

FIRST REGULAR SESSION

# HOUSE BILL NO. 877

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES HOBBS (Sponsor), FISHER, JONES (117), SANDER,  
THOMSON, MUNZLINGER, WHORTON, QUINN (9) AND PAGE (Co-sponsors).

Read 1st time February 15, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1800L.011

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### AN ACT

To repeal section 414.255, RSMo, and to enact in lieu thereof one new section relating to biodiesel, with penalty provisions.

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

Section A. Section 414.255, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 414.255, to read as follows: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 "Missouri Renewable Fuel Standard Act".

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

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

(2) "**Biodiesel**", fuel as defined in ASTM Standard D-6751 or its subsequent standard specifications for biodiesel fuel (B100) blend stock for distillate fuels and that is produced by an accredited producer under the National Biodiesel Accreditation Commission;

(3) "**Biodiesel-blended fuel**", a blend of biodiesel and conventional diesel fuel;

(4) "**Conventional diesel fuel**", a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine. "Conventional diesel fuel" does not include biodiesel or biodiesel-blended fuel;

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.

14       (5) "Distributor", a person who either produces, refines, blends, compounds or  
15 manufactures motor fuel, imports motor fuel into a state or exports motor fuel out of a state, or  
16 who is engaged in distribution of motor fuel;

17       [(3)] (6) "Fuel ethanol-blended gasoline", a mixture of ninety percent gasoline and ten  
18 percent fuel ethanol in which the fuel ethanol meets ASTM International Specification D4806,  
19 as amended. The ten percent fuel ethanol portion may be derived from any agricultural source;

20       [(4)] (7) "Position holder", the person who holds the inventory position in motor fuel in  
21 a terminal, as reflected on the records of the terminal operator. A person holds the inventory  
22 position in motor fuel when that person has a contract with the terminal operator for the use of  
23 storage facilities and terminating services for motor fuel at the terminal. The term includes a  
24 terminal operator who owns motor fuel in the terminal;

25       [(5)] (8) "Premium gasoline", gasoline with an antiknock index number of ninety-one  
26 or greater;

27       [(6)] (9) "Price", the cost of the fuel ethanol plus fuel taxes and transportation expenses  
28 less tax credits, if any; or the cost of the fuel ethanol-blended gasoline plus fuel taxes and  
29 transportation expenses less tax credits, if any; or the cost of the unblended gasoline plus fuel  
30 taxes and transportation expenses less tax credits, if any; **or the cost of the biodiesel plus fuel**  
31 **taxes and transportation expenses less tax credits, if any; or the cost of the biodiesel-**  
32 **blended fuel plus fuel taxes and transportation expenses less tax credits, if any; or the cost**  
33 **of conventional diesel fuel plus fuel taxes and transportation expenses less tax credits, if**  
34 **any;**

35       [(7)] (10) "Qualified terminal", a terminal that has been assigned a terminal control  
36 number (tcn) by the Internal Revenue Service;

37       [(8)] (11) "Supplier", a person that is:

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

40       (b) One or more of the following:

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

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

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

46       d. The position holder in a terminal or refinery outside this state with respect to motor  
47 fuel which that person imports into this state. A terminal operator shall not be considered a  
48 supplier based solely on the fact that the terminal operator handles motor fuel consigned to it  
49 within a terminal. "Supplier" also means a person that produces fuel grade alcohol or

50 alcohol-derivative substances in this state, produces fuel grade alcohol or alcohol-derivative  
51 substances for import to this state into a terminal, or acquires upon import by truck, rail car or  
52 barge into a terminal, fuel grade alcohol or alcohol-derivative substances. "Supplier" includes  
53 a permissive supplier unless specifically provided otherwise;

54       [(9)] (12) "Terminal", a bulk storage and distribution facility which includes:

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

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

58       [(10)] (13) "Unblended gasoline", gasoline that has not been blended with fuel ethanol.

59       3. Except as otherwise provided under subsections [4 and] 5 **and 7** of this section, on and  
60 after January 1, 2008, all gasoline sold or offered for sale in Missouri at retail shall be fuel  
61 ethanol-blended gasoline.

62       4. **Except as otherwise provided in subsections 6 and 7 of this section, on and after**  
63 **January 1, 2009, all diesel fuel sold or offered for sale in Missouri shall be a biodiesel-**  
64 **blended fuel containing at least five percent biodiesel by volume.**

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

74       6. **If a distributor is unable to obtain biodiesel or biodiesel-blended fuel from a**  
75 **position holder or supplier at the terminal at the same price or lower price as conventional**  
76 **diesel fuel, then the purchase of conventional diesel fuel by the distributor and the sale of**  
77 **conventional diesel fuel shall not be deemed a violation of this section. The position holder,**  
78 **supplier, distributor, and ultimate vendor shall, upon request, provide the required**  
79 **documentation regarding the sales transaction and price of biodiesel-blended fuel and**  
80 **conventional diesel fuel to the department of agriculture and the department of revenue.**  
81 **All information obtained by the departments from such sources shall be confidential and**  
82 **not disclosed except by court order or as otherwise provided by law.**

83       [5.] 7. The following shall be exempt from the provisions of this section:

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

85       (2) Premium gasoline;

- 86 (3) E75-E85 fuel ethanol;  
87 (4) Any specific exemptions declared by the United States Environmental Protection  
88 Agency; and  
89 (5) Bulk transfers between terminals.  
90

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

97 [6.] **8.** The provisions of section 414.152 shall apply for purposes of enforcement of this  
98 section.

99 [7.] **9.** The department of agriculture is hereby authorized to promulgate rules to ensure  
100 implementation of, and compliance and consistency with, this section. Any rule or portion of  
101 a rule, as that term is defined in section 536.010, RSMo, that is created under the authority  
102 delegated in this section shall become effective only if it complies with and is subject to all of  
103 the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section  
104 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general  
105 assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove  
106 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority  
107 and any rule proposed or adopted after August 28, 2006, shall be invalid and void.

108 [8.] **10.** All terminals in Missouri that sell gasoline shall offer for sale, in cooperation  
109 with position holders and suppliers, fuel ethanol-blended gasoline, fuel ethanol, and unblended  
110 gasoline. Terminals that only offer for sale federal reformulated gasolines, in cooperation with  
111 position holders and suppliers, shall not be required to offer for sale unblended gasoline.

112 **11. All terminals in Missouri that sell diesel fuel shall offer for sale, in cooperation**  
113 **with position holders and suppliers, biodiesel-blended fuel and conventional diesel fuel.**

114 [9.] **12.** Notwithstanding any other law to the contrary, all fuel retailers, wholesalers,  
115 distributors, and marketers shall be allowed to purchase fuel ethanol from any terminal, position  
116 holder, fuel ethanol producer, fuel ethanol wholesaler, or supplier. In the event a court of  
117 competent jurisdiction finds that this subsection does not apply to or improperly impairs existing  
118 contractual relationships, then this subsection shall only apply to and impact future contractual  
119 relationships.

120 **13. The department of agriculture shall, by rule, develop standards for cold**  
121 **temperature operability properties of biodiesel and shall have the power to enforce that**

122 all biodiesel and biodiesel-blended fuel offered for sale on or after January 1, 2009, in the  
123 state meets such standards.

124       **14. Notwithstanding the provisions of subsection 8 to the contrary, any person who**  
125 **produces biodiesel intended for market that does not meet the quality standard as**  
126 **described for biodiesel in this section may be assessed a civil penalty by the director of not**  
127 **more than ten thousand dollars for each violation. Each violation shall be a separate**  
128 **offense. In addition, the director may issue an order requiring the person to cease and**  
129 **desist from continuing the violation. No penalty shall be assessed nor a cease and desist**  
130 **order be issued unless the person is given notice and opportunity for a hearing before the**  
131 **director with respect to the violation. The order of the director assessing a penalty or**  
132 **imposing a cease and desist order shall be final and conclusive unless the person affected**  
133 **by the order files a petition for review under chapter 536, RSMo. Any person who fails to**  
134 **obey a cease and desist order after it has become final shall be subject to a civil penalty**  
135 **assessed by the director, after an opportunity for hearing before the director, of not more**  
136 **than five hundred dollars for each offense. Each day during which the failure continues**  
137 **shall be deemed a separate offense. If any person fails to pay an assessment of a civil**  
138 **penalty after it has become a final order, the director shall refer the matter to the attorney**  
139 **general for recovery of the amount assessed in any appropriate circuit court of the state.**  
140 **In such action, the validity and appropriateness of the final order imposing the civil**  
141 **penalty shall not be subject to review.**

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