

Act No. 271
Public Acts of 2006
Approved by the Governor
July 7, 2006
Filed with the Secretary of State
July 7, 2006
EFFECTIVE DATE: July 7, 2006

STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006

Introduced by Senators Brown, Gilbert, Patterson, Cropsey, Bishop, Jelinek, Birkholz, Toy, Kuipers, Sikkema, Hammerstrom, Garcia, Cassis, Van Woerkom, Johnson, Olshove, Leland, Schauer, Cherry and Thomas

ENROLLED SENATE BILL No. 1079

AN ACT to amend 1984 PA 44, entitled "An act to provide purity and quality standards for motor fuels; to regulate the transfer, sale, dispensing, or offering motor fuels for sale; to provide for an inspection and testing program; to provide for the powers and duties of certain state agencies; to prescribe certain powers of the governor; to provide for the licensing of certain persons engaged in the transfer, sale, dispensing, or offering of motor fuels for sale; to regulate stage I vapor-recovery systems at certain facilities; to provide for fees; to make appropriations; and to provide remedies and prescribe fines and penalties," by amending sections 2, 3, 4a, 5, 6, and 7 (MCL 290.642, 290.643, 290.644a, 290.645, 290.646, and 290.647), sections 2, 3, and 5 as amended by 2006 PA 104, section 4a as amended by 2002 PA 425, section 6 as amended by 2004 PA 278, and section 7 as amended by 1993 PA 236.

The People of the State of Michigan enact:

Sec. 2. As used in this act:

(a) "Additive" means any substance in gasoline other than gasoline but does not include approved blending components, other than lead, sodium, and phosphate components, introduced at refineries or terminals as octane or product quality enhancers in quantities of less than 1% of volume.

(b) "American society for testing and materials" means an international nonprofit scientific and educational society devoted to the promotion of knowledge of the materials of engineering and the standardization of specification and methods of testing.

(c) "Antiknock index" or "AKI" means an index number arrived at by adding the motor octane number and the research octane number, then dividing by 2.

(d) "Biodiesel" means a fuel composed of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, and, in accordance with standards specified by the American society for testing and materials, designated B100, and meeting the requirements of D-6751, as approved by the department.

(e) "Biodiesel blend" means a fuel comprised of a blend of biodiesel fuel with petroleum-based diesel fuel, suitable for use as a fuel in a compression-ignition internal combustion diesel engine.

- (f) "Blender" means a person who as an individual or through his or her agent adds an oxygenate to a gasoline.
- (g) "Bulk purchaser-end user" means a person who is an ultimate consumer of gasoline and receives delivery of gasoline into a storage tank of at least 550-gallon capacity substantially under his or her control.
- (h) "CARB" means the California air resources board.
- (i) "Delivery vessel" means a tank truck, tank equipped trailer, or a similar vessel used for the delivery of gasoline to a dispensing facility.
- (j) "Department" means the department of agriculture.
- (k) "Diesel fuel" means any liquid other than gasoline that is suitable for use as a fuel or a component of a fuel in a compression-ignition internal combustion diesel engine.
- (l) "Director" means the director of the department of agriculture or his or her authorized representative.
- (m) "Dispensing facility" means a site used for gasoline refueling.
- (n) "Dispensing unit" means a device designed for the delivery of gasoline in which 1 nozzle equates to 1 dispensing unit.
- (o) "Distributor" means a person who purchases, transports, or stores or causes the transportation or storage of gasoline at any point between a gasoline refinery and a retail outlet or bulk purchaser-end user facility.
- (p) "E.P.A." means the United States environmental protection agency.
- (q) "Gasoline" means a volatile mixture of liquid hydrocarbons generally containing small amounts of additives suitable for use in spark-ignition internal combustion engines, and commonly or commercially known or sold as gasoline.
- (r) "Hydrogen fuel" means a substance containing the chemical formula H₂ that exists as a colorless, odorless, and highly flammable gas except at low cryogenic temperatures or when highly compressed that is gaseous or liquefied and suitable for use in a fuel cell or hydrogen fuel vehicle.
- (s) "Leak" means liquid or vapor loss from the gasoline dispensing system or stage I vapor-recovery system as determined by visual inspection or functional testing.
- (t) "Modification" means any change, removal, or addition, other than an identical replacement, of any component contained within a stage I vapor-recovery system. The resultant modification must constitute an approved vapor-recovery system.
- (u) "Motor octane number" or "MON" means a knock characteristic of gasoline determined by use of standard procedures on a motor engine.
- (v) "Operator" means a person who owns, leases, operates, manages, supervises, or controls, directly or indirectly, a gasoline-dispensing facility.
- (w) "Oxygenate" means an oxygen-containing, ashless, organic compound, such as alcohol or ether, that may be used as fuel or fuel supplement.
- (x) "Person" means an individual, sole proprietorship, partnership, corporation, association, or other legal entity.
- (y) "Refiner" means a person who owns, leases, operates, controls, or supervises a refinery.
- (z) "Refinery" means a plant at which gasoline is produced.
- (aa) "Research octane number" or "RON" means a knock characteristic of gasoline determined by use of standard procedures on a research engine.
- (bb) "Retail dealer" means a person who owns, leases, operates, controls, or supervises a retail outlet.
- (cc) "Retail outlet" means an establishment at which motor fuel is sold or offered for sale to the public.
- (dd) "Rule" means a rule promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
- (ee) "Stage I vapor-recovery system" means a vapor tight collection system that is approved by the department and is designed to capture the gasoline vapors displaced during delivery into a stationary storage tank and to return not less than 90% of the displaced vapors to the delivery vessel.

Sec. 3. (1) The director shall establish standards pursuant to this act to ensure the purity and quality of gasoline and diesel fuel sold or offered for sale in this state.

(2) The director shall establish standards for the amount and type of additives allowed to be included in gasoline and diesel fuel.

(3) The director shall establish standards for the grading of gasoline, including, but not limited to, subregular with a minimum 85 AKI, regular with a minimum 87 AKI and a minimum 82 MON, midgrade 88 with a minimum 88 AKI and a minimum 82 MON, midgrade 89 with a minimum 89 AKI and a minimum 83 MON, premium with a minimum 90 AKI, premium 91 with a minimum 91 AKI, premium 92 with a minimum 92 AKI, premium 93 with a minimum 93 AKI, and premium 94 with a minimum 94 AKI.

(4) The director shall establish standards for vapor pressure as specified by the American society for testing and materials, except as otherwise required to conform to federal or state law. Notwithstanding anything to the contrary in section 10d, the director shall establish the vapor pressure as 9.0 pounds per square inch (psi) for retail outlets during the period beginning June 1 through September 15 of each year, except for dispensing facilities in counties where the director establishes the vapor pressure as 7.0 psi or 7.8 psi in the year 2007 and thereafter. As used in this act, "vapor pressure" means the vapor pressure of gasoline or gasoline oxygenate blend as determined by ASTM test method D6378 or D5191 or an ASTM method approved by the department.

(5) In establishing additive and grading standards the director shall adopt the latest standards for gasoline established by the American society for testing and materials and shall adopt the latest standards for gasoline established by federal law or regulation. The standards established by the director shall not prohibit a gasoline blend that is permitted by a valid waiver granted by the United States environmental protection agency pursuant to the fuel or fuel additive waiver in section 211(f)(4) of part A of title II of the clean air act, chapter 360, 81 Stat. 502, 42 USC 7545, and the ethanol waiver of 1.0 psi in section 211(h)(4) of part A of title II of the clean air act, chapter 360, 81 Stat. 502, 42 USC 7545, if the gasoline blend meets all of the conditions set forth in the waiver. Beginning June 1, 2003, the director shall not permit the use of the additive methyl tertiary butyl ether (MTBE) in this state.

(6) The director shall establish standards pursuant to this act to ensure the purity and quality of diesel fuel sold or offered for sale in this state.

(7) Any firm offering hydrogen fuel for sale in this state shall first register with and obtain approval from the department. Registration shall include a complete list of the fuel specifications the product is to meet and the sites where the product is offered for sale to the general public.

(8) Standards established pursuant to this section shall be by rules promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 4a. (1) A storage tank at a retail outlet shall be periodically tested by the retail dealer to insure that the tank does not have water or water-alcohol at the bottom of that tank in an amount greater than 2 inches. If there is more than 2 inches of water or water-alcohol at the bottom of the storage tank, gasoline, diesel fuel, biodiesel, or biodiesel blend shall not be sold to a consumer from that tank until the water or water-alcohol level is reduced to a level of less than 2 inches.

(2) Adequate testing supplies, as determined by the department, shall be maintained at the retail outlet and shall also be made available to the department to determine the water or water-alcohol level in the storage tank.

Sec. 5. (1) Except as provided by federal law or regulation, in the manufacture of gasoline, diesel fuel, or hydrogen fuel at any refinery in this state, a refiner shall not manufacture gasoline, diesel fuel, or hydrogen fuel at a refinery in this state unless the gasoline, diesel fuel, or hydrogen fuel meets the requirements in sections 3 and 10d. Except as provided by federal law or regulation, a blender shall not blend gasoline unless the finished blend meets the requirements in sections 3 and 10d.

(2) Except as provided by federal law or regulation, a distributor shall not sell or transfer to any distributor, retail dealer, or bulk purchaser-end user any gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel unless that gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel meets the requirements in sections 3 and 10d and is suitable for its intended purpose.

(3) A carrier or an employee or agent of a carrier, whether operating under contract or tariff, shall not cause gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel tendered to the carrier for shipment or transfer to another carrier, distributor, or retail dealer to fail to comply, at the time of delivery, with the requirements in sections 3 and 10d.

(4) A person shall not knowingly sell, dispense, or offer for sale gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel unless that gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel meets the requirements in sections 3 and 10d.

(5) A refiner or distributor shall not transfer, sell, dispense, or offer gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel for sale in this state to a distributor unless the refiner or distributor indicates on each bill, invoice, or other instrument evidencing a delivery of gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel the name of the wholesale distributor who received delivery of the gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel.

(6) A distributor or refiner shall not transfer, sell, dispense, or offer gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel for sale in this state to a retail dealer unless the retail dealer has a valid retail gasoline outlet license pursuant to this act.

(7) A bill, invoice, or other instrument evidencing a delivery of gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel issued by a refiner or distributor for deliveries of gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel to purchasers who are not required to hold a license issued pursuant to the motor fuel tax act, 2000

PA 403, MCL 207.1001 to 207.1170, or this act shall clearly indicate the name and address and other information necessary to identify the purchaser of the gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel.

(8) A bill, invoice, or other instrument evidencing a delivery of gasoline required by subsection (5), (6), or (7) shall include a guarantee that the gasoline delivered meets the requirements in sections 3 and 10d and shall indicate the concentration range of alcohol in the gasoline, except for alcohols or ethers that have a molecular weight greater than ethanol and are not mixed with methanol or ethanol, or both, and shall indicate the possible presence, without regard to concentration range, of any alcohols or ethers that have a molecular weight greater than ethanol and are not mixed with methanol or ethanol, or both.

(9) A refiner, distributor, bulk purchaser-end user, or retail dealer shall not transfer, sell, dispense, or offer gasoline, diesel fuel, biodiesel, or biodiesel blend for sale unless that gasoline, diesel fuel, biodiesel, or biodiesel blend is visibly free of undissolved water, sediments, and other suspended matter and the gasoline is clear and bright at an ambient temperature or 70 degrees Fahrenheit, whichever is greater.

(10) A person who violates this section or rules promulgated under this section is liable for a civil fine not to exceed \$10,000.00 for each day of the continuance of the violation. A civil fine ordered pursuant to this section shall be submitted to the state treasurer for deposit in the gasoline inspection and testing fund created by section 8.

Sec. 6. (1) Before a distributor or retail dealer engages in transferring, selling, dispensing, or offering for sale gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel in this state, the distributor or retail dealer shall obtain a license from the department for each retail outlet operated by that person. In administering the licensing under this section, the department may attempt to coordinate the licensing with the licensing applicable to gasoline administered by the department of treasury pursuant to the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170, and the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78.

(2) A license expires annually on November 30 unless renewed before December 1 of each year or unless suspended, denied, or revoked by the department.

(3) The fee for a license is \$15.00 for each year or portion of a year through July 31, 2002, \$50.00 for each year or portion of a year through July 31, 2003, \$75.00 for each year or portion of a year through July 31, 2004, and \$100.00 beginning August 1, 2004 and each year or portion of a year thereafter. A license shall not be issued or renewed until the fee and any administrative fines issued under section 10a have been paid. A hearing is not required before the refusal to issue or renew a license under this subsection. Fees collected shall be deposited in the gasoline inspection and testing fund.

(4) An application for a license shall be made to the department upon a form furnished by the department. The completed form shall contain the information requested by the department and shall be accompanied by the fee specified in subsection (3).

(5) The director may suspend, deny, or revoke a license issued pursuant to this act for failure to comply with the requirements provided for in section 3, for failure to provide notice as provided in section 4, for violating section 31 of the weights and measures act of 1964, 1964 PA 283, MCL 290.631, if that violation occurs at any of the licensee's retail outlets and involves the transferring, selling, dispensing, or the offering for sale of gasoline in this state, or for otherwise failing to comply with this act or a rule promulgated under this act or an order issued under this act.

(6) This section does not apply until June 29, 1985.

(7) If a person licensed under this act is convicted of a willful violation under section 31 of the weights and measures act of 1964, 1964 PA 283, MCL 290.631, any license issued pursuant to this act shall be revoked for 2 years.

(8) A suspension, revocation, or denial of a license of a person who is an individual shall result in the suspension, revocation, or denial of any other license held or applied for by that individual under this act. The license of a corporation, partnership, or other association shall be suspended when a license or license application of a partner, trustee, director, or officer, member, or a person exercising control of the corporation, partnership, or other association is suspended, revoked, or denied. The suspension shall remain in force until the director determines that the disability created by the suspension, revocation, or denial has been removed.

(9) Except as otherwise provided in subsection (3), beginning on July 23, 2004, the department shall issue an initial or renewal license not later than 120 days after the applicant files a completed application. If the application is considered incomplete by the department, the department shall notify the applicant in writing or make notification electronically available within 40 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 120-day period is tolled upon notification by the department of a deficiency until the date all of the information requested during the 40-day period is received by the department. Requests for new or additional information by the department that fall outside the 40-day period do not toll the 120-day period. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

(10) If the department does not issue or deny a license within 120 days after the receipt of a completed application, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application,

if any, by 15%. The failure to issue a license within the time required under this subsection does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of an application based on the fact that the application fee was refunded or discounted under this subsection.

(11) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with motor fuel quality issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 120-day time period described in subsection (9).

(b) The number of applications denied.

(c) The number of applications not issued within the 120-day period and the amount of money returned to licensees and registrants under subsection (10).

(12) Before a blender engages in the transferring, selling, dispensing, or offering for sale blended gasoline in this state, the blender shall register the finished product with the department and provide to the department test results as the department considers necessary. If the product does not comply with the requirements of section 3, the blender shall provide the department with a written list of the business names and addresses to whom the blended product is sold.

(13) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

Sec. 7. (1) The director shall establish a gasoline, diesel fuel, biodiesel, and biodiesel blend inspection, investigation, and testing program. The purpose of the inspection, investigation, and testing program is to determine whether gasoline, diesel fuel, biodiesel, and biodiesel blend transferred, sold, dispensed, or offered for sale in this state meet the requirements provided in this act, to sample, to investigate allegations of fraud, to inspect and investigate violations of the weights and measures act, 1964 PA 283, MCL 290.601 to 290.634, and whether notice required by section 4 is provided. The program shall provide for a regular system of monitoring gasoline, diesel fuel, biodiesel, and biodiesel blend sold or offered for sale in this state. The department shall implement the inspection, investigation, and testing program as provided in subsection (8). The expenses of operating the program shall be paid from money in the gasoline inspection and testing fund created in section 8.

(2) As part of the inspection and testing program the director shall maintain a 24-hour toll free consumer hot line to receive consumer complaints regarding vapor-recovery systems and the purity and quality of gasoline sold or offered for sale in this state.

(3) If the director has reason to believe a violation of section 5 or rules promulgated under section 5 has occurred, the director may require a refiner, distributor, storage facility, blender, bulk purchaser-end user, or retail dealer to provide to the department the original documents pertaining to the receipt, transfer, delivery, storage, or sale of gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel and to allow the original documents to remain in the possession of the department. If original documents remain in the possession of the department and the documents are necessary for conducting business, the department shall provide copies of the documents to the refiner, distributor, blender, bulk purchaser-end user, or retail dealer upon request. A refiner, distributor, bulk purchaser-end user, blender, or retail dealer shall preserve information regarding the receipt, transfer, delivery, storage, or sale of gasoline, including loading tickets, bills of lading, drop tickets, meter tickets, invoices, sales reports, and billings, for 3 years. A retail outlet shall retain on its premises the original drop tickets, bills of lading, and invoices for 1 month before transfer to another location.

(4) The director, upon presentation of appropriate credentials, may do all of the following:

(a) Enter upon or through any retail outlet, bulk purchaser-end user facility, dispensing facility, or the premises or property of any refiner or distributor.

(b) Make inspections, take samples, and conduct tests during any hours the business is operating.

(c) Examine records during normal business hours to determine compliance with this act.

(5) In addition to the powers provided in this act, the director has all the powers to enforce this act that the director has under the weights and measures act, 1964 PA 283, MCL 290.601 to 290.634.

(6) The director may transmit any information obtained pursuant to the inspection and testing program to any other agency of this state if the information will assist the other agency to carry out any of the agency's regulatory functions or responsibilities related to the transfer, sale, dispensing, or offering of gasoline for sale in this state.

(7) The director may promulgate rules for the purpose of implementing and enforcing this act.

(8) The department shall implement the inspection and testing program provided in subsection (1) as follows:

(a) Inspection and testing for standards regarding lead, alcohol, free water, and sediments within 90 days after the effective date of this act.

(b) Inspection and testing for any other standards by March 29, 1987.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gay E. Randall

Clerk of the House of Representatives

Approved

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Governor