

SECOND REGULAR SESSION

SENATE BILL NO. 657

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MUNZLINGER.

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ADRIANE D. CROUSE, Secretary.

4693S.011

AN ACT

To repeal sections 319.114, 414.036, and 414.255, RSMo, and to enact in lieu thereof three new sections relating to liability for the use of incompatible motor fuel.

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

Section A. Sections 319.114, 414.036, and 414.255, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 319.114,
3 414.036, and 414.255, to read as follows:

319.114. 1. The department shall establish rules requiring the owner or
2 operator to maintain evidence of financial responsibility in an amount and form
3 sufficient for taking corrective action and compensating third parties for bodily
4 injury and property damage caused by sudden and nonsudden accidental releases
5 arising from the operation of an underground storage tank.

6 2. The form of the evidence of financial responsibility required by this
7 section may be by any one, or any combination, of the following methods: cash
8 trust fund, guarantee, insurance, surety or performance bond, letter of credit,
9 qualification as a self-insurer, or any other method satisfactory to the
10 department. In adopting requirements under this section, the department may
11 specify policy or other contractual terms, conditions, or defenses which are
12 necessary or are unacceptable in establishing the evidence of financial
13 responsibility.

14 3. The amount of financial responsibility required shall not exceed the
15 amount required for compliance with section 9003 of subtitle I of the federal
16 Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended.

17 4. The total liability of a guarantor shall be limited to the aggregate
18 amount which the guarantor has provided as evidence of financial responsibility
19 to the owner or operator under this section. Nothing in this subsection shall be

20 construed to limit any other state or federal statutory, contractual, or common
21 law liability of a guarantor to its owner or operator, including, but not limited to,
22 the liability of such guarantor for bad faith either in negotiating or in failing to
23 negotiate the settlement of any claim.

24 Nothing in this subsection shall be construed to diminish the liability of any
25 person under section 107 or 111 of the Comprehensive Environmental Response,
26 Compensation and Liability Act of 1980 (P.L. 96-510), as amended, or other
27 applicable law.

28 **5. Except in cases of fraud or misrepresentation on the**
29 **application for coverage, no owner or operator shall be denied benefits**
30 **by the petroleum storage tank insurance fund or other provider of**
31 **financial responsibility required by this section solely because the**
32 **owner or operator's claim arises from a release of a regulated**
33 **petroleum substance deemed incompatible with the motor fuel storage**
34 **tank system.**

414.036. 1. After December 31, 2010, the owner or operator of an
2 aboveground storage tank defined in subsection 2 of this section shall maintain
3 evidence of financial responsibility in an amount equal to or greater than one
4 million dollars per occurrence and two million dollars annual aggregate for the
5 costs of taking corrective action and compensating third parties for bodily injury
6 and property damage caused by sudden and nonsudden accidental releases
7 arising from the operation of the tank.

8 2. For the purposes of this section, "aboveground storage tank" is defined
9 as any one or a combination of tanks, including pipes connected thereto, used to
10 contain an accumulation of petroleum and the volume of which, including the
11 volume of the aboveground pipes connected thereto, is ninety percent or more
12 above the surface of the ground, which is utilized for the sale of products
13 regulated by this chapter. The term does not include those tanks described in
14 paragraphs (a) to (k) of subdivision (16) of section 319.100, nor does it include
15 aboveground storage tanks at refineries, petroleum pipeline terminals, or marine
16 terminals.

17 3. Owners and operators may meet the requirements of this section by
18 participating in the petroleum storage tank insurance fund created in section
19 319.129 or by any other method approved by the department.

20 4. The department shall promulgate rules to implement the provisions of
21 this section. Any rule or portion of a rule, as that term is defined in section

22 536.010, that is created under the authority delegated in this section shall
23 become effective only if it complies with and is subject to all of the provisions of
24 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
25 nonseverable and if any of the powers vested with the general assembly pursuant
26 to chapter 536 to review, to delay the effective date, or to disapprove and annul
27 a rule are subsequently held unconstitutional, then the grant of rulemaking
28 authority and any rule proposed or adopted after August 28, 2008, shall be
29 invalid and void.

30 **5. Except in cases of fraud or misrepresentation on the**
31 **application for coverage, no owner or operator shall be denied benefits**
32 **by the petroleum storage tank insurance fund or other provider of**
33 **financial responsibility required by this section solely because the**
34 **owner or operator's claim arises from a release of a regulated**
35 **petroleum substance deemed incompatible with the motor fuel storage**
36 **tank system.**

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) "Distributor", a person who either produces, refines, blends,
7 compounds or manufactures motor fuel, imports motor fuel into a state or exports
8 motor fuel out of a state, or who is engaged in distribution of motor fuel;

9 (3) "Fuel ethanol-blended gasoline", a mixture of ninety percent gasoline
10 and ten percent fuel ethanol in which the fuel ethanol meets ASTM International
11 Specification D4806, as amended. The ten percent fuel ethanol portion may be
12 derived from any agricultural source;

13 (4) "Position holder", the person who holds the inventory position in motor
14 fuel in a terminal, as reflected on the records of the terminal operator. A person
15 holds the inventory position in motor fuel when that person has a contract with
16 the terminal operator for the use of storage facilities and terminating services for
17 motor fuel at the terminal. The term includes a terminal operator who owns
18 motor fuel in the terminal;

19 (5) "Premium gasoline", gasoline with an antiknock index number of
20 ninety-one or greater;

21 (6) "Price", the cost of the fuel ethanol plus fuel taxes and transportation

22 expenses less tax credits, if any; or the cost of the fuel ethanol-blended gasoline
23 plus fuel taxes and transportation expenses less tax credits, if any; or the cost of
24 the unblended gasoline plus fuel taxes and transportation expenses less tax
25 credits, if any;

26 (7) "Qualified terminal", a terminal that has been assigned a terminal
27 control number (tcn) by the Internal Revenue Service;

28 (8) "Supplier", a person that is:

29 (a) Registered or required to be registered pursuant to 26 U.S.C., Section
30 4101, for transactions in motor fuels in the bulk transfer/terminal distribution
31 system; and

32 (b) One or more of the following:

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

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

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

39 d. The position holder in a terminal or refinery outside this state with
40 respect to motor fuel which that person imports into this state. A terminal
41 operator shall not be considered a supplier based solely on the fact that the
42 terminal operator handles motor fuel consigned to it within a
43 terminal. "Supplier" also means a person that produces fuel grade alcohol or
44 alcohol-derivative substances in this state, produces fuel grade alcohol or
45 alcohol-derivative substances for import to this state into a terminal, or acquires
46 upon import by truck, rail car or barge into a terminal, fuel grade alcohol or
47 alcohol-derivative substances. "Supplier" includes a permissive supplier unless
48 specifically provided otherwise;

49 (9) "Terminal", a bulk storage and distribution facility which includes:

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

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

53 (10) "Unblended gasoline", gasoline that has not been blended with fuel
54 ethanol.

55 3. Except as otherwise provided under subsections 4 and 5 of this section,
56 on and after January 1, 2008, all gasoline sold or offered for sale in Missouri at
57 retail shall be fuel ethanol-blended gasoline.

58 4. If a distributor is unable to obtain fuel ethanol or fuel ethanol-blended
59 gasoline from a position holder or supplier at the terminal at the same or lower
60 price as unblended gasoline, then the purchase of unblended gasoline by the
61 distributor and the sale of the unblended gasoline at retail shall not be deemed
62 a violation of this section. The position holder, supplier, distributor, and ultimate
63 vendor shall, upon request, provide the required documentation regarding the
64 sales transaction and price of fuel ethanol, fuel ethanol-blended gasoline, and
65 unblended gasoline to the department of agriculture and the department of
66 revenue. All information obtained by the departments from such sources shall
67 be confidential and not disclosed except by court order or as otherwise provided
68 by law.

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

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

71 (2) Premium gasoline;

72 (3) E75-E85 fuel ethanol;

73 (4) Any specific exemptions declared by the United States Environmental
74 Protection Agency; and

75 (5) Bulk transfers between terminals. The director of the department of
76 agriculture may by rule exempt or rescind additional gasoline uses from the
77 requirements of this section. The governor may by executive order waive the
78 requirements of this section or any part thereof in part or in whole for all or any
79 portion of this state for reasons related to air quality. Any regional waiver shall
80 be issued and implemented in such a way as to minimize putting any region of
81 the state at a competitive advantage or disadvantage with any other region of the
82 state.

83 6. The provisions of section 414.152 shall apply for purposes of
84 enforcement of this section.

85 7. The department of agriculture is hereby authorized to promulgate rules
86 to ensure implementation of, and compliance and consistency with, this
87 section. Any rule or portion of a rule, as that term is defined in section 536.010,
88 that is created under the authority delegated in this section shall become effective
89 only if it complies with and is subject to all of the provisions of chapter 536 and,
90 if applicable, section 536.028. This section and chapter 536 are nonseverable and
91 if any of the powers vested with the general assembly pursuant to chapter 536 to
92 review, to delay the effective date, or to disapprove and annul a rule are
93 subsequently held unconstitutional, then the grant of rulemaking authority and

94 any rule proposed or adopted after August 28, 2006, shall be invalid and void.

95 8. All terminals in Missouri that sell gasoline shall offer for sale, in
96 cooperation with position holders and suppliers, fuel ethanol-blended gasoline,
97 fuel ethanol, and unblended gasoline. Terminals that only offer for sale federal
98 reformulated gasolines, in cooperation with position holders and suppliers, shall
99 not be required to offer for sale unblended gasoline.

100 9. Notwithstanding any other law to the contrary, all fuel retailers,
101 wholesalers, distributors, and marketers shall be allowed to purchase fuel ethanol
102 from any terminal, position holder, fuel ethanol producer, fuel ethanol wholesaler,
103 or supplier. In the event a court of competent jurisdiction finds that this
104 subsection does not apply to or improperly impairs existing contractual
105 relationships, then this subsection shall only apply to and impact future
106 contractual relationships.

107 **10. No refiner, supplier, wholesaler, distributor, retailer, or other**
108 **vendor of motor fuel that contains or is blended with any amount of**
109 **ethanol, biodiesel, or other renewable fuel or biofuel and that complies**
110 **with labeling and motor fuel quality laws shall be liable for any**
111 **property damages related to a customer's purchase of such motor fuel**
112 **from the vendor. No motor fuel that contains or is blended with any**
113 **amount of ethanol, biodiesel, or other renewable fuel or biofuel shall**
114 **be considered a defective product if such motor fuel complies with**
115 **motor fuel quality laws.**

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