

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 204
94TH GENERAL ASSEMBLY

Reported from the Committee on Agriculture, Conservation, Parks and Natural Resources, February 22, 2007, with recommendation that the Senate Committee Substitute do pass.

0926S.04C

TERRY L. SPIELER, Secretary.

AN ACT

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

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Section A. Section 414.255, RSMo, is repealed and one new section
2 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
2 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 use in
5 reciprocating aircraft engines;

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

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

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

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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

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

29 [(5)] (8) "Premium gasoline", gasoline with an antiknock index number
30 of ninety-one or greater;

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

40 [(7)] (10) "Qualified terminal", a terminal that has been assigned a
41 terminal control number (tcn) by the Internal Revenue Service;

42 [(8)] (11) "Supplier", a person that is:

43 (a) Registered or required to be registered pursuant to 26 U.S.C., Section
44 4101, for transactions in motor fuels in the bulk transfer/terminal distribution
45 system; and

46 (b) One or more of the following:

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

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

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

53 d. The position holder in a terminal or refinery outside this state with
54 respect to motor fuel which that person imports into this state. A terminal

55 operator shall not be considered a supplier based solely on the fact that the
56 terminal operator handles motor fuel consigned to it within a
57 terminal. "Supplier" also means a person that produces fuel grade alcohol or
58 alcohol-derivative substances in this state, produces fuel grade alcohol or
59 alcohol-derivative substances for import to this state into a terminal, or acquires
60 upon import by truck, rail car or barge into a terminal, fuel grade alcohol or
61 alcohol-derivative substances. "Supplier" includes a permissive supplier unless
62 specifically provided otherwise;

63 [(9)] (12) "Terminal", a bulk storage and distribution facility which
64 includes:

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

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

68 [(10)] (13) "Unblended gasoline", gasoline that has not been blended with
69 fuel ethanol.

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

73 4. **Except as otherwise provided in subsections 6 and 7 of this**
74 **section, on and after April 1, 2009, all diesel fuel sold or offered for sale**
75 **in Missouri at retail shall be a biodiesel-blended fuel, which shall only**
76 **be acquired through a qualified terminal.**

77 5. If a distributor is unable to obtain fuel ethanol or fuel ethanol-blended
78 gasoline from a position holder or supplier at the terminal at the same or lower
79 price as unblended gasoline, then the purchase of unblended gasoline by the
80 distributor and the sale of the unblended gasoline at retail shall not be deemed
81 a violation of this section. The position holder, supplier, distributor, and ultimate
82 vendor shall, upon request, provide the required documentation regarding the
83 sales transaction and price of fuel ethanol, fuel ethanol-blended gasoline, and
84 unblended gasoline to the department of agriculture and the department of
85 revenue. All information obtained by the departments from such sources shall
86 be confidential and not disclosed except by court order or as otherwise provided
87 by law.

88 6. **If a distributor is unable to obtain biodiesel-blended fuel from**
89 **a position holder or supplier at the terminal at the same price or lower**
90 **price as conventional diesel fuel, then the purchase of conventional**

91 **diesel fuel by the distributor and the sale of conventional diesel fuel at**
92 **retail shall not be deemed a violation of this section. The position**
93 **holder, supplier, distributor, and ultimate vendor shall, upon request,**
94 **provide the required documentation regarding the sales transaction**
95 **and price of biodiesel-blended fuel and conventional diesel fuel to the**
96 **department of agriculture and the department of revenue. All**
97 **information obtained by the departments from such sources shall be**
98 **confidential and not disclosed except by court order or as otherwise**
99 **provided by law.**

100 [5.] 7. The following shall be exempt from the provisions of this section:

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

102 (2) Premium gasoline;

103 (3) E75-E85 fuel ethanol;

104 (4) **Diesel fuel sold to or used by railroad on-track equipment;**

105 (5) **Diesel fuel sold to or used by motors located at an electric**
106 **generation plant regulated by the Nuclear Regulatory Commission;**

107 (6) Any specific exemptions declared by the United States Environmental
108 Protection Agency; and

109 [(5)] (7) Bulk transfers between terminals.

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

117 [6.] 8. The provisions of section 414.152 shall apply for purposes of
118 enforcement of this section.

119 [7.] 9. The department of agriculture is hereby authorized to promulgate
120 rules to ensure implementation of, and compliance and consistency with, this
121 section. Any rule or portion of a rule, as that term is defined in section 536.010,
122 RSMo, that is created under the authority delegated in this section shall become
123 effective only if it complies with and is subject to all of the provisions of chapter
124 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter
125 536, RSMo, are nonseverable and if any of the powers vested with the general
126 assembly pursuant to chapter 536, RSMo, to review, to delay the effective date,

127 or to disapprove and annul a rule are subsequently held unconstitutional, then
128 the grant of rulemaking authority and any rule proposed or adopted after August
129 28, 2006, shall be invalid and void.

130 **[8.] 10.** All terminals in Missouri that sell gasoline shall offer for sale,
131 in cooperation with position holders and suppliers, fuel ethanol-blended gasoline,
132 fuel ethanol, and unblended gasoline. Terminals that only offer for sale federal
133 reformulated gasolines, in cooperation with position holders and suppliers, shall
134 not be required to offer for sale unblended gasoline.

135 **11.** All terminals in Missouri that sell diesel fuel shall offer for
136 sale, in cooperation with position holders and suppliers, biodiesel-
137 blended fuel and conventional diesel fuel. Any biodiesel-blended fuel
138 sold at a terminal shall contain a minimum of five percent biodiesel by
139 volume.

140 **12.** All diesel fuel sold or distributed from terminals in Missouri
141 that is required to contain biodiesel fuel by volume shall be blended
142 with the biodiesel at a qualified terminal.

143 **[9.] 13.** Notwithstanding any other law to the contrary, all fuel retailers,
144 wholesalers, distributors, and marketers shall be allowed to purchase fuel ethanol
145 from any terminal, position holder, fuel ethanol producer, fuel ethanol wholesaler,
146 or supplier. In the event a court of competent jurisdiction finds that this
147 subsection does not apply to or improperly impairs existing contractual
148 relationships, then this subsection shall only apply to and impact future
149 contractual relationships.

150 **14.** The department of agriculture shall, by rule, develop
151 standards for cold temperature operability properties of biodiesel and
152 shall have the power to enforce that all biodiesel and biodiesel-blended
153 fuel offered for sale on or after January 1, 2009, in the state meets such
154 standards.

155 **15.** Notwithstanding the provisions of subsection 8 to the
156 contrary, any person who produces biodiesel intended for market that
157 does not meet the quality standard as described for biodiesel in this
158 section may be assessed a civil penalty by the director of not more than
159 ten thousand dollars for each violation. Each violation shall be a
160 separate offense. In addition, the director may issue an order requiring
161 the person to cease and desist from continuing the violation. No
162 penalty shall be assessed nor a cease and desist order be issued unless

163 the person is given notice and opportunity for a hearing before the
164 director with respect to the violation. The order of the director
165 assessing a penalty or imposing a cease and desist order shall be final
166 and conclusive unless the person affected by the order files a petition
167 for review under chapter 536, RSMo. Any person who fails to obey a
168 cease and desist order after it has become final shall be subject to a
169 civil penalty assessed by the director, after an opportunity for hearing
170 before the director, of not more than five hundred dollars for each
171 offense. Each day during which the failure continues shall be deemed
172 a separate offense. If any person fails to pay an assessment of a civil
173 penalty after it has become a final order, the director shall refer the
174 matter to the attorney general for recovery of the amount assessed in
175 any appropriate circuit court of the state. In such action, the validity
176 and appropriateness of the final order imposing the civil penalty shall
177 not be subject to review.

178 16. Notwithstanding any law or rule to the contrary, biodiesel-
179 blended fuel may be mixed or co-mingled with conventional diesel fuel
180 and sold at retail without any penalty, fine, or
181 punishment. Notwithstanding any law or rule to the contrary, fuel
182 ethanol-blended gasoline may be mixed or co-mingled with unblended
183 gasoline and sold at retail without any penalty, fine, or punishment.

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