

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE NO. 2 FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 204
94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

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TERRY L. SPIELER, Secretary.

0926S.08P

AN ACT

To repeal sections 142.031, 414.255, and 414.365, RSMo, and to enact in lieu thereof three new sections relating to biodiesel, with penalty provisions.

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

Section A. Sections 142.031, 414.255, and 414.365, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as section 142.031,
3 414.255, and 414.365, to read as follows:

142.031. 1. As used in this section the following terms shall mean:

2 (1) "Biodiesel", fuel as defined in ASTM Standard D-6751 or its
3 subsequent standard specifications for biodiesel fuel (B100) blend stock for
4 distillate fuels;

5 (2) "Missouri qualified biodiesel producer", a facility that produces
6 biodiesel, is registered with the United States Environmental Protection Agency
7 according to the requirements of 40 CFR 79, and:

8 (a) Is at least fifty-one percent owned by agricultural producers who are
9 residents of this state and who are actively engaged in agricultural production for
10 commercial purposes; or

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

14 2. The "Missouri Qualified Biodiesel Producer Incentive Fund" is hereby

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

15 created and subject to appropriations shall be used to provide economic subsidies
16 to Missouri qualified biodiesel producers pursuant to this section. The director
17 of the department of agriculture shall administer the fund pursuant to this
18 section.

19 3. A Missouri qualified biodiesel producer shall be eligible for a monthly
20 grant from the fund provided that one hundred percent of the feedstock originates
21 in the United States. However, the director may waive the feedstock
22 requirements on a month-to-month basis if the facility provides verification that
23 adequate feedstock is not available. A Missouri qualified biodiesel producer shall
24 only be eligible for the grant for a total of sixty months unless such producers
25 during the sixty months fail, due to a lack of appropriations, to receive the full
26 amount from the fund for which the producers were eligible, in which case such
27 producers shall continue to be eligible for up to twenty-four additional months or
28 until they have received the maximum amount of funding for which such
29 producers were eligible during the original sixty-month time period. The amount
30 of the grant is determined by calculating the estimated gallons of qualified
31 biodiesel produced during the preceding month from [Missouri] agricultural
32 products, as certified by the department of agriculture, and applying such figure
33 to the per-gallon incentive credit established in this subsection. Each Missouri
34 qualified biodiesel producer shall be eligible for a total grant in any fiscal year
35 equal to thirty cents per gallon for the first fifteen million gallons of qualified
36 biodiesel produced from [Missouri] agricultural products in the fiscal year plus
37 ten cents per gallon for the next fifteen million gallons of qualified biodiesel
38 produced from [Missouri] agricultural products in the fiscal year. All such
39 qualified biodiesel produced by a Missouri qualified biodiesel producer in excess
40 of thirty million gallons shall not be applied to the computation of a grant
41 pursuant to this subsection. The department of agriculture shall pay all grants
42 for a particular month by the fifteenth day after receipt and approval of the
43 application described in subsection 4 of this section.

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

- 48 (1) The location of the Missouri qualified biodiesel producer;
- 49 (2) The average number of citizens of Missouri employed by the Missouri
50 qualified biodiesel producer in the preceding month, if applicable;

51 (3) The number of bushel equivalents of Missouri agricultural commodities
52 **and non-Missouri agricultural commodities** used by the Missouri qualified
53 biodiesel producer in the production of biodiesel in the preceding month;

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

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

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

62 5. The director of the department of agriculture, in consultation with the
63 department of revenue, shall promulgate rules and regulations necessary for the
64 administration of the provisions of this section.

65 6. Any rule or portion of a rule, as that term is defined in section 536.010,
66 RSMo, that is created under the authority delegated in this section shall become
67 effective only if it complies with and is subject to all of the provisions of chapter
68 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter
69 536, RSMo, are nonseverable and if any of the powers vested with the general
70 assembly pursuant to chapter 536, RSMo, to review, to delay the effective date
71 or to disapprove and annul a rule are subsequently held unconstitutional, then
72 the grant of rulemaking authority and any rule proposed or adopted after August
73 28, 2002, shall be invalid and void.

74 7. This section shall expire on December 31, 2009. However, Missouri
75 qualified biodiesel producers receiving any grants awarded prior to December 31,
76 2009, shall continue to be eligible for the remainder of the original sixty-month
77 time period under the same terms and conditions of this section unless such
78 producer during such sixty months failed, due to a lack of appropriations, to
79 receive the full amount from the fund for which he or she was eligible. In such
80 case, such producers shall continue to be eligible for up to twenty-four additional
81 months or until they have received the maximum amount of funding for which
82 they were eligible during the original sixty-month time period.

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;**

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**
24 **in motor fuel in a terminal, as reflected on the records of the terminal operator.**
25 **A person holds the inventory position in motor fuel when that person has a**
26 **contract with the terminal operator for the use of storage facilities and**
27 **terminating services for motor fuel at the terminal. The term includes a terminal**
28 **operator 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.**

76 5. If a distributor is unable to obtain fuel ethanol or fuel ethanol-blended

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

91 **6. If a distributor is unable to obtain biodiesel or biodiesel-**
92 **blended fuel from a position holder or supplier at the terminal at the**
93 **same price or lower price as conventional diesel fuel, then the purchase**
94 **of conventional diesel fuel by the distributor and the sale of**
95 **conventional diesel fuel at retail shall not be deemed a violation of this**
96 **section. If a distributor can make five-percent biodiesel-blended fuel**
97 **by blending biodiesel and conventional diesel fuel at the same or lower**
98 **price than the price of acquiring conventional diesel fuel at the**
99 **terminal, then the purchase of conventional diesel fuel at the terminal**
100 **by a distributor for such purpose shall not be deemed a violation of this**
101 **section. The position holder, supplier, distributor, and ultimate vendor**
102 **shall, upon request, provide the required documentation regarding the**
103 **sales transaction and price of biodiesel, biodiesel-blended fuel, and**
104 **conventional diesel fuel to the department of agriculture and the**
105 **department of revenue. All information obtained by the departments**
106 **from such sources shall be confidential and not disclosed except by**
107 **court order or as otherwise provided by law.**

108 [5.] 7. The following shall be exempt from the provisions of this section:

- 109 (1) Aviation fuel and automotive gasoline used in aircraft;
- 110 (2) Premium gasoline;
- 111 (3) E75-E85 fuel ethanol;
- 112 (4) Diesel fuel sold to or used by railroad on-track equipment;

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

115 **(6)** Any specific exemptions declared by the United States Environmental
116 Protection Agency; and

117 **[(5)] (7)** Bulk transfers between terminals.

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

125 **[6.] 8.** The provisions of section 414.152 shall apply for purposes of
126 enforcement of this section.

127 **[7.] 9.** The department of agriculture is hereby authorized to promulgate
128 rules to ensure implementation of, and compliance and consistency with, this
129 section. Any rule or portion of a rule, as that term is defined in section 536.010,
130 RSMo, that is created under the authority delegated in this section shall become
131 effective only if it complies with and is subject to all of the provisions of chapter
132 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter
133 536, RSMo, are nonseverable and if any of the powers vested with the general
134 assembly pursuant to chapter 536, RSMo, to review, to delay the effective date,
135 or to disapprove and annul a rule are subsequently held unconstitutional, then
136 the grant of rulemaking authority and any rule proposed or adopted after August
137 28, 2006, shall be invalid and void.

138 **[8.] 10.** All terminals in Missouri that sell gasoline shall offer for sale,
139 in cooperation with position holders and suppliers, fuel ethanol-blended gasoline,
140 fuel ethanol, and unblended gasoline. Terminals that only offer for sale federal
141 reformulated gasolines, in cooperation with position holders and suppliers, shall
142 not be required to offer for sale unblended gasoline.

143 **11. All terminals in Missouri that sell diesel fuel shall offer for**
144 **sale, in cooperation with position holders and suppliers, biodiesel-**
145 **blended fuel. Any biodiesel-blended fuel sold at a terminal shall**
146 **contain five percent biodiesel by volume.**

147 **[9.] 12.** Notwithstanding any other law to the contrary, all fuel retailers,
148 wholesalers, distributors, and marketers shall be allowed to purchase fuel ethanol

149 **or biodiesel** from any terminal, position holder, fuel ethanol **or biodiesel**
150 producer, fuel ethanol **or biodiesel** wholesaler, or supplier. In the event a court
151 of competent jurisdiction finds that this subsection does not apply to or
152 improperly impairs existing contractual relationships, then this subsection shall
153 only apply to and impact future contractual relationships.

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

159 **14. Notwithstanding the provisions of subsection 8 to the**
160 **contrary, any person who produces biodiesel intended for market that**
161 **does not meet the quality standard as described for biodiesel in this**
162 **section may be assessed a civil penalty by the director of the**
163 **department of agriculture of not more than ten thousand dollars for**
164 **each violation. Each violation shall be a separate offense. In addition,**
165 **the director may issue an order requiring the person to cease and**
166 **desist from continuing the violation. No penalty shall be assessed nor**
167 **a cease and desist order be issued unless the person is given notice and**
168 **opportunity for a hearing before the director with respect to the**
169 **violation. The order of the director assessing a penalty or imposing a**
170 **cease and desist order shall be final and conclusive unless the person**
171 **affected by the order files a petition for review under chapter 536,**
172 **RSMo. Any person who fails to obey a cease and desist order after it**
173 **has become final shall be subject to a civil penalty assessed by the**
174 **director, after an opportunity for hearing before the director, of not**
175 **more than five hundred dollars for each offense. Each day during**
176 **which the failure continues shall be deemed a separate offense. If any**
177 **person fails to pay an assessment of a civil penalty after it has become**
178 **a final order, the director shall refer the matter to the attorney general**
179 **for recovery of the amount assessed in any appropriate circuit court of**
180 **the state. In such action, the validity and appropriateness of the final**
181 **order imposing the civil penalty shall not be subject to review.**

414.365. 1. As used in this section, the following terms mean:

- 2 (1) "B-20", a blend of twenty percent by volume biodiesel fuel and eighty
- 3 percent by volume petroleum-based diesel fuel;
- 4 (2) "Biodiesel", fuel as defined in ASTM standard PS121;

5 (3) "Incremental cost", the difference in cost between blended biodiesel
6 fuel and conventional petroleum-based diesel fuel at the time the blended
7 biodiesel fuel is purchased.

8 2. On or before October 1, 2003, the Missouri department of
9 transportation shall develop a program that provides for the opportunity to use
10 fuel with at least the biodiesel content of B-20 in its vehicle fleet and heavy
11 equipment that use diesel fuel. Such program shall have the following goals,
12 provided that such program and goals do not prohibit the department from
13 generating and selling EPCredits pursuant to section 414.407:

14 (1) On or before July 1, 2004, at least fifty percent of the department's
15 vehicle fleet and heavy equipment that use diesel fuel shall use fuel with at least
16 the biodiesel content of B-20, if such fuel is commercially available;

17 (2) On or before July 1, 2005, at least seventy-five percent of the
18 department's vehicle fleet and heavy equipment that use diesel fuel shall use fuel
19 with at least the biodiesel content of B-20, if such fuel is commercially available.

20 3. The blended biodiesel fuel shall be presumed to be commercially
21 available if the [incremental cost of such fuel is not more than twenty-five cents]
22 **conditions under subdivision (9) of subsection 2 and subsection 6 of**
23 **section 414.255 are satisfied.**

24 4. Nothing in this section is intended to create a state requirement for
25 biodiesel fuel use in excess of the requirements of the federal National Energy
26 Policy Act of 1992, Pub.L. 102-486; 42 U.S.C. 13251, 13257(o).

27 5. To the maximum extent practicable, the department shall obtain
28 funding for the incremental cost of the blended biodiesel fuel from the biodiesel
29 fuel revolving fund established in section 414.407.

30 6. The director of the Missouri department of transportation may
31 promulgate any rules necessary to carry out the provisions of this section. No
32 rule or portion of a rule promulgated pursuant to this section shall take effect
33 unless it has been promulgated pursuant to chapter 536, RSMo.

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