

## HOUSE BILL NO. 674

INTRODUCED BY WAITSCHIES, LAMBERT, KEENAN, STEINBEISSER, MALCOLM, HIMMELBERGER,  
R. BROWN, WAGMAN, ROSS, BARKUS, LAKE, ANDERSEN

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE PRODUCTION AND USE OF ETHANOL;  
PROHIBITING CERTAIN ADDITIVES IN ETHANOL PRODUCTION; ~~ESTABLISHING A MINIMUM OCTANE  
CONTENT STANDARD FOR ETHANOL-BLENDED GASOLINE AND FOR UNLEADED OR REGULAR  
UNLEADED GASOLINE SOLD IN MONTANA;~~ PROVIDING A TAX CREDIT INCENTIVE FOR GASOLINE  
RETAILERS WHO CONVERT THEIR TANKS TO ALLOW THE DISPENSING OF ETHANOL-BLENDED  
GASOLINE; PROVIDING A TAX CREDIT INCENTIVE TO REFINERIES FOR CONVERSION OF TERMINAL  
FACILITIES TO ALLOW FOR BLENDING GASOLINE WITH ETHANOL; AND REDUCING THE TAX INCENTIVE  
FROM 30 CENTS TO 20 CENTS A GALLON; REVISING THE TIME IN WHICH TAX INCENTIVES MAY BE PAID;  
REDUCING THE AMOUNT OF PAYMENTS THAT MAY BE MADE TO AN ALCOHOL DISTRIBUTOR IN A  
CALENDAR YEAR FROM \$3 MILLION TO \$2 MILLION; PROVIDING FOR CONTRACTS FOR ETHANOL  
PRODUCERS ELIGIBLE FOR TAX INCENTIVES; REMOVING THE REQUIREMENT FOR LOSS OF PRIORITY;  
CREATING THE ALCOHOL FACILITY OVERSIGHT COUNCIL FOR THE PURPOSE OF FACILITATING THE  
IMPLEMENTATION OF ALCOHOL PRODUCTION TAX INCENTIVES THROUGH OVERSIGHT OF THE  
CONSTRUCTION OR REMODELING OF ALCOHOL PRODUCTION FACILITIES; AND AMENDING SECTIONS  
82-15-103 AND 82-15-110, MCA; AND AMENDING SECTION 15-70-522, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 3] may be cited as the "Montana Ethanol  
Production and Use Act".

NEW SECTION. Section 2. Ethanol blending -- prohibited blending additives -- minimum octane  
rating. (1) When ethanol is blended with gasoline AND LABELED AS AN ETHANOL PRODUCT for consumer sale,  
(+) the ratio of ethanol to gasoline may not be less than:  
(A) 10% anhydrous ethanol; FOR GASOLINE WITH AN ANTIKNOCK INDEX NUMBER OF LESS THAN 87; AND  
(B) 4.5% ANHYDROUS ETHANOL FOR GASOLINE WITH AN ANTIKNOCK INDEX NUMBER OF 87 OR GREATER BUT

1 LESS THAN 91.

2 (2) ~~the~~ THE following additives may not be ~~included~~ ADDED TO GASOLINE IN MONTANA:

3 (a) methyl tertiary butyl ether, known as MTBE;

4 (b) ethyl tertiary butyl ether, known as ETBE; or

5 (c) tertiary amyl methyl ether, known as TAME; ~~and.~~

6 ~~(3) the final minimum octane content standard may not be less than 87.5.~~

7

8 NEW SECTION. Section 3. Alcohol facility oversight council -- duties. (1) In order to facilitate the  
9 implementation of tax incentives for the production of alcohol pursuant to 15-70-522, there is an alcohol facility  
10 oversight council. The council is composed of:

11 (a) the director of the department of transportation;

12 (b) one senator chosen by the president of the senate;

13 (c) one representative chosen by the speaker of the house of representatives;

14 (d) one representative of the alcohol production industry; and

15 (e) one expert in the field of alcohol facility construction.

16 (2) The alcohol facility oversight council shall assess alcohol facility construction or remodeling  
17 conducted pursuant to the applicant's written business plan required under 15-70-522(5) ~~and (6)~~ and advise the  
18 department regarding ~~the percentage of~~ facility completion for purposes of implementing the tax incentives in  
19 15-70-522.

20

21 NEW SECTION. Section 4. Tax incentive for ethanol-related tank OR TERMINAL FACILITY conversion.

22 (1) A gasoline retailer that converts gasoline tanks to allow the dispensing of ethanol-blended gasoline is entitled  
23 to a one-time tax credit of \$300 for the year in which the conversion is completed. The credit may be claimed  
24 against the taxes imposed under chapter 31 or this chapter.

25 (2) A GASOLINE REFINER THAT BUILDS, UPDATES, OR RETROFITS A TERMINAL TO ALLOW BLENDING OF ETHANOL  
26 WITH GASOLINE IS ENTITLED TO A ONE-TIME TAX CREDIT OF \$2,500 PER TERMINAL FOR THE YEAR IN WHICH THE FACILITY  
27 IS BUILT, UPDATED, OR RETROFITTED. THE CREDIT MAY BE CLAIMED AGAINST THE TAXES IMPOSED UNDER CHAPTER 31  
28 OR THIS CHAPTER.

29

30 ~~Section 5. Section 82-15-103, MCA, is amended to read:~~

1 ~~—————"82-15-103. Standards for petroleum products. (1) The standards, and specifications, and official~~  
 2 ~~tests for petroleum products, including but not limited to gasoline, fuel oils, diesel fuel, kerosene, and liquefied~~  
 3 ~~petroleum gases, shall must be determined and established by the department by rule and shall must be based~~  
 4 ~~upon nationally recognized standards and specifications such as that are published from time to time by the~~  
 5 ~~American society for testing and materials. When so determined by the department and adopted as rules, such~~  
 6 ~~standards and specifications are the standards and specifications for such products sold in this state and official~~  
 7 ~~tests of such products shall be based upon them:~~

8 ~~————(2) The department may not adopt by rule a minimum octane content standard for gasoline labeled~~  
 9 ~~"unleaded" or "regular unleaded" that is less than 87.5."~~

10

11 ~~————Section 6. Section 82-15-110, MCA, is amended to read:~~

12 ~~————"82-15-110. Unlawful acts. It is unlawful to:~~

13 ~~————(1) use any meter or mechanical device for the measurement of gasoline or liquid fuels unless the same~~  
 14 ~~meter or device has been approved by the department and sealed as correct;~~

15 ~~————(2) change or in any way tamper with the department's seal without written consent from the~~  
 16 ~~department;~~

17 ~~————(3) make hose delivery from petroleum vehicle tanks unless the tanks have been calibrated by the~~  
 18 ~~department under 82-15-108;~~

19 ~~————(4) sell or deliver liquefied petroleum to a consumer as a liquid or vapor except as provided by~~  
 20 ~~82-15-109;~~

21 ~~————(5) sell or offer for sale or deliver liquefied petroleum to a consumer as a liquid or vapor the~~  
 22 ~~measurement of which has not been temperature corrected to 60 degrees F by means of an automatic~~  
 23 ~~compensating device which that has been approved, calibrated, and sealed by the department, unless otherwise~~  
 24 ~~provided by the department;~~

25 ~~————(6) sell, offer, or expose for sale any petroleum product for which standards or minimum specifications~~  
 26 ~~have been set by the department unless the commodities in all respects meet the tests and standards~~  
 27 ~~prescribed;~~

28 ~~————(7) sell, offer, or expose for sale any petroleum product which that is adulterated, mislabeled, or~~  
 29 ~~misrepresented with respect to the use for which it is reasonably intended; or~~

30 ~~————(8) sell, offer, or expose for sale gasoline labeled "unleaded" or "regular unleaded" that has an octane~~

1 level that is less than 87.5."

2

3 **SECTION 5. SECTION 15-70-522, MCA, IS AMENDED TO READ:**

4 **"15-70-522. Tax incentive for production of alcohol -- written plan required --~~reservation of~~**  
 5 **~~incentives -- rules.~~** (1) (a) If the alcohol was produced in Montana from Montana agricultural products, including  
 6 Montana wood or wood products, or if the alcohol was produced from non-Montana agricultural products when  
 7 Montana products are not available, there is a tax incentive payable to alcohol distributors for distilling alcohol  
 8 that:

9 (i) is to be blended with gasoline for sale as gasohol in Montana;

10 (ii) was exported from Montana to be blended with gasoline for sale as gasohol; or

11 (iii) is to be used in the production of ethyl butyl ether for use in reformulated gasoline.

12 (b) Payment must be made by the department out of the amount collected under 15-70-204.

13 (2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of alcohol distilled  
 14 in accordance with subsection (1) is ~~30~~ 20 cents a gallon for each gallon that is 100% produced from Montana  
 15 products, with the amount of the tax incentive for each gallon reduced proportionately, based upon the amount  
 16 of agricultural or wood products not produced in Montana that is used in the production of the alcohol. ~~Beginning~~  
 17 ~~July 1, 2010, there is no tax incentive.~~ The tax incentive is available to a facility for the first 6 years from the date  
 18 that the facility begins production.

19 (3) Regardless of the alcohol tax incentive provided in subsection (2), the total payments made for the  
 20 incentive under this part may not exceed \$6 million in any consecutive 12-month period.

21 (4) (a) An alcohol distributor may not receive tax incentive payments under subsection (2) that exceed  
 22 ~~\$3~~ \$2 million in any consecutive 12-month period. Subject to subsections (6) and (7), an alcohol distributor may  
 23 receive tax incentive payments commencing the first quarter after a facility begins production. The distributor  
 24 shall report its production to the department pursuant to 15-70-205.

25 (b) The distributor's report must include:

26 (i) the total number of gallons produced for the month;

27 (ii) the total amount of products purchased for the production of alcohol;

28 (iii) the percentage of the total amount of products purchased that are Montana products; and

29 (iv) other information that the department determines is necessary.

30 (5) An alcohol distributor may not receive tax incentive payments under subsection (2) unless the

1 distributor has provided a written business plan to the department of transportation at least 24 months before  
 2 the distributor's anticipated application for collection of the tax incentives ~~and has complied with the schedule~~  
 3 ~~provided for in subsection (6)~~. The plan must contain the following information:

4 (a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the  
 5 production of alcohol for use in gasohol;

6 (b) the anticipated source of agricultural products used in the production of alcohol for use in gasohol;  
 7 and

8 (c) the anticipated time, quantity, and duration of production of alcohol for use in gasohol.

9 ~~(6) An applicant that has provided the department with a written business plan shall meet the following~~  
 10 ~~schedule to be able to receive alcohol tax incentive payments:~~

11 ~~—— (a) start building construction or remodeling within 24 months of the date on which the department~~  
 12 ~~received the business plan;~~

13 ~~—— (b) complete 50% of construction or remodeling of a production facility within 36 months of the date on~~  
 14 ~~which the business plan was received; and~~

15 ~~—— (c) complete 100% of construction or remodeling of a production facility and be in production of alcohol~~  
 16 ~~for use in gasohol for distribution within 48 months of the date on which the business plan was received.~~

17 ~~—— (7) If the applicant does not adhere to the schedule in subsection (6), the applicant loses its priority for~~  
 18 ~~receiving incentive payments.~~

19 ~~(6)~~(6) (a) A plant shall apply for the incentive payment by submitting an application to the department  
 20 when the plant has proof of commitment from lenders to finance the plant. Subject to subsection (6)(b), the  
 21 department of transportation shall respond to the applicant with approval of the application within 45 days of  
 22 receipt of the application, after confirming the lending commitment. Upon approval of the application, the  
 23 department shall enter into a contract with the plant that ensures the state's commitment to pay incentive  
 24 payments to qualifying ethanol plants.

25 (b) If the department of transportation is not able to confirm a lending commitment, the department shall  
 26 deny the application.

27 (7) After the department has verified production, the application provisions of subsection (6) are met,  
 28 and the plant owner presents proof of financing, the department shall begin payments of the alcohol tax  
 29 incentives based on actual production according to the terms of ~~subsection~~ subsections (2) and (4).

30 ~~(9) The department shall reserve, in the order that written plans required under subsection (5) are~~

1 ~~received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of~~  
2 ~~production:~~

3 ~~———(10) A new tax incentive payment may not be made if the total tax incentive established in subsection~~  
4 ~~(3) has been reserved or paid. If an alcohol tax incentive has been reduced or canceled, the amount by which~~  
5 ~~the tax incentive has been reduced or canceled is available for reservation as provided in subsection (9):~~

6 ~~(11)(8) The department shall prescribe rules necessary to carry out the provisions of this section. The~~  
7 ~~department shall coordinate and request information and input from the industry as a part of the rulemaking~~  
8 ~~process and shall follow the procedures provided in Title 2, chapter 4."~~

9

10 NEW SECTION. Section 6. Codification instruction. (1) [Sections 1 through 3] are intended to be  
11 codified as an integral part of Title 15, chapter 70, part 5, and the provisions of Title 15, chapter 70, part 5, apply  
12 to [sections 1 through 3].

13 (2) [Section 4] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the  
14 provisions of Title 15, chapter 30, part 1, apply to [section 4].

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