

SECOND REGULAR SESSION

HOUSE BILL NO. 2536

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES DETHROW (Sponsor), POLLOCK, MAY, WELLS, SATER,
WALLACE, DENISON, KELLY AND ICET (Co-sponsors).

Read 1st time March 31, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5028L.02I

AN ACT

To repeal section 414.255, RSMo, relating to the mandatory sale of fuel ethanol-blended gasoline.

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

Section A. Section 414.255, RSMo, is repealed as follows: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) "Distributor", a person who either produces, refines, blends,
compounds or manufactures motor fuel, imports motor fuel into a state or exports
motor fuel out of a state, or who is engaged in distribution of motor fuel;

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

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

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.

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

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

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

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

29 (a) Registered or required to be registered pursuant to 26 U.S.C., Section
30 4101, for transactions in motor fuels in the bulk transfer/terminal distribution
31 system; and

32 (b) One or more of the following:

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

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

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

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

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

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

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

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

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

58 4. If a distributor is unable to obtain fuel ethanol or fuel ethanol-blended
59 gasoline from a position holder or supplier at the terminal at the same or lower
60 price as unblended gasoline, then the purchase of unblended gasoline by the
61 distributor and the sale of the unblended gasoline at retail shall not be deemed a

violation of this section. The position holder, supplier, distributor, and ultimate vendor shall, upon request, provide the required documentation regarding the sales transaction and price of fuel ethanol, fuel ethanol-blended gasoline, and unblended gasoline to the department of agriculture and the department of revenue. All information obtained by the departments from such sources shall be confidential and not disclosed except by court order or as otherwise provided by law.

5. The following shall be exempt from the provisions of this section:
- (1) Aviation fuel and automotive gasoline used in aircraft;
 - (2) Premium gasoline;
 - (3) E75-E85 fuel ethanol;
 - (4) Any specific exemptions declared by the United States Environmental Protection Agency; and
 - (5) Bulk transfers between terminals.

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

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

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

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

9. Notwithstanding any other law to the contrary, all fuel retailers, wholesalers, distributors, and marketers shall be allowed to purchase fuel ethanol from any terminal, position holder, fuel ethanol producer, fuel ethanol

105 wholesaler, or supplier. In the event a court of competent jurisdiction finds that
106 this subsection does not apply to or improperly impairs existing contractual
107 relationships, then this subsection shall only apply to and impact future
108 contractual relationships.]

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