



AN ACT REVISING LAWS RELATED TO ALTERNATIVE FUELS AND PETROLEUM PRODUCTS; REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT STANDARDS AND SPECIFICATIONS ENSURING THAT CERTAIN TYPES OF GASOLINE SOLD TO CONSUMERS FOR USE IN MOTOR VEHICLES TO BE OPERATED ON PUBLIC ROADS IS BLENDED WITH ETHANOL AND PROVIDING THAT THE GASOLINE MAY NOT CONTAIN MORE THAN TRACE LEVELS OF METHYL TERTIARY BUTYL ETHER; REDUCING THE TAX INCENTIVE FROM 30 CENTS TO 20 CENTS PER GALLON; REVISING THE TIME IN WHICH TAX CREDITS 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; REQUIRING AN ETHANOL PRODUCER TO USE AT LEAST A CERTAIN PERCENTAGE OF MONTANA PRODUCT IN ITS TOTAL PRODUCTION TO QUALIFY FOR THE TAX INCENTIVE; PROVIDING THAT AN ETHANOL FACILITY IS NOT ELIGIBLE FOR THE TAX INCENTIVE UNLESS THE FACILITY PAID A PREVAILING RATE OF WAGES DURING CONSTRUCTION; REVISING REQUIREMENTS FOR BUSINESS PLANS; REMOVING THE REQUIREMENT FOR LOSS OF PRIORITY; REVISING THE CONDITIONS FOR AN IN-STATE INVESTMENT FOR ALCOHOL PRODUCTION TO BE USED FOR FUEL; ALLOWING THE PAYMENT OF DIVIDENDS AND BONUSES UNDER CERTAIN CONDITIONS; CREATING CERTAIN EXCEPTIONS TO THE REQUIREMENT TO USE ETHANOL-BLENDED GASOLINE; REVISING THE CONTINGENCIES ELIMINATING THE PROVISIONS TAXING GASOHOL AT 85 PERCENT OF THE GASOLINE LICENSE TAX AND SPECIAL FUEL TAX RATES; PROVIDING FOR ENFORCEMENT BY THE DEPARTMENT OF LABOR AND INDUSTRY AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES ESTABLISHING ALLOWABLE TRACE LEVELS OF METHYL TERTIARY BUTYL ETHER AND ESTABLISHING REPORTING AND SAMPLING REQUIREMENTS; AMENDING SECTIONS 15-70-201, 15-70-204, 15-70-503, 15-70-522, 17-6-317, 82-15-101, 82-15-102, 82-15-103, 82-15-104, 82-15-106, 82-15-110, AND 82-15-111, MCA, AND SECTIONS 12 AND 13, CHAPTER 568, LAWS OF 2001; REPEALING SECTION 15-70-245, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND TERMINATION DATES.

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

Section 1. Required use of gasoline blended with ethanol. (1) Except as provided in [section 2] and subsection (5) of this section, within 12 months after the department of transportation has certified that the state of Montana has produced 40 million gallons of denatured ethanol and has 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 must be blended with 10%, by volume, of agriculturally derived, denatured ethanol and may not contain more than trace amounts of the additive methyl tertiary butyl ether.

(2) Except as provided in [section 2] and subsection (5) of this section, 12 months after the department of transportation has certified that the state of Montana has produced 40 million gallons of denatured ethanol and has maintained that level of production on an annualized basis for at least 3 months, 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 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 the production of denatured ethanol drops below 20 million gallons on an annualized basis, the provisions of this section do not apply.

Section 2. Exemptions from use of ethanol-blended gasoline. (1) Gasoline that is not ethanol-blended as required in [section 1] 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 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.

(3) Aviation fuel is not subject to an ethanol blending requirement.

Section 3. 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 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 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."~~

Section 4. 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) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1).~~

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, is subject to 85% of the tax imposed in subsection (1)(b).

(4) Beginning the date that the requirement for use of gasohol contained in [section 1] occurs, gasohol is subject to the tax imposed in subsection (1)(b). (Terminates June 30 of fourth year following date of occurrence of contingency--sec. 13, Ch. 568, L. 2001.)

15-70-204. (Effective July 1 of fourth year following date of 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) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)."

Section 5. 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" means any person who, for the purpose of making gasohol, engages in the business of producing alcohol 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.

~~(4)~~(5) "Gasohol dealer" means any person who blends alcohol with gasoline to produce gasohol for sale, use, or distribution in this state."

Section 6. Section 15-70-522, MCA, is amended to read:

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

- (i) is to be blended with gasoline for sale as gasohol in Montana;
- (ii) was exported from Montana to be blended with gasoline for sale as gasohol; 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), the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is ~~30~~ 20 cents a gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive 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. ~~Beginning July 1, 2010, there is no tax incentive. The tax incentive is available to a facility for the first 6 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 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) an alcohol distributor is not eligible to receive the tax incentive unless at least:

- (i) 20% Montana product is used to produce alcohol at the facility in the first year of production;
- (ii) 25% Montana product is used to produce alcohol at the facility in the second year of production;
- (iii) 35% Montana product is used to produce alcohol at the facility in the third year of production;
- (iv) 45% Montana product is used to produce alcohol at the facility in the fourth year of production;
- (v) 55% Montana product is used to produce alcohol at the facility in the fifth year of production; and

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

(4) (a) An alcohol distributor may not receive tax incentive payments under subsection (2) that exceed \$2 million in any consecutive 12-month period. Subject to subsections (5) and (6), an alcohol 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 produced for the month;

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

(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) An alcohol distributor may not receive tax incentive payments under subsection (2) unless the distributor has provided a written business plan to the department of transportation at least 24 months before the distributor's anticipated collection of the tax incentives and has complied with the schedule provided for in subsection (6). The plan must contain the following information:~~

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

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

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

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

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

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

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

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

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

~~(9) The department shall reserve, in the order that written plans required under subsection (5) are received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of production.~~

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

~~(11)~~(7) The department shall prescribe rules necessary to carry out the provisions of this section within 1 year of [the effective date of this act]. The department shall coordinate and request information and input from the alcohol production industry as a part of the rulemaking process and shall follow the procedures provided in Title 2, chapter 4."

Section 7. 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 average weekly salary, 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 average weekly salary, 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 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 8. Section 82-15-101, MCA, is amended to read:

"82-15-101. Definitions. As used in this part, the following definitions apply:

(1) "Antiknock index number" means the octane rating of the antiknock characteristics of a grade or type of motor fuel determined as provided in 16 CFR 306.0.

~~(1)~~(2) "Dealer" means any person engaged in the petroleum business and includes petroleum dealers and liquefied petroleum dealers.

~~(2)~~(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

~~(3)~~(4) "Liquefied petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or of selling or offering or advertising for sale or refining or manufacturing or keeping for sale in this state any petroleum product composed predominately of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and butylenes but excluding prepackaged liquefied petroleum products.

~~(4)~~(5) "Liquefied petroleum product" means a product composed predominately of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and butylenes.

~~(5)~~(6) "Liquefied petroleum product container" means a container approved by the American society of mechanical engineers that can hold 110 gallons or more of a liquefied petroleum product.

~~(6)~~(7) "Mislabeled" means a package label or dispensing device of a product that bears any statement, design, or device regarding the product or regarding ingredients or substances in the product or regarding the properties, quality, or kind of products that is false or misleading in any manner.

~~(7)~~(8) "Owner" means a person:

(a) who is listed with the American society of mechanical engineers or with the manufacturer as owner by the serial number of the liquefied petroleum product container;

(b) who holds a written bill of sale or other instrument under which title to a liquefied petroleum product container was transferred; or

(c) who holds a paid invoice showing purchase of and payment for a liquefied petroleum product container.

~~(8)~~(9) "Person" means an individual, trust, estate, partnership, corporation, joint-stock company, firm, agency, association, or any receiver appointed by law.

~~(9)~~(10) "Petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or offering or advertising for sale, refining, manufacturing, or keeping for sale in this state any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil, or greases or any oil or gas or oil and gas product except prepackaged petroleum products and except as otherwise defined as a liquefied petroleum dealer in subsection ~~(3)~~ (4).

~~(10)~~(11) "Sell" and "sale" includes barter and exchange."

Section 9. 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 ~~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."

Section 10. Section 82-15-103, MCA, is amended to read:

"82-15-103. Standards for petroleum products. The standards and specifications for petroleum products, including but not limited to gasoline, ethanol-blended gasoline, fuel oils, diesel fuel, kerosene, and liquefied petroleum gases, ~~shall~~ must be determined by the department and, subject to the provisions of [section 1(1)], shall must be based upon nationally recognized standards and specifications such as those that are

published from time to time by the American society for testing materials. ~~When so determined by the~~ The standards and specifications adopted by rule by the department and adopted as rules, such standards and specifications are the standards and specifications for ~~such those~~ such those products sold in this state and official tests of ~~such those~~ such those products ~~shall~~ must be based upon ~~them~~ the adopted standards and specifications."

Section 11. 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~~ 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."

Section 12. 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."

Section 13. Section 82-15-110, MCA, is amended to read:

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

- (1) use any meter or mechanical device for the measurement of gasoline or liquid fuels unless the ~~same~~ the meter or mechanical device has been approved by the department and sealed as correct;
- (2) change or in any way tamper with the department's seal without written consent from the department;
- (3) make hose delivery from petroleum vehicle tanks unless the tanks have been calibrated by the department under 82-15-108;
- (4) sell or deliver liquefied petroleum to a consumer as a liquid or vapor except as provided by 82-15-109;
- (5) sell or offer for sale or deliver liquefied petroleum to a consumer as a liquid or vapor the measurement of which has not been temperature corrected to 60 degrees F by means of an automatic compensating device

which ~~that~~ has been approved, calibrated, and sealed by the department, unless otherwise provided by the department;

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

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

(8) import into the state, store, distribute, sell, offer or expose for sale, or dispense any gasoline that contains methyl tertiary butyl ether in amounts that exceed the trace level or levels allowed by the rules adopted pursuant to 82-15-102(3)(a)."

Section 14. 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.

Section 15. 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."

Section 16. Section 12, Chapter 568, Laws of 2001, is amended to read:

"Section 12. Contingent effective date. ~~[This act] is~~ [Sections 5 through 10] are effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

- (1) an ethanol plant is operational and producing fuel in Montana; and
- (2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least \$20 million on June 30 following the date on which the condition in subsection (1) is complied with."

Section 17. Section 13, Chapter 568, Laws of 2001, is amended to read:

"Section 13. Contingent termination. ~~[This act] terminates~~ [Sections 5 through 10] terminate June 30 of the fourth year following [the effective date of this act]."

Section 18. Repealer. Section 15-70-245, MCA, is repealed.

Section 19. Codification instruction. [Sections 1, 2, and 14] are intended to be codified as an integral part of Title 82, chapter 15, part 1, and the provisions of Title 82, chapter 15, part 1, apply to [sections 1, 2, and 14].

Section 20. Effective date. [This act] is effective on passage and approval.

Section 21. Contingent termination. (1) Subject to subsection (2), [sections 1 and 2] and the amendments to 15-70-204 terminate 5 years after the production level provided for in [section 1] is met.

(2) If, after the 40-million-gallon production requirement of [section 1] is met, the production of denatured ethanol in Montana falls below 20 million gallons on an annualized basis, [sections 1 and 2] and the amendments to 15-70-204 are terminated.

(3) The department of transportation shall inform the code commissioner of the date that the production level provided for in [section 1] 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 [section 1] has been met.

- END -

I hereby certify that the within bill,
SB 0293, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2019.

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 293

INTRODUCED BY BLACK, ARNTZEN, BERGREN, BUTCHER, DICKENSON, FRANKLIN, FUREY,
GUTSCHE, HANSEN, HARRIS, HENRY, HINER, KITZENBERG, LINDEEN, MATTHEWS, MUSGROVE,
PARKER, ROUSH, SESSO, STAHL, TESTER, WINDHAM, WITT, L. JONES

AN ACT REVISING LAWS RELATED TO ALTERNATIVE FUELS AND PETROLEUM PRODUCTS;
REQUIRING THE DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT STANDARDS AND
SPECIFICATIONS ENSURING THAT CERTAIN TYPES OF GASOLINE SOLD TO CONSUMERS FOR USE
IN MOTOR VEHICLES TO BE OPERATED ON PUBLIC ROADS IS BLENDED WITH ETHANOL AND
PROVIDING THAT THE GASOLINE MAY NOT CONTAIN MORE THAN TRACE LEVELS OF METHYL
TERTIARY BUTYL ETHER; REDUCING THE TAX INCENTIVE FROM 30 CENTS TO 20 CENTS PER
GALLON; REVISING THE TIME IN WHICH TAX CREDITS 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; REQUIRING AN ETHANOL PRODUCER TO USE AT LEAST A CERTAIN
PERCENTAGE OF MONTANA PRODUCT IN ITS TOTAL PRODUCTION TO QUALIFY FOR THE TAX
INCENTIVE; PROVIDING THAT AN ETHANOL FACILITY IS NOT ELIGIBLE FOR THE TAX INCENTIVE
UNLESS THE FACILITY PAID A PREVAILING RATE OF WAGES DURING CONSTRUCTION; REVISING
REQUIREMENTS FOR BUSINESS PLANS; REMOVING THE REQUIREMENT FOR LOSS OF PRIORITY;
REVISING THE CONDITIONS FOR AN IN-STATE INVESTMENT FOR ALCOHOL PRODUCTION TO BE
USED FOR FUEL; ALLOWING THE PAYMENT OF DIVIDENDS AND BONUSES UNDER CERTAIN
CONDITIONS; CREATING CERTAIN EXCEPTIONS TO THE REQUIREMENT TO USE
ETHANOL-BLENDED GASOLINE; REVISING THE CONTINGENCIES ELIMINATING THE PROVISIONS
TAXING GASOHOL AT 85 PERCENT OF THE GASOLINE LICENSE TAX AND SPECIAL FUEL TAX
RATES; PROVIDING FOR ENFORCEMENT BY THE DEPARTMENT OF LABOR AND INDUSTRY AND
THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REQUIRING THE BOARD OF ENVIRONMENTAL
REVIEW TO ADOPT RULES ESTABLISHING ALLOWABLE TRACE LEVELS OF METHYL TERTIARY
BUTYL ETHER AND ESTABLISHING REPORTING AND SAMPLING REQUIREMENTS; AMENDING
SECTIONS 15-70-201, 15-70-204, 15-70-503, 15-70-522, 17-6-317, 82-15-101, 82-15-102, 82-15-103,
82-15-104, 82-15-106, 82-15-110, AND 82-15-111, MCA, AND SECTIONS 12 AND 13, CHAPTER 568,
LAWS OF 2001; REPEALING SECTION 15-70-245, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE

DATE AND TERMINATION DATES.