

Amendments to House Bill No. 464
1st Reading Copy

Requested by Representative Bob Bergren

For the House Agriculture Committee

Prepared by Krista Lee Evans
February 10, 2005 (12:30pm)

1. Title, page 1, line 7 through line 8.

Strike: "INCLUDING" on line 7 through "ALCOHOL;" on line 8

2. Title, page 1, line 25.

Strike: "AND BIODIESEL"

3. Title, page 1, line 27.

Strike: "AND BIODIESEL"

Following: "PUMPS;"

Insert: "PROVIDING THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCES THE PROHIBITION ON MTBE; PROVIDING PENALTIES FOR
VIOLATIONS OF MTBE REQUIREMENTS;"

Following: "15-30-164,"

Insert: "15-70-201,"

4. Title, page 1, line 28.

Strike: "15-70-321, 15-70-502,"

Following: "17-6-317,"

Insert: "82-15-102,"

Strike: "AND"

Insert: "82-15-104, 82-15-106,"

Following: "82-15-110,"

Insert: "AND 82-15-111,"

5. Title, page 1, line 29.

Strike: "SECTIONS"

Insert: "SECTION"

Strike: "AND 15-70-370"

6. Page 2.

Following: line 25

Insert: "Section 2. Section 15-70-201, MCA, is amended to read:
"15-70-201. (Temporary) Definitions. As used in this part,

unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:

(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;

(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or

(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.

(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) (a) "Gasoline" includes:

(i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(10) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

(12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state.

15-70-201. (Effective on occurrence of contingency)

Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as

required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:

(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;

(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or

(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.

(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than

in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) "~~Gasohol~~" means ~~a fuel blend containing at least 10% alcohol, with the balance being gasoline and other additives. Gasohol is also known as "E-10" a gasoline fuel that is blended with ethanol. Typically gasohol is a blend of 10% ethanol and 90% gasoline, but the blended amounts may differ. The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% ethanol and 90% gasoline would be reflected as E-10.~~

(10) (a) "Gasoline" includes:

(i) all petroleum products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) except for alcohol blended into gasohol, any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(11) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(12) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

(13) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (10) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(14) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(15) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(16) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state. ~~(Terminates June 30 of fourth year following date of occurrence of contingency--sec. 13, Ch. 568, L. 2001.)~~

~~15-70-201. (Effective July 1 of fourth year following date~~

~~of occurrence of contingency) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:~~

~~(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.~~

~~(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.~~

~~(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.~~

~~(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.~~

~~(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:~~

~~(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;~~

~~(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or~~

~~(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.~~

~~(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.~~

~~(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.~~

~~(6) "Distributor" means:~~

~~(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;~~

~~(b) a person who imports gasoline for sale, use, or distribution;~~

~~(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;~~

~~(d) an exporter as defined in subsection (8);~~

~~(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or~~

~~(f) a person in Montana who blends alcohol with gasoline.~~

~~(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.~~

~~(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.~~

~~(9) (a) "Gasoline" includes:~~

~~(i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines, and~~

~~(ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.~~

~~(b) Gasoline does not include special fuels as defined in 15-70-301.~~

~~(10) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.~~

~~(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.~~

~~(12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:~~

~~(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202, or~~

~~(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.~~

~~(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.~~

~~(14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.~~

~~(15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state."~~

~~{ Internal References to 15-70-201:~~

7-14-301x	15-70-121x	15-70-202x	15-70-202x
15-70-202x	15-70-204x	15-70-225x	15-70-503x
75-11-302x	75-11-302x	}"	

Renumber: subsequent sections

7. Page 3, line 19.

Strike: "10"

Insert: "14"

8. Page 4, line 4 through page 6, line 3.

Strike: sections 3 and 4 in their entirety

Renumber: subsequent sections

9. Page 6, line 8.

Strike: "or biodiesel"

10. Page 6.

Following: line 12

Insert: "(4) "Gasohol" means a gasoline fuel that is blended with ethanol. Typically gasohol is a blend of 10% ethanol and 90% gasoline, but the blended amounts may differ. The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% ethanol and 90% gasoline would be reflected as E-10."

Renumber: subsequent subsections

11. Page 6, line 13.

Strike: "or diesel fuel"

12. Page 6, line 14.

Strike: "or biodiesel"

13. Page 6, line 22.

Strike: "or diesel fuel"

Strike: "or biodiesel"

14. Page 6, line 23.

Strike: "or biodiesel"

15. Page 10.

Following: line 22

Insert: "Section 7. Section 82-15-102, MCA, is amended to read:

"82-15-102. Enforcement of part -- rules. (1) This Except as provided in subsection (2), this part shall must be enforced by the department. It may adopt necessary and reasonable rules

for the implementation of the provisions and intent of this part, and those rules have the effect of law.

(2) Section 82-15-110(8) must be enforced by the department of environmental quality.

(3) The board of environmental review shall adopt rules for the regulation of methyl tertiary butyl ether in accordance with this part. The rules must establish:

(a) a trace level or trace levels of methyl tertiary butyl ether that may be contained in gasoline that is imported into the state, stored, distributed, sold, offered or exposed for sale, or dispensed. The board shall establish trace levels in a manner that prevents the intentional addition of methyl tertiary butyl ether to gasoline but that allows for a residual amount of methyl tertiary butyl ether to remain in tanks following implementation of 82-15-110(8).

(b) reasonable sampling and reporting requirements; and

(c) requirements that the board determines are reasonable and necessary for implementation of the portions of this part that apply to methyl tertiary butyl ether. "

{Internal References to 82-15-102: None.}"

Renumber: subsequent sections

16. Page 10, line 27.

Strike: "10(1)"

Insert: "14(1)"

17. Page 11.

Following: line 2

Insert: "**Section 9.** Section 82-15-104, MCA, is amended to read:

"82-15-104. Department Departments authorized to employ laboratory for testing. The department and, when testing for methyl tertiary butyl ether, the department of environmental quality may employ a laboratory having that has sufficient facilities to make tests of petroleum products as required and may pay reasonable compensation for the analyses and tests made by it the laboratory."

{Internal References to 82-15-104: None.}"

Insert: "**Section 10.** Section 82-15-106, MCA, is amended to read:

"82-15-106. Refusing, suspending, and revoking licenses -- hearing required. The department may refuse to grant a license or may suspend or revoke a license already granted for due cause after a hearing noticed for which notice was provided for not less than 10 days. Violation of any provision of this part, except 82-15-110(8), or any lawful order or rule of the department is cause for which the department may suspend, revoke, or refuse to issue a license. The suspension, revocation, or refusal may be conditioned on those terms which that the department considers just and proper appropriate."

{Internal References to 82-15-106: None.}"

Insert: "NEW SECTION. Section 11. Department of environmental quality to enforce prohibition on methyl tertiary butyl ether -- notice requirements -- hearing -- penalties. (1) (a) Whenever the department of environmental quality believes that a violation of 82-15-110(8) or of the rules adopted pursuant to 82-15-102(3) has occurred, it may serve written notice of the violation on the alleged violator or an agent of the alleged violator.

(b) The notice must specify the facts alleged to constitute a violation and may include an order assessing an administrative penalty pursuant to subsection (3), an order to take necessary corrective action within a reasonable period of time stated in the order, or both.

(c) The order becomes final unless, within 30 days after the notice is served, the person named in the order requests in writing a hearing before the board of environmental review. Service by mail is complete on the date of mailing.

(d) Upon receipt of the request, the board of environmental review shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act provided in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(2) If, after a hearing held under subsection (1), the board of environmental review finds that a violation has occurred, it shall either affirm or modify the order of the department of environmental quality. An order issued by the department of environmental quality or by the board of environmental review may prescribe the date by which the violation must cease and may prescribe time limits for a particular action. If, after hearing, the board of environmental review finds no violation has occurred, it shall rescind the order of the department of environmental quality.

(3) A violation of 82-15-110(8) or of a rule adopted pursuant to 82-15-102(3) is subject to an administrative penalty of up to \$1,000. Each day of violation constitutes a separate violation.

(4) Any person who violates 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or an order issued under this section is subject to a civil penalty not to exceed \$5,000 for each violation. Each day of violation constitutes a separate violation.

(5) The department of environmental quality is authorized to commence a civil action seeking appropriate relief, including temporary and permanent injunctions and penalties under subsection (4) of this section, for a violation of 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or a violation of an order issued under this section. The action must be brought in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the violation occurred."

Renumber: subsequent sections

18. Page 11, line 23.

Following: "(8)"

Insert: "import into the state, store, distribute,"

Following: "offer"

Strike: "1"

Following: "sale"

Insert: ", or dispense"

19. Page 11, line 24.

Strike: "(MTBE)"

Strike: "10"

Insert: "14"

20. Page 11.

Following: line 24

Insert: "Section 13. Section 82-15-111, MCA, is amended to read:

"**82-15-111. Penalty for violations.** A person who purposely, knowingly, or negligently violates any of the provisions of this part, except 82-15-110(8), or any rule promulgated by the department is guilty of a misdemeanor and upon conviction shall for the first offense be punished by a fine of not less than \$10 or more than \$1,000 and shall be punished for any subsequent offense by a fine of not less than \$50 or more than \$5,000, by imprisonment in the county jail for a term not exceeding 1 year, or by both fine and imprisonment."

{*Internal References to 82-15-111: None.*}"

Renumber: subsequent sections

21. Page 12, line 1.

Following: "trace"

Strike: "amounts"

Insert: "levels, as defined in rules adopted pursuant to 82-15-102(3),"

Strike: "commonly known as MTBE ("

Following: "ether"

Strike: ")"

22. Page 12, line 2.

Strike: "11"

Insert: "15"

23. Page 12, line 6.
Strike: "the additive MTBE"
Insert: "methyl tertiary butyl ether"

24. Page 12, line 11.
Strike: "10"
Insert: "14"

25. Page 12, line 13.
Following: "retailer"
Insert: "or a wholesale bulk distributor"

26. Page 12, line 15.
Following: "engines."
Insert: "Gasoline retailers and wholesale bulk distributors are encouraged to hold, store, import, transfer, and offer for sale or use nonethanol-blended unleaded premium grade gasoline with an antiknock index number of 91 or greater."

27. Page 12, line 17.
Strike: "Sections"
Insert: "Section"
Strike: "and 15-70-370"

28. Page 12, line 20.
Strike: "10 and"
Following: "11"
Insert: ", 14, and 15"

29. Page 12, line 22.
Strike: "10 and"
Following: "11"
Insert: ", 14, and 15"