

AMENDMENTS TO LB562

Introduced by Agriculture.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Sections 1 to 11 of this act shall be known and may be
4 cited as the E-15 Access Standard Act.

5 Sec. 2. The purpose of the E-15 Access Standard Act is to increase
6 consumer access to E-15 gasoline through the establishment of an access
7 standard.

8 Sec. 3. For purposes of the E-15 Access Standard Act, unless the
9 context otherwise requires:

10 (1) Department means the Department of Agriculture;

11 (2) Director means the Director of Agriculture;

12 (3) E-15 access standard means the requirements described in
13 subsections (1) and (2) of section 4 of this act;

14 (4) E-15 gasoline means a classification of ethanol blended gasoline
15 formulated with a percentage of more than ten percent but no more than
16 fifteen percent by volume of ethanol;

17 (5) Ethanol has the same meaning as agricultural ethyl alcohol as
18 defined in section 66-482;

19 (6) Motor fuel means a substance or combination of substances which
20 is intended to be or is capable of being used for the purpose of
21 operating an internal combustion engine and is kept for sale or sold for
22 that purpose;

23 (7) Motor fuel dispenser means equipment that is the part of motor
24 fuel storage and dispensing infrastructure that includes mechanical or
25 electrical systems that operate a motor fuel pump dispensing motor fuel
26 from a motor fuel storage tank to the end point of the equipment's
27 nozzle;

1 (8) Motor fuel pump means the part of motor fuel storage and
2 dispensing infrastructure that is a meter or similar commercial weighing
3 and measuring device used to measure and dispense motor fuel originating
4 from a motor fuel storage tank, on a retail basis;

5 (9)(a) Motor fuel storage and dispensing infrastructure means
6 equipment used to:

7 (i) Store and dispense motor fuel; or

8 (ii) Store, blend, and dispense motor fuel.

9 (b) Motor fuel storage and dispensing infrastructure includes, but
10 is not limited to, a motor fuel storage tank, motor fuel pump, motor fuel
11 dispenser, and associated pipes, hoses, nozzles, tubes, lines, fittings,
12 valves, filters, seals, and covers. Motor fuel storage and dispensing
13 infrastructure does not include signage not located on the motor fuel
14 dispenser or motor fuel pump;

15 (10) Motor fuel storage tank means the part of motor fuel storage
16 and dispensing infrastructure that includes an aboveground or belowground
17 container constituting a fixture used to store an accumulation of motor
18 fuel;

19 (11) Nonqualifying motor fuel dispenser means:

20 (a) A dispenser that exclusively dispenses any of the following:

21 (i) Aviation fuel;

22 (ii) Diesel fuel;

23 (iii) Kerosene; or

24 (iv) Diesel exhaust fluid;

25 (b) A dispenser that is part of a tank vehicle as defined in section
26 60-4,131 that is not used to dispense motor fuel on the premises of the
27 retail motor fuel site; or

28 (c) A dispenser that is part of a commercial marina;

29 (12) Qualifying motor fuel dispenser means a motor fuel dispenser
30 that is capable of dispensing motor fuel at all times that it is in
31 operation. The term does not include nonqualifying motor fuel dispensers;

1 (13) Retail dealer means a person engaged in the business of storing
2 and dispensing motor fuel from a motor fuel pump for sale on a retail
3 basis; and

4 (14) Retail motor fuel site means a geographic location in this
5 state where a retail dealer sells and dispenses motor fuel on a retail
6 basis.

7 Sec. 4. (1) Beginning January 1, 2024, if a retail dealer
8 constructs a new retail motor fuel site or replaces more than eighty
9 percent of the motor fuel storage and dispensing infrastructure located
10 at an existing retail motor fuel site, the retail dealer shall advertise
11 for sale and sell E-15 gasoline from at least fifty percent of all
12 qualifying motor fuel dispensers located at such retail motor fuel site
13 unless the retail dealer has filed a statement with the department under
14 section 8 of this act in which the retail dealer swears or affirms that
15 the retail motor fuel site qualifies as a small retail motor fuel site.

16 (2) If the statewide ethanol blend rate for 2027 is below fourteen
17 percent as determined pursuant to section 9 of this act and the retail
18 motor fuel site is not a retail motor fuel site described in subsection
19 (1) of this section, then beginning January 1, 2028, the retail dealer
20 shall advertise for sale and sell E-15 gasoline from at least one
21 qualifying motor fuel dispenser located at such retail motor fuel site
22 unless:

23 (a) A waiver has been issued under section 6 of this act because the
24 motor fuel storage and dispensing infrastructure located at the retail
25 motor fuel site is not compatible with the use of E-15 gasoline;

26 (b) The retail motor fuel site is exempt under section 7 of this act
27 because all of the motor fuel storage tanks located at such site are
28 listed with the State Fire Marshal as described in section 7 of this act;
29 or

30 (c) The retail dealer has filed a statement with the department
31 under section 8 of this act in which the retail dealer swears or affirms

1 that the retail motor fuel site qualifies as a small retail motor fuel
2 site.

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

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

14 Sec. 5. The Governor may issue or renew an executive order that
15 temporarily suspends the E-15 access standard if there is an inadequate
16 supply of E-15 gasoline or the market price of E-15 gasoline may cause
17 consumers to suffer economic hardship.

18 Sec. 6. (1) The director shall issue an administrative order that
19 waives the requirement that a retail dealer comply with subsection (2) of
20 section 4 of this act at a retail motor fuel site owned or operated by
21 the retail dealer if the retail motor fuel site qualifies under this
22 section based on the fact that the motor fuel storage and dispensing
23 infrastructure located at such site is not compatible with the use of
24 E-15 gasoline.

25 (2) A retail dealer may apply for a waiver under this section by
26 submitting an application to the department in a manner prescribed by the
27 department.

28 (3) The application shall be supported by credible evidence that the
29 retail dealer is unable to comply with subsection (2) of section 4 of
30 this act because the motor fuel storage and dispensing infrastructure
31 located at the retail motor fuel site is not compatible with the use of

1 E-15 gasoline and the cost to replace the motor fuel storage and
2 dispensing infrastructure would exceed fifteen thousand dollars as
3 determined by a person certified by the department as a professional
4 retail motor fuel site installer. For purposes of this section, motor
5 fuel storage and dispensing infrastructure is compatible with E-15
6 gasoline if the equipment is included in a list published by an
7 independent testing laboratory for use with E-15 gasoline or the
8 manufacturer of the equipment has issued a written statement of
9 compatibility with E-15 gasoline.

10 (4) The application shall include an inventory and description of
11 the motor fuel storage and dispensing infrastructure located at the
12 retail motor fuel site.

13 (5) The department may require a retail dealer to attach any
14 supporting documentation to the application, which may include an
15 inspection report completed by a person certified by the department as a
16 professional retail motor fuel site installer. The certified professional
17 retail motor fuel site installer may be a licensed engineer or other
18 person who the department determines is qualified by education, testing,
19 or experience to oversee a project involving the installation,
20 replacement, or conversion of motor fuel storage and dispensing
21 infrastructure.

22 (6) The department, in consultation with the State Fire Marshal,
23 shall review and evaluate an application to determine whether it is
24 supported by credible evidence sufficient for the director to issue an
25 order granting a waiver under this section. The department shall approve
26 or disapprove a completed application within one hundred twenty days
27 following the date that the application was submitted to the department.

28 (7) The retail dealer shall sign the application, which shall
29 include a statement that the retail dealer swears or affirms that all
30 information in the application completed by the retail dealer is true and
31 correct. If a certified professional retail motor fuel site installer

1 completes an inspection report to support an application, the installer
2 shall sign a statement that the installer swears or affirms that all
3 information in the inspection report completed by the installer is true
4 and correct.

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

8 (9) The department shall publish a copy of each administrative order
9 granting a waiver under this section on the department's website within
10 ten days after the issuance of the order. The order shall take effect on
11 its date of publication, unless the order specifies a later date.

12 (10)(a) The director shall terminate an administrative order issued
13 under this section if a terminable event has occurred. A terminable event
14 includes any of the following:

15 (i) The failure of a retail dealer to maintain a valid permit as
16 required under section 89-187.01;

17 (ii) The cessation of the retail dealer's business of advertising
18 for sale or selling motor fuel at the retail motor fuel site; or

19 (iii) The installation, replacement, or conversion of a motor fuel
20 storage tank located at the retail motor fuel site.

21 (b) The department may require that a retail dealer notify the
22 department that a terminable event as described in subdivision (10)(a) of
23 this section is planned to occur, is occurring, or has occurred.

24 Sec. 7. Subsection (2) of section 4 of this act shall not apply to
25 a retail motor fuel site if all of the motor fuel storage tanks located
26 at such site are listed with the State Fire Marshal as falling within one
27 of the following categories:

28 (1) Each motor fuel storage tank not constructed of fiberglass was
29 installed during or prior to 1985; or

30 (2) Each motor fuel storage tank constructed of fiberglass was
31 installed during or prior to:

1 (a) For a double-wall fiberglass underground motor fuel storage
2 tank, 1991; or

3 (b) For a single-wall fiberglass underground motor fuel storage
4 tank, 1996.

5 Sec. 8. (1) The E-15 access standard shall not apply to a retail
6 motor fuel site if the retail dealer provides a statement to the
7 Department of Agriculture in which the retail dealer swears or affirms
8 that the retail motor fuel site qualifies under this section as a small
9 retail motor fuel site. A retail dealer may include multiple retail motor
10 fuel sites in one statement.

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

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

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

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

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

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

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

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

8 Sec. 9. Beginning in 2025, the Department of Revenue and the
9 Department of Environment and Energy shall annually issue a joint report
10 that identifies the statewide ethanol blend rate. The statewide ethanol
11 blend rate shall be equal to the average percentage of ethanol contained
12 in each gallon of motor fuel sold in this state. Retail dealers shall
13 provide a quarterly report of the number of gallons of each type of motor
14 fuel sold and the percentage of ethanol in each gallon to the Department
15 of Revenue. Reports to the Department of Revenue shall be submitted on a
16 form and in the manner prescribed by the Department of Revenue.

17 Sec. 10. (1) Beginning January 1, 2024, the department may suspend
18 or revoke a permit issued to a retail dealer pursuant to section
19 89-187.01 if the retail dealer fails to comply with subsection (1) of
20 section 4 of this act.

21 (2) Beginning April 1, 2028, the department may suspend or revoke a
22 permit issued to a retail dealer pursuant to section 89-187.01 if the
23 retail dealer fails to comply with subsection (2) of section 4 of this
24 act.

25 Sec. 11. The department may adopt and promulgate rules and
26 regulations to carry out the E-15 Access Standard Act.

27 Sec. 12. Section 77-7002, Revised Statutes Cumulative Supplement,
28 2022, is amended to read:

29 77-7002 For purposes of the Nebraska Higher Blend Tax Credit Act:

30 (1) Department means the Department of Revenue;

31 (2) E-15 means ethanol blended gasoline formulated with a percentage

1 of more than ten percent but no more than fifteen percent by volume of
2 ethanol;

3 (3) E-25 means ethanol blended gasoline formulated with a percentage
4 of twenty-five percent by volume of ethanol;

5 (4) E-30 means ethanol blended gasoline formulated with a percentage
6 of thirty percent by volume of ethanol;

7 (5) E-85 means ethanol blended gasoline formulated with a percentage
8 of fifty-one percent to eighty-three percent by volume of ethanol;

9 (6) Motor fuel pump means a meter or similar commercial weighing and
10 measuring device used to measure and dispense motor fuel originating from
11 a motor fuel storage tank;

12 (7) Retail dealer means a person engaged in the business of storing
13 and dispensing motor fuel from a motor fuel pump for sale on a retail
14 basis;

15 (8) Retail motor fuel site means a geographic location in this state
16 where a retail dealer sells and dispenses motor fuel from a motor fuel
17 pump on a retail basis; and

18 (9) Taxpayer means any natural person or any limited liability
19 company, partnership, private domestic or private foreign corporation, or
20 domestic or foreign nonprofit corporation certified pursuant to section
21 501(c)(3) of the Internal Revenue Code of 1986, as amended.

22 Sec. 13. Section 77-7003, Revised Statutes Cumulative Supplement,
23 2022, is amended to read:

24 77-7003 (1) Any taxpayer who is a retail dealer and who sold and
25 dispensed E-15 or higher blend on a retail basis during the prior
26 calendar year through a motor fuel pump located at the taxpayer's retail
27 motor fuel site shall be eligible to receive tax credits under the
28 Nebraska Higher Blend Tax Credit Act.

29 (2)(a) Through calendar year 2023, the ~~(2)~~ The tax credit shall be
30 in an amount equal to (i) ~~(a)~~ five cents multiplied by the total number
31 of gallons of E-15 sold by the taxpayer on a retail basis during the

1 prior calendar year through a motor fuel pump located at the taxpayer's
2 retail motor fuel site and (ii) (b) eight cents multiplied by the total
3 number of gallons of E-25 or higher blend sold by the taxpayer on a
4 retail basis during the prior calendar year through a motor fuel pump
5 located at the taxpayer's retail motor fuel site.

6 (b) For calendar year 2024, the tax credit shall be in an amount
7 equal to eight cents multiplied by the total number of gallons of E-15 or
8 higher blend sold by the taxpayer on a retail basis during the prior
9 calendar year through a motor fuel pump located at the taxpayer's retail
10 motor fuel site.

11 (c) For calendar year 2025, the tax credit shall be in an amount
12 equal to nine cents multiplied by the total number of gallons of E-15 or
13 higher blend sold by the taxpayer on a retail basis during the prior
14 calendar year through a motor fuel pump located at the taxpayer's retail
15 motor fuel site.

16 (d) For calendar year 2026, the tax credit shall be in an amount
17 equal to eight cents multiplied by the total number of gallons of E-15 or
18 higher blend sold by the taxpayer on a retail basis during the prior
19 calendar year through a motor fuel pump located at the taxpayer's retail
20 motor fuel site.

21 (e) For calendar year 2027, the tax credit shall be in an amount
22 equal to seven cents multiplied by the total number of gallons of E-15 or
23 higher blend sold by the taxpayer on a retail basis during the prior
24 calendar year through a motor fuel pump located at the taxpayer's retail
25 motor fuel site.

26 (f) For calendar year 2028, the tax credit shall be in an amount
27 equal to five cents multiplied by the total number of gallons of E-15 or
28 higher blend sold by the taxpayer on a retail basis during the prior
29 calendar year through a motor fuel pump located at the taxpayer's retail
30 motor fuel site.

31 (3) The tax credit shall be a refundable credit that may be used

1 against any income tax imposed by the Nebraska Revenue Act of 1967 or any
2 tax imposed pursuant to sections 77-907 to 77-918 or 77-3801 to 77-3807.

3 (4) Tax credits allowed under this section may be claimed for
4 taxable years beginning or deemed to begin on or after January 1, 2022,
5 under the Internal Revenue Code of 1986, as amended.

6 (5) To receive tax credits, a taxpayer shall submit an application
7 to the department on a form prescribed by the department. The application
8 shall include the following information:

9 (a) The name and address of the taxpayer;

10 (b) The total number of gallons of E-15 sold by the taxpayer on a
11 retail basis during the prior calendar year through a motor fuel pump
12 located at the taxpayer's retail motor fuel site;

13 (c) The total number of gallons of E-25 sold by the taxpayer on a
14 retail basis during the prior calendar year through a motor fuel pump
15 located at the taxpayer's retail motor fuel site;

16 (d) The total number of gallons of E-30 sold by the taxpayer on a
17 retail basis during the prior calendar year through a motor fuel pump
18 located at the taxpayer's retail motor fuel site;

19 (e) The total number of gallons of E-85 sold by the taxpayer on a
20 retail basis during the prior calendar year through a motor fuel pump
21 located at the taxpayer's retail motor fuel site; and

22 (f) Any other documentation required by the department.

23 Sec. 14. Section 77-7004, Revised Statutes Cumulative Supplement,
24 2022, is amended to read:

25 77-7004 (1) If the department determines that an application is
26 complete and that the taxpayer qualifies for tax credits, the department
27 shall approve the application within the limits set forth in this section
28 and shall certify the amount of tax credits approved to the taxpayer.

29 (2) The department shall consider applications in the order in which
30 they are received and may approve tax credits until the annual limit for
31 the calendar year has been reached. For calendar year 2022, the annual

1 limit on tax credits shall be two million dollars. For calendar year 2023
2 ~~and each calendar year thereafter~~, the annual limit on tax credits shall
3 be calculated by taking the annual limit from the prior calendar year and
4 then multiplying such amount by (a) two hundred percent if the amount of
5 tax credits approved in the prior calendar year exceeded ninety percent
6 of the annual limit applicable to that calendar year or (b) one hundred
7 percent if the amount of tax credits approved in the prior calendar year
8 did not exceed ninety percent of the annual limit applicable to that
9 calendar year. For calendar years 2024 through 2028, the annual limit on
10 tax credits shall be five million dollars. In no case shall the annual
11 limit on tax credits exceed four million dollars.

12 Sec. 15. Section 77-7007, Revised Statutes Cumulative Supplement,
13 2022, is amended to read:

14 77-7007 There shall be no new applications filed under the Nebraska
15 Higher Blend Tax Credit Act after December 31, 2028 ~~2026~~. All
16 applications and all tax credits pending or approved before such date
17 shall continue in full force and effect.

18 Sec. 16. Original sections 77-7002, 77-7003, 77-7004, and 77-7007,
19 Revised Statutes Cumulative Supplement, 2022, are repealed.