

FIRST REGULAR SESSION

# HOUSE BILL NO. 1360

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE LOVE.

2639H.021

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 142.803 as enacted by house bill no. 2141, ninety-seventh general assembly, and section 142.800, RSMo, and to enact in lieu thereof two new sections relating to motor fuel tax, with an effective date.

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

Section A. Section 142.803 as enacted by house bill no. 2141, ninety-seventh general assembly, and section 142.800, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 142.800 and 142.803, to read as follows:

142.800. As used in this chapter, the following words, terms and phrases have the meanings given:

- (1) "Agricultural purposes", clearing, terracing or otherwise preparing the ground on a farm; preparing soil for planting and fertilizing, cultivating, raising and harvesting crops; raising and feeding livestock and poultry; building fences; pumping water for any and all uses on the farm, including irrigation; building roads upon any farm by the owner or person farming the same; operating milking machines; sawing wood for use on a farm; producing electricity for use on a farm; movement of tractors, farm implements and nonlicensed equipment from one field to another;
- (2) "Alternative fuel", electricity, liquefied petroleum gas (LPG or LP gas), compressed natural gas product, or a combination of liquefied petroleum gas and a compressed natural gas or electricity product used in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance. It includes all forms of fuel commonly or commercially known or sold as butane, propane, or compressed natural gas;

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

17 (4) "Blend stock", any petroleum product component of motor fuel, such as naphtha,  
18 reformat, toluene or kerosene, that can be blended for use in a motor fuel without further  
19 processing. The term includes those petroleum products presently defined by the Internal  
20 Revenue Service in regulations pursuant to 26 U.S.C., Sections 4081 and 4082, as amended.  
21 However, the term does not include any substance that:

22 (a) Will be ultimately used for consumer nonmotor fuel use; and

23 (b) Is sold or removed in drum quantities (fifty-five gallons) or less at the time of the  
24 removal or sale;

25 (5) "Blended fuel", a mixture composed of motor fuel and another liquid including blend  
26 stock, other than a de minimis amount of a product such as carburetor detergent or oxidation  
27 inhibitor, that can be used as a fuel in a highway vehicle. This term includes but is not limited  
28 to gasohol, ethanol, methanol, fuel grade alcohol, diesel fuel enhancers and resulting blends;

29 (6) "Blender", any person that produces blended motor fuel outside the bulk  
30 transfer/terminal system;

31 (7) "Blending", the mixing of one or more petroleum products, with or without another  
32 product, regardless of the original character of the product blended, if the product obtained by  
33 the blending is capable of use or otherwise sold for use in the generation of power for the  
34 propulsion of a motor vehicle, an airplane, or a motorboat. The term does not include the  
35 blending that occurs in the process of refining by the original refiner of crude petroleum or the  
36 blending of products known as lubricating oil and greases;

37 (8) "Bulk plant", a bulk motor fuel storage and distribution facility that is not a terminal  
38 within the bulk transfer system and from which motor fuel may be removed by truck;

39 (9) "Bulk transfer", any transfer of motor fuel from one location to another by pipeline  
40 tender or marine delivery within the bulk transfer/terminal system;

41 (10) "Bulk transfer/terminal system", the motor fuel distribution system consisting of  
42 refineries, pipelines, vessels, and terminals. Motor fuel in a refinery, pipeline, boat, barge or  
43 terminal is in the bulk transfer/terminal system. Motor fuel in the fuel supply tank of any engine,  
44 or in any tank car, rail car, trailer, truck, or other equipment suitable for ground transportation  
45 is not in the bulk transfer/terminal system;

46 (11) "Consumer", the user of the motor fuel;

47 (12) "Delivery", the placing of motor fuel or any liquid into the fuel tank of a motor  
48 vehicle or bulk storage facility;

49 (13) "Department", the department of revenue;

50 (14) "Destination state", the state, territory, or foreign country to which motor fuel is  
51 directed for delivery into a storage facility, a receptacle, a container, or a type of transportation  
52 equipment for the purpose of resale or use;

53 (15) "Diesel fuel", any liquid that is commonly or commercially known or sold as a fuel  
54 that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if,  
55 without further processing or blending, the liquid has practical and commercial fitness for use  
56 in the propulsion engine of a diesel-powered highway vehicle. "Diesel fuel" does not include  
57 jet fuel sold to a buyer who is registered with the Internal Revenue Service to purchase jet fuel  
58 and remit taxes on its sale or use to the Internal Revenue Service. "Diesel fuel" does not include  
59 biodiesel commonly referred to as B100 and defined in ASTM D6751, B99, or B99.9 until such  
60 biodiesel is blended with other diesel fuel or sold for highway use;

61 (16) "Diesel-powered highway vehicle", a motor vehicle operated on a highway that is  
62 propelled by a diesel-powered engine;

63 (17) "Director", the director of revenue;

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

67 (19) "Dyed fuel", diesel fuel or kerosene that is required to be dyed pursuant to United  
68 States Environmental Protection Agency rules or is dyed pursuant to Internal Revenue Service  
69 rules or pursuant to any other requirements subsequently set by the United States Environmental  
70 Protection Agency or Internal Revenue Service including any invisible marker requirements;

71 (20) "Eligible purchaser", a distributor who has been authorized by the director to  
72 purchase motor fuel on a tax-deferred basis;

73 (21) "Export", to obtain motor fuel in this state for sale or other distribution outside of  
74 this state. In applying this definition, motor fuel delivered out of state by or for the seller  
75 constitutes an export by the seller, and motor fuel delivered out of state by or for the purchaser  
76 constitutes an export by the purchaser;

77 (22) "Exporter", any person, other than a supplier, who purchases motor fuel in this state  
78 for the purpose of transporting or delivering the fuel outside of this state;

79 (23) "Farm tractor", all tractor-type, motorized farm implements and equipment but shall  
80 not include motor vehicles of the truck-type, pickup truck-type, automobiles, and other motor  
81 vehicles required to be registered and licensed each year pursuant to the provisions of the motor  
82 vehicle license and registration laws of this state;

83 (24) "Fuel grade alcohol", a methanol or ethanol with a proof of not less than one  
84 hundred ninety degrees (determined without regard to denaturants) and products derived from  
85 such alcohol for blending with motor fuel;

86 (25) "Fuel transportation vehicle", any vehicle designed for highway use which is also  
87 designed or used to transport motor fuels and includes transport trucks and tank wagons;

88 (26) "Gasoline", all products commonly or commercially known or sold as gasoline that  
89 are suitable for use as a motor fuel. Gasoline does not include products that have an American  
90 Society for Testing and Materials (ASTM) octane number of less than seventy-five as determined  
91 by the motor method;

92 (27) "Gross gallons", the total measured motor fuel, exclusive of any temperature or  
93 pressure adjustments, in U.S. gallons;

94 (28) "Heating oil", a motor fuel that is burned in a boiler, furnace, or stove for heating  
95 or industrial processing purposes;

96 (29) "Import", to bring motor fuel into this state by any means of conveyance other than  
97 in the fuel supply tank of a motor vehicle. In applying this definition, motor fuel delivered into  
98 this state from out-of-state by or for the seller constitutes an import by the seller, and motor fuel  
99 delivered into this state from out-of-state by or for the purchaser constitutes an import by the  
100 purchaser;

101 (30) "Import verification number", the number assigned by the director with respect to  
102 a single transport truck delivery into this state from another state upon request for an assigned  
103 number by an importer or the transporter carrying motor fuel into this state for the account of an  
104 importer;

105 (31) "Importer" includes any person who is the importer of record, pursuant to federal  
106 customs law, with respect to motor fuel. If the importer of record is acting as an agent, the  
107 person for whom the agent is acting is the importer. If there is no importer of record of motor  
108 fuel entered into this state, the owner of the motor fuel at the time it is brought into this state is  
109 the importer;

110 (32) "Interstate motor fuel user", any person who operates a motor fuel-powered motor  
111 vehicle with a licensed gross weight exceeding twenty-six thousand pounds that travels from this  
112 state into another state or from another state into this state;

113 (33) "Invoiced gallons", the gallons actually billed on an invoice for payment to a  
114 supplier which shall be either gross or net gallons on the original manifest or bill of lading;

115 (34) "K-1 kerosene", a petroleum product having an A.P.I. gravity of not less than forty  
116 degrees, at a temperature of sixty degrees Fahrenheit and a minimum flash point of one hundred  
117 degrees Fahrenheit with a sulfur content not exceeding four one-hundredths percent by weight;

118 (35) "Kerosene", the petroleum fraction containing hydrocarbons that are slightly heavier  
119 than those found in gasoline and naphtha, with a boiling range of one hundred forty-nine to three  
120 hundred degrees Celsius;

- 121 (36) "Liquid", any substance that is liquid in excess of sixty degrees Fahrenheit and at  
122 a pressure of fourteen and seven-tenths pounds per square inch absolute;
- 123 (37) "Motor fuel", gasoline, diesel fuel, kerosene and blended fuel;
- 124 (38) "Motor vehicle", any automobile, truck, truck-tractor or any motor bus or  
125 self-propelled vehicle not exclusively operated or driven upon fixed rails or tracks. The term  
126 does not include:
- 127 (a) Farm tractors or machinery including tractors and machinery designed for off-road  
128 use but capable of movement on roads at low speeds, or
- 129 (b) A vehicle solely operated on rails;
- 130 (39) "Net gallons", the motor fuel, measured in U.S. gallons, when corrected to a  
131 temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per  
132 square inch absolute (psi);
- 133 (40) "Permissive supplier", an out-of-state supplier that elects, but is not required, to  
134 have a supplier's license pursuant to this chapter;
- 135 (41) "Person", natural persons, individuals, partnerships, firms, associations,  
136 corporations, estates, trustees, business trusts, syndicates, this state, any county, city,  
137 municipality, school district or other political subdivision of the state, federally recognized  
138 Indian tribe, or any corporation or combination acting as a unit or any receiver appointed by any  
139 state or federal court;
- 140 (42) "Position holder", the person who holds the inventory position in motor fuel in a  
141 terminal, as reflected on the records of the terminal operator. A person holds the inventory  
142 position in motor fuel when that person has a contract with the terminal operator for the use of  
143 storage facilities and terminating services for motor fuel at the terminal. The term includes a  
144 terminal operator who owns motor fuel in the terminal;
- 145 (43) "Propel", the operation of a motor vehicle, whether it is in motion or at rest;
- 146 (44) "Public highway", every road, toll road, highway, street, way or place generally open  
147 to the use of the public as a matter of right for the purposes of vehicular travel, including streets  
148 and alleys of any town or city notwithstanding that the same may be temporarily closed for  
149 construction, reconstruction, maintenance or repair;
- 150 (45) "Qualified terminal", a terminal which has been assigned a terminal control number  
151 ("tcn") by the Internal Revenue Service;
- 152 (46) "Rack", a mechanism for delivering motor fuel from a refinery or terminal into a  
153 railroad tank car, a transport truck or other means of bulk transfer outside of the bulk  
154 transfer/terminal system;
- 155 (47) "Refiner", any person that owns, operates, or otherwise controls a refinery;

156 (48) "Refinery", a facility used to produce motor fuel from crude oil, unfinished oils,  
157 natural gas liquids, or other hydrocarbons and from which motor fuel may be removed by  
158 pipeline, by boat or barge, or at a rack;

159 (49) "Removal", any physical transfer of motor fuel from a terminal, manufacturing  
160 plant, customs custody, pipeline, boat or barge, refinery or any facility that stores motor fuel;

161 (50) "Retailer", a person that engages in the business of selling or dispensing to the  
162 consumer within this state;

163 (51) "Supplier", a person that is:

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

166 (b) One or more of the following:

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

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

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

172 d. The position holder in a terminal or refinery outside this state with respect to motor  
173 fuel which that person imports into this state. A terminal operator shall not be considered a  
174 supplier based solely on the fact that the terminal operator handles motor fuel consigned to it  
175 within a terminal. "Supplier" also means a person that produces fuel grade alcohol or  
176 alcohol-derivative substances in this state, produces fuel grade alcohol or alcohol-derivative  
177 substances for import to this state into a terminal, or acquires upon import by truck, rail car or  
178 barge into a terminal, fuel grade alcohol or alcohol-derivative substances. "Supplier" includes  
179 a permissive supplier unless specifically provided otherwise;

180 (52) "Tank wagon", a straight truck having multiple compartments designed or used to  
181 carry motor fuel;

182 (53) "Terminal", a bulk storage and distribution facility which includes:

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

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

186 (54) "Terminal bulk transfers" include but are not limited to the following:

187 (a) Boat or barge movement of motor fuel from a refinery or terminal to a terminal;

188 (b) Pipeline movements of motor fuel from a refinery or terminal to a terminal;

189 (c) Book transfers of product within a terminal between suppliers prior to completion  
190 of removal across the rack; and

191 (d) Two-party exchanges or buy-sell supply arrangements within a terminal between  
192 licensed suppliers;

193 (55) "Terminal operator", any person that owns, operates, or otherwise controls a  
194 terminal. A terminal operator may own the motor fuel that is transferred through or stored in the  
195 terminal;

196 (56) "Transmix", the buffer or interface between two different products in a pipeline  
197 shipment, or a mix of two different products within a refinery or terminal that results in an  
198 off-grade mixture;

199 (57) "Transport truck", a semitrailer combination rig designed or used to transport motor  
200 fuel over the highways;

201 (58) "Transporter", any operator of a pipeline, barge, railroad or transport truck engaged  
202 in the business of transporting motor fuels;

203 (59) "Two-party exchange", a transaction in which the motor fuel is transferred from one  
204 licensed supplier or licensed permissive supplier to another licensed supplier or licensed  
205 permissive supplier and:

206 (a) Which transaction includes a transfer from the person that holds the original  
207 inventory position for motor fuel in the terminal as reflected on the records of the terminal  
208 operator; and

209 (b) The exchange transaction is simultaneous with removal from the terminal by the  
210 receiving exchange partner. However, in any event, the terminal operator in its books and  
211 records treats the receiving exchange party as the supplier which removes the product across a  
212 terminal rack for purposes of reporting such events to this state;

213 (60) "Ultimate vendor", a person that sells motor fuel to the consumer;

214 (61) "Undyed diesel fuel", diesel fuel that is not subject to the United States  
215 Environmental Protection Agency dyeing requirements, or has not been dyed in accordance with  
216 Internal Revenue Service fuel dyeing provisions; [and]

217 (62) "Vehicle fuel tank", any receptacle on a motor vehicle from which fuel is supplied  
218 for the propulsion of the motor vehicle; **and**

219 **(63) "Wholesale price", the price at the terminal's rack excluding federal and state**  
220 **excise taxes.**

142.803. 1. A tax is levied and imposed on all motor fuel used or consumed in this state  
2 as follows:

3 (1) Motor fuel[,] :

4 **(a) Seventeen cents per gallon; and**

5 **(b) In addition, beginning January 1, 2016:**

6           **a. A tax equivalent to two percent on the statewide average wholesale price of a**  
7 **gallon of unleaded gasoline as determined by the director from the applicable base period,**  
8 **on all motor fuel except diesel fuel and blended fuel containing diesel fuel. The provisions**  
9 **of this subparagraph shall not apply if the wholesale price of a gallon of unleaded gasoline**  
10 **exceeds four dollars per gallon;**

11           **b. A tax equivalent to two percent on the statewide average wholesale price of a**  
12 **gallon of diesel fuel as determined by the director from the applicable base period, on all**  
13 **diesel fuel and blended fuel containing diesel fuel. The provisions of this subparagraph**  
14 **shall not apply if the wholesale price of a gallon of diesel fuel exceeds four dollars per**  
15 **gallon;**

16           (2) Alternative fuels, not subject to the decal fees as provided in section 142.869, with  
17 a power potential equivalent of motor fuel. In the event alternative fuel, which is not commonly  
18 sold or measured by the gallon, is used in motor vehicles on the highways of this state, the  
19 director is authorized to assess and collect a tax upon such alternative fuel measured by the  
20 nearest power potential equivalent to that of one gallon of regular grade gasoline. The  
21 determination by the director of the power potential equivalent of such alternative fuel shall be  
22 prima facie correct;

23           (3) Aviation fuel used in propelling aircraft with reciprocating engines, nine cents per  
24 gallon as levied and imposed by section 155.080 to be collected as required under this chapter;

25           (4) Compressed natural gas fuel, five cents per gasoline gallon equivalent until  
26 December 31, 2019, eleven cents per gasoline gallon equivalent from January 1, 2020, until  
27 December 31, 2024, and then seventeen cents per gasoline gallon equivalent thereafter. The  
28 gasoline gallon equivalent and method of sale for compressed natural gas shall be as published  
29 by the National Institute of Standards and Technology in Handbooks 44 and 130, and  
30 supplements thereto or revisions thereof. In the absence of such standard or agreement, the  
31 gasoline gallon equivalent and method of sale for compressed natural gas shall be equal to five  
32 and sixty-six-hundredths pounds of compressed natural gas. All applicable provisions contained  
33 in this chapter governing administration, collections, and enforcement of the state motor fuel tax  
34 shall apply to the tax imposed on compressed natural gas, including but not limited to licensing,  
35 reporting, penalties, and interest;

36           (5) **(a)** Liquefied natural gas fuel, five cents per diesel gallon equivalent until December  
37 31, 2019, eleven cents per diesel gallon equivalent from January 1, 2020, until December 31,  
38 2024, and then seventeen cents per diesel gallon equivalent thereafter. The diesel gallon  
39 equivalent and method of sale for liquefied natural gas shall be as published by the National  
40 Institute of Standards and Technology in Handbooks 44 and 130, and supplements thereto or  
41 revisions thereof.

42           **(b)** In the absence of such standard or agreement, the diesel gallon equivalent and  
43 method of sale for liquefied natural gas shall be equal to six and six-hundredths pounds of  
44 liquefied natural gas. All applicable provisions contained in this chapter governing  
45 administration, collections, and enforcement of the state motor fuel tax shall apply to the tax  
46 imposed on liquefied natural gas, including but not limited to licensing, reporting, penalties, and  
47 interest;

48           (6) If a natural gas, compressed natural gas, or liquefied natural gas connection is used  
49 for fueling motor vehicles and for another use, such as heating, the tax imposed by this section  
50 shall apply to the entire amount of natural gas, compressed natural gas, or liquefied natural gas  
51 used unless an approved separate metering and accounting system is in place.

52           2. All taxes, surcharges and fees are imposed upon the ultimate consumer, but are to be  
53 precollected as described in this chapter, for the facility and convenience of the consumer. The  
54 levy and assessment on other persons as specified in this chapter shall be as agents of this state  
55 for the precollection of the tax.

56           **3. The statewide average wholesale price of one gallon of unleaded gasoline and**  
57 **diesel fuels upon which the two-tenths of one percent tax shall be levied and imposed as**  
58 **authorized under paragraph (b) of subdivision (1) of subsection 1 of this section shall be**  
59 **recalculated every six months. To calculate the statewide average wholesale price of a**  
60 **gallon of unleaded gasoline and diesel fuel for the six-month tax period comprising**  
61 **January first through June thirtieth, the director shall review the statewide average**  
62 **wholesale prices for the aforementioned motor fuels from the base period that comprises**  
63 **June first through November thirtieth immediately prior to the January first through June**  
64 **thirtieth tax period. In addition, to calculate the statewide average wholesale price of a**  
65 **gallon of unleaded gasoline and diesel fuel for the six-month tax period comprising July**  
66 **first through December thirty-first, the director shall review the statewide average**  
67 **wholesale prices for the aforementioned motor fuels from the base period that comprises**  
68 **December first through May thirty-first immediately prior to the July first through**  
69 **December thirty-first tax period.**

70           **4. Blended fuel that contains gasoline shall also be subject to the two-tenths of one**  
71 **percent tax authorized under paragraph (b) of subdivision (1) of subsection 1 of this**  
72 **section and the wholesale price of such blended fuel that contains gasoline shall be the same**  
73 **statewide average wholesale price of one gallon of unleaded gasoline. Blended fuel that**  
74 **contains diesel fuel shall also be subject to the two-tenths of one percent tax authorized**  
75 **under paragraph (b) of subdivision (1) of subsection 1 of this section and the wholesale**  
76 **price of such blended fuel that contains diesel fuel shall be the same statewide average**  
77 **wholesale price of one gallon of diesel fuel.**

78           **5. Any increase in revenues produced as a result of the excise tax levied on motor**  
79 **fuel as provided in paragraph (b) of subdivision (1) of subsection 1 of this section shall be**  
80 **subject to the provisions of article X, section 18(e) of the constitution of Missouri.**

Section B. The provisions of this act shall become effective January 1, 2016.

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