

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 562**

Introduced by Dorn, 30; Ballard, 21; Brandt, 32; Ibach, 44; Jacobson, 42;  
Lippincott, 34.

Read first time January 17, 2023

Committee: Agriculture

- 1 A BILL FOR AN ACT relating to ethanol; to amend section 66-2205, Revised
- 2 Statutes Cumulative Supplement, 2022; to adopt the E-15 Access
- 3 Standard Act; to change provisions relating to a grant program; and
- 4 to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 10 of this act shall be known and may be  
2 cited as the E-15 Access Standard Act.

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

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

8           (1) Department means the Department of Agriculture;

9           (2) Director means the Director of Agriculture;

10          (3) E-15 access standard means the requirements described in  
11 subsection (1) of section 4 of this act;

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

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

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

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

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

30          (9)(a) Motor fuel storage and dispensing infrastructure means  
31 equipment used to:

1        (i) Store and dispense motor fuel; or

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

3        (b) Motor fuel storage and dispensing infrastructure includes, but  
4 is not limited to, a motor fuel storage tank, motor fuel pump, motor fuel  
5 dispenser, and associated pipes, hoses, nozzles, tubes, lines, fittings,  
6 valves, filters, seals, and covers;

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

11        (11) Nonqualifying motor fuel dispenser means:

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

13        (i) Aviation fuel;

14        (ii) Diesel fuel;

15        (iii) Kerosene; or

16        (iv) Diesel exhaust fluid;

17        (b) A dispenser that is part of a tank vehicle as defined in section  
18 60-4,131 that is not used to dispense motor fuel on the premises of the  
19 retail motor fuel site; or

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

21        (12) Qualifying motor fuel dispenser means a motor fuel dispenser  
22 that is capable of dispensing motor fuel at all times that it is in  
23 operation;

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

27        (14) Retail motor fuel site means a geographic location in this  
28 state where a retail dealer sells and dispenses motor fuel on a retail  
29 basis.

30        Sec. 4. (1) Beginning January 1, 2024, a retail dealer owning or  
31 operating a retail motor fuel site shall advertise for sale and sell E-15

1 gasoline from at least fifty percent of all qualifying motor fuel  
2 dispensers located at the retail dealer's retail motor fuel site unless  
3 the retail dealer (a) has not installed, replaced, or converted a motor  
4 fuel storage tank after January 1, 2024, and (b) beginning January 1,  
5 2027, advertises for sale and sells E-15 gasoline from at least one  
6 qualifying motor fuel dispenser located at the retail dealer's retail  
7 motor fuel site.

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

11 (3) It is not a violation of this section if a retail dealer is (a)  
12 maintaining, repairing, or reconditioning motor fuel storage and  
13 dispensing infrastructure or (b) installing, expanding, replacing, or  
14 converting motor fuel storage and dispensing infrastructure. The  
15 department may require that a retail dealer notify the department in  
16 advance of such actions, and the department may inspect the retail motor  
17 fuel site to determine if a violation occurred.

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

22 Sec. 6. (1) The director may issue an administrative order that  
23 waives the requirement that a retail dealer comply with the E-15 access  
24 standard at a retail motor fuel site owned or operated by the retail  
25 dealer. Such order shall be based on E-15 gasoline availability.

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

29 (3) The application shall be supported by credible evidence that the  
30 retail dealer has not been able to reasonably obtain E-15 gasoline to be  
31 advertised for sale and sold at the retail dealer's retail motor fuel

1 site.

2 (4) The retail dealer shall sign the application, which shall  
3 include a statement that the retail dealer swears and affirms that all  
4 information in the application completed by the retail dealer is true and  
5 correct.

6 (5) The department shall publish a copy of the administrative order  
7 on the department's website within ten days after issuance of the order.  
8 The order shall take effect on its date of publication, unless the order  
9 specifies a later date.

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

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

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

17 (iii) The cessation of the retail dealer's inability to obtain E-15  
18 gasoline.

19 (b) The department may require that a retail dealer notify the  
20 department that a terminable event as described in subdivision (6)(a) of  
21 this section is planned to occur, is occurring, or has occurred.

22 Sec. 7. (1) The director shall issue an administrative order that  
23 waives the requirement that a retail dealer comply with the E-15 access  
24 standard at a retail motor fuel site owned or operated by the retail  
25 dealer, if the retail motor fuel site qualifies under this section based  
26 on the fact that the motor fuel storage and dispensing infrastructure  
27 located at such site is not compatible with the use of E-15 gasoline.

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

31 (3) The application shall be supported by credible evidence that:

1       (a) The retail dealer is unable to comply with the E-15 access  
2 standard because the motor fuel storage and dispensing infrastructure  
3 located at the retail motor fuel site is not compatible with the use of  
4 E-15 gasoline and the cost to replace the motor fuel storage and  
5 dispensing infrastructure would exceed one hundred thousand dollars as  
6 determined by a person certified by the department as a professional  
7 retail motor fuel site installer. For purposes of this section, motor  
8 fuel storage and dispensing infrastructure is compatible with E-15  
9 gasoline if the equipment is included in a list published by an  
10 independent testing laboratory for use with E-15 gasoline or the  
11 manufacturer of the equipment has issued a written statement of  
12 compatibility with E-15 gasoline; or

13       (b) All motor fuel storage tanks located at the retail motor fuel  
14 site fall within one of the following categories:

15           (i) Each motor fuel storage tank not constructed of fiberglass was  
16 installed during or prior to 1985; or

17           (ii) Each motor fuel storage tank constructed of fiberglass was  
18 installed during or prior to:

19               (A) For a double-wall fiberglass underground motor fuel storage  
20 tank, 1991; or

21               (B) For a single-wall fiberglass underground motor fuel storage  
22 tank, 1996.

23       (4) The application shall include an inventory and description of  
24 the motor fuel storage and dispensing infrastructure located at the  
25 retail motor fuel site.

26       (5) The department may require a retail dealer to attach any  
27 supporting documentation to the application, which may include an  
28 inspection report completed by a person certified by the department as a  
29 professional retail motor fuel site installer. The certified professional  
30 retail motor fuel site installer may be a licensed engineer or other  
31 person who the department determines is qualified by education, testing,

1 or experience to oversee a project involving the installation,  
2 replacement, or conversion of motor fuel storage and dispensing  
3 infrastructure.

4 (6) The department shall review and evaluate an application to  
5 determine whether it is supported by credible evidence sufficient for the  
6 director to issue an order granting a waiver under this section. The  
7 department shall approve or disapprove a completed application within one  
8 hundred twenty days following the date that the application was submitted  
9 to the department.

10 (7) The retail dealer shall sign the application, which shall  
11 include a statement that the retail dealer swears and affirms that all  
12 information in the application completed by the retail dealer is true and  
13 correct. If a certified professional retail motor fuel site installer  
14 completes an inspection report to support an application, the installer  
15 shall sign a statement that the installer swears and affirms that all  
16 information in the inspection report completed by the installer is true  
17 and correct.

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

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

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

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

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

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

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

6       Sec. 8.   (1) The director shall issue an administrative order  
7 granting a small retail motor fuel site exemption to a retail dealer who  
8 qualifies for such an order under this section. The administrative order  
9 shall exempt the retail dealer from complying with the E-15 access  
10 standard at a small retail motor fuel site owned or operated by the  
11 retail dealer.

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

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

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

19       (3) A retail dealer may apply for a small retail motor fuel site  
20 exemption under this section by submitting an application to the  
21 Department of Agriculture in a manner prescribed by the department.

22       (4) The retail dealer shall sign the application, which shall  
23 include a statement that the retail dealer swears and affirms that all  
24 information in the application completed by the retail dealer is true and  
25 correct.

26       (5) Upon request by the Department of Agriculture, the Department of  
27 Revenue shall certify to the Department of Agriculture the average annual  
28 gasoline gallonage for a retail motor fuel site computed for the three-  
29 year period beginning on January 1, 2021, and ending on December 31,  
30 2023. The certification shall be based on information for the retail  
31 motor fuel site in motor fuel tax returns required to be filed by the



1 retail dealer with the Department of Revenue.

2 (6) The information received by the Department of Agriculture from  
3 the Department of Revenue under subsection (5) of this section shall be  
4 confidential and shall be used by the Department of Agriculture for the  
5 limited purposes of evaluating a retail dealer's application for approval  
6 and issuing an administrative order under this section.

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

9 (8) The Department of Agriculture shall publish on its website for  
10 each quarter of a calendar year information aggregated from  
11 administrative orders issued under this section. Such information shall  
12 include:

13 (a) The total number of administrative orders issued; and

14 (b) The total number of administrative orders in effect.

15 (9)(a) The director shall terminate an administrative order issued  
16 under this section if a terminable event has occurred. A terminable event  
17 includes any of the following:

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

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

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

24 (b) The Department of Agriculture may require that a retail dealer  
25 notify the department that a terminable event as described in subdivision  
26 (9)(a) of this section is planned to occur, is occurring, or has  
27 occurred.

28 Sec. 9. The department may suspend or revoke a permit issued to a  
29 retail dealer pursuant to section 89-187.01 if the retail dealer fails to  
30 comply with the E-15 access standard.

31 Sec. 10. The department may adopt and promulgate rules and

1 regulations to carry out the E-15 Access Standard Act.

2       Sec. 11. Section 66-2205, Revised Statutes Cumulative Supplement,  
3 2022, is amended to read:

4       66-2205 (1) The department shall determine the amount of the grants  
5 to be awarded under the program. The department shall award grants to the  
6 maximum number of qualified applicants and may approve up to ten ~~one~~  
7 million dollars in grants per ~~in any~~ calendar year. The department shall  
8 not approve any grants after calendar year 2026.

9       (2) The department shall approve and execute a three-year cost-share  
10 agreement according to terms and conditions set by the department with an  
11 eligible person whose application is approved by the department for such  
12 grant. Such cost-share agreement shall state the total costs related to  
13 improving a retail motor fuel site and ~~,~~ the amount of the grant, ~~and~~  
14 ~~whether the agreement is for a three-year or five-year period.~~

15       (3) In awarding grants under the program, an award shall not exceed  
16 ~~(a)~~ fifty percent of the estimated cost of the improvement or one hundred  
17 fifty ~~thirty~~ thousand dollars, whichever is less, ~~for a three-year cost-~~  
18 ~~share agreement, or (b) seventy percent of the estimated costs of making~~  
19 ~~the improvement or fifty thousand dollars, whichever is less, for a five-~~  
20 ~~year cost-share agreement.~~ The department may approve multiple  
21 improvements to the same retail motor fuel site so long as the total  
22 amount of the grants does not exceed the limitations in this subsection.

23       Sec. 12. Original section 66-2205, Revised Statutes Cumulative  
24 Supplement, 2022, is repealed.