

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1364
99TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, April 30, 2018, with recommendation that the Senate Committee Substitute do pass.

4591S.05C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 292.606, 319.129, and 414.032, RSMo, and to enact in lieu thereof three new sections relating to petroleum products.

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

Section A. Sections 292.606, 319.129, and 414.032, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 292.606,
3 319.129, and 414.032, to read as follows:

292.606. 1. Fees shall be collected for a period of six years from August
2 28, [2012] **2018**.

3 2. (1) Any employer required to report under subsection 1 of section
4 292.605, except local governments and family-owned farm operations, shall
5 submit an annual fee to the commission of one hundred dollars along with the
6 Tier II form. Owners or operators of petroleum retail facilities shall pay a fee of
7 no more than fifty dollars for each such facility. Any person, firm or corporation
8 selling, delivering or transporting petroleum or petroleum products and whose
9 primary business deals with petroleum products or who is covered by the
10 provisions of chapter 323, if such person, firm or corporation is paying fees under
11 the provisions of the federal hazardous materials transportation registration and
12 fee assessment program, shall deduct such federal fees from those fees owed to
13 the state under the provisions of this subsection. If the federal fees exceed or are
14 equal to what would otherwise be owed under this subsection, such employer
15 shall not be liable for state fees under this subsection. In relation to petroleum
16 products "primary business" shall mean that the person, firm or corporation shall

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

17 earn more than fifty percent of hazardous chemical revenues from the sale,
18 delivery or transport of petroleum products. For the purpose of calculating fees,
19 all grades of gasoline are considered to be one product, all grades of heating oils,
20 diesel fuels, kerosenes, naphthas, aviation turbine fuel, and all other heavy
21 distillate products except for grades of gasoline are considered to be one product,
22 and all varieties of motor lubricating oil are considered to be one product. For
23 the purposes of this section "facility" shall mean all buildings, equipment,
24 structures and other stationary items that are located on a single site or on
25 contiguous or adjacent sites and which are owned or operated by the same person.
26 If more than three hazardous substances or mixtures are reported on the Tier II
27 form, the employer shall submit an additional twenty dollar fee for each
28 hazardous substance or mixture. Fees collected under this subdivision shall be
29 for each hazardous chemical on hand at any one time in excess of ten thousand
30 pounds or for extremely hazardous substances on hand at any one time in excess
31 of five hundred pounds or the threshold planning quantity, whichever is less, or
32 for explosives or blasting agents on hand at any one time in excess of one
33 hundred pounds. However, no employer shall pay more than ten thousand dollars
34 per year in fees. Moneys acquired through litigation and any administrative fees
35 paid pursuant to subsection 3 of this section shall not be applied toward this cap.

36 (2) Employers engaged in transporting hazardous materials by pipeline
37 except local gas distribution companies regulated by the Missouri public service
38 commission shall pay to the commission a fee of two hundred fifty dollars for each
39 county in which they operate.

40 (3) Payment of fees is due each year by March first. A late fee of ten
41 percent of the total owed, plus one percent per month of the total, may be
42 assessed by the commission.

43 (4) If, on March first of each year, fees collected under this section and
44 natural resources damages made available pursuant to section 640.235 exceed one
45 million dollars, any excess over one million dollars shall be proportionately
46 credited to fees payable in the succeeding year by each employer who was
47 required to pay a fee and who did pay a fee in the year in which the excess
48 occurred. The limit of one million dollars contained herein shall be reviewed by
49 the commission concurrent with the review of fees as required in subsection 1 of
50 this section.

51 3. Beginning January 1, 2013, any employer filing its Tier II form
52 pursuant to subsection 1 of section 292.605 may request that the commission

53 distribute that employer's Tier II report to the local emergency planning
54 committees and fire departments listed in its Tier II report. Any employer opting
55 to have the commission distribute its Tier II report shall pay an additional fee of
56 ten dollars for each facility listed in the report at the time of filing to recoup the
57 commission's distribution costs. Fees shall be deposited in the chemical
58 emergency preparedness fund established under section 292.607. An employer
59 who pays the additional fee and whose Tier II report includes all local emergency
60 planning committees and fire departments required to be notified under
61 subsection 1 of section 292.605 shall satisfy the reporting requirements of
62 subsection 1 of section 292.605. The commission shall develop a mechanism for
63 an employer to exercise its option to have the commission distribute its Tier II
64 report.

65 4. Local emergency planning committees receiving funds under section
66 292.604 shall coordinate with the commission and the department in chemical
67 emergency planning, training, preparedness, and response activities. Local
68 emergency planning committees receiving funds under this section, section
69 260.394, sections 292.602, 292.604, 292.605, 292.615 and section 640.235 shall
70 provide to the commission an annual report of expenditures and activities.

71 5. Fees collected by the department and all funds provided to local
72 emergency planning committees shall be used for chemical emergency
73 preparedness purposes as outlined in sections 292.600 to 292.625 and the federal
74 act, including contingency planning for chemical releases; exercising, evaluating,
75 and distributing plans, providing training related to chemical emergency
76 preparedness and prevention of chemical accidents; identifying facilities required
77 to report; processing the information submitted by facilities and making it
78 available to the public; receiving and handling emergency notifications of
79 chemical releases; operating a local emergency planning committee; and providing
80 public notice of chemical preparedness activities. Local emergency planning
81 committees receiving funds under this section may combine such funds with other
82 local emergency planning committees to further the purposes of sections 292.600
83 to 292.625, or the federal act.

84 6. The commission shall establish criteria and guidance on how funds
85 received by local emergency planning committees may be used.

319.129. 1. There is hereby created a special trust fund to be known as
2 the "Petroleum Storage Tank Insurance Fund" within the state treasury which
3 shall be the successor to the underground storage tank insurance fund. Moneys

4 in such special trust fund shall not be deemed to be state funds. Notwithstanding
5 the provisions of section 33.080 to the contrary, moneys in the fund shall not be
6 transferred to general revenue at the end of each biennium.

7 2. The owner or operator of any underground storage tank, including the
8 state of Missouri and its political subdivisions and public transportation systems,
9 in service on August 28, 1989, shall submit to the department a fee of one
10 hundred dollars per tank on or before December 31, 1989. The owner or operator
11 of any underground storage tank who seeks to participate in the petroleum
12 storage tank insurance fund, including the state of Missouri and its political
13 subdivisions and public transportation systems, and whose underground storage
14 tank is brought into service after August 28, 1998, shall transmit one hundred
15 dollars per tank to the board with his or her initial application. Such amount
16 shall be a one-time payment, and shall be in addition to the payment required by
17 section 319.133. The owner or operator of any aboveground storage tank
18 regulated by this chapter, including the state of Missouri and its political
19 subdivisions and public transportation systems, who seeks to participate in the
20 petroleum storage tank insurance fund, shall transmit one hundred dollars per
21 tank to the board with his or her initial application. Such amount shall be a
22 one-time payment and shall be in addition to the payment required by section
23 319.133. Moneys received pursuant to this section shall be transmitted to the
24 director of revenue for deposit in the petroleum storage tank insurance fund.

25 3. The state treasurer may deposit moneys in the fund in any of the
26 qualified depositories of the state. All such deposits shall be secured in a manner
27 and upon the terms as are provided by law relative to state deposits. Interest
28 earned shall be credited to the petroleum storage tank insurance fund.

29 4. The general administration of the fund and the responsibility for the
30 proper operation of the fund, including all decisions relating to payments from the
31 fund, are hereby vested in a board of trustees. The board of trustees shall consist
32 of the commissioner of administration or the commissioner's designee, the director
33 of the department of natural resources or the director's designee, the director of
34 the department of agriculture or the director's designee, and eight citizens
35 appointed by the governor with the advice and consent of the senate. Three of
36 the appointed members shall be owners or operators of retail petroleum storage
37 tanks, including one tank owner or operator of greater than one hundred tanks;
38 one tank owner or operator of less than one hundred tanks; and one aboveground
39 storage tank owner or operator. One appointed trustee shall represent a financial

40 lending institution, and one appointed trustee shall represent the insurance
41 underwriting industry. One appointed trustee shall represent industrial or
42 commercial users of petroleum. The two remaining appointed citizens shall have
43 no petroleum-related business interest, and shall represent the nonregulated
44 public at large. The members appointed by the governor shall serve four-year
45 terms except that the governor shall designate two of the original appointees to
46 be appointed for one year, two to be appointed for two years, two to be appointed
47 for three years and two to be appointed for four years. Any vacancies occurring
48 on the board shall be filled in the same manner as provided in this section.

49 5. The board shall meet in Jefferson City, Missouri, within thirty days
50 following August 28, 1996. Thereafter, the board shall meet upon the written call
51 of the chairman of the board or by the agreement of any six members of the
52 board. Notice of each meeting shall be delivered to all other trustees in person
53 or by registered mail not less than six days prior to the date fixed for the
54 meeting. The board may meet at any time by unanimous mutual consent. There
55 shall be at least one meeting in each quarter.

56 6. Six trustees shall constitute a quorum for the transaction of business,
57 and any official action of the board shall be based on a majority vote of the
58 trustees present.

59 7. The trustees shall serve without compensation but shall receive from
60 the fund their actual and necessary expenses incurred in the performance of their
61 duties for the board.

62 8. The board of trustees shall be a type III agency and shall appoint an
63 executive director and other employees as needed, who shall be state employees
64 and be eligible for all corresponding benefits. The executive director shall have
65 charge of the offices, operations, records, and other employees of the board,
66 subject to the direction of the board. Employees of the board shall receive such
67 salaries and necessary expenses as shall be fixed by the board.

68 9. Staff resources for the Missouri petroleum storage tank insurance fund
69 may be provided by the department of natural resources or another state agency
70 as otherwise specifically determined by the board. The fund shall compensate the
71 department of natural resources or other state agency for all costs of providing
72 staff required by this subsection. Such compensation shall be made pursuant to
73 contracts negotiated between the board and the department of natural resources
74 or other state agency.

75 10. In order to carry out the fiduciary management of the fund, the board

76 may select and employ, or may contract with, persons experienced in insurance
77 underwriting, accounting, the servicing of claims and rate making, and legal
78 counsel to defend third-party claims, who shall serve at the board's
79 pleasure. Invoices for such services shall be presented to the board in sufficient
80 detail to allow a thorough review of the costs of such services.

81 11. At the first meeting of the board, the board shall elect one of its
82 members as chairman. The chairman shall preside over meetings of the board
83 and perform such other duties as shall be required by action of the board.

84 12. The board shall elect one of its members as vice chairman, and the
85 vice chairman shall perform the duties of the chairman in the absence of the
86 latter or upon the chairman's inability or refusal to act.

87 13. The board shall determine and prescribe all rules and regulations as
88 they relate to fiduciary management of the fund, pursuant to the purposes of
89 sections 319.100 to 319.137. In no case shall the board have oversight regarding
90 environmental cleanup standards for petroleum storage tanks.

91 14. No trustee or staff member of the fund shall receive any gain or profit
92 from any moneys or transactions of the fund. This shall not preclude any eligible
93 trustee from making a claim or receiving benefits from the petroleum storage
94 tank insurance fund as provided by sections 319.100 to 319.137.

95 15. The board may reinsure all or a portion of the fund's liability. Any
96 insurer who sells environmental liability insurance in this state may, at the
97 option of the board, reinsure some portion of the fund's liability.

98 16. The petroleum storage tank insurance fund shall expire on December
99 31, [2020] **2030**, unless extended by action of the general assembly. After
100 December 31, [2020] **2030**, the board of trustees may continue to function for the
101 sole purpose of completing payment of claims made prior to December 31, [2020]
102 **2030**.

103 17. The board shall annually commission an independent financial audit
104 of the petroleum storage tank insurance fund. The board shall biennially
105 commission an actuarial analysis of the petroleum storage tank insurance
106 fund. The results of the financial audit and the actuarial analysis shall be made
107 available to the public. The board may contract with third parties to carry out
108 the requirements of this subsection.

414.032. 1. All kerosene, diesel fuel, heating oil, aviation turbine fuel,
2 gasoline, gasoline-alcohol blends and other motor fuels shall meet the
3 requirements in the annual book of ASTM standards and supplements

4 thereto. The director may promulgate rules and regulations on the labeling,
5 standards for, and identity of motor fuels and heating oils.

6 2. The director may inspect gasoline, gasoline-alcohol blends or other
7 motor fuels to insure that these fuels conform to advertised grade and octane. In
8 no event shall the penalty for a first violation of this section exceed a written
9 reprimand.

10 **3. The director may waive specific requirements in this section**
11 **and in regulations promulgated according to this section, or may**
12 **establish temporary alternative requirements for fuels as determined**
13 **to be necessary in the event of an extreme and unusual fuel supply**
14 **circumstance as a result of a petroleum pipeline or petroleum refinery**
15 **equipment failure, emergency, or a natural disaster as determined by**
16 **the director for a specified period of time.**

17 4. Any waiver issued under subsection 3 of this section shall be
18 as limited in scope and applicability as necessary, and shall apply
19 equally and uniformly to all persons and companies in the impacted
20 petroleum motor fuel supply and distribution system, including but not
21 limited to petroleum producers, terminals, distributors, and retailers.

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