

SECOND REGULAR SESSION

SENATE BILL NO. 810

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Pre-filed December 1, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

3574S.011

AN ACT

To repeal section 414.255, RSMo, and to enact in lieu thereof one new section relating to renewable fuels, with penalty provisions.

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

Section A. Section 414.255, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 414.255, to read as follows:

414.255. 1. This section shall be known and may be cited as the "Missouri
2 Renewable 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
5 reciprocating aircraft engines;

6 (2) "**Biodiesel**", fuel as defined in ASTM Standard D-6751 or its
7 subsequent standard specifications for biodiesel fuel (B100) blend stock
8 for distillate fuels;

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

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

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

18 [(3)] (6) "Fuel ethanol-blended gasoline", a mixture of ninety percent
19 gasoline and ten percent fuel ethanol in which the fuel ethanol meets ASTM

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 International Specification D4806, as amended. The ten percent fuel ethanol
21 portion may be derived from any agricultural source;

22 [(4)] (7) "Position holder", the person who holds the inventory position
23 in motor fuel in a terminal, as reflected on the records of the terminal operator.
24 A person holds the inventory position in motor fuel when that person has a
25 contract with the terminal operator for the use of storage facilities and
26 terminating services for motor fuel at the terminal. The term includes a terminal
27 operator who owns motor fuel in the terminal;

28 [(5)] (8) "Premium gasoline", gasoline with an antiknock index number
29 of ninety-one or greater;

30 [(6)] "Price", the cost of the fuel ethanol plus fuel taxes and transportation
31 expenses less tax credits, if any; or the cost of the fuel ethanol-blended gasoline
32 plus fuel taxes and transportation expenses less tax credits, if any; or the cost of
33 the unblended gasoline plus fuel taxes and transportation expenses less tax
34 credits, if any;]

35 [(7)] (9) "Qualified terminal", a terminal that has been assigned a
36 terminal control number (tcn) by the Internal Revenue Service;

37 [(8)] (10) "Supplier", a person that is:

38 (a) Registered or required to be registered pursuant to 26 U.S.C., Section
39 4101, for transactions in motor fuels in the bulk transfer/terminal distribution
40 system; and

41 (b) One or more of the following:

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

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

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

48 d. The position holder in a terminal or refinery outside this state with
49 respect to motor fuel which that person imports into this state. A terminal
50 operator shall not be considered a supplier based solely on the fact that the
51 terminal operator handles motor fuel consigned to it within a
52 terminal. "Supplier" also means a person that produces fuel grade alcohol or
53 alcohol-derivative substances in this state, produces fuel grade alcohol or
54 alcohol-derivative substances for import to this state into a terminal, or acquires
55 upon import by truck, rail car or barge into a terminal, fuel grade alcohol or

56 alcohol-derivative substances. "Supplier" includes a permissive supplier unless
57 specifically provided otherwise;

58 ~~[(9)]~~ **(11)** "Terminal", a bulk storage and distribution facility which
59 includes:

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

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

64 ~~[(10)]~~ **(12)** "Unblended gasoline", gasoline that has not been blended with
65 fuel ethanol.

66 3. Except as otherwise provided under subsection ~~[4 and]~~ 5 of this section,
67 on and after January 1, 2008, all gasoline sold or offered for sale in Missouri at
68 retail shall be fuel ethanol-blended gasoline.

69 4. ~~[If a distributor is unable to obtain fuel ethanol or fuel ethanol-blended~~
70 ~~gasoline from a position holder or supplier at the terminal at the same or lower~~
71 ~~price as unblended gasoline, then the purchase of unblended gasoline by the~~
72 ~~distributor and the sale of the unblended gasoline at retail shall not be deemed~~
73 ~~a violation of this section. The position holder, supplier, distributor, and ultimate~~
74 ~~vendor shall, upon request, provide the required documentation regarding the~~
75 ~~sales transaction and price of fuel ethanol, fuel ethanol-blended gasoline, and~~
76 ~~unblended gasoline to the department of agriculture and the department of~~
77 ~~revenue. All information obtained by the departments from such sources shall~~
78 ~~be confidential and not disclosed except by court order or as otherwise provided~~
79 ~~by law.]~~ **Except as otherwise provided in subsection 5 of this section, on**
80 **and after April 1, 2010, all diesel fuel sold or offered for sale in**
81 **Missouri at retail shall be a biodiesel-blended fuel.**

82 5. The following shall be exempt from the provisions of this section:

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

84 (2) Premium gasoline;

85 (3) E75-E85 fuel ethanol;

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

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

89 **(6) Any specific exemptions declared by the United States Environmental**
90 **Protection Agency; and**

91 ~~[(5)]~~ **(7) Bulk transfers between terminals.**

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

100 6. The provisions of section 414.152 shall apply for purposes of
101 enforcement of this section.

102 7. The department of agriculture is hereby authorized to promulgate rules
103 to ensure implementation of, and compliance and consistency with, this section.
104 **In adopting its rules, the department shall as far as practicable adopt**
105 **and apply to biodiesel producers the requirements of an accredited**
106 **producer contained in the BQ-9000 program of the National Biodiesel**
107 **Accreditation Commission.** Any rule or portion of a rule, as that term is
108 defined in section 536.010, RSMo, that is created under the authority delegated
109 in this section shall become effective only if it complies with and is subject to all
110 of the provisions of chapter 536, RSMo, and, if applicable, section 536.028,
111 RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the
112 powers vested with the general assembly pursuant to chapter 536, RSMo, to
113 review, to delay the effective date, or to disapprove and annul a rule are
114 subsequently held unconstitutional, then the grant of rulemaking authority and
115 any rule proposed or adopted after August 28, 2006, shall be invalid and void.

116 8. All terminals in Missouri that sell gasoline shall offer for sale, in
117 cooperation with position holders and suppliers, fuel ethanol-blended gasoline,
118 fuel ethanol, and unblended gasoline. Terminals that only offer for sale federal
119 reformulated gasolines, in cooperation with position holders and suppliers, shall
120 not be required to offer for sale unblended gasoline.

121 9. **On and after January 1, 2010, all terminals in Missouri that**
122 **sell diesel fuel shall offer for sale, in cooperation with position holders**
123 **and suppliers, biodiesel-blended fuel containing five percent biodiesel**
124 **by volume, biodiesel, and conventional diesel fuel. It shall not be a**
125 **violation of this section for a terminal to sell biodiesel-blended fuel**
126 **containing more than five percent biodiesel by volume, provided any**
127 **such sale conforms with subsection 10 of this section.**

128 **10. Any seller of biodiesel-blended fuel containing greater than**
129 **five percent biodiesel by volume shall notify any purchaser of the**
130 **biodiesel content of such fuel, in accordance with notification**
131 **procedures established by rule by the department of agriculture. The**
132 **notification requirements for the sale of such fuel at retail shall include**
133 **an advisement to the purchaser to consult his or her owner's manual**
134 **regarding motor vehicle warranty and recommended fuel use.**

135 **11. Notwithstanding any other law to the contrary, all fuel retailers,**
136 **wholesalers, distributors, and marketers shall be allowed to purchase fuel ethanol**
137 **or biodiesel from any terminal, position holder, fuel ethanol or biodiesel**
138 **producer, fuel ethanol or biodiesel wholesaler, or supplier. In the event a court**
139 **of competent jurisdiction finds that this subsection does not apply to or**
140 **improperly impairs existing contractual relationships, then this subsection shall**
141 **only apply to and impact future contractual relationships.**

142 **12. The department of agriculture shall, by rule, develop**
143 **standards for cold temperature operability properties of biodiesel and**
144 **shall have the power to enforce that all biodiesel and biodiesel-blended**
145 **fuel offered for sale on or after January 1, 2010, in the state meets such**
146 **standards.**

147 **13. Notwithstanding the provisions of subsection 6 of this section**
148 **to the contrary, any person who produces biodiesel intended for market**
149 **that does not meet the quality standard for biodiesel, as promulgated**
150 **by rule by the department of agriculture, may be assessed a civil**
151 **penalty by the director of the department of agriculture of not more**
152 **than ten thousand dollars for each violation. Each violation shall be a**
153 **separate offense. In addition, the director may issue an order requiring**
154 **the person to cease and desist from continuing the violation. No**
155 **penalty shall be assessed nor a cease and desist order be issued unless**
156 **the person is given notice and opportunity for a hearing before the**
157 **director with respect to the violation. The order of the director**
158 **assessing a penalty or imposing a cease and desist order shall be final**
159 **and conclusive unless the person affected by the order files a petition**
160 **for review under chapter 536, RSMo. Any person who fails to obey a**
161 **cease and desist order after it has become final shall be subject to a**
162 **civil penalty assessed by the director, after an opportunity for hearing**
163 **before the director, of not more than five hundred dollars for each**
164 **offense. Each day during which the failure continues shall be deemed**

165 a separate offense. If any person fails to pay an assessment of a civil
166 penalty after it has become a final order, the director shall refer the
167 matter to the attorney general for recovery of the amount assessed in
168 any appropriate circuit court of the state. In such action, the validity
169 and appropriateness of the final order imposing the civil penalty shall
170 not be subject to review.

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