

SECOND REGULAR SESSION

# HOUSE BILL NO. 1410

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HOUGHTON.

4772H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 319.114, 414.036, and 414.255, RSMo, and to enact in lieu thereof three new sections relating to liability for the use of incompatible motor fuel.

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

Section A. Sections 319.114, 414.036, and 414.255, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 319.114, 414.036, and 414.255, to read as follows:

319.114. 1. The department shall establish rules requiring the owner or operator to maintain evidence of financial responsibility in an amount and form sufficient for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of an underground storage tank.

2. The form of the evidence of financial responsibility required by this section may be by any one, or any combination, of the following methods: cash trust fund, guarantee, insurance, surety or performance bond, letter of credit, qualification as a self-insurer, or any other method satisfactory to the department. In adopting requirements under this section, the department may specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing the evidence of financial responsibility.

3. The amount of financial responsibility required shall not exceed the amount required for compliance with section 9003 of subtitle I of the federal Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended.

4. The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this

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.

17 section. Nothing in this subsection shall be construed to limit any other state or federal statutory,  
18 contractual, or common law liability of a guarantor to its owner or operator, including, but not  
19 limited to, the liability of such guarantor for bad faith either in negotiating or in failing to  
20 negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish  
21 the liability of any person under section 107 or 111 of the Comprehensive Environmental  
22 Response, Compensation and Liability Act of 1980 (P.L. 96-510), as amended, or other  
23 applicable law.

24 **5. Except in cases of fraud or misrepresentation on the application for coverage,**  
25 **no owner or operator shall be denied benefits by the petroleum storage tank insurance**  
26 **fund or other provider of financial responsibility required by this section solely because**  
27 **the owner or operator's claim arises from a release of a regulated petroleum substance**  
28 **deemed incompatible with the motor fuel storage tank system.**

414.036. 1. After December 31, 2010, the owner or operator of an aboveground storage  
2 tank defined in subsection 2 of this section shall maintain evidence of financial responsibility in  
3 an amount equal to or greater than one million dollars per occurrence and two million dollars  
4 annual aggregate for the costs of taking corrective action and compensating third parties for  
5 bodily injury and property damage caused by sudden and nonsudden accidental releases arising  
6 from the operation of the tank.

7 2. For the purposes of this section, "aboveground storage tank" is defined as any one or  
8 a combination of tanks, including pipes connected thereto, used to contain an accumulation of  
9 petroleum and the volume of which, including the volume of the aboveground pipes connected  
10 thereto, is ninety percent or more above the surface of the ground, which is utilized for the sale  
11 of products regulated by this chapter. The term does not include those tanks described in  
12 paragraphs (a) to (k) of subdivision (16) of section 319.100, nor does it include aboveground  
13 storage tanks at refineries, petroleum pipeline terminals, or marine terminals.

14 3. Owners and operators may meet the requirements of this section by participating in  
15 the petroleum storage tank insurance fund created in section 319.129 or by any other method  
16 approved by the department.

17 4. The department shall promulgate rules to implement the provisions of this section.  
18 Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the  
19 authority delegated in this section shall become effective only if it complies with and is subject  
20 to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and  
21 chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant  
22 to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are  
23 subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed  
24 or adopted after August 28, 2008, shall be invalid and void.

25           **5. Except in cases of fraud or misrepresentation on the application for coverage,**  
26 **no owner or operator shall be denied benefits by the petroleum storage tank insurance**  
27 **fund or other provider of financial responsibility required by this section solely because**  
28 **the owner or operator's claim arises from a release of a regulated motor fuel deemed**  
29 **incompatible with the motor fuel storage tank system.**

          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) "Distributor", a person who either produces, refines, blends, compounds or  
7 manufactures motor fuel, imports motor fuel into a state or exports motor fuel out of a state, or  
8 who is engaged in distribution of motor fuel;

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

12           (4) "Position holder", the person who holds the inventory position in motor fuel in a  
13 terminal, as reflected on the records of the terminal operator. A person holds the inventory  
14 position in motor fuel when that person has a contract with the terminal operator for the use of  
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, that is created under the authority delegated in  
76 this section shall become effective only if it complies with and is subject to all of the provisions  
77 of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable  
78 and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to  
79 delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional,  
80 then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2006,  
81 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. No motor vehicle manufacturer, distributor, or dealer or refiner, supplier,**  
93 **wholesaler, distributor, retailer, or other vendor of motor fuel that contains or is blended**  
94 **with any amount of ethanol, biodiesel, or other renewable fuel or biofuel and that complies**  
95 **with labeling and motor fuel quality laws shall be liable for any property damages related**  
96 **to a customer's purchase or use of such motor fuel from the vendor if the selection of motor**  
97 **fuel was made by the customer and not the vendor. No motor fuel that contains or is**  
98 **blended with any amount of ethanol, biodiesel, or other renewable fuel or biofuel shall be**  
99 **considered a defective product for the purposes of a claim for property damage if such**  
100 **motor fuel complies with motor fuel quality laws.**

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