; and

75 [(10)] (14) "Unblended gasoline", gasoline that has not been blended with fuel ethanol.

76 3. Except as otherwise provided under subsections [4 and] 5 **and 7** of this section, on and  
77 after January 1, 2008, all gasoline sold or offered for sale in Missouri at retail shall be fuel  
78 ethanol-blended gasoline.

79 4. **Except as otherwise provided in subsections 6 and 7 of this section, on and after**  
80 **April 1, 2010, all diesel fuel sold or offered for sale in Missouri at retail shall be a biodiesel-**  
81 **blended fuel.**

82 5. If a distributor is unable to obtain fuel ethanol or fuel ethanol-blended gasoline from  
83 a position holder or supplier at the terminal at the same or lower price as unblended gasoline,  
84 then the purchase of unblended gasoline by the distributor and the sale of the unblended gasoline  
85 at retail shall not be deemed a violation of this section. The position holder, supplier, distributor,  
86 and ultimate vendor shall, upon request, provide the required documentation regarding the sales  
87 transaction and price of fuel ethanol, fuel ethanol-blended gasoline, and unblended gasoline to  
88 the department of agriculture and the department of revenue. All information obtained by the  
89 departments from such sources shall be confidential and not disclosed except by court order or  
90 as otherwise provided by law.

91 6. **If a distributor is unable to obtain biodiesel or biodiesel-blended fuel from a**  
92 **position holder or supplier at the terminal at the same price or lower price as conventional**  
93 **diesel fuel, then the purchase of conventional diesel fuel by the distributor and the sale of**  
94 **conventional diesel fuel at retail shall not be deemed a violation of this section. If a**  
95 **distributor can make five-percent biodiesel-blended fuel by blending biodiesel and**

96 **conventional diesel fuel at the same or lower price than the price of acquiring conventional**  
97 **diesel fuel at the terminal, then the purchase of conventional diesel fuel at the terminal by**  
98 **a distributor for such purpose shall not be deemed a violation of this section. The position**  
99 **holder, supplier, distributor, and ultimate vendor shall, upon request, provide the required**  
100 **documentation regarding the sales transaction and price of biodiesel, biodiesel-blended**  
101 **fuel, and conventional diesel fuel to the department of agriculture and the department of**  
102 **revenue. All information obtained by the departments from such sources shall be**  
103 **confidential and not disclosed except by court order or as otherwise provided by law.**

104 [5.] **7.** The following shall be exempt from the provisions of this section:

105 (1) Aviation fuel and automotive gasoline used in aircraft;

106 (2) Premium gasoline;

107 (3) E75-E85 fuel ethanol;

108 (4) **Diesel fuel sold to or used by railroad on-track equipment;**

109 (5) **Diesel fuel sold to or used by motors located at an electric generation plant**  
110 **regulated by the Nuclear Regulatory Commission;**

111 (6) Any specific exemptions declared by the United States Environmental Protection  
112 Agency; and

113 [5)] (7) Bulk transfers between terminals.

114 The director of the department of agriculture may by rule, **subject to the provisions of chapter**  
115 **536, RSMo**, exempt or rescind additional gasoline **and diesel** uses from the requirements of this  
116 section. The governor may by executive order waive the requirements of this section or any part  
117 thereof in part or in whole for all or any portion of this state [for reasons related to air quality].  
118 Any regional waiver shall be issued and implemented in such a way as to minimize putting any  
119 region of the state at a competitive advantage or disadvantage with any other region of the state.

120 [6.] **8.** The provisions of section 414.152 shall apply for purposes of enforcement of this  
121 section.

122 [7.] **9.** The department of agriculture is hereby authorized to promulgate rules to ensure  
123 implementation of, and compliance and consistency with, this section. **In adopting its rules,**  
124 **the department shall as far as practicable adopt and apply to biodiesel producers the**  
125 **requirements of an accredited producer contained in the BQ-9000 program of the National**  
126 **Biodiesel Accreditation Commission.** Any rule or portion of a rule, as that term is defined in  
127 section 536.010, RSMo, that is created under the authority delegated in this section shall become  
128 effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo,  
129 and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are  
130 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,  
131 RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently

132 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted  
133 after August 28, 2006, shall be invalid and void.

134 [8.] **10.** All terminals in Missouri that sell gasoline shall offer for sale, in cooperation  
135 with position holders and suppliers, fuel ethanol-blended gasoline, fuel ethanol, and unblended  
136 gasoline. Terminals that only offer for sale federal reformulated gasolines, in cooperation with  
137 position holders and suppliers, shall not be required to offer for sale unblended gasoline.

138 **11. All terminals in Missouri that sell conventional diesel fuel shall offer for sale,**  
139 **in cooperation with position holders and suppliers, biodiesel-blended fuel. Any biodiesel-**  
140 **blended fuel sold at a terminal shall contain five percent biodiesel by volume, except that**  
141 **it shall not be a violation of this section for a terminal to sell biodiesel-blended fuel**  
142 **containing more than five percent biodiesel by volume, provided any such sale conforms**  
143 **with subsection 12 of this section.**

144 **12. Any seller of biodiesel-blended fuel containing greater than five percent**  
145 **biodiesel by volume shall notify any purchaser of the biodiesel content of such fuel, in**  
146 **accordance with notification procedures established by rule by the department of**  
147 **agriculture. The notification requirements for the sale of such fuel at retail shall also**  
148 **include an advisement to the purchaser to consult his or her owner's manual regarding**  
149 **motor vehicle warranty and recommended fuel use.**

150 [9.] **13.** Notwithstanding any other law to the contrary, all fuel retailers, wholesalers,  
151 distributors, and marketers shall be allowed to purchase fuel ethanol **or biodiesel** from any  
152 terminal, position holder, fuel ethanol **or biodiesel** producer, fuel ethanol **or biodiesel**  
153 wholesaler, or supplier. In the event a court of competent jurisdiction finds that this subsection  
154 does not apply to or improperly impairs existing contractual relationships, then this subsection  
155 shall only apply to and impact future contractual relationships.

156 **14. The department of agriculture shall, by rule, develop standards for cold**  
157 **temperature operability properties of biodiesel and shall have the power to enforce that**  
158 **all biodiesel and biodiesel-blended fuel offered for sale on or after January 1, 2010, in the**  
159 **state meets such standards.**

160 **15. Notwithstanding the provisions of subsection 8 to the contrary, any person who**  
161 **produces biodiesel intended for market that does not meet the quality standard for**  
162 **biodiesel, as promulgated by rule by the department of agriculture, may be assessed a civil**  
163 **penalty by the director of the department of agriculture of not more than ten thousand**  
164 **dollars for each violation. Each violation shall be a separate offense. In addition, the**  
165 **director may issue an order requiring the person to cease and desist from continuing the**  
166 **violation. No penalty shall be assessed nor a cease and desist order be issued unless the**  
167 **person is given notice and opportunity for a hearing before the director with respect to the**

168 violation. The order of the director assessing a penalty or imposing a cease and desist  
169 order shall be final and conclusive unless the person affected by the order files a petition  
170 for review under chapter 536, RSMo. Any person who fails to obey a cease and desist  
171 order after it has become final shall be subject to a civil penalty assessed by the director,  
172 after an opportunity for hearing before the director, of not more than five hundred dollars  
173 for each offense. Each day during which the failure continues shall be deemed a separate  
174 offense. If any person fails to pay an assessment of a civil penalty after it has become a  
175 final order, the director shall refer the matter to the attorney general for recovery of the  
176 amount assessed in any appropriate circuit court of the state. In such action, the validity  
177 and appropriateness of the final order imposing the civil penalty shall not be subject to  
178 review.

414.365. 1. As used in this section, the following terms mean:

2 (1) "B-20", a blend of twenty percent by volume biodiesel fuel and eighty percent by  
3 volume petroleum-based diesel fuel;

4 (2) "Biodiesel", fuel as defined in ASTM standard PS121;

5 (3) "Incremental cost", the difference in cost between blended biodiesel fuel and  
6 conventional petroleum-based diesel fuel at the time the blended biodiesel fuel is purchased.

7 2. On or before October 1, 2003, the Missouri department of transportation shall develop  
8 a program that provides for the opportunity to use fuel with at least the biodiesel content of B-20  
9 in its vehicle fleet and heavy equipment that use diesel fuel. Such program shall have the  
10 following goals, provided that such program and goals do not prohibit the department from  
11 generating and selling EPAAct credits pursuant to section 414.407:

12 (1) On or before July 1, 2004, at least fifty percent of the department's vehicle fleet and  
13 heavy equipment that use diesel fuel shall use fuel with at least the biodiesel content of B-20, if  
14 such fuel is commercially available;

15 (2) On or before July 1, 2005, at least seventy-five percent of the department's vehicle  
16 fleet and heavy equipment that use diesel fuel shall use fuel with at least the biodiesel content  
17 of B-20, if such fuel is commercially available.

18 3. The blended biodiesel fuel shall be presumed to be commercially available if the  
19 [incremental cost of such fuel is not more than twenty-five cents] **conditions under subdivision**  
20 **(9) of subsection 2 and subsection 6 of section 414.255 are satisfied.**

21 4. Nothing in this section is intended to create a state requirement for biodiesel fuel use  
22 in excess of the requirements of the federal National Energy Policy Act of 1992, Pub.L. 102-486;  
23 42 U.S.C. 13251, 13257(o).

24           5. To the maximum extent practicable, the department shall obtain funding for the  
25 incremental cost of the blended biodiesel fuel from the biodiesel fuel revolving fund established  
26 in section 414.407.

27           6. The director of the Missouri department of transportation may promulgate any rules  
28 necessary to carry out the provisions of this section. No rule or portion of a rule promulgated  
29 pursuant to this section shall take effect unless it has been promulgated pursuant to chapter 536,  
30 RSMo.

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Bill

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