

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2367

Introduced by

Senators Wanzek, Klein

Representatives D. Johnson, Nicholas

1 A BILL for an Act to create and enact two new sections to chapter 19-10 of the North Dakota
2 Century Code, relating to oxygenated gasoline; and to amend and reenact sections 19-10-01
3 and 57-43.1-03.1 of the North Dakota Century Code and to amend and reenact section 2 of
4 chapter 576 of the 1995 Session Laws, relating to petroleum products definitions and ethanol
5 plant production incentives.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 19-10-01 of the 1995 Supplement to the North
8 Dakota Century Code is amended and reenacted as follows:

9 **19-10-01. Definitions.** In this chapter, unless the context or subject matter otherwise
10 requires:

- 11 1. "Adulterated", when used to describe any petroleum product, denotes a petroleum
12 product which fails to meet the specifications prescribed by this chapter.
- 13 2. "Department" means the state department of health.
- 14 3. "Diesel fuel" is any petroleum product intended for use or offered for sale as a fuel
15 for engines in which the fuel is injected into the combustion chamber and ignited
16 by pressure without electric spark.
- 17 4. "Gasoline" is a refined petroleum naphtha which by its composition is suitable for
18 use as a carburant in internal combustion engines.
- 19 5. "Heating oil" is any petroleum product intended for use or offered for sale, as a
20 furnace oil, range oil, or fuel oil for heating and cooking purposes to be used in
21 burners other than wick burners regardless of whether the product is designated
22 as furnace oil, range oil, fuel oil, gas oil, or is given any other name or designation.
- 23 6. "Kerosene" is a petroleum fraction which is free from water, additives, foreign or
24 suspended matter, and is suitable for use as an illuminating oil.

- 1 7. "Lubricating oil" is any petroleum, or other product, used for the purpose of
2 reducing friction, heat, or wear in automobiles, tractors, gasoline engines, diesel
3 engines, and other machines.
- 4 8. "Misbranded", when used in connection with any petroleum product, denotes a
5 petroleum product which is not labeled as required under the provisions of this
6 chapter.
- 7 9. "Oxygenate" means agriculturally derived, denatured ethanol, ETBE, MTBE, or
8 other alcohol or ether, approved as an oxygenate by the United States
9 environmental protection agency.
- 10 10. "Oxygenate blender" means a person who has registered with the department to
11 blend and distribute, transport, sell, or offer to sell gasoline containing oxygen.
- 12 11. "Oxygenated gasoline" means gasoline that has been blended with agriculturally
13 derived denatured ethanol or with another oxygenate approved by the United
14 States environmental protection agency.
- 15 12. "Person responsible for the gasoline" means a person or persons, corporation,
16 partnership, stock company, society, association, or its agent or employee who
17 processes, blends, holds, stores, imports, transfers, distributes, offers for sale or
18 use, or sells petroleum products in this state and who possesses petroleum
19 products at the time they are sampled or inspected by the director.
- 20 13. "Sell" and "sale" includes the keeping, offering, or exposing for sale, transportation,
21 or exchange of the restricted or prohibited article.
- 22 ~~40.~~ 14. "Tractor fuel" is any petroleum product, other than gasoline or kerosene, intended
23 for use or offered for sale, as a fuel for tractors, regardless of whether the product
24 is designated as distillate, gas oil, fuel oil, or is given any other name or
25 designation.

26 **SECTION 2.** A new section to chapter 19-10 of the North Dakota Century Code is
27 created and enacted as follows:

28 **Oxygenated gasoline - Minimum oxygen content required - Blending restriction -**
29 **Oxygenate records - Disclosure.**

- 1 1. Except as provided in section 3 of this Act, after October 1, 1997, all gasoline sold
2 or offered for sale in this state must contain at least two and seven-tenths percent
3 oxygen by weight.
- 4 2. When gasoline contains an oxygenate, a person responsible for the gasoline may
5 not blend the gasoline with ethanol or with any other oxygenate after it is
6 transferred or otherwise removed from a refinery or terminal.
- 7 3. The department shall audit the records of registered oxygenate blenders to ensure
8 that each blender has met all requirements of this chapter. Specific information or
9 data relating to sales figures or to processes or methods of production unique to
10 the blender or that would tend to adversely affect the competitive position of the
11 blender must be only for the confidential use of the department, unless otherwise
12 specifically authorized by the registered blender.
- 13 4. A refinery or terminal shall provide, at the time gasoline is sold or transferred from
14 the refinery or terminal, a bill of lading or shipping manifest to the person who
15 receives the gasoline. For oxygenated gasoline, the bill of lading or shipping
16 manifest must include the identity and the volume percentage or gallons of
17 oxygenate included in the gasoline, and it must state: "This fuel contains an
18 oxygenate. Do not blend this fuel with ethanol or with any other oxygenate." For
19 nonoxygenated gasoline sold or transferred after September 30, 1997, the bill of
20 lading or shipping manifest must state: "This fuel is not oxygenated. It may not be
21 sold at retail in North Dakota." This subdivision does not apply to sales or
22 transfers of gasoline between refineries, between terminals, or between a refinery
23 and a terminal.

24 **SECTION 3.** A new section to chapter 19-10 of the North Dakota Century Code is
25 created and enacted as follows:

26 **Exemptions.** The following are exemptions to the oxygenated gasoline requirement.
27 Nonoxygenated gasoline may be offered for sale, sold, or dispensed at:

- 28 1. An airport, marina, mooring facility, resort, or for use in airplanes if the gasoline is
29 unleaded with an octane rating of ninety-one or greater;
- 30 2. A public or private racecourse if the gasoline is intended to be used exclusively as
31 a fuel for off-highway motor sports racing events; or

- 1 3. A retail gasoline station for use in collector vehicles or vehicles eligible to be
2 licensed as collector vehicles, off-road vehicles, motorcycles, boats, snowmobiles,
3 or small engines, if the person meets the conditions in subdivisions a through c. If
4 the nonoxygenated gasoline is for use in a small engine, it must be dispensed into
5 a can with a capacity of six gallons [22.71 liters] or less.
- 6 a. The nonoxygenated gasoline must be unleaded gasoline with an octane
7 rating of ninety-one or greater.
- 8 b. No more than one storage tank on the premises of the retail gasoline station
9 may be used for storage of the nonoxygenated gasoline offered for sale, sold,
10 or dispensed by the station.
- 11 c. The pump stands must be posted with a permanent notice stating:
12 "Nonoxygenated gasoline, for use in collector vehicles or vehicles eligible to
13 be licensed as collector vehicles, off-road vehicles, motorcycles, boats,
14 snowmobiles, or small engines only".

15 **SECTION 4. AMENDMENT.** Section 57-43.1-03.1 of the 1995 Supplement to the
16 North Dakota Century Code is amended and reenacted as follows:

17 **57-43.1-03.1. ~~(Effective until December 31, 1999) Refund of tax for fuel used for~~**
18 **~~agricultural purposes—Reduction for agricultural fuel tax fund.~~** Any person who buys or
19 uses any motor vehicle fuel for agricultural purposes, except motor vehicle fuel used in motor
20 vehicles operated or intended to be operated in whole or in part upon any of the public
21 highways of this state on which the motor vehicle fuel tax has been paid, must be reimbursed
22 or repaid within the time provided in this chapter, the amount of the tax paid upon the
23 presentation to and the approval of the commissioner of a claim for refund. The amount of the
24 tax refund provided for in this section must be reduced by four cents per gallon [3.79 liters]
25 except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users;
26 two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural
27 fuel tax fund, and two cents per gallon [3.79 liters] withheld from the refund must be retained in
28 the highway tax distribution fund. Those persons who have a valid tax assignment permit
29 issued by the commissioner under section 57-43.1-11 must be charged four cents per gallon
30 [3.79 liters] by the dealer and the four cents charged must be remitted to the commissioner by
31 the dealer when the dealer submits the tax assigned invoices for credit.

(Effective January 1, 2000) Refund of tax for fuel used for agricultural purposes -

Reduction for agricultural fuel tax fund. Any person who buys or uses any motor vehicle fuel for agricultural purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state on which the motor vehicle fuel tax has been paid, must be reimbursed or repaid within the time provided in this chapter, the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund. The amount of the tax refund provided for in this section must be reduced by two cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund. Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 must be charged two cents per gallon [3.79 liters] by the dealer and the two cents charged must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

SECTION 5. AMENDMENT. Section 2 of chapter 576 of the 1995 Session Laws is amended and reenacted as follows:

SECTION 2. Duration and limitation of ethanol plant production incentives.

Notwithstanding any other provision of law, an ethanol plant may not receive production incentives except as permitted under this section.

4. An ethanol plant that was in operation before July 1, 1995, ~~may not receive production incentives in the form of direct payments from the state for more than five fiscal years of operation after June 30, 1995. An ethanol plant that or which~~ begins operation after June 30, 1995, may not receive production incentives in the form of direct payments from the state ~~for more than ten fiscal years of operation. After December 31, 2007, the state may not provide production incentives in the form of direct payments to any ethanol plant after June 30, 1997.~~
2. An ethanol plant that was in operation before July 1, 1995, and which produced fewer than fifteen million gallons [56781000 liters] of ethanol in the previous fiscal year may receive up to one million dollars in production incentives from the state for production in a fiscal year. An ethanol plant that was in operation before July 1, 1995, and which produced fifteen million gallons [56781000 liters] or more of

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1 ~~ethanol in the previous fiscal year and an ethanol plant that begins operation after~~
2 ~~June 30, 1995, are each eligible to receive an equal share in up to five hundred~~
3 ~~thousand dollars in production incentives from the state for production in a fiscal~~
4 ~~year.~~