

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 657

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.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

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2 are repealed and three new sections enacted in lieu thereof, to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

5 319.114. 1. The department shall establish rules requiring
6 the owner or operator to maintain evidence of financial
7 responsibility in an amount and form sufficient for taking
8 corrective action and compensating third parties for bodily
9 injury and property damage caused by sudden and nonsudden
10 accidental releases arising from the operation of an underground
11 storage tank.

12 2. The form of the evidence of financial responsibility
13 required by this section may be by any one, or any combination,
14 of the following methods: cash trust fund, guarantee, insurance,
15 surety or performance bond, letter of credit, qualification as a
16 self-insurer, or any other method satisfactory to the department.

1 In adopting requirements under this section, the department may
2 specify policy or other contractual terms, conditions, or
3 defenses which are necessary or are unacceptable in establishing
4 the evidence of financial responsibility.

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

9 4. The total liability of a guarantor shall be limited to
10 the aggregate amount which the guarantor has provided as evidence
11 of financial responsibility to the owner or operator under this
12 section. Nothing in this subsection shall be construed to limit
13 any other state or federal statutory, contractual, or common law
14 liability of a guarantor to its owner or operator, including, but
15 not limited to, the liability of such guarantor for bad faith
16 either in negotiating or in failing to negotiate the settlement
17 of any claim.

18
19 Nothing in this subsection shall be construed to diminish the
20 liability of any person under section 107 or 111 of the
21 Comprehensive Environmental Response, Compensation and Liability
22 Act of 1980 (P.L. 96-510), as amended, or other applicable law.

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

1 with the underground storage tank system.

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

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

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

25 4. The department shall promulgate rules to implement the
26 provisions of this section. Any rule or portion of a rule, as
27 that term is defined in section 536.010, that is created under
28 the authority delegated in this section shall become effective

1 only if it complies with and is subject to all of the provisions
2 of chapter 536 and, if applicable, section 536.028. This section
3 and chapter 536 are nonseverable and if any of the powers vested
4 with the general assembly pursuant to chapter 536 to review, to
5 delay the effective date, or to disapprove and annul a rule are
6 subsequently held unconstitutional, then the grant of rulemaking
7 authority and any rule proposed or adopted after August 28, 2008,
8 shall be invalid and void.

9 5. Except in cases of fraud or misrepresentation on the
10 application for coverage, no owner or operator shall be denied
11 benefits by the petroleum storage tank insurance fund or other
12 provider of financial responsibility required by this section
13 solely because the owner or operator's claim arises from a
14 release of motor fuel deemed incompatible with the aboveground
15 storage tank system.

16 414.255. 1. This section shall be known and may be cited
17 as the "Missouri Renewable Fuel Standard Act".

18 2. For purposes of this section, the following terms shall
19 mean:

20 (1) "Aviation fuel", any motor fuel specifically compounded
21 for use in reciprocating aircraft engines;

22 (2) "Distributor", a person who either produces, refines,
23 blends, compounds or manufactures motor fuel, imports motor fuel
24 into a state or exports motor fuel out of a state, or who is
25 engaged in distribution of motor fuel;

26 (3) "Fuel ethanol-blended gasoline", a mixture of ninety
27 percent gasoline and ten percent fuel ethanol in which the fuel
28 ethanol meets ASTM International Specification D4806, as amended.

1 The ten percent fuel ethanol portion may be derived from any
2 agricultural source;

3 (4) "Position holder", the person who holds the inventory
4 position in motor fuel in a terminal, as reflected on the records
5 of the terminal operator. A person holds the inventory position
6 in motor fuel when that person has a contract with the terminal
7 operator for the use of storage facilities and terminating
8 services for motor fuel at the terminal. The term includes a
9 terminal operator who owns motor fuel in the terminal;

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

12 (6) "Price", the cost of the fuel ethanol plus fuel taxes
13 and transportation expenses less tax credits, if any; or the cost
14 of the fuel ethanol-blended gasoline plus fuel taxes and
15 transportation expenses less tax credits, if any; or the cost of
16 the unblended gasoline plus fuel taxes and transportation
17 expenses less tax credits, if any;

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

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

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

24 (b) One or more of the following:

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

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

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

6 d. The position holder in a terminal or refinery outside
7 this state with respect to motor fuel which that person imports
8 into this state. A terminal operator shall not be considered a
9 supplier based solely on the fact that the terminal operator
10 handles motor fuel consigned to it within a terminal. "Supplier"
11 also means a person that produces fuel grade alcohol or
12 alcohol-derivative substances in this state, produces fuel grade
13 alcohol or alcohol-derivative substances for import to this state
14 into a terminal, or acquires upon import by truck, rail car or
15 barge into a terminal, fuel grade alcohol or alcohol-derivative
16 substances. "Supplier" includes a permissive supplier unless
17 specifically provided otherwise;

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

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

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

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

27 3. Except as otherwise provided under subsections 4 and 5
28 of this section, on and after January 1, 2008, all gasoline sold

1 or offered for sale in Missouri at retail shall be fuel
2 ethanol-blended gasoline.

3 4. If a distributor is unable to obtain fuel ethanol or
4 fuel ethanol-blended gasoline from a position holder or supplier
5 at the terminal at the same or lower price as unblended gasoline,
6 then the purchase of unblended gasoline by the distributor and
7 the sale of the unblended gasoline at retail shall not be deemed
8 a violation of this section. The position holder, supplier,
9 distributor, and ultimate vendor shall, upon request, provide the
10 required documentation regarding the sales transaction and price
11 of fuel ethanol, fuel ethanol-blended gasoline, and unblended
12 gasoline to the department of agriculture and the department of
13 revenue. All information obtained by the departments from such
14 sources shall be confidential and not disclosed except by court
15 order or as otherwise provided by law.

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

- 18 (1) Aviation fuel and automotive gasoline used in aircraft;
- 19 (2) Premium gasoline;
- 20 (3) E75-E85 fuel ethanol;
- 21 (4) Any specific exemptions declared by the United States
22 Environmental Protection Agency; and

23 (5) Bulk transfers between terminals. The director of the
24 department of agriculture may by rule exempt or rescind
25 additional gasoline uses from the requirements of this section.
26 The governor may by executive order waive the requirements of
27 this section or any part thereof in part or in whole for all or
28 any portion of this state for reasons related to air quality.

1 Any regional waiver shall be issued and implemented in such a way
2 as to minimize putting any region of the state at a competitive
3 advantage or disadvantage with any other region of the state.

4 6. The provisions of section 414.152 shall apply for
5 purposes of enforcement of this section.

6 7. The department of agriculture is hereby authorized to
7 promulgate rules to ensure implementation of, and compliance and
8 consistency with, this section. Any rule or portion of a rule,
9 as that term is defined in section 536.010, that is created under
10 the authority delegated in this section shall become effective
11 only if it complies with and is subject to all of the provisions
12 of chapter 536 and, if applicable, section 536.028. This section
13 and chapter 536 are nonseverable and if any of the powers vested
14 with the general assembly pursuant to chapter 536 to review, to
15 delay the effective date, or to disapprove and annul a rule are
16 subsequently held unconstitutional, then the grant of rulemaking
17 authority and any rule proposed or adopted after August 28, 2006,
18 shall be invalid and void.

19 8. All terminals in Missouri that sell gasoline shall offer
20 for sale, in cooperation with position holders and suppliers,
21 fuel ethanol-blended gasoline, fuel ethanol, and unblended
22 gasoline. Terminals that only offer for sale federal
23 reformulated gasolines, in cooperation with position holders and
24 suppliers, shall not be required to offer for sale unblended
25 gasoline.

26 9. Notwithstanding any other law to the contrary, all fuel
27 retailers, wholesalers, distributors, and marketers shall be
28 allowed to purchase fuel ethanol from any terminal, position

1 holder, fuel ethanol producer, fuel ethanol wholesaler, or
2 supplier. In the event a court of competent jurisdiction finds
3 that this subsection does not apply to or improperly impairs
4 existing contractual relationships, then this subsection shall
5 only apply to and impact future contractual relationships.

6 10. No refiner, supplier, terminal, wholesaler,
7 distributor, retailer, or other vendor of motor fuel that
8 contains or is blended with any amount of ethanol, biodiesel, or
9 other renewable fuel or biofuel and that complies with labeling
10 and motor fuel quality laws shall be liable for any property
11 damages related to a customer's purchase of such motor fuel from
12 the vendor so long as the selection of the motor fuel was made by
13 the customer and not the vendor. No motor fuel that contains or
14 is blended with any amount of ethanol, biodiesel, or other
15 renewable fuel or biofuel shall be considered a defective product
16 for the purposes of a claim for property damage if such motor
17 fuel complies with motor fuel quality laws.

18 11. No auto manufacturer or dealer, except in cases of
19 fraud or misrepresentation, shall be liable for any property
20 damages related to a customer's purchase of a motor fuel
21 containing or blended with any amount of ethanol, biodiesel, or
22 other renewable fuel or biofuel from the fuel refiner, supplier,
23 terminal, wholesaler, distributor, retailer, or other vendor of
24 motor fuel if the selection and purchase of the motor fuel was
25 made by the customer and does not comply with specific fuel
26 recommendations found in the vehicle owner manual.