

CONFERENCE COMMITTEE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NOS. 1270 & 1027

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Section A. Section 142.031, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 142.031 and 414.255, to read as follows: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

1 are actively engaged in agricultural production for commercial
2 purposes; or

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

7 2. The "Missouri Qualified Biodiesel Producer Incentive
8 Fund" is hereby created and subject to appropriations shall be
9 used to provide economic subsidies to Missouri qualified
10 biodiesel producers pursuant to this section. The director of
11 the department of agriculture shall administer the fund pursuant
12 to this section.

13 3. A Missouri qualified biodiesel producer shall be
14 eligible for a monthly grant from the fund provided that
15 [fifty-one percent of the feedstock originates in the state of
16 Missouri and that] one hundred percent of the feedstock
17 originates in the United States. However, the director may waive
18 the feedstock requirements on a month-to-month basis if the
19 facility provides verification that adequate feedstock is not
20 available. A Missouri qualified biodiesel producer shall only be
21 eligible for the grant for a total of sixty months unless such
22 producers during the sixty months fail, due to a lack of
23 appropriations, to receive the full amount from the fund for
24 which the producers were eligible, in which case such producers
25 shall continue to be eligible for up to twenty-four additional
26 months or until they have received the maximum amount of funding
27 for which such producers were eligible during the original
28 sixty-month time period. The amount of the grant is determined

1 by calculating the estimated gallons of qualified biodiesel
2 produced during the preceding month from Missouri agricultural
3 products, as certified by the department of agriculture, and
4 applying such figure to the per-gallon incentive credit
5 established in this subsection. Each Missouri qualified
6 biodiesel producer shall be eligible for a total grant in any
7 fiscal year equal to thirty cents per gallon for the first
8 fifteen million gallons of qualified biodiesel produced from
9 Missouri agricultural products in the fiscal year plus ten cents
10 per gallon for the next fifteen million gallons of qualified
11 biodiesel produced from Missouri agricultural products in the
12 fiscal year. All such qualified biodiesel produced by a Missouri
13 qualified biodiesel producer in excess of thirty million gallons
14 shall not be applied to the computation of a grant pursuant to
15 this subsection. The department of agriculture shall pay all
16 grants for a particular month by the fifteenth day after receipt
17 and approval of the application described in subsection 4 of this
18 section.

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

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

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

1 (3) The number of bushel equivalents of Missouri
2 agricultural commodities used by the Missouri qualified biodiesel
3 producer in the production of biodiesel in the preceding month;

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

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

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

14 5. The director of the department of agriculture, in
15 consultation with the department of revenue, shall promulgate
16 rules and regulations necessary for the administration of the
17 provisions of this section.

18 6. Any rule or portion of a rule, as that term is defined
19 in section 536.010, RSMo, that is created under the authority
20 delegated in this section shall become effective only if it
21 complies with and is subject to all of the provisions of chapter
22 536, RSMo, and, if applicable, section 536.028, RSMo. This
23 section and chapter 536, RSMo, are nonseverable and if any of the
24 powers vested with the general assembly pursuant to chapter 536,
25 RSMo, to review, to delay the effective date or to disapprove and
26 annul a rule are subsequently held unconstitutional, then the
27 grant of rulemaking authority and any rule proposed or adopted
28 after August 28, 2002, shall be invalid and void.

1 7. This section shall expire on December 31, 2009.
2 However, Missouri qualified biodiesel producers receiving any
3 grants awarded prior to December 31, 2009, shall continue to be
4 eligible for the remainder of the original sixty-month time
5 period under the same terms and conditions of this section unless
6 such producer during such sixty months failed, due to a lack of
7 appropriations, to receive the full amount from the fund for
8 which he or she was eligible. In such case, such producers shall
9 continue to be eligible for up to twenty-four additional months
10 or until they have received the maximum amount of funding for
11 which they were eligible during the original sixty-month time
12 period.

13 414.255. 1. This section shall be known and may be cited
14 as the "Missouri Renewable Fuel Standard Act".

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

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

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

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

28 (4) "Position holder", the person who holds the inventory

1 position in motor fuel in a terminal, as reflected on the records
2 of the terminal operator. A person holds the inventory position
3 in motor fuel when that person has a contract with the terminal
4 operator for the use of storage facilities and terminating
5 services for motor fuel at the terminal. The term includes a
6 terminal operator who owns motor fuel in the terminal;

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

9 (6) "Price", the cost of the fuel ethanol plus fuel taxes
10 and transportation expenses less tax credits, if any; or the cost
11 of the fuel ethanol-blended gasoline plus fuel taxes and
12 transportation expenses less tax credits, if any; or the cost of
13 the unblended gasoline plus fuel taxes and transportation
14 expenses less tax credits, if any;

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

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

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

22 (b) One or more of the following:

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

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

27 c. Acquires motor fuel from a terminal or refinery in this
28 state from a position holder pursuant to either a two-party

exchange or a qualified buy-sell arrangement which is treated as an exchange and appears on the records of the terminal operator; or

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

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

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

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

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

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

1 4. If a distributor is unable to obtain fuel ethanol or
2 fuel ethanol-blended gasoline from a position holder or supplier
3 at the terminal at the same or lower price as unblended gasoline,
4 then the purchase of unblended gasoline by the distributor and
5 the sale of the unblended gasoline at retail shall not be deemed
6 a violation of this section. The position holder, supplier,
7 distributor, and ultimate vendor shall, upon request, provide the
8 required documentation regarding the sales transaction and price
9 of fuel ethanol, fuel ethanol-blended gasoline, and unblended
10 gasoline to the department of agriculture and the department of
11 revenue. All information obtained by the departments from such
12 sources shall be confidential and not disclosed except by court
13 order or as otherwise provided by law.

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

- 16 (1) Aviation fuel and automotive gasoline used in aircraft;
17 (2) Premium gasoline;
18 (3) E75-E85 fuel ethanol;
19 (4) Any specific exemptions declared by the United States
20 Environmental Protection Agency; and
21 (5) Bulk transfers between terminals.

22 The director of the department of agriculture may by rule exempt
23 or rescind additional gasoline uses from the requirements of this
24 section. The governor may by executive order waive the
25 requirements of this section or any part thereof in part or in
26 whole for all or any portion of this state for reasons related to
27 air quality. Any regional waiver shall be issued and implemented

1 in such a way as to minimize putting any region of the state at a
2 competitive advantage or disadvantage with any other region of
3 the state.

4 6. The provisions of section 414.152 shall apply for
5 purposes of enforcement of this section.

6 7. The department of agriculture is hereby authorized to
7 promulgate rules to ensure implementation of, and compliance and
8 consistency with, this section. Any rule or portion of a rule,
9 as that term is defined in section 536.010, RSMo, that is created
10 under the authority delegated in this section shall become
11 effective only if it complies with and is subject to all of the
12 provisions of chapter 536, RSMo, and, if applicable, section
13 536.028, RSMo. This section and chapter 536, RSMo, are
14 nonseverable and if any of the powers vested with the general
15 assembly pursuant to chapter 536, RSMo, to review, to delay the
16 effective date, or to disapprove and annul a rule are
17 subsequently held unconstitutional, then the grant of rulemaking
18 authority and any rule proposed or adopted after August 28, 2006,
19 shall be invalid and void.

20 8. All terminals in Missouri that sell gasoline shall offer
21 for sale, in cooperation with position holders and suppliers,
22 fuel ethanol-blended gasoline, fuel ethanol, and unblended
23 gasoline. Terminals that only offer for sale federal
24 reformulated gasolines, in cooperation with position holders and
25 suppliers, shall not be required to offer for sale unblended
26 gasoline.

27 9. Notwithstanding any other law to the contrary, all fuel
28 retailers, wholesalers, distributors, and marketers shall be

1 allowed to purchase fuel ethanol from any terminal, position
2 holder, fuel ethanol producer, fuel ethanol wholesaler, or
3 supplier. In the event a court of competent jurisdiction finds
4 that this subsection does not apply to or improperly impairs
5 existing contractual relationships, then this subsection shall
6 only apply to and impact future contractual relationships.

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