

Enrolled
House Bill 3463

Sponsored by Representatives JENSON, CLEM; Representatives BAILEY, BARNHART, CAMERON,
Senators NELSON, ROSENBAUM

CHAPTER

AN ACT

Relating to biodiesel; creating new provisions; amending ORS 646.921 and 646.922 and section 16, chapter 739, Oregon Laws 2007; and declaring an emergency.

The Legislative Assembly finds that:

(1) The technology to produce other renewable diesel is not fully developed, approval of other renewable diesel as a registered fuel by the United States Environmental Protection Agency has been obtained in only one state and production of other renewable diesel for general market consumption is not occurring in Oregon or any other state at the present time.

(2) Appropriate definitions and standards for the production and use of other renewable diesel have not been fully ascertained or established.

(3) The efficiencies and consequences of producing and using diesel fuel that contains other renewable diesel are unknown and remain to be identified on a national level.

(4) It would be premature for Oregon to establish required percentages of other renewable diesel in diesel fuel sold or offered for sale in Oregon given the lack of technology and standards for the production and use of other renewable diesel. Given the interest in other renewable diesel, it is anticipated that a market for, and the means for production of, other renewable diesel will be established within the next two years, at which time the legislature may enact appropriate legislation requiring specified percentages of other renewable diesel in diesel fuel sold or offered for sale in Oregon.

(5) It would not serve the interests of encouraging the development of a market and the means for production of other renewable diesel to implement a ban or prohibition on other renewable diesel; therefore it is the policy of this state to not prohibit the production, sale or use of other renewable diesel, whether produced in Oregon or another state.

(6) The technology and standardization for production, use and sale of biodiesel fuel currently exists to a commercially viable degree in Oregon and elsewhere.

(7) Given the current state of the market for and the means to produce biodiesel fuel, it is a legitimate and appropriate exercise of Oregon's police powers to regulate the production, use and sale of biodiesel fuel in this state and to require specified percentages of biodiesel to be contained in diesel fuel sold or offered for sale in Oregon.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 646.921 is amended to read:

646.921. (1) The State Department of Agriculture shall study and monitor biodiesel fuel production, use and sales and certificates of analysis in this state.

[(2) When the production of biodiesel in this state from sources in Oregon, Washington, Idaho and Montana reaches a level of at least 5 million gallons on an annualized basis for at least three months, the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this state, in a notice that meets the requirements of subsection (5) of this section.]

(2) At least two weeks before each of the dates specified in paragraphs (a) and (b) of this subsection, the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this state that the capacity of biodiesel production facilities in Oregon has reached a level of at least five million gallons on an annualized basis and that a retail dealer, nonretail dealer or wholesale dealer may sell or offer for sale diesel fuel only as described in ORS 646.922 (1) as follows:

(a) After August 1, 2009, in the counties of:

(A) Clackamas;

(B) Clatsop;

(C) Columbia;

(D) Marion;

(E) Multnomah;

(F) Polk;

(G) Tillamook;

(H) Washington; and

(I) Yamhill; and

(b) After October 1, 2009, in all other counties in this state not included in paragraph (a) of this subsection.

*(3) When the [production of biodiesel in this state from sources in Oregon, Washington, Idaho and Montana] **capacity of biodiesel production facilities in Oregon** reaches a level of at least 15 million gallons on an annualized basis [for at least three months], the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this state[, in a notice that meets the requirements of subsection (5) of this section] **that the capacity of biodiesel production facilities in Oregon has reached a level of at least 15 million gallons on an annualized basis and that a retail dealer, nonretail dealer or wholesale dealer may sell or offer for sale diesel fuel only as described in ORS 646.922 (2) after the date that is two months after the date of the notice given by the department under this subsection.***

(4) All retail dealers, nonretail dealers and wholesale dealers in Oregon are required to provide, upon the request of the department, a certificate of analysis for biodiesel received.

[(5) The notices required under this section shall inform retail dealers, nonretail dealers and wholesale dealers that:]

[(a) The production of biodiesel has reached the level described in subsection (2) or (3) of this section, as appropriate; and]

[(b) Three months after the date of the notice, a retail dealer, nonretail dealer or wholesale dealer may sell or offer for sale diesel fuel only as described in ORS 646.922.]

SECTION 2. ORS 646.922 is amended to read:

646.922. (1) *[Three months after the date]* **Upon receipt** of the notice given under ORS 646.921 (2) **and after the dates specified in ORS 646.921 (2)(a) and (b)**, a retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least two percent biodiesel by volume *[or other renewable diesel with at least two percent renewable component by volume]*.

(2) *[Three]* **Two** months after the date of the notice given under ORS 646.921 (3), a retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least five percent biodiesel by volume *[or other renewable diesel with at least five percent renewable component by volume]*. Diesel fuel containing more than five percent biodiesel by volume *[or other renewable diesel with more than five percent renewable component by volume]* must be labeled as provided by the State Department of Agriculture by rule.

(3) The department shall adopt standards for biodiesel or other renewable diesel sold in this state. The department shall consult the specifications established for biodiesel or other renewable diesel by ASTM International in forming its standards. The department may review specifications adopted by ASTM International, or equivalent organizations, and revise the standards adopted pursuant to this subsection as necessary.

(4) The minimum biodiesel fuel content [*or renewable component in other renewable diesel*] requirements under subsections (1) and (2) of this section do not apply to diesel fuel sold or offered for sale for use by railroad locomotives, marine engines or home heating.

SECTION 3. ORS 646.922, as amended by section 2 of this 2009 Act, is amended to read:

646.922. (1) Upon receipt of the notice given under ORS 646.921 (2) and after the dates specified in ORS 646.921 (2)(a) and (b), a retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least two percent biodiesel by volume **or other renewable diesel with at least two percent renewable component by volume.**

(2) Two months after the date of the notice given under ORS 646.921 (3), a retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least five percent biodiesel by volume **or other renewable diesel with at least five percent renewable component by volume.** Diesel fuel containing more than five percent biodiesel by volume **or other renewable diesel with more than five percent renewable component by volume** must be labeled as provided by the State Department of Agriculture by rule.

(3) The department shall adopt standards for biodiesel or other renewable diesel sold in this state. The department shall consult the specifications established for biodiesel or other renewable diesel by ASTM International in forming its standards. The department may review specifications adopted by ASTM International, or equivalent organizations, and revise the standards adopted pursuant to this subsection as necessary.

(4) The minimum biodiesel fuel content **or renewable component in other renewable diesel** requirements under subsections (1) and (2) of this section do not apply to diesel fuel sold or offered for sale for use by railroad locomotives, marine engines or home heating.

SECTION 4. Section 16, chapter 739, Oregon Laws 2007, is amended to read:

Sec. 16. [*Sections 14 and 15 of this 2007 Act*] **ORS 646.922 (2) and 646.923** become operative on a date that is [*three*] **two** months following the date of the first notice required under [*section 13 (2) of this 2007 Act*] **ORS 646.921 (3).**

SECTION 5. The amendments to ORS 646.922 by section 3 of this 2009 Act become operative on January 2, 2012.

SECTION 6. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House May 4, 2009

Repassed by House June 23, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate June 22, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State