

## LEGISLATIVE BILL 1095

Approved by the Governor April 15, 2024

Introduced by Dorn, 30.

A BILL FOR AN ACT relating to motor fuels; to amend sections 66-2210, 66-2211, 66-2215, and 77-7011, Revised Statutes Supplement, 2023; to change the E-15 Access Standard Act as prescribed; to change provisions relating to tax credits under the Nebraska Biodiesel Tax Credit Act; and to repeal the original sections.

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

Section 1. Section 66-2210, Revised Statutes Supplement, 2023, is amended to read:

66-2210 For purposes of the E-15 Access Standard Act, unless the context otherwise requires:

- (1) Department means the Department of Agriculture;
- (2) Director means the Director of Agriculture;
- (3) E-15 access standard means the requirements described in subsections (1) and (2) of section 66-2211;
- (4) E-15 gasoline means a classification of ethanol blended gasoline formulated with a percentage of more than ten percent but no more than fifteen percent by volume of ethanol;
- (5) Ethanol has the same meaning as agricultural ethyl alcohol as defined in section 66-482;
- (6) Motor fuel means all products and fuel commonly or commercially known as gasoline, including ethanol and the various ethanol and gasoline blends a substance or combination of substances which is intended to be or is capable of being used for the purpose of operating an internal combustion engine and is kept for sale or sold for that purpose;
- (7) Motor fuel dispenser means equipment that is the part of motor fuel storage and dispensing infrastructure that includes mechanical or electrical systems that operate a motor fuel pump dispensing motor fuel from a motor fuel storage tank to the end point of the equipment's nozzle;
- (8) Motor fuel pump means the part of motor fuel storage and dispensing infrastructure that is a meter or similar commercial weighing and measuring device used to measure and dispense motor fuel originating from a motor fuel storage tank, on a retail basis;
- (9)(a) Motor fuel storage and dispensing infrastructure means equipment used to:
  - (i) Store and dispense motor fuel; or
  - (ii) Store, blend, and dispense motor fuel.
- (b) Motor fuel storage and dispensing infrastructure includes, but is not limited to, a motor fuel storage tanks tank, motor fuel pumps pump, and motor fuel dispensers dispenser, and associated pipes, hoses, nozzles, tubes, lines, fittings, valves, filters, seals, and covers. Motor fuel storage and dispensing infrastructure does not include signage not located on the motor fuel dispenser or motor fuel pump;
- (10) Motor fuel storage tank means the part of motor fuel storage and dispensing infrastructure that includes an aboveground or belowground container constituting a fixture used to store an accumulation of motor fuel;
- (11) Nonqualifying motor fuel dispenser means:
  - (a) A dispenser that exclusively dispenses any of the following:
    - (i) Aviation fuel;
    - (ii) Diesel fuel;
    - (iii) Kerosene; or
    - (iv) Diesel exhaust fluid;
  - (b) A dispenser that is part of a tank vehicle as defined in section 60-4,131 that is not used to dispense motor fuel on the premises of the retail motor fuel site; or
  - (c) A dispenser that is part of a commercial marina;
- (12) Qualifying motor fuel dispenser means a motor fuel dispenser that is capable of dispensing motor fuel at all times that it is in operation. The term does not include nonqualifying motor fuel dispensers;
- (13) Retail dealer means a person engaged in the business of storing and dispensing motor fuel from a motor fuel pump for sale on a retail basis; and
- (14) Retail motor fuel site means a geographic location in this state where a retail dealer sells and dispenses motor fuel on a retail basis.

Sec. 2. Section 66-2211, Revised Statutes Supplement, 2023, is amended to read:

66-2211 (1) Beginning January 1, 2024, if a retail dealer constructs a new retail motor fuel site or cumulatively from such date replaces more than eighty percent of the motor fuel storage and dispensing infrastructure located at an existing retail motor fuel site, the retail dealer shall advertise for sale and sell E-15 gasoline from at least fifty percent of all qualifying motor fuel dispensers located at such retail motor fuel site unless the retail dealer has filed a statement with the department under section 66-2215 in which the retail dealer swears or affirms that the retail motor fuel site qualifies as a small

retail motor fuel site.

(2) If the statewide ethanol blend rate for 2027 is below fourteen percent as determined pursuant to section 66-2216 and the retail motor fuel site is not a retail motor fuel site described in subsection (1) of this section, then beginning January 1, 2028, the retail dealer shall advertise for sale and sell E-15 gasoline from at least one qualifying motor fuel dispenser located at such retail motor fuel site unless:

(a) A waiver has been issued under section 66-2213 because the motor fuel storage and dispensing infrastructure located at the retail motor fuel site is not compatible with the use of E-15 gasoline;

(b) The retail motor fuel site is exempt under section 66-2214 because all of the motor fuel storage tanks located at such site are listed with the State Fire Marshal as described in section 66-2214; or

(c) The retail dealer has filed a statement with the department under section 66-2215 in which the retail dealer swears or affirms that the retail motor fuel site qualifies as a small retail motor fuel site.

(3) A retail dealer owning or operating a retail motor fuel site is not prohibited from advertising for sale and selling motor fuel from any number of nonqualifying motor fuel dispensers.

(4) It is not a violation of this section if a retail dealer is out of compliance with this section while (a) temporarily maintaining, repairing, or reconditioning motor fuel storage and dispensing infrastructure or (b) temporarily installing, expanding, replacing, or converting motor fuel storage and dispensing infrastructure. The department may require that a retail dealer notify the department in advance of such actions, and the department may inspect the retail motor fuel site to determine if a violation occurred.

Sec. 3. Section 66-2215, Revised Statutes Supplement, 2023, is amended to read:

66-2215 (1) The E-15 access standard shall not apply to a retail motor fuel site if the retail dealer provides a statement to the Department of Agriculture in which the retail dealer swears or affirms that the retail motor fuel site qualifies under this section as a small retail motor fuel site. A retail dealer may include multiple retail motor fuel sites in one statement.

(2) For purposes of this section, a retail motor fuel site shall qualify as a small retail motor fuel site if:

(a) The retail motor fuel site has only one qualifying motor fuel dispenser; or

(b) The retail motor fuel site's average annual gasoline gallonage was three hundred thousand gallons or less for the most recent three-year period beginning on January 1, 2021, and ending on December 31, 2023.

(3) Upon request by the Department of Agriculture, the Department of Revenue shall determine whether or not a particular retail motor fuel site met the average annual gasoline gallonage requirement described in subdivision (2) (b) of this section and shall inform the Department of Agriculture of such determination. The determination shall be based on information for the retail motor fuel site in motor fuel tax returns required to be filed by the retail dealer with the Department of Revenue.

(4) The information received by the Department of Agriculture from the Department of Revenue under subsection (3) of this section shall be confidential and shall be used by the Department of Agriculture for the limited purposes of evaluating a retail dealer's compliance with this section.

(5) The Department of Revenue may adopt and promulgate rules and regulations as needed to carry out this section.

(6) The Department of Agriculture shall publish on its website the number of statements filed with the department under this section and the total number of retail motor fuel sites qualifying as small retail motor fuel sites.

(7) The Department of Agriculture may inspect the premises of a retail motor fuel site during normal business hours to administer and enforce the provisions of this section.

Sec. 4. Section 77-7011, Revised Statutes Supplement, 2023, is amended to read:

77-7011 (1) Any taxpayer who is a retail dealer and who sold and dispensed biodiesel on a retail basis during the prior calendar year through a motor fuel pump located at the taxpayer's retail motor fuel site shall be eligible to receive tax credits under the Nebraska Biodiesel Tax Credit Act.

(2) The tax credit shall be in an amount equal to fourteen cents multiplied by the total number of gallons of biodiesel sold by the taxpayer on a retail basis during the prior calendar year through a motor fuel pump located at the taxpayer's retail motor fuel site. If the product sold by the taxpayer is a blend of biodiesel and diesel fuel, the tax credit shall only apply to the portion of the product that is biodiesel.

(3) The tax credit shall be a refundable credit that may be used against the income tax imposed by the Nebraska Revenue Act of 1967.

(4) Tax credits allowed under this section may be claimed for taxable years beginning or deemed to begin on or after January 1, 2024, under the Internal Revenue Code of 1986, as amended.

(5) To receive tax credits, a taxpayer shall submit an application to the department on a form prescribed by the department. Applications may be submitted from January 1 to April 15 of each calendar year beginning in 2024. The application shall include the following information:

(a) The name and address of the taxpayer;

(b) The total number of gallons of biodiesel sold by the taxpayer on a retail basis during the prior calendar year through a motor fuel pump located

at the taxpayer's retail motor fuel site; and

(c) Any other documentation required by the department.

Sec. 5. Original sections 66-2210, 66-2211, 66-2215, and 77-7011, Revised Statutes Supplement, 2023, are repealed.