

FIRST REGULAR SESSION

HOUSE BILL NO. 1068

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HOBBS (Sponsor),
SANDER AND MUNZLINGER (Co-sponsors).

2441L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 414.255, RSMo, and to enact in lieu thereof two new sections relating to renewable fuel, 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Section A. Section 414.255, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 414.255 and 414.265, to read as follows:

2 414.255. 1. This section shall be known and may be cited as the "Missouri Renewable
2 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 reciprocating
5 aircraft engines;

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

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

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

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

15 [(3)] (6) "Fuel ethanol-blended gasoline", a mixture of ninety percent gasoline and ten
16 percent fuel ethanol in which the fuel ethanol meets ASTM International Specification D4806,
17 as amended. The ten percent fuel ethanol portion may be derived from any agricultural source;

18 [(4)] (7) "Position holder", the person who holds the inventory position in motor fuel in
19 a terminal, as reflected on the records of the terminal operator. A person holds the inventory
20 position in motor fuel when that person has a contract with the terminal operator for the use of
21 storage facilities and terminating services for motor fuel at the terminal. The term includes a
22 terminal operator who owns motor fuel in the terminal;

23 [(5)] (8) "Premium gasoline", gasoline with an antiknock index number of ninety-one
24 or greater;

25 [(6)] (9) "Price", the cost of the fuel ethanol plus fuel taxes and transportation expenses
26 less tax credits, if any; or the cost of the fuel ethanol-blended gasoline plus fuel taxes and
27 transportation expenses less tax credits, if any; or the cost of the unblended gasoline plus fuel
28 taxes and transportation expenses less tax credits, if any; **or the cost of the biodiesel plus fuel**
29 **taxes and transportation expenses less tax credits, if any; or the cost of the biodiesel-**
30 **blended fuel plus fuel taxes and transportation expenses less tax credits, if any; or the cost**
31 **of the conventional diesel fuel plus fuel taxes and transportation expenses less tax credits,**
32 **if any;**

33 [(7)] (10) "Qualified terminal", a terminal that has been assigned a terminal control
34 number (tcn) by the Internal Revenue Service;

35 [(8)] (11) "Supplier", a person that is:

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

38 (b) One or more of the following:

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

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

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

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

50 barge into a terminal, fuel grade alcohol or alcohol-derivative substances. "Supplier" includes
51 a permissive supplier unless specifically provided otherwise;

52 [(9)] (12) "Terminal", a bulk storage and distribution facility which includes:

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

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

56 [(10)] (13) "Unblended gasoline", gasoline that has not been blended with fuel ethanol.

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

60 4. **Except as otherwise provided in subsections 6 and 7 of this section, within one**
61 **hundred twenty days of the date of the determination issuance under subsection 16 of this**
62 **section, but in no case earlier than June 1, 2011, all diesel fuel sold or offered for sale in**
63 **Missouri at retail shall be a biodiesel-blended fuel.**

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

77 6. **If a distributor is unable to obtain biodiesel or biodiesel-blended fuel from a**
78 **position holder or supplier at the terminal at the same price or lower price as conventional**
79 **diesel fuel, then the purchase of conventional diesel fuel by the distributor and the sale of**
80 **conventional diesel fuel at retail shall not be deemed a violation of this section. If a**
81 **distributor can make five percent biodiesel-blended fuel by blending biodiesel and**
82 **conventional diesel fuel at the same or lower price than the price of acquiring conventional**
83 **diesel fuel at the terminal, then the purchase of conventional diesel fuel at the terminal by**
84 **a distributor for such purpose shall not be deemed a violation of this section. The position**
85 **holder, supplier, distributor, and ultimate vendor shall, upon request, provide the required**

86 **documentation regarding the sales transaction and price of biodiesel, biodiesel-blended**
87 **fuel, and conventional diesel fuel to the department of agriculture and the department of**
88 **revenue. All information obtained by the departments from such sources shall be**
89 **confidential and not disclosed except by court order or as otherwise provided by law.**

90 [5.] **7.** The following shall be exempt from the provisions of this section:

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

92 (2) Premium gasoline;

93 (3) E75-E85 fuel ethanol;

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

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

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

99 [(5)] (7) Bulk transfers between terminals.

100 The director of the department of agriculture may by rule, **subject to the provisions of chapter**
101 **536, RSMo**, exempt or rescind additional gasoline **and diesel** uses from the requirements of this
102 section. The governor may by executive order waive the requirements of this section or any part
103 thereof in part or in whole for all or any portion of this state [for reasons related to air quality].
104 Any regional waiver shall be issued and implemented in such a way as to minimize putting any
105 region of the state at a competitive advantage or disadvantage with any other region of the state.

106 [6.] **8.** The provisions of section 414.152 shall apply for purposes of enforcement of this
107 section.

108 [7.] **9.** The department of agriculture is hereby authorized to promulgate rules to ensure
109 implementation of, and compliance and consistency with, this section. **In adopting its rules,**
110 **the department shall as far as practicable adopt and apply to biodiesel producers the**
111 **requirements of an accredited producer contained in the BQ-9000 program of the National**
112 **Biodiesel Accreditation Commission.** Any rule or portion of a rule, as that term is defined in
113 section 536.010, RSMo, that is created under the authority delegated in this section shall become
114 effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo,
115 and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
116 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,
117 RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently
118 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
119 after August 28, 2006, shall be invalid and void.

120 [8.] **10.** All terminals in Missouri that sell gasoline shall offer for sale, in cooperation
121 with position holders and suppliers, fuel ethanol-blended gasoline, fuel ethanol, and unblended

122 gasoline. Terminals that only offer for sale federal reformulated gasolines, in cooperation with
123 position holders and suppliers, shall not be required to offer for sale unblended gasoline.

124 **11. Within ninety days of the date of the determination issuance under subsection**
125 **16 of this section, but in no case earlier than May 1, 2011, all terminals in Missouri that sell**
126 **diesel fuel shall offer for sale, in cooperation with position holders and suppliers, biodiesel-**
127 **blended fuel containing five percent biodiesel by volume, biodiesel, and conventional diesel**
128 **fuel. It shall not be a violation of this section for a terminal to sell biodiesel-blended fuel**
129 **containing more than five percent biodiesel by volume, provided any such sale conforms**
130 **with subsection 12 of this section.**

131 **12. Any seller of biodiesel-blended fuel containing greater than five percent**
132 **biodiesel by volume shall notify any purchaser of the biodiesel content of such fuel, in**
133 **accordance with notification procedures established by rule by the department of**
134 **agriculture. The notification requirements for the sale of such fuel at retail shall also**
135 **include an advisement to the purchaser to consult his or her owner's manual regarding**
136 **motor vehicle warranty and recommended fuel use.**

137 [9.] **13. Notwithstanding any other law to the contrary, all fuel retailers, wholesalers,**
138 **distributors, and marketers shall be allowed to purchase fuel ethanol or biodiesel from any**
139 **terminal, position holder, fuel ethanol or biodiesel producer, fuel ethanol or biodiesel**
140 **wholesaler, or supplier. In the event a court of competent jurisdiction finds that this subsection**
141 **does not apply to or improperly impairs existing contractual relationships, then this subsection**
142 **shall only apply to and impact future contractual relationships.**

143 **14. The department of agriculture shall, by rule, develop standards for cold**
144 **temperature operability properties of biodiesel and shall have the power to enforce that**
145 **all biodiesel and biodiesel-blended fuel offered for sale on or after January 1, 2011, in the**
146 **state meets such standards.**

147 **15. Notwithstanding the provisions of subsection 8 to the contrary, any person who**
148 **produces biodiesel intended for market that does not meet the quality standard for**
149 **biodiesel, as promulgated by rule by the department of agriculture, may be assessed a civil**
150 **penalty by the director of the department of agriculture of not more than ten thousand**
151 **dollars for each violation. Each violation shall be a separate offense. In addition, the**
152 **director may issue an order requiring the person to cease and desist from continuing the**
153 **violation. No penalty shall be assessed nor a cease and desist order be issued unless the**
154 **person is given notice and opportunity for a hearing before the director with respect to the**
155 **violation. The order of the director assessing a penalty or imposing a cease and desist**
156 **order shall be final and conclusive unless the person affected by the order files a petition**
157 **for review under chapter 536, RSMo. Any person who fails to obey a cease and desist**

158 order after it has become final shall be subject to a civil penalty assessed by the director,
159 after an opportunity for hearing before the director, of not more than five hundred dollars
160 for each offense. Each day during which the failure continues shall be deemed a separate
161 offense. If any person fails to pay an assessment of a civil penalty after it has become a
162 final order, the director shall refer the matter to the attorney general for recovery of the
163 amount assessed in any appropriate circuit court of the state. In such action, the validity
164 and appropriateness of the final order imposing the civil penalty shall not be subject to
165 review.

166 **16.** The department of agriculture shall issue a determination upon the finding that
167 the price of biodiesel or biodiesel-blended fuel is, on average, less than or equal to the price
168 of conventional diesel fuel for a period of one year. On the same day of the issuance of the
169 determination, the department shall notify the revisor of statutes and shall post notification
170 of the issuance on the department's publicly accessible web site. The department may
171 contract with the Food and Agricultural Policy Research Institute at the University of
172 Missouri to provide assistance to the department in meeting the requirements of this
173 subsection.

174 **17.** Nothing in this section shall be construed to restrict the use of animal fats in any
175 biodiesel-blended fuel for the purposes of compliance with this section.

414.265. The director of the department of agriculture may annually contract with
2 the Food and Agricultural Policy Research Institute associated with the University of
3 Missouri to study the effect of biodiesel and fuel ethanol production on the prices of fuel
4 and food, which shall include but not be limited to beef, milk, wheat, and corn. Each year
5 by January fifteenth, the results and findings of such study shall be provided in a report
6 submitted to the general assembly by the director of the department of agriculture.

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