

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1198**

Introduced by Connealy, 16; Cunningham, 40; Preister, 5

Read first time January 18, 2006

Committee: Revenue

A BILL

1 FOR AN ACT relating to motor fuels; to amend sections 66-485,  
2 66-488, and 66-489, Revised Statutes Cumulative  
3 Supplement, 2004, and section 66-482, Revised Statutes  
4 Supplement, 2005; to provide for microscale producers;  
5 to provide reporting and security requirements for such  
6 producers; to provide an exemption from tax; to provide  
7 an operative date; and to repeal the original sections.

8 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 66-482, Revised Statutes Supplement,  
2 2005, is amended to read:

3           66-482 For purposes of sections 66-482 to 66-4,149:

4           (1) Motor vehicle shall have the same definition as in  
5 section 60-339;

6           (2) Motor vehicle fuel shall include all products and  
7 fuel commonly or commercially known as gasoline, including casing  
8 head or natural gasoline, and shall include any other liquid and  
9 such other volatile and inflammable liquids as may be produced,  
10 compounded, or used for the purpose of operating or propelling  
11 motor vehicles, motorboats, or aircraft or as an ingredient in  
12 the manufacture of such fuel. Agricultural ethyl alcohol produced  
13 for use as a motor vehicle fuel shall be considered a motor  
14 vehicle fuel. Motor vehicle fuel shall not include the products  
15 commonly known as methanol, kerosene oil, kerosene distillate,  
16 crude petroleum, naphtha, and benzine with a boiling point over  
17 two hundred degrees Fahrenheit, residuum gas oil, smudge oil,  
18 leaded automotive racing fuel with an American Society of Testing  
19 Materials research method octane number in excess of one hundred  
20 five, and any petroleum product with an initial boiling point under  
21 two hundred degrees Fahrenheit, a ninety-five percent distillation  
22 (recovery) temperature in excess of four hundred sixty-four degrees  
23 Fahrenheit, an American Society of Testing Materials research  
24 method octane number less than seventy, and an end or dry point of  
25 distillation of five hundred seventy degrees Fahrenheit maximum;

1           (3) Agricultural ethyl alcohol shall mean ethyl alcohol  
2 produced from cereal grains or agricultural commodities grown  
3 within the continental United States and which is a finished  
4 product that is a nominally anhydrous ethyl alcohol meeting  
5 American Society for Testing and Materials D4806 standards. For  
6 the purpose of sections 66-482 to 66-4,149, the purity of the ethyl  
7 alcohol shall be determined excluding denaturant and the volume of  
8 alcohol blended with gasoline for motor vehicle fuel shall include  
9 the volume of any denaturant required pursuant to law;

10           (4) Alcohol blend shall mean a blend of agricultural  
11 ethyl alcohol in gasoline or other motor vehicle fuel, such blend  
12 to contain not less than five percent by volume of alcohol;

13           (5) Supplier shall mean any person who owns motor fuels  
14 imported by barge, barge line, or pipeline and stored at a barge,  
15 barge line, or pipeline terminal in this state;

16           (6) Distributor shall mean any person who acquires  
17 ownership of motor fuels directly from a producer or supplier  
18 at or from a barge, barge line, pipeline terminal, or ethanol or  
19 biodiesel facility in this state;

20           (7) Wholesaler shall mean any person, other than a  
21 producer, supplier, distributor, or importer, who acquires motor  
22 fuels for resale;

23           (8) Retailer shall mean any person who acquires motor  
24 fuels from a producer, supplier, distributor, wholesaler, or  
25 importer for resale to consumers of such fuel;

1           (9) Importer shall mean any person who owns motor fuels  
2 at the time such fuels enter the State of Nebraska by any means  
3 other than barge, barge line, or pipeline. Importer shall not  
4 include a person who imports motor fuels in a tank directly  
5 connected to the engine of a motor vehicle, train, watercraft, or  
6 airplane for purposes of providing fuel to the engine to which the  
7 tank is connected;

8           (10) Exporter shall mean any person who acquires  
9 ownership of motor fuels from any licensed producer, supplier,  
10 distributor, wholesaler, or importer exclusively for use or resale  
11 in another state;

12           (11) Gross gallons shall mean measured gallons without  
13 adjustment or correction for temperature or barometric pressure;

14           (12) Diesel fuel shall mean all combustible liquids and  
15 biodiesel which are suitable for the generation of power for  
16 diesel-powered vehicles, except that diesel fuel shall not include  
17 kerosene;

18           (13) Compressed fuel shall mean any fuel defined as  
19 compressed fuel in section 66-6,100;

20           (14) Person shall mean any individual, firm, partnership,  
21 limited liability company, company, agency, association,  
22 corporation, state, county, municipality, or other political  
23 subdivision. Whenever a fine or imprisonment is prescribed or  
24 imposed in sections 66-482 to 66-4,149, the word person as applied  
25 to a partnership, a limited liability company, or an association

1 shall mean the partners or members thereof;

2 (15) Department shall mean the Motor Fuel Tax Enforcement  
3 and Collection Division of the Department of Revenue;

4 (16) Semiannual period shall mean either the period which  
5 begins on January 1 and ends on June 30 of each year or the period  
6 which begins on July 1 and ends on December 31 of each year;

7 (17) Producer shall mean any person who manufactures  
8 agricultural ethyl alcohol or biodiesel at an ethanol or biodiesel  
9 facility in this state, including a microscale producer;

10 (18) Highway shall mean every way or place generally open  
11 to the use of the public for the purpose of vehicular travel,  
12 even though such way or place may be temporarily closed or travel  
13 thereon restricted for the purpose of construction, maintenance,  
14 repair, or reconstruction;

15 (19) Kerosene shall mean kerosene meeting the  
16 specifications as found in the American Society for Testing and  
17 Materials publication D3699 entitled Standard Specifications for  
18 Kerosene;

19 (20) Biodiesel shall mean mono-alkyl esters of long  
20 chain fatty acids derived from vegetable oils or animal fats  
21 which conform to American Society for Testing and Materials D6751  
22 specifications for use in diesel engines. Biodiesel refers to the  
23 pure fuel before blending with diesel fuel;

24 (21) Motor fuels shall mean motor vehicle fuel, diesel  
25 fuel, aircraft fuel, or compressed fuel;

1           (22) Ethanol facility shall mean a plant which produces  
2 agricultural ethyl alcohol under the provisions described in  
3 section 66-1344; and

4           (23) Biodiesel facility shall mean a plant which produces  
5 biodiesel;

6           (24) Microscale producer shall mean a person who produces  
7 biofuel for his or her own use and who sells or distributes less  
8 than fifty percent of his or her annual production. Production for  
9 a person's own use is limited to ten thousand gallons annually  
10 for urban and residential uses and one hundred thousand gallons  
11 annually for agricultural uses; and -

12           (25) Biofuel means any renewable liquid fuel produced  
13 from organic matter available on a renewable basis, including  
14 forest and mill residues, agricultural crops and wastes, wood and  
15 wood wastes, aquatic plants, and fast-growing trees and plants.

16           Sec. 2. Section 66-485, Revised Statutes Cumulative  
17 Supplement, 2004, is amended to read:

18           66-485 The department, for the first year of a new  
19 license or whenever it deems it necessary to insure compliance  
20 with sections 66-482 to 66-4,149, may require any producer,  
21 supplier, distributor, wholesaler, exporter, or importer subject  
22 to such sections to place with the department such security as  
23 it determines. The amount and duration of the security shall be  
24 fixed by the department and shall be approximately three times  
25 the total estimated average monthly tax liability payable by such

1 producer, supplier, distributor, wholesaler, or importer pursuant  
2 to such sections, except that the amount of the security required  
3 for a microscale producer shall not exceed five thousand dollars.  
4 Such security shall consist of a surety bond executed by a surety  
5 company duly licensed and authorized to do business within this  
6 state in the amount specified by the department. In the case of  
7 an exporter, the amount and duration of the security shall be  
8 fixed by the department. Such security shall run to the Department  
9 of Revenue and be conditioned upon the payment of all taxes,  
10 interest, penalties, and costs for which such producer, supplier,  
11 distributor, wholesaler, exporter, or importer is liable, whether  
12 such liability was incurred prior to or after such security is  
13 filed.

14           Sec. 3. Section 66-488, Revised Statutes Cumulative  
15 Supplement, 2004, is amended to read:

16           66-488 (1) Every producer, supplier, distributor,  
17 wholesaler, importer, and exporter who engages in the sale,  
18 distribution, delivery, and use of motor fuels shall render and  
19 have on file with the department a return reporting the number of  
20 gallons of motor fuels, based on gross gallons, received, imported,  
21 or exported and unloaded and emptied or caused to be received,  
22 imported, or exported and unloaded and emptied by such producer,  
23 supplier, distributor, wholesaler, or importer in the State of  
24 Nebraska and the number of gallons of motor fuels produced,  
25 refined, manufactured, blended, or compounded by such producer,

1 supplier, distributor, wholesaler, or importer within the State  
2 of Nebraska, during the preceding reporting period, and defining  
3 the nature of such motor fuels. The return shall also show such  
4 information as the department reasonably requires for the proper  
5 administration and enforcement of sections 66-482 to 66-4,149. The  
6 return shall contain a declaration, by the person making the same,  
7 to the effect that the statements contained therein are true and  
8 are made under penalties of perjury, which declaration shall have  
9 the same force and effect as a verification of the return and shall  
10 be in lieu of such verification. The return shall be signed by the  
11 producer, supplier, distributor, wholesaler, importer, or exporter  
12 or a principal officer, general agent, managing agent, attorney in  
13 fact, chief accountant, or other responsible representative of the  
14 producer, supplier, distributor, wholesaler, importer, or exporter,  
15 and such return shall be entitled to be received in evidence in all  
16 courts of this state and shall be prima facie evidence of the facts  
17 therein stated. The producer, supplier, distributor, wholesaler,  
18 importer, or exporter shall file the return in such format as  
19 prescribed by the department on or before the twenty-fifth day of  
20 the next succeeding calendar month following the reporting period  
21 to which it relates. If the final filing date for such return  
22 falls on a Saturday, Sunday, or legal holiday, the next secular  
23 or business day shall be the final filing date. The return shall  
24 be considered filed on time if transmitted or postmarked before  
25 midnight of the final filing date.

1           (2) For purposes of this section, reporting period means  
2 (a) for microscale producers, calendar quarter unless extended  
3 to an annual basis by rules and regulations of the department,  
4 and (b) for all other producers and for suppliers, distributors,  
5 wholesalers, and importers, calendar month unless otherwise  
6 provided by rules and regulations of the department, but under no  
7 circumstance shall such reporting period extend beyond an annual  
8 basis.

9           Sec. 4. Section 66-489, Revised Statutes Cumulative  
10 Supplement, 2004, is amended to read:

11           66-489 (1) At the time of filing the return required by  
12 section 66-488, such producer, supplier, distributor, wholesaler,  
13 or importer shall, in addition to the tax imposed pursuant to  
14 sections 66-4,140, 66-4,145, and 66-4,146 and in addition to the  
15 other taxes provided for by law, pay a tax of ten and one-half  
16 cents per gallon upon all motor fuels as shown by such return,  
17 except that there shall be no tax on the motor fuels reported if  
18 (a) the required taxes on the motor fuels have been paid, (b) the  
19 motor fuels have been sold to a licensed exporter exclusively for  
20 resale or use in another state, (c) the motor fuels have been sold  
21 from a Nebraska barge line terminal, pipeline terminal, refinery,  
22 or ethanol or biodiesel facility, including motor fuels stored  
23 offsite in bulk, by a licensed producer or supplier to a licensed  
24 distributor, (d) the motor fuels have been sold by a licensed  
25 distributor or licensed importer to a licensed distributor or to a

1 licensed wholesaler and the seller acquired ownership of the motor  
2 fuels directly from a licensed producer or supplier at or from  
3 a refinery, barge, barge line, pipeline terminal, or ethanol or  
4 biodiesel facility, including motor fuels stored offsite in bulk,  
5 in this state or was the first importer of such fuel into this  
6 state, ~~or~~ (e) the motor fuels are biofuel produced by a microscale  
7 producer and used for the producer's own off-road agricultural  
8 uses, up to one hundred thousand gallons, or (f) as otherwise  
9 provided in this section. Such producer, supplier, distributor,  
10 wholesaler, or importer shall remit such tax to the department.

11 (2) As part of filing the return required by section  
12 66-488, each producer of ethanol shall, in addition to other  
13 taxes imposed by the motor fuel laws, pay an excise tax of one  
14 and one-quarter cents per gallon through December 31, 2004, and  
15 commencing January 1, 2010, and two and one-half cents per gallon  
16 commencing January 1, 2005, through December 31, 2009, on natural  
17 gasoline purchased for use as a denaturant by the producer at  
18 an ethanol facility. All taxes, interest, and penalties collected  
19 under this subsection shall be remitted to the State Treasurer  
20 for credit to the Agricultural Alcohol Fuel Tax Fund, except that  
21 commencing January 1, 2005, through December 31, 2009, one and  
22 one-quarter cents per gallon of such excise tax shall be credited  
23 to the Ethanol Production Incentive Cash Fund.

24 (3)(a) Motor fuels, methanol, and all blending agents  
25 or fuel expanders shall be exempt from the taxes imposed by this

1 section and sections 66-4,105, 66-4,140, 66-4,145, and 66-4,146,  
2 when the fuels are used for buses equipped to carry more than  
3 seven persons for hire and engaged entirely in the transportation  
4 of passengers for hire within municipalities or within a radius of  
5 six miles thereof.

6 (b) The owner or agent of any bus equipped to carry  
7 more than seven persons for hire and engaged entirely in the  
8 transportation of passengers for hire within municipalities, or  
9 within a radius of six miles thereof, in lieu of the excise tax  
10 provided for in this section, shall pay an equalization fee of a  
11 sum equal to twice the amount of the registration fee applicable to  
12 such vehicle under the laws of this state. Such equalization fee  
13 shall be paid in the same manner as the registration fee and be  
14 disbursed and allocated as registration fees.

15 (c) Nothing in this section shall be construed as  
16 permitting motor fuels to be sold tax exempt. The department  
17 shall refund tax paid on motor fuels used in buses deemed exempt by  
18 this section.

19 (4) Natural gasoline purchased for use as a denaturant  
20 by a producer at an ethanol facility as defined in section 66-1333  
21 shall be exempt from the motor fuels tax imposed by subsection (1)  
22 of this section as well as the tax imposed pursuant to sections  
23 66-4,140, 66-4,145, and 66-4,146.

24 (5) Motor fuels purchased on a Nebraska Indian  
25 reservation where the purchaser is a Native American who resides on

1 the reservation shall be exempt from the motor fuels tax imposed  
2 by this section as well as the tax imposed pursuant to sections  
3 66-4,140, 66-4,145, and 66-4,146.

4 (6) Motor fuels purchased for use by the United States  
5 Government or its agencies shall be exempt from the motor fuels  
6 tax imposed by this section as well as the tax imposed pursuant to  
7 sections 66-4,140, 66-4,145, and 66-4,146.

8 (7) In the case of diesel fuel, there shall be no tax on  
9 the motor fuels reported if (a) the diesel fuel has been indelibly  
10 dyed and chemically marked in accordance with regulations issued by  
11 the Secretary of the Treasury of the United States under 26 U.S.C.  
12 4082 or (b) the diesel fuel contains a concentration of sulphur  
13 in excess of five-hundredths percent by weight or fails to meet  
14 a cetane index minimum of forty and has been indelibly dyed in  
15 accordance with regulations promulgated by the Administrator of the  
16 Environmental Protection Agency pursuant to 42 U.S.C. 7545.

17 Sec. 5. This act becomes operative on October 1, 2006.

18 Sec. 6. Original sections 66-485, 66-488, and 66-489,  
19 Revised Statutes Cumulative Supplement, 2004, and section 66-482,  
20 Revised Statutes Supplement, 2005, are repealed.