

SENATE BILL NO. 473
INTRODUCED BY J. BLACK

A BILL FOR AN ACT ENTITLED: "AN ACT ENCOURAGING THE MONTANA PRODUCTION OF GASOHOL AND DENATURED ETHANOL; CLARIFYING THE LICENSE TAX RATE FOR GASOHOL OR GASOLINE BLENDED WITH AT LEAST 10 PERCENT DENATURED ETHANOL; REPLACING TAX INCENTIVES FOR THE PRODUCTION OF DENATURED ETHANOL WITH INCENTIVE PAYMENTS; REVISING STANDARDS FOR ELIGIBILITY FOR INCENTIVE PAYMENTS; PROVIDING FOR A PRODUCTION EXCEPTION FOR CERTAIN DISASTER DECLARATIONS; PROVIDING AN OCTANE REQUIREMENT FOR MOTOR FUEL WHEN PRODUCTION LEVELS OF DENATURED ETHANOL ARE ACHIEVED; AMENDING SECTIONS 15-70-201, 15-70-204, 15-70-221, 15-70-501, 15-70-502, 15-70-503, 15-70-511, 15-70-512, 15-70-513, 15-70-514, 15-70-521, 15-70-522, 15-70-523, 15-70-527, 17-6-317, 75-11-314, 82-15-103, 82-15-121, 82-15-122, AND 90-4-302, MCA; AND PROVIDING AN EFFECTIVE DATE AND TERMINATION DATES."

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

Section 1. Section 15-70-201, MCA, is amended to read:

"15-70-201. 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(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to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~~ denatured ethanol 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 gasoline fuel that is blended with denatured ethanol. Typically gasohol is a blend of 10% denatured 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% denatured 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~~ denatured ethanol 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."

Section 2. Section 15-70-204, MCA, is amended to read:

"15-70-204. (Temporary) Gasoline license tax -- rate. (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) Gasohol, as defined in 15-70-201, or gasoline blended with at least 10% denatured ethanol is subject to 85% of the tax imposed in subsection (1)(b).

(4) Beginning on the date that the requirement for use of gasohol or gasoline blended with at least 10% denatured ethanol contained in 82-15-121 occurs, gasohol and gasoline blended with at least 10% denatured ethanol ~~is~~ are subject to the tax imposed in subsection (1)(b) and the tax may not be reduced regardless of the future production rate of denatured ethanol by a Montana plant or plants. (Terminates on occurrence of contingency--sec. 21, Ch. 452, L. 2005.)

15-70-204. (Effective on occurrence of contingency) Gasoline license tax -- rate. (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) Gasohol, as defined in 15-70-201, and gasoline blended with at least 10% denatured ethanol ~~is~~ are subject to ~~85%~~ of the tax imposed in subsection (1)(b)."

Section 3. Section 15-70-221, MCA, is amended to read:

"15-70-221. Refund or credit authorized. (1) A person who purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing ~~alcohol~~ ethanol to be used in gasohol, for operating stationary gasoline engines used off the public highways and streets, or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the gasoline. The refund may not exceed the tax paid or to be paid to the state. Except as provided in subsection (5), a refund is not allowed for the tax per gallon upon aviation fuel allocated to the department of transportation by 67-1-301.

(2) A distributor who pays the gasoline license tax to this state erroneously is allowed a credit or refund of the amount of tax paid erroneously.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with a tax liability of \$200 or greater for which the distributor has not received consideration from or on behalf of the

purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the accounts of the purchaser worthless more than once during a 3-year period, and the distributor must have claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) A person who purchases and exports for sale, use, or consumption outside Montana gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. The credit or refund must be made upon completion of the information reports required under 15-70-209 and presentation to the department of proof of delivery outside Montana as it may by rule require.

(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 2 cents on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has been paid."

Section 4. Section 15-70-501, MCA, is amended to read:

"15-70-501. Short title. This part may be cited as the "~~Alcohol Tax~~ "Denatured Ethanol Incentive and Administration Act of 1983"."

Section 5. Section 15-70-502, MCA, is amended to read:

"15-70-502. Purpose. The purpose of this part is to establish schedules for the ~~tax~~ incentive payments for the production of ~~alcohol~~ denatured ethanol to be blended for gasohol and to provide for the proper administration and enforcement of the ~~tax~~ incentive payments. The schedules for the ~~tax~~ incentive payments are designed to stimulate the development of ~~alcohol fuel~~ the production of gasohol and gasoline blended with denatured ethanol in Montana while limiting the cost to the state of the ~~tax~~ incentive payments to amounts that are reasonable in relation to the highway revenue needs of Montana."

Section 6. Section 15-70-503, MCA, is amended to read:

"15-70-503. Definitions. As used in this part, the definitions in 15-70-201 and the following definitions

apply:

(1) ~~"Alcohol distributor"~~ "Denatured ethanol distributor" means any person who, for the purpose of making gasohol or gasoline blended with denatured ethanol, engages in the business of producing ~~alcohol~~ denatured ethanol for sale, use, or distribution.

(2) "Department" means the department of transportation.

(3) "Export" means to transport out of Montana from any point of origin within Montana by any means other than in the fuel supply tank of a motor vehicle.

(4) "Gasohol" means a gasoline fuel that is blended with denatured ethanol. Typically gasohol is a blend of 10% denatured 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% denatured ethanol and 90% gasoline would be reflected as E-10.

(5) "Gasohol dealer" means any person who blends ~~alcohol~~ denatured ethanol with gasoline to produce gasohol for sale, use, or distribution in this state."

Section 7. Section 15-70-511, MCA, is amended to read:

"15-70-511. Licensing of ~~alcohol~~ denatured ethanol distributors. ~~Every alcohol~~ Each denatured ethanol distributor, prior to doing business, shall file with the department an application for a license, using forms prescribed and furnished by the department and setting forth ~~such~~ information ~~as that~~ may be requested by the department. Upon approval of the application, the department shall issue the distributor a nonassignable license that continues in force until surrendered or canceled."

Section 8. Section 15-70-512, MCA, is amended to read:

"15-70-512. Distributor's statement. Each ~~alcohol~~ denatured ethanol distributor shall, not later than the 25th day of each calendar month, ~~render~~ submit to the department a statement, signed by ~~him~~ the distributor, that includes the following:

(1) the number of gallons of ~~alcohol~~ denatured ethanol manufactured or imported by the distributor during the preceding calendar month;

(2) the name of each gasohol dealer to whom ~~he~~ the distributor sold ~~alcohol~~ denatured ethanol and the number of gallons sold to each dealer; and

(3) ~~such~~ other information ~~as that~~ the department may reasonably require to administer ~~the tax laws of this state~~ this part."

Section 9. Section 15-70-513, MCA, is amended to read:

"15-70-513. Recordkeeping requirements. The records of each ~~alcohol~~ denatured ethanol distributor and gasohol dealer must be kept for a period of not more than 3 years and must include receipts, invoices, and ~~such~~ other information ~~as~~ that the department may require."

Section 10. Section 15-70-514, MCA, is amended to read:

"15-70-514. Examination of records. The department or its authorized representative may examine the books, papers, records, and equipment of any ~~alcohol~~ denatured ethanol distributor or gasohol dealer."

Section 11. Section 15-70-521, MCA, is amended to read:

"15-70-521. Denaturing ~~alcohol~~ ethanol -- refund authorized. Any ~~alcohol~~ denatured ethanol distributor who, for the purpose of denaturing ~~alcohol~~ ethanol distilled in Montana, purchases gasoline on which the Montana gasoline tax has been paid is entitled to a refund, computed as allowed in 15-70-221, of tax paid on the gasoline used."

Section 12. Section 15-70-522, MCA, is amended to read:

"15-70-522. ~~Tax incentive~~ Incentive payment for production of ~~alcohol~~ denatured ethanol -- rules. (1) (a) If the ~~alcohol~~ denatured ethanol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the ~~alcohol~~ denatured ethanol was produced from non-Montana agricultural products when Montana products are not available, there is ~~a tax an~~ incentive payable to ~~alcohol~~ denatured ethanol distributors for distilling ~~alcohol~~ and producing denatured ethanol that:

(i) is to be blended in a percentage of at least 10% with gasoline for sale as gasohol or gasoline blended with denatured ethanol in Montana;

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

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

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

(2) Except as provided in subsections (3) ~~and (4)~~ through (5), the ~~tax incentive~~ payment on each gallon of ~~alcohol~~ denatured ethanol distilled in accordance with subsection (1) is 20 cents a gallon for each gallon that is 100% produced from Montana products, with the amount of the ~~tax incentive~~ payment for each gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used

in the production of the ~~alcohol~~ denatured ethanol. The ~~tax~~ incentive is available to a Montana facility for the first ~~6~~ 3 years from the date that the facility begins production. The facility shall file a business plan with the department at least 2 years before the estimated beginning date of production. After the initial business plan is filed, the facility shall provide the department with quarterly updates regarding any changes to the business plan.

(3) Regardless of the ~~alcohol~~ tax incentive provided in subsection (2):

(a) the total payments made for the incentive under this part may not exceed \$6 million in any consecutive 12-month period;

(b) a plant or facility is not eligible to receive the ~~tax~~ incentive payment unless the facility paid the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), during the construction phase; and

(c) subject to subsections (3)(b) and (4), an ~~alcohol~~ a denatured ethanol distributor is not eligible to receive the ~~tax~~ incentive payment unless at least:

(i) 20% Montana product is used to produce ~~alcohol~~ denatured ethanol at the facility in the first year of production;

(ii) 25% Montana product is used to produce ~~alcohol~~ denatured ethanol at the facility in the second year of production;

(iii) 35% Montana product is used to produce ~~alcohol~~ denatured ethanol at the facility in the third year of production;

(iv) 45% Montana product is used to produce ~~alcohol~~ denatured ethanol at the facility in the fourth year of production;

(v) 55% Montana product is used to produce ~~alcohol~~ denatured ethanol at the facility in the fifth year of production; and

(vi) 65% Montana product is used to produce ~~alcohol~~ denatured ethanol at the facility in the sixth year of production.

(4) The provisions of subsection (3) do not apply in any county producing wheat, barley, or corn in any year in which the United States secretary of agriculture has declared that county a disaster area.

~~(4)(5)~~ (a) ~~An ~~alcohol~~ A denatured ethanol distributor may not receive ~~tax~~ incentive payments under subsection (2) that exceed \$2 million in any consecutive 12-month period. Subject to subsections (5) (6) and (6) (7), an ~~alcohol~~ a denatured ethanol distributor may receive ~~tax~~ incentive payments commencing the first quarter after a facility begins production. The distributor shall report its production to the department pursuant to 15-70-205.~~

(b) The distributor's report must include:

- (i) the total number of gallons of denatured ethanol produced for the month;
- (ii) the total amount of products purchased for the production of ~~alcohol~~ denatured ethanol;
- (iii) the percentage of the total amount of products purchased that are Montana products; and
- (iv) other information that the department determines is necessary.

~~(5)(6)~~ (a) A plant shall apply for the incentive payment by submitting an application to the department when the plant has proof of commitment from lenders to finance the plant. Subject to subsection ~~(5)(b)~~ (6)(b), the department shall respond to the applicant with approval of the application within 45 days of receipt of the application, after confirming the lending commitment. Upon approval of the application, the department shall enter into a contract with the plant that ensures the state's commitment to pay incentive payments to qualifying ethanol plants.

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

~~(6)(7)~~ After the department has verified production, the application provisions of subsection ~~(5)~~ (6) are met, and the plant owner presents proof of financing, the department shall begin payments of the ~~alcohol tax incentives~~ denatured ethanol incentive payment based on actual production according to the terms of subsections (2) and ~~(4)~~ (5).

~~(7)(8)~~ The department shall prescribe rules necessary to carry out the provisions of this section ~~within 1 year of April 28, 2005~~. The department shall coordinate and request information and input from the ~~alcohol~~ denatured ethanol production industry as a part of the rulemaking process and shall follow the procedures provided in Title 2, chapter 4."

Section 13. Section 15-70-523, MCA, is amended to read:

"15-70-523. Application for payment of tax incentive. (1) The claimant shall apply for payment of ~~tax~~ an incentive by signed statement, on a form furnished by the department. The form must be accompanied by:

- (a) the original production records and invoices issued to the ~~gasohol~~ dealer at the time of sale and delivery, showing total gallons of ~~alcohol~~ denatured ethanol sold; and
- (b) a certificate of blending issued by the ~~alcohol~~ denatured ethanol purchaser showing the total gallons of ~~alcohol~~ denatured ethanol blended and the date of blending.

(2) Application for the payment of the ~~tax~~ incentives must be filed with the department not later than the 25th day of the calendar month following the month for which the claim is being made."

Section 14. Section 15-70-527, MCA, is amended to read:

"15-70-527. Penalty for failure to file. Any ~~alcohol~~ denatured ethanol distributor who knowingly fails to obtain a license under 15-70-511 or to file the statements required by 15-70-512 in the manner or within the time provided in 15-70-512 or who makes any false statement is guilty of a misdemeanor and upon conviction must be fined not more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both."

Section 15. Section 17-6-317, MCA, is amended to read:

"17-6-317. Participation by private financial institutions -- rulemaking. (1) (a) The board may jointly participate with private financial institutions in making loans to a business enterprise if the loan will:

(i) result in the creation of a business estimated to employ at least 10 people in Montana on a permanent, full-time basis;

(ii) result in the expansion of a business estimated to employ at least an additional 10 people in Montana on a permanent, full-time basis; or

(iii) prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business.

(b) Loans under this section may be made only to business enterprises that are producing or will produce value-added products or commodities.

(c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under 17-6-318.

(2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund and must comply with each of the following requirements:

(a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25% of the total loan amount.

(ii) A participating private financial institution may not require the business to have an equity position greater than 50% of the total loan amount.

(iii) If additional security or guarantees, exclusive of federal guarantees, are required to cover a participating private financial institution, then the additional security or guarantees must be proportional to the amount loaned by all participants, including the board of investments.

(b) The board shall provide 75% of the total loan amount.

(c) The term of the loan may not exceed 15 years.

(d) The board shall charge interest at the following annual rate:

- (i) 2% for the first 5 years if 15 or more jobs are created or retained;
- (ii) 4% for the first 5 years if 10 to 14 jobs are created or retained;
- (iii) 6% for the second 5 years; and
- (iv) the board's posted interest rate for the third 5 years, but not to exceed 10% a year.

(e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board receives certification that the required number of jobs has been created or as provided in subsection (2)(e)(ii). If the board disburses loan proceeds prior to creation of the required jobs, the loan must bear interest at the board's posted rate.

(ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination of jobs, the board shall require the submission of financial data that allows the board to determine if the loan and interest rate will in fact prevent the elimination of jobs.

(f) If a business entitled to the interest rate in subsection (2)(d)(i) or (2)(d)(ii) reduces the number of required jobs, the board may apply a graduated scale to increase the interest rate, not to exceed the board's posted rate.

(g) For purposes of calculating job creation or retention requirements, the board shall use the state's average weekly wage, as defined in 39-71-116, multiplied by the number of jobs required. This calculated number is the minimum aggregate salary threshold that is required to be eligible for a reduced interest rate. If individual jobs created pay less than the state's average weekly wage, the borrower shall create more jobs to meet the minimum aggregate salary threshold. If fewer jobs are created or retained than required in subsection (2)(d)(i) or (2)(d)(ii) but aggregate salaries meet the minimum aggregate salary threshold, the borrower is eligible for the reduced interest rate. A job paying less than the minimum wage, provided for in 39-3-409, may not be included in the required number of jobs.

(h) (i) A participating private financial institution may charge interest in an amount equal to the national prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater than 12%.

(ii) At the borrower's discretion, the borrower may request the lead lender to change this prime rate to an adjustable or fixed rate on terms acceptable to the borrower and lender.

(iii) A participating private financial institution, or lead private financial institution if more than one is participating, may charge a 0.5% annual service fee.

(i) The business enterprise may not be charged a loan prepayment penalty.

(j) The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation

provisions based upon the loan percentage of the board and each participating private lender.

(3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion of the loan must be made based upon the percentage of completion to ensure that the construction portion of the loan is advanced prior to completion of the project.

(4) A private financial institution shall participate in a loan made pursuant to this section to the extent of 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan must be 75% of the loan amount.

(5) (a) Except as provided in subsection (5)(b), a business enterprise receiving a loan under the provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off, except that incentives may be paid to employees for achieving performance standards or goals.

(b) A business enterprise for the production of ~~alcohol~~ denatured ethanol to be used as provided in Title 15, chapter 70, part 5, may pay dividends to investors and bonuses to employees if the business enterprise is current on its loan payments and has available funds equal to at least 15% of the outstanding principal balance of the loan.

(6) The board may adopt rules that it considers necessary to implement this section."

Section 16. Section 75-11-314, MCA, is amended to read:

"75-11-314. Petroleum storage tank cleanup fee -- collection -- penalties -- warrant for distraint -- statute of limitations. (1) Except as provided in subsection (4), each distributor shall pay to the department of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel, or heating oil distributed by the distributor within the state and upon which the fee has not been paid by any other distributor. The fee must equal:

~~(a) 1 cent for each gallon of gasoline distributed from July 1, 1989, through June 30, 1991;~~

~~(b)(a) 0.75 cent for each gallon of gasoline distributed after July 1, 1991;~~

~~(c)(b) 0.75 cent for each gallon of aviation gasoline distributed after July 1, 1993;~~

~~(d)(c) 0.75 cent for each gallon of special fuel distributed after July 1, 1993; and~~

~~(e)(d) 0.75 cent for each gallon of heating oil distributed after July 1, 1993.~~

(2) Gasoline, aviation gasoline, special fuel, and heating oil exported or sold for export out of the state must be included in the measure of a distributor's fee.

(3) ~~Alcohol~~ Denatured ethanol that is blended with gasoline to be sold as gasohol is subject to the fee provided in subsection (1).

(4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds \$8 million. Whenever the unobligated fund balance, less claims anticipated for board approval within the next 90 days, is less than \$4 million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds \$8 million.

(5) The department of transportation shall collect the fee in the same manner as the basic gasoline license tax under Title 15, chapter 70, part 2. The provisions of 15-70-103, 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the fee. The provisions of 15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224 do not apply to the fee."

Section 17. Section 82-15-103, MCA, is amended to read:

"82-15-103. Standards and specifications for petroleum products. The standards and specifications for petroleum products, including but not limited to gasoline, ~~ethanol-blended gasoline~~ blended with denatured ethanol, fuel oils, diesel fuel, kerosene, and liquefied petroleum gases, must be determined by the department and, ~~subject to the provisions of 82-15-121(1)~~, must be based upon nationally recognized standards and specifications such as the standards and specifications that are published by the American society for testing and materials. The standards and specifications adopted by rule by the department are the standards and specifications for products sold in this state, and official tests of the products must be based upon the adopted standards and specifications. Gasoline sold to consumers for use in motor vehicles to be operated on the public highways, roads, and streets of this state that contains at least 10% denatured ethanol must have a minimum octane rating of 87."

Section 18. Section 82-15-121, MCA, is amended to read:

"82-15-121. (Temporary) Required use of gasoline blended with ethanol. (1) Except as provided in 82-15-122 and subsection (5) of this section, within 12 months after the department of transportation has certified that a plant or plants in the state of Montana has have produced 40 million gallons of denatured ethanol on an annualized basis and ~~has have~~ maintained that level of production ~~on an annualized basis~~ for at least 3 months, the department shall adopt standards and specifications pursuant to 82-15-103 that ensure that all gasoline sold to consumers for use in motor vehicles to be operated on the public highways, roads, and streets of this state;

(a) must be blended with at least 10%, by volume, of agriculturally derived, denatured ethanol;

(b) must have an octane rating of at least 87; and

(c) may not contain more than trace amounts of the additive methyl tertiary butyl ether.

(2) Except as provided in 82-15-122 and subsection (5) of this section, 12 months after the department of transportation has certified that a plant or plants in the state of Montana has have produced 40 million gallons of denatured ethanol and has maintained that level of production on an annualized basis for at least 3 months as provided in subsection (1), a fuel retailer who sells gasoline to consumers to be used in their vehicles on the public highways, roads, and streets of this state may not ~~accept gasoline for sale to consumers or for a 5-year period of time from the date the requirement goes into effect~~ sell gasoline to consumers that is not ethanol-blended as provided in subsection (1) or that contains the additive methyl tertiary butyl ether.

(3) Agriculturally denatured ethanol referred to in subsection (1) may be denatured only as specified in Title 27, parts 20 and 21, of the Code of Federal Regulations.

(4) The department of transportation shall compile a quarterly report certifying the amount of denatured ethanol that is produced in Montana.

(5) ~~Once the production of 40 million gallons of denatured ethanol has been certified and the provisions of subsections (1) and (2) apply, if~~ One year after the department of transportation certifies that the production level required in subsection (2) has been met and each year after the initial certification, the department of transportation shall determine the annual production level for the preceding year. If the department of transportation certifies that the production of denatured ethanol by a Montana plant or plants drops below 20 million gallons on an annualized basis for 3 months, the provisions of this section do subsection (2) requiring retailers to offer only ethanol-blended gasoline for sale to consumers do not apply. (Terminates on occurrence of contingency--sec. 21, Ch. 452, L. 2005.)"

Section 19. Section 82-15-122, MCA, is amended to read:

"82-15-122. (Temporary) Exemptions from use of ethanol-blended gasoline. (1) Gasoline that is not ethanol-blended as required in 82-15-121 may be sold or dispensed at a public or private racecourse if the gasoline is intended to be used exclusively as a fuel for off-highway motor sports racing events.

(2) Gasoline retailers and wholesale bulk distributors ~~shall~~ may 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, and midgrade unleaded ethanol-blended gasoline may be less than 10% ethanol.

(3) Aviation fuel, boat fuel, and motorcycle fuel ~~is~~ are not subject to an ethanol blending requirement.

(Terminates on occurrence of contingency--sec. 21, Ch. 452, L. 2005.)"

Section 20. Section 90-4-302, MCA, is amended to read:

"90-4-302. Definitions. As used in this part, the following definitions apply:

(1) "Bulk pipeline terminal" means a facility that is primarily used for storage for the marketing of petroleum products and that has a total bulk storage capacity of 50,000 gallons or more.

(2) "Distributor" means any person, private corporation, partnership, producer, individual proprietorship, public utility, joint operating agency, or cooperative that engages in or is authorized to engage in the activity of generating, producing, transmitting, or distributing energy in this state.

(3) "Energy" means petroleum or other liquid fuels, natural or synthetic fuel gas, or electricity.

(4) "Energy emergency" means an existing or imminent domestic, regional, or national shortage of energy or a price of energy that will result in curtailment of essential services or production of essential goods or the disruption of significant sectors of the economy unless action is taken to conserve or limit the use of the energy form involved and the allocation of available energy supplies among users or to increase the available supply of energy.

(5) "Energy facility" means a facility that produces, extracts, converts, transports, or stores energy.

(6) "Energy supply alert" means a condition of energy supply on a national, regional, state, or local basis that foreseeably will affect significantly the availability of essential energy supplies or the price of energy within the ensuing 90-day period unless action is taken under 90-4-309 to reduce energy usage by state agencies and political subdivisions or action is taken to increase the supply of energy.

(7) "Person" means an individual, partnership, joint venture, private or public corporation, cooperative, association, firm, public utility, political subdivision, municipal corporation, government agency, joint operating agency, or any other entity, public or private, however organized.

(8) "Petroleum pipeline company" means a person who owns or operates in Montana any pipeline used for the transportation of petroleum products or their derivatives. This definition does not include pipelines used to transport crude petroleum from producing wells to refineries.

(9) "Petroleum products" means propane, butane, propane/butane mix, motor gasoline, kerosene and other middle distillates, aviation gasoline, jet fuel, number 4 fuel oil, residual fuel oil, and ~~alcohol~~ denatured ethanol fuels, whether in natural or synthetic form.

(10) "Prime petroleum supplier" means the person who makes the first sale of a petroleum product into the state distribution system. Any person who is considered to be a Montana prime supplier by the U.S.

department of energy is included in this definition.

(11) "Refiner" means a person that owns, operates, or controls the operations of one or more refineries located in Montana.

(12) "Refinery" means an industrial plant, regardless of capacity, that processes fossil or renewable feedstock or manufactures refined petroleum products, except when the plant exclusively produces petrochemicals."

NEW SECTION. Section 21. Effective date. [This act] is effective July 1, 2007.

NEW SECTION. Section 22. Contingent termination. (1) Subject to subsection (2), [sections 2, 18, and 19] terminate 5 years after the production level provided for in 82-15-121 is met.

(2) If, after the 40-million-gallon production requirement of 82-15-121 is met, the production of denatured ethanol in Montana falls below 20 million gallons on an annualized basis, [sections 2, 18, and 19] are terminated.

(3) The department of transportation shall inform the code commissioner of the date that the production level provided for in 82-15-121 is met.

(4) The department of transportation shall inform the code commissioner if production of denatured ethanol in Montana falls below 20 million gallons on an annualized basis once the production requirement of 40 million gallons provided for in 82-15-121 has been met.

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