

# Senate Bill 35

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## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires Director of Transportation to compare amount of energy derived from petroleum products that is used in ethanol production to amount of energy derived from petroleum products that is saved as consequence of blending gasoline with ethanol. Requires director to issue notice to gasoline dealers that requires dealers to sell gasoline blended with certain percentage of ethanol if State Department of Agriculture finds that ethanol production has reached specified volume and if Director of Transportation finds that amount of energy derived from petroleum products that is saved as a result of ethanol blending exceeds amount of energy derived from petroleum products that is used in ethanol production during previous calendar year.

Requires State Department of Agriculture to rescind notice if State Department of Agriculture issued notice before effective date of Act.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to alternative fuel requirements; creating new provisions; amending ORS 646.905, 646.912  
3 and 646.913; and declaring an emergency.

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

5 **SECTION 1.** ORS 646.905 is amended to read:

6 646.905. As used in ORS 646.910 to 646.923:

7 (1) "Alcohol" means a volatile flammable liquid having the general formula  $C_nH_{(2n+1)OH}$  used  
8 or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles, and  
9 commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.

10 (2) "Biodiesel" means a motor vehicle fuel consisting of mono-alkyl esters of long chain fatty  
11 acids derived from vegetable oils, animal fats or other nonpetroleum resources, not including palm  
12 oil, designated as B100 and complying with ASTM D 6751.

13 (3) "Certificate of analysis" means:

14 (a) A document verifying that B100 biodiesel has been analyzed and complies with, at a mini-  
15 mum, the following ASTM D 6751 biodiesel fuel test methods and specifications:

16 (A) Flash point (ASTM D 93);

17 (B) Acid number (ASTM D 664);

18 (C) Cloud point (ASTM D 2500);

19 (D) Water and sediment (ASTM D 2709);

20 (E) Visual appearance (ASTM D 4176);

21 (F) Free glycerin (ASTM D [6854] **6584**); and

22 (G) Total glycerin (ASTM D [6854] **6584**); and

23 (b) Certification of feedstock origination describing the percent of the feedstock sourced outside  
24 of the states of Oregon, Washington, Idaho and Montana.

25 (4) "Co-solvent" means an alcohol other than methanol which is blended with either methanol

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 or ethanol or both to minimize phase separation in gasoline.

2 (5) "Ethanol" means ethyl alcohol, a flammable liquid having the formula  $C_2H_5OH$  used or sold  
3 for the purpose of blending or mixing with gasoline for use in motor vehicles.

4 (6) "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded.

5 (7) "Methanol" means methyl alcohol, a flammable liquid having the formula  $CH_3OH$  used or  
6 sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

7 (8) "Motor vehicles" means all vehicles, vessels, watercraft, engines, machines or mechanical  
8 contrivances that are propelled by internal combustion engines or motors.

9 (9) "Nonretail dealer" means any person who owns, operates, controls or supervises an estab-  
10 lishment at which motor vehicle fuel is dispensed through a card- or key-activated fuel dispensing  
11 device to nonretail customers.

12 (10) "Other renewable diesel" means a diesel fuel substitute, produced from nonfossil renewable  
13 resources, that has an established ASTM standard, is approved by the United States Environmental  
14 Protection Agency, meets specifications of the National Conference on Weights and Measures, and  
15 complies with standards promulgated under ORS 646.957.

16 (11) "Retail dealer" means any person who owns, operates, controls or supervises an establish-  
17 ment at which gasoline is sold or offered for sale to the public.

18 (12) "Wholesale dealer" means any person engaged in the sale of gasoline if the seller knows  
19 or has reasonable cause to believe the buyer intends to resell the gasoline in the same or an altered  
20 form to another.

21 **SECTION 2.** ORS 646.912 is amended to read:

22 646.912. (1) The State Department of Agriculture shall study and monitor ethanol fuel pro-  
23 duction, use and sales in this state.

24 (2) [*When capacity of ethanol production facilities in Oregon reaches a level of at least 40 million*  
25 *gallons, the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this*  
26 *state, in]* **The Director of Transportation shall issue** a notice that meets the requirements of  
27 subsection (3) of this section[.] **to all retail dealers, nonretail dealers and wholesale dealers in**  
28 **this state if:**

29 **(a) The State Department of Agriculture determines that the capacity of ethanol pro-**  
30 **duction facilities in this state has reached a level of at least 40 million gallons; and**

31 **(b) The Director of Transportation makes the finding described in subsection (4) of this**  
32 **section.**

33 (3) The notice under subsection (2) of this section shall inform retail dealers, nonretail dealers  
34 and wholesale dealers that:

35 (a) The capacity of ethanol production facilities in [*Oregon*] **this state** has reached the levels  
36 described in subsection (2) of this section; [*and*]

37 **(b) The Director of Transportation has made the finding described in subsection (4) of**  
38 **this section; and**

39 [*(b)*] **(c)** Three months after the date of the notice, a retail dealer, nonretail dealer or wholesale  
40 dealer may sell or offer for sale only gasoline described in ORS 646.913.

41 **(4) At the start of each calendar year, the Director of Transportation shall compare the**  
42 **amount of energy derived from petroleum products that is used in ethanol production in this**  
43 **state to the amount of energy derived from petroleum products that is not or would not be**  
44 **used in this state as a consequence of blending ethanol with gasoline in accordance with the**  
45 **requirements of ORS 646.913. If the amount of energy derived from petroleum products that**

1 is not used as a consequence of the blending exceeds the amount of energy derived from  
 2 petroleum products that is used in ethanol production during the previous calendar year, the  
 3 Director of Transportation shall make a finding to that effect. For purposes of this sub-  
 4 section, the Director of Transportation by rule shall develop and implement a methodology  
 5 suitable for collecting needed information and for calculating the amounts of energy de-  
 6 scribed in this subsection. At a minimum, the methodology must include as part of the cal-  
 7 culation of the amount of energy derived from petroleum products that is used for ethanol  
 8 production:

9 (a) The amount of energy used in cultivating and processing vegetation or other sub-  
 10 stances used to produce ethanol; and

11 (b) The amount of energy used in refining, transporting and otherwise making ethanol  
 12 available for use in the gasoline described in ORS 646.913.

13 (5) For purposes of this section, "petroleum product":

14 (a) Means a substance that is obtained from distilling and processing or otherwise  
 15 transforming crude oil and that is capable of use as a fertilizer or as a fuel in an internal  
 16 combustion engine, including motor gasoline, aviation gasoline, kerosene, distillate fuel oil,  
 17 the portion of gasohol or other alcohol-blended fuels that consists of petroleum distillates,  
 18 and number 1 and number 2 diesel.

19 (b) Does not include naphtha-type jet fuel, kerosene-type jet fuel, a substance destined  
 20 for use in the chemical manufacture of fuel, including alcohol-based substances used in  
 21 gasahol or alcohol-blended fuels, or fuel sold to vessels engaged in interstate or foreign  
 22 commerce.

23 **SECTION 3.** ORS 646.913, as amended by section 4, chapter 44, Oregon Laws 2008, is amended  
 24 to read:

25 646.913. (1) Except as provided in subsection (5) of this section, a retail dealer, nonretail dealer  
 26 or wholesale dealer **that received a notice from the Director of Transportation under ORS**  
 27 **646.912 (2)** may not sell or offer for sale gasoline unless the gasoline contains 10 percent ethanol  
 28 by volume.

29 (2) Gasoline containing ethanol that is sold or offered for sale meets the requirements of this  
 30 section if the gasoline, exclusive of denaturants and permitted contaminants, contains not less than  
 31 9.2 percent by volume of agriculturally derived, denatured ethanol that complies with the standards  
 32 for ethanol adopted by the State Department of Agriculture.

33 (3) The [department] **State Department of Agriculture** shall adopt standards for ethanol  
 34 blended with gasoline sold in this state. The standards adopted shall require that the gasoline  
 35 blended with ethanol:

36 (a) Contains ethanol that is derived from agricultural or woody waste or residue;

37 (b) Contains ethanol denatured as specified in 27 C.F.R. parts 20 and 21;

38 (c) Complies with the volatility requirements specified in 40 C.F.R. part 80;

39 (d) Complies with or is produced from a gasoline base stock that complies with ASTM Interna-  
 40 tional specification D 4814;

41 (e) Is not blended with casinghead gasoline, absorption gasoline, drip gasoline or natural gaso-  
 42 line after it has been sold, transferred or otherwise removed from a refinery or terminal; and

43 (f) Contains ethanol that complies with ASTM International specification D 4806.

44 (4) The [department] **State Department of Agriculture** may review specifications adopted by  
 45 ASTM International, or equivalent organizations, and federal regulations and revise the standards

1 adopted pursuant to this section as necessary.

2 (5) A retail dealer, nonretail dealer or wholesale dealer may sell or offer for sale gasoline that  
 3 is not blended with ethanol if the gasoline is for use in:

4 (a) An aircraft:

5 (A) With a supplemental type certificate approved by the Federal Aviation Administration that  
 6 allows the aircraft to use gasoline that is intended for use in motor vehicles; or

7 (B) Issued a type certificate by an aircraft engine manufacturer that allows the aircraft to use  
 8 gasoline that is intended for use in motor vehicles;

9 (b) An aircraft that has been issued an experimental certificate, described in 14 C.F.R. 21.191,  
 10 by the Federal Aviation Administration and that is required by the manufacturer's specifications to  
 11 use gasoline that is intended for use in motor vehicles;

12 (c) A light-sport aircraft, as defined in 14 C.F.R. 1.1, that is required by the manufacturer's  
 13 specifications to use gasoline that is intended for use in motor vehicles;

14 (d) A vintage aircraft, as defined by the Oregon Department of Aviation by rule, that is required  
 15 by the manufacturer's specifications to use gasoline that is intended for use in motor vehicles;

16 (e) An antique vehicle, as defined in ORS 801.125;

17 (f) A Class I all-terrain vehicle, as defined in ORS 801.190;

18 (g) A Class III all-terrain vehicle, as defined in ORS 801.194;

19 (h) A racing activity vehicle, as defined in ORS 801.404;

20 (i) A snowmobile, as defined in ORS 801.490;

21 (j) Tools, including but not limited to lawn mowers, leaf blowers and chain saws; or

22 (k) A watercraft.

23 **SECTION 4. If the State Department of Agriculture has issued a notice under ORS**  
 24 **646.912 before the effective date of this 2009 Act, the notice is void and of no effect and the**  
 25 **department shall immediately rescind the notice.**

26 **SECTION 5. (1) The amendments to ORS 646.912 and 646.913 by sections 2 and 3 of this**  
 27 **2009 Act become operative on January 1, 2010.**

28 **(2) The Director of Transportation may take any action before the operative date speci-**  
 29 **fied in subsection (1) of this section that is necessary to enable the director to exercise, on**  
 30 **and after the operative date specified in subsection (1) of this section, all the duties, func-**  
 31 **tions and powers conferred on the director by the amendments to ORS 646.912 and 646.913**  
 32 **by sections 2 and 3 of this 2009 Act.**

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

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