

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NOS. 1270 & 1027
93RD GENERAL ASSEMBLY

3181L.14T

2006

AN ACT

To repeal section 142.031, RSMo, and to enact in lieu thereof two new sections relating to ethanol blend fuel.

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

Section A. Section 142.031, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 142.031 and 414.255, to read as follows: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;

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

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

(b) **At least eighty percent of the feedstock used by the facility originates in the state of Missouri. For purposes of this section, "feedstock" means a Missouri agricultural product as defined in section 348.400, RSMo.**

2. The "Missouri Qualified Biodiesel Producer Incentive Fund" is hereby created and subject to appropriations shall be used to provide economic subsidies to Missouri qualified

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.

15 biodiesel producers pursuant to this section. The director of the department of agriculture shall
16 administer the fund pursuant to this section.

17 3. A Missouri qualified biodiesel producer shall be eligible for a monthly grant from the
18 fund provided that [fifty-one percent of the feedstock originates in the state of Missouri and that]
19 one hundred percent of the feedstock originates in the United States. **However, the director**
20 **may waive the feedstock requirements on a month-to-month basis if the facility provides**
21 **verification that adequate feedstock is not available.** A Missouri qualified biodiesel producer
22 shall only be eligible for the grant for a total of sixty months unless such producers during the
23 sixty months fail, due to a lack of appropriations, to receive the full amount from the fund for
24 which the producers were eligible, in which case such producers shall continue to be eligible for
25 up to twenty-four additional months or until they have received the maximum amount of funding
26 for which such producers were eligible during the original sixty-month time period. The amount
27 of the grant is determined by calculating the estimated gallons of qualified biodiesel produced
28 during the preceding month from Missouri agricultural products, as certified by the department
29 of agriculture, and applying such figure to the per-gallon incentive credit established in this
30 subsection. Each Missouri qualified biodiesel producer shall be eligible for a total grant in any
31 fiscal year equal to thirty cents per gallon for the first fifteen million gallons of qualified
32 biodiesel produced from Missouri agricultural products in the fiscal year plus ten cents per gallon
33 for the next fifteen million gallons of qualified biodiesel produced from Missouri agricultural
34 products in the fiscal year. All such qualified biodiesel produced by a Missouri qualified
35 biodiesel producer in excess of thirty million gallons shall not be applied to the computation of
36 a grant pursuant to this subsection. The department of agriculture shall pay all grants for a
37 particular month by the fifteenth day after receipt and approval of the application described in
38 subsection 4 of this section.

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

- 42 (1) The location of the Missouri qualified biodiesel producer;
43 (2) The average number of citizens of Missouri employed by the Missouri qualified
44 biodiesel producer in the preceding month, if applicable;
45 (3) The number of bushel equivalents of Missouri agricultural commodities used by the
46 Missouri qualified biodiesel producer in the production of biodiesel in the preceding month;
47 (4) The number of gallons of qualified biodiesel the producer manufactures during the
48 month for which the grant is applied;

49 (5) A copy of the qualified biodiesel producer license required pursuant to subsection
50 5 of this section, name and address of surety company, and amount of bond to be posted pursuant
51 to subsection 5 of this section; and

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

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

57 6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that
58 is created under the authority delegated in this section shall become effective only if it complies
59 with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section
60 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers
61 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the
62 effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the
63 grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be
64 invalid and void.

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

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

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

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

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

10 **(3) "Fuel ethanol-blended gasoline", a mixture of ninety percent gasoline and ten**
11 **percent fuel ethanol in which the fuel ethanol meets ASTM International Specification D**
12 **4806, as amended. The ten percent fuel ethanol portion may be derived from any**
agricultural source;

- 13 (4) "Position holder", the person who holds the inventory position in motor fuel in
14 a terminal, as reflected on the records of the terminal operator. A person holds the
15 inventory position in motor fuel when that person has a contract with the terminal
16 operator for the use of storage facilities and terminating services for motor fuel at the
17 terminal. The term includes a terminal operator who owns motor fuel in the terminal;
- 18 (5) "Premium gasoline", gasoline with an antiknock index number of ninety-one
19 or greater;
- 20 (6) "Price", the cost of the fuel ethanol plus fuel taxes and transportation expenses
21 less tax credits, if any; or the cost of the fuel ethanol-blended gasoline plus fuel taxes and
22 transportation expenses less tax credits, if any; or the cost of the unblended gasoline plus
23 fuel taxes and transportation expenses less tax credits, if any;
- 24 (7) "Qualified terminal", a terminal that has been assigned a terminal control
25 number ("tcn") by the Internal Revenue Service;
- 26 (8) "Supplier", a person that is:
- 27 (a) Registered or required to be registered pursuant to 26 U.S.C., Section 4101, for
28 transactions in motor fuels in the bulk transfer/terminal distribution system; and
- 29 (b) One or more of the following:
- 30 a. The position holder in a terminal or refinery in this state;
- 31 b. Imports motor fuel into this state from a foreign country;
- 32 c. Acquires motor fuel from a terminal or refinery in this state from a position
33 holder pursuant to either a two-party exchange or a qualified buy-sell arrangement which
34 is treated as an exchange and appears on the records of the terminal operator; or
- 35 d. The position holder in a terminal or refinery outside this state with respect to
36 motor fuel which that person imports into this state. A terminal operator shall not be
37 considered a supplier based solely on the fact that the terminal operator handles motor fuel
38 consigned to it within a terminal. "Supplier" also means a person that produces fuel grade
39 alcohol or alcohol-derivative substances in this state, produces fuel grade alcohol or
40 alcohol-derivative substances for import to this state into a terminal, or acquires upon
41 import by truck, rail car or barge into a terminal, fuel grade alcohol or alcohol-derivative
42 substances. "Supplier" includes a permissive supplier unless specifically provided
43 otherwise;
- 44 (9) "Terminal", a bulk storage and distribution facility which includes:
- 45 (a) For the purposes of motor fuel, is a qualified terminal;
- 46 (b) For the purposes of fuel grade alcohol, is supplied by truck, rail car, boat, barge
47 or pipeline and the products are removed at a rack; and
- 48 (10) "Unblended gasoline", gasoline that has not been blended with fuel ethanol.

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

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

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

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

64 **(2) Premium gasoline;**

65 **(3) E75-E85 fuel ethanol;**

66 **(4) Any specific exemptions declared by the United States Environmental**
67 **Protection Agency; and**

68 **(5) Bulk transfers between terminals.**

69
70 **The director of the department of agriculture may by rule exempt or rescind additional**
71 **gasoline uses from the requirements of this section. The governor may by executive order**
72 **waive the requirements of this section or any part thereof in part or in whole for all or any**
73 **portion of this state for reasons related to air quality. Any regional waiver shall be issued**
74 **and implemented in such a way as to minimize putting any region of the state at a**
75 **competitive advantage or disadvantage with any other region of the state.**

76 **6. The provisions of section 414.152 shall apply for purposes of enforcement of this**
77 **section.**

78 **7. The department of agriculture is hereby authorized to promulgate rules to**
79 **ensure implementation of, and compliance and consistency with, this section. Any rule or**
80 **portion of a rule, as that term is defined in section 536.010, RSMo, that is created under**
81 **the authority delegated in this section shall become effective only if it complies with and**
82 **is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028,**
83 **RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers**
84 **vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the**

85 effective date, or to disapprove and annul a rule are subsequently held unconstitutional,
86 then the grant of rulemaking authority and any rule proposed or adopted after August 28,
87 2006, shall be invalid and void.

88 **8. All terminals in Missouri that sell gasoline shall offer for sale, in cooperation**
89 **with position holders and suppliers, fuel ethanol-blended gasoline, fuel ethanol, and**
90 **unblended gasoline. Terminals that only offer for sale federal reformulated gasolines, in**
91 **cooperation with position holders and suppliers, shall not be required to offer for sale**
92 **unblended gasoline.**

93 **9. Notwithstanding any other law to the contrary, all fuel retailers, wholesalers,**
94 **distributors, and marketers shall be allowed to purchase fuel ethanol from any terminal,**
95 **position holder, fuel ethanol producer, fuel ethanol wholesaler, or supplier. In the event**
96 **a court of competent jurisdiction finds that this subsection does not apply to or improperly**
97 **impairs existing contractual relationships, then this subsection shall only apply to and**
98 **impact future contractual relationships.**

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