

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILLS NOS. 1270 & 1027
93RD GENERAL ASSEMBLY

Reported from the Committee on Agriculture, Conservation, Parks and Natural Resources, April 20, 2006, with recommendation that the Senate Committee Substitute do pass.

3181S.13C

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 414, RSMo, by adding thereto one new section relating to ethanol blend fuel.

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

Section A. Chapter 414, RSMo, is amended by adding thereto one new
2 section, 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
2 "Missouri 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
5 use in 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
8 or exports motor fuel out of a state, or who is engaged in distribution
9 of motor fuel;

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

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

20 in the terminal;

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

23 (6) "Price", the cost of the fuel ethanol plus fuel taxes and
24 transportation expenses less tax credits, if any; or the cost of the fuel
25 ethanol-blended gasoline plus fuel taxes and transportation expenses
26 less tax credits, if any; or the cost of the unblended gasoline plus fuel
27 taxes and transportation expenses less tax credits, if any;

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

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

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

34 (b) One or more of the following:

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

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

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

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

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

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

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

57 rack; and

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

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

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

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

- 77 (1) Aviation fuel and automotive gasoline used in aircraft;
- 78 (2) Premium gasoline;
- 79 (3) E75-E85 fuel ethanol;
- 80 (4) Any specific exemptions declared by the United States
81 Environmental Protection Agency; and
- 82 (5) Bulk transfers between terminals.

83 The director of the department of agriculture may by rule exempt or
84 rescind additional gasoline uses from the requirements of this
85 section. The governor may by executive order waive the requirements
86 of this section or any part thereof in part or in whole for all or any
87 portion of this state for reasons related to air quality. Any regional
88 waiver shall be issued and implemented in such a way as to minimize
89 putting any region of the state at a competitive advantage or
90 disadvantage with any other region of the state.

91 6. The provisions of section 414.152 shall apply for purposes of
92 enforcement of this section.

93 7. The department of agriculture is hereby authorized to

94 promulgate rules to ensure implementation of, and compliance and
95 consistency with, this section. Any rule or portion of a rule, as that
96 term is defined in section 536.010, RSMo, that is created under the
97 authority delegated in this section shall become effective only if it
98 complies with and is subject to all of the provisions of chapter 536,
99 RSMo, and, if applicable, section 536.028, RSMo. This section and
100 chapter 536, RSMo, are nonseverable and if any of the powers vested
101 with the general assembly pursuant to chapter 536, RSMo, to review, to
102 delay the effective date, or to disapprove and annul a rule are
103 subsequently held unconstitutional, then the grant of rulemaking
104 authority and any rule proposed or adopted after August 28, 2006, shall
105 be invalid and void.

106 8. All terminals in Missouri that sell gasoline shall offer for sale,
107 in cooperation with position holders and suppliers, fuel ethanol-
108 blended gasoline, fuel ethanol, and unblended gasoline. Terminals that
109 only offer for sale federal reformulated gasolines, in cooperation with
110 position holders and suppliers, shall not be required to offer for sale
111 unblended gasoline.

112 9. Notwithstanding any other law to the contrary, all fuel
113 retailers, wholesalers, distributors, and marketers shall be allowed to
114 purchase fuel ethanol from any terminal, position holder, fuel ethanol
115 producer, fuel ethanol wholesaler, or supplier. In the event a court of
116 competent jurisdiction finds that this subsection does not apply to or
117 improperly impairs existing contractual relationships, then this
118 subsection shall only apply to and impact future contractual
119 relationships.

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