

## SENATE BILL No. 303

By Committee on Ways and Means

2-6

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9 AN ACT enacting the Kansas fuel ethanol act.

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11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. The provisions of sections 1 through 6, and amendments  
13 thereto, shall be known and may be cited as the Kansas fuel ethanol act.

14 Sec. 2. As used in the Kansas fuel ethanol act:

15 (a) "Fuel ethanol-blended gasoline" means a mixture of 90% gasoline  
16 and 10% fuel ethanol in which the fuel ethanol meets ASTM International  
17 Specification D 4806, as amended. The 10% fuel ethanol portion may be  
18 derived from any agricultural source;

19 (b) "distributor" means a person who either produces, refines,  
20 blends, compounds or manufactures motor fuel, imports motor fuel into  
21 a state or exports motor fuel out of a state, or who is engaged in distri-  
22 bution of motor fuel;

23 (c) "Kansas qualified ethanol producer" means a facility that pro-  
24 duces fuel ethanol, or fuel-ethanol blended gasoline within Kansas and is  
25 registered with the United States environmental protection agency pur-  
26 suant to 40 CFR 79;

27 (d) "position holder" means the person who holds the inventory po-  
28 sition in motor fuel in a terminal, as reflected on the records of the ter-  
29 minal operator. A person holds the inventory position in motor fuel when  
30 that person has a contract with the terminal operator for the use of storage  
31 facilities and terminating services for motor fuel at the terminal. The term  
32 includes a terminal operator who owns motor fuel in the terminal;

33 (e) "premium gasoline" means gasoline with an antiknock index num-  
34 ber of 91 or greater;

35 (f) "qualified terminal" means a terminal that has been assigned a  
36 terminal control number ("tcn") by the internal revenue service;

37 (g) "supplier" includes a person that produces fuel grade ethanol or  
38 alcohol-derivative substances in this state, produces fuel grade alcohol or  
39 alcohol-derivative substances for import to this state into a terminal, or  
40 acquires upon import by truck, rail car or barge into a terminal, fuel grade  
41 alcohol or alcohol-derivative substances. "Supplier" also includes a per-  
42 missive supplier unless specifically provided otherwise. "Supplier" also  
43 means a person that is:

- 1 (1) Registered or required to be registered pursuant to 26 U.S.C.,  
2 Section 4101, for transactions in motor fuels in the bulk transfer/terminal  
3 distribution system; and
- 4 (2) one or more of the following:
- 5 (A) The position holder in a terminal or refinery in this state;
- 6 (B) imports motor fuel into this state from a foreign country;
- 7 (C) acquires motor fuel from a terminal or refinery in this state from  
8 a position holder pursuant to either a two-party exchange or a qualified  
9 buy-sell arrangement which is treated as an exchange and appears on the  
10 records of the terminal operator; or
- 11 (D) the position holder in a terminal or refinery outside this state  
12 with respect to motor fuel which that person imports into this state. A  
13 terminal operator shall not be considered a supplier based solely on the  
14 fact that the terminal operator handles motor fuel consigned to it within  
15 a terminal.
- 16 Sec. 3. On and after January 1, 2009, all gasoline sold for retail in  
17 the state of Kansas shall be fuel ethanol-blended gasoline, and to the  
18 extent necessary supply is available, the fuel ethanol shall be obtained  
19 from a Kansas qualified ethanol producer. All terminals in Kansas that  
20 sell gasoline shall offer for sale, in cooperation with position holders and  
21 suppliers, fuel ethanol-blended gasoline and premium gasoline.
- 22 Sec. 4. Notwithstanding any other law to the contrary, all fuel re-  
23 tailers, wholesalers, distributors and marketers shall be allowed to pur-  
24 chase fuel ethanol from any terminal, position holder, fuel ethanol pro-  
25 ducer, fuel ethanol wholesaler or supplier. If a court of competent  
26 jurisdiction finds that this subsection does not apply to or improperly  
27 impairs contractual relationships existing on the effective date of this act,  
28 then the provisions of this subsection shall only apply to contractual re-  
29 lationships created after the effective date of this act.
- 30 Sec. 5. (a) Upon request of the department of agriculture or the de-  
31 partment of revenue, the position holder, supplier, distributor and ulti-  
32 mate vendor shall provide the required documentation regarding the sales  
33 transaction and price of fuel ethanol, fuel ethanol-blended gasoline and  
34 premium gasoline to the requesting department. All information obtained  
35 by the departments from such sources shall be confidential and not dis-  
36 closed except by court order or as otherwise provided by law.
- 37 (b) The following shall be exempt from the provisions of subsection  
38 (a):
- 39 (1) Aviation fuel and automotive gasoline used in aircraft;
- 40 (2) fuel ethanol exceeding a 10% ethanol blend;
- 41 (3) any specific exemptions declared by the United States environ-  
42 mental protection agency; and
- 43 (4) bulk transfers between terminals.

1     Sec. 6. In addition to any other penalty provided by law, any person  
2 violating the provisions of this act, and amendments thereto, or the rules  
3 and regulations adopted pursuant to this act may incur fines in an amount  
4 not less than \$50 nor more than \$1,000 for each such violation. In the  
5 case of a continuing violation, every day such violation continues is a  
6 separate violation. Such fines shall be imposed pursuant to the procedures  
7 provided in the administrative procedure act. All fines recovered shall be  
8 remitted to the state treasurer and deposited to the credit of the state  
9 general fund.

10    Sec. 7. The secretary of agriculture is hereby authorized to prom-  
11 ulgate rules and regulations to carry out the provisions of this act.

12    Sec. 8. This act shall take effect and be in force from and after its  
13 publication in the statute book.