

FIRST REGULAR SESSION

HOUSE BILL NO. 592

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES DETHROW (Sponsor), SCHAD, SATER, COOPER, FRANZ, POLLOCK, YATES, KUESSNER, WALLACE, WELLS, WETER, ERVIN, DUSENBERG, SCHLOTTACH, WASSON, EMERY AND LAMPE (Co-sponsors).

1241L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 414.255, RSMo, and to enact in lieu thereof one new section 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Section A. Section 414.255, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 414.255, to read as follows: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 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

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 storage facilities and terminating services for motor fuel at the terminal. The term includes a
16 terminal operator who owns motor fuel in the terminal;

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

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

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

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

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

28 (b) One or more of the following:

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

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

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

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

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

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

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

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

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

50 4. If a distributor is unable to obtain fuel ethanol or fuel ethanol-blended gasoline from
51 a position holder or supplier at the terminal at the same or lower price as unblended gasoline,
52 then the purchase of unblended gasoline by the distributor and the sale of the unblended gasoline
53 at retail shall not be deemed a violation of this section. The position holder, supplier, distributor,
54 and ultimate vendor shall, upon request, provide the required documentation regarding the sales
55 transaction and price of fuel ethanol, fuel ethanol-blended gasoline, and unblended gasoline to
56 the department of agriculture and the department of revenue. All information obtained by the
57 departments from such sources shall be confidential and not disclosed except by court order or
58 as otherwise provided by law.

59 5. The following shall be exempt from the provisions of this section:

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

61 (2) Premium gasoline;

62 (3) E75-E85 fuel ethanol;

63 (4) Any specific exemptions declared by the United States Environmental Protection
64 Agency; and

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

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

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

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

86 9. Notwithstanding any other law to the contrary, all fuel retailers, wholesalers,
87 distributors, and marketers shall be allowed to purchase fuel ethanol from any terminal, position
88 holder, fuel ethanol producer, fuel ethanol wholesaler, or supplier. In the event a court of
89 competent jurisdiction finds that this subsection does not apply to or improperly impairs existing
90 contractual relationships, then this subsection shall only apply to and impact future contractual
91 relationships.

92 **10. This section shall expire on December 31, 2010.**

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