

ENGROSSED LEGISLATIVE BILL 815

Introduced by Brandt, 32; Dorn, 30; Ibach, 44; Jacobson, 42; Murman, 38.

A BILL FOR AN ACT relating to fuels; to amend sections 66-726, 66-1331, 66-1332, 66-1333, 66-1337, 66-1338, and 66-1340, Reissue Revised Statutes of Nebraska, and sections 66-489, 66-739, 66-1334, 66-1335, and 66-1521, Revised Statutes Cumulative Supplement, 2024; to provide for a tax on certain diesel fuels; to change provisions relating to refunds for motor fuel taxes; to change provisions relating to the Motor Fuel Tax Enforcement and Collection Cash Fund; to change and eliminate provisions of the Ethanol Development Act; to provide, change, and eliminate definitions; to change provisions relating to the petroleum release remedial action fee; to eliminate the Ethanol Production Incentive Cash Fund; to harmonize provisions; to provide operative dates; to repeal the original sections; and to outright repeal sections 66-1342, 66-1344.01, 66-1345, 66-1345.05, and 66-1348, Reissue Revised Statutes of Nebraska, and section 66-1344, Revised Statutes Supplement, 2025.

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

Section 1. Section 66-489, Revised Statutes Cumulative Supplement, 2024, is amended to read:

66-489 (1)(a) At the time of filing the return required by section 66-488, such producer, supplier, distributor, wholesaler, or importer shall, in addition to the tax imposed pursuant to sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146 and in addition to the other taxes provided for by law, pay a tax in an amount set in subdivision (b) of this subsection upon all motor fuels as shown by such return, except that there shall be no tax on the motor fuels reported if (i) the required taxes on the motor fuels have been paid, (ii) the motor fuels have been sold to a licensed exporter exclusively for resale or use in another state, (iii) the motor fuels have been sold from a Nebraska barge line terminal, pipeline terminal, refinery, or ethanol or biodiesel facility, including motor fuels stored offsite in bulk, by a licensed producer or

supplier to a licensed distributor, (iv) the motor fuels have been sold by a licensed distributor or licensed importer to a licensed distributor or to a licensed wholesaler and the seller acquired ownership of the motor fuels directly from a licensed producer or supplier at or from a refinery, barge, barge line, pipeline terminal, or ethanol or biodiesel facility, including motor fuels stored offsite in bulk, in this state or was the first importer of such fuel into this state, or (v) as otherwise provided in this section. Such producer, supplier, distributor, wholesaler, or importer shall remit such tax to the department.

(b) The tax shall be:

(i) Seven and one-half cents per gallon through December 31, 2015;

(ii) Eight cents per gallon beginning on January 1, 2016, through December 31, 2016;

(iii) Eight and one-half cents per gallon beginning on January 1, 2017, through December 31, 2017;

(iv) Nine cents per gallon beginning on January 1, 2018, through December 31, 2018; and

(v) Nine and one-half cents per gallon beginning on January 1, 2019.

(2)(a) As part of filing the return required by section 66-488, each producer of ethanol shall, in addition to other taxes imposed by the motor fuel laws, pay an excise tax of one and one-quarter cents per gallon on:

(i) Gasoline, natural gasoline, or any other gasoline component, including, but not limited to, any gasoline component produced from biomass feedstock, purchased for use as a denaturant by the producer at an ethanol facility; and

(ii) Two percent of agricultural ethyl alcohol sold that is unfit for beverage purposes and does not meet the American Society for Testing and Materials D4806 standards.

(b) All taxes, interest, and penalties collected under this subsection shall be remitted to the State Treasurer for credit to the Agricultural Alcohol Fuel Tax Fund.

(3)(a) Motor fuels, methanol, and all blending agents or fuel expanders shall be exempt from the taxes imposed by this section and sections 66-489.02, 66-4,105, 66-4,140, 66-4,145, and 66-4,146, when the fuels are used for buses equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities or within a radius of six miles thereof.

(b) The owner or agent of any bus equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities, or within a radius of six miles thereof, in lieu of the excise tax provided for in this section, shall pay an equalization fee of a sum equal to twice the amount of the registration fee applicable to such vehicle under the laws of this state. Such equalization fee shall be paid in the same manner as the registration fee and be disbursed and allocated as registration fees.

(c) Nothing in this section shall be construed as permitting motor fuels to be sold tax exempt. The department shall refund tax paid on motor fuels used in buses deemed exempt by this section.

(4) Gasoline, natural gasoline, or any other gasoline component, including, but not limited to, any gasoline component produced from biomass feedstock, purchased for use as a denaturant by a producer at an ethanol facility as defined in section 66-1333 shall be exempt from the motor fuels tax imposed by subsection (1) of this section as well as the tax imposed pursuant to sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146.

(5) Unless otherwise provided by an agreement entered into between the State of Nebraska and the governing body of any federally recognized Indian tribe within the State of Nebraska, motor fuels purchased on a Nebraska Indian reservation where the purchaser is a Native American who resides on the reservation shall be exempt from the motor fuels tax imposed by this section as well as the tax imposed pursuant to sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146.

(6) Motor fuels purchased for use by the United States Government or its

agencies shall be exempt from the motor fuels tax imposed by this section as well as the tax imposed pursuant to sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146.

(7)(a) Except as otherwise provided in subdivision (b) of this subsection, in the case of diesel fuel, there shall be no tax on the motor fuels reported if (i) the diesel fuel has been indelibly dyed and chemically marked in accordance with regulations issued by the Secretary of the Treasury of the United States under 26 U.S.C. 4082 or (ii) the diesel fuel contains a concentration of sulphur in excess of five-hundredths percent by weight or fails to meet a cetane index minimum of forty and has been indelibly dyed in accordance with regulations promulgated by the Administrator of the United States Environmental Protection Agency pursuant to 42 U.S.C. 7545.

(b) Beginning on October 1, 2026, a one-quarter of one cent tax per gallon shall be imposed on diesel fuel that (i) has been indelibly dyed and chemically marked in accordance with the regulations issued by the Secretary of the Treasury of the United States or (ii) contains a concentration of sulphur in excess of five-hundredths percent by weight or fails to meet a cetane index minimum of forty and has been indelibly dyed in accordance with the regulations promulgated by the Administrator of the United States Environmental Protection Agency.

(c) The first one hundred forty thousand dollars of taxes collected under this subsection each fiscal year shall be remitted to the State Treasurer for credit to the Motor Fuel Tax Enforcement and Collection Cash Fund, and all remaining taxes collected under this subsection each fiscal year shall be remitted to the State Treasurer for credit to the Agricultural Alcohol Fuel Tax Fund.

Sec. 2. Section 66-726, Reissue Revised Statutes of Nebraska, is amended to read:

66-726 (1) The department may adjust all errors in payment, refund tax paid on motor fuel destroyed, refund tax overpaid on motor fuel, and refund an amount equal to the per-gallon tax imposed by this state on sales of motor fuel

on which tax was paid in this state but which was sold in a state other than Nebraska.

(2)(a) Motor fuels shall be exempt from the taxes imposed by sections 66-489, 66-489.02, 66-4,105, 66-4,140, 66-4,145, and 66-4,146 when the fuels are used for agricultural, quarrying, industrial, or other nonhighway use.

(b) The department shall refund tax paid on motor fuels used for an exempt purpose. The purchaser of tax-paid motor fuels used for an exempt purpose shall file a claim for refund with the department on forms prescribed by the department and shall provide such documentation and maintain such records as the department reasonably requires to substantiate that the fuels were used for exempt purposes.

(c) The refund claim shall include: (i) The name of claimant; (ii) the make, horsepower, and other mechanical description of machinery in which the motor fuels were used; (iii) a statement as to the source or place of business where such motor fuels, used solely for agricultural, quarrying, industrial, or other nonhighway uses, were acquired; that no part of such motor fuels were used in propelling licensed motor vehicles; and that the motor fuels for which refund of the tax thereon is claimed were used solely for agricultural, quarrying, industrial, or other nonhighway uses; and (iv) any other information deemed necessary by the department.

(d) The department shall deduct (i) from each claim for refund of tax paid on purchases of motor vehicle fuels under this subsection two and one-quarter cents per gallon through December 31, 2004, and commencing January 1, 2010, and three and one-half cents per gallon commencing January 1, 2005, through December 31, 2009, of the tax paid and (ii) from each claim for refund of tax paid on purchases of diesel fuel under this subsection one cent per gallon of the tax paid.

(3) No refund shall be allowed unless a claim is filed setting forth the circumstances by reason of which refund should be allowed. Such claim shall be filed with the department within three years from the date of the payment of the tax.

(4) In each calendar year, no claim for refund related to motor vehicle fuel, diesel fuel, aircraft fuel, or compressed fuel can be for an amount less than twenty-five dollars.

(5) The department shall administer and enforce this section. The department may call to its aid when necessary any member of the Nebraska State Patrol, any police officer, any county attorney, or the Attorney General. The employees of the department are empowered to stop and inspect motor vehicles, to inspect premises, and temporarily to impound motor vehicles or motor fuels when necessary to administer this section.

(6) The department may adopt and promulgate such rules and regulations as are necessary for the prompt and effective enforcement of this section.

(7) Any claimant for refund of motor fuels tax under this section who is unable to produce the original copy of any invoice to substantiate the refund for the reason that the same has been lost, mutilated, or destroyed may make proof of his or her claim by affidavit and such other evidence as may be required by the department, and if such claim is verified by investigation, such claim may be allowed.

(8) The changes made to this section by Laws 2004, LB 983, apply to motor fuels purchased during any tax year ending or deemed to end on or after January 1, 2005, under the Internal Revenue Code.

Sec. 3. Section 66-739, Revised Statutes Cumulative Supplement, 2024, is amended to read:

66-739 There is hereby created the Motor Fuel Tax Enforcement and Collection Cash Fund. Such fund shall consist of appropriations to the fund and money transferred to it pursuant to sections 39-2215 and 66-489. The fund shall be used exclusively for the costs of the Department of Revenue in carrying out its duties under the Compressed Fuel Tax Act, the Petroleum Release Remedial Action Act, the State Aeronautics Act, and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to 66-736 and other related costs for the Department of Agriculture and the Nebraska State Patrol, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any

money in the Motor Fuel Tax Enforcement and Collection Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 4. Section 66-1331, Reissue Revised Statutes of Nebraska, is amended to read:

66-1331 The Legislature finds that Nebraska should continue its existing programs to encourage processing, market development, promotion, distribution, and research on ethanol, ethanol coproducts, and products derived from ethanol or ethanol coproducts to provide for:

(1) Expanded use of Nebraska agricultural products;

(2) Efficient and less-polluting energy sources and reserves which will make Nebraska less energy dependent, improve air quality, and retain Nebraska dollars in the Nebraska economy to achieve a multiplier effect thereby generating additional jobs and tax income to the state rather than the export of Nebraska dollars;

(3) Development of protein products which will be efficiently stored and marketed domestically and internationally to encourage greater processing of Nebraska ethanol, ethanol coproducts, and products derived from ethanol or ethanol coproducts;

(4) New and enhanced outlets for Nebraska agricultural products which can be leveraged by Nebraska agricultural producers to facilitate strengthened demand and drive greater economic prosperity in rural communities. New and enhanced outlets may include ethanol plants, agricultural production facilities, or other facilities processing, marketing, or distributing ethanol, ethanol coproducts, or products derived from ethanol or ethanol coproducts;

(5) Collaboration with private industry to support existing ethanol production facilities in Nebraska and establish new facilities producing ethanol, ethanol coproducts, or products derived from ethanol or ethanol coproducts to strengthen and create demand for Nebraska agricultural products;

(6) Promotion and market development, in collaboration with private industry, of ethanol, ethanol coproducts, or products derived from ethanol or

ethanol coproducts; and

(7) Sponsorship of research and development of industrial and commercial uses for ethanol, ethanol coproducts, and products derived from ethanol or ethanol coproducts in order to enhance economic feasibility and marketing potential of such products and processes.

Sec. 5. Section 66-1332, Reissue Revised Statutes of Nebraska, is amended to read:

66-1332 It is hereby declared to be the public policy of the State of Nebraska to safeguard the health, prosperity, and general welfare of its residents by developing, protecting, and maintaining a leading position in ethanol production and the processing of agricultural products into ethanol, ethanol coproducts, or products derived from ethanol or ethanol coproducts that improve air quality, strengthen energy security, increase demand for agricultural products, provide consumer choice, and displace products produced from petroleum. The Nebraska Ethanol Board shall be the state agency for such purpose. The Legislature also recognizes the need for a statewide approach to identify and attract agricultural processing opportunities that support the Nebraska ethanol industry, the need to participate in programs of research, education, market development, and promotion of ethanol, ethanol coproducts, or products derived from ethanol or ethanol coproducts, and the need to provide subject matter expertise related to policy and regulatory affairs for ethanol, ethanol coproducts, or products derived from ethanol or ethanol coproducts.

Sec. 6. Section 66-1333, Reissue Revised Statutes of Nebraska, is amended to read:

66-1333 For purposes of the Ethanol Development Act, unless the context otherwise requires:

(1) Agricultural production facility or ethanol facility means a plant or facility related to the processing, marketing, or distribution of ethanol, ethanol coproducts, products derived from ethanol or ethanol coproducts, or grain;

(2) Board means the Nebraska Ethanol Board;

(3) Ethanol producer means a person who devotes at least fifty percent of his or her professional time to ethanol production or business operations at an ethanol facility in Nebraska;

(4) Grain means wheat, corn, and grain sorghum; and

(5) Name plate design capacity means the original designed capacity of an ethanol or agricultural production facility. Capacity may be specified as bushels of grain processed or mass or volume of ethanol, ethanol coproducts, or products derived from ethanol or ethanol coproducts produced per year.

Sec. 7. Section 66-1334, Revised Statutes Cumulative Supplement, 2024, is amended to read:

66-1334 (1) The Agricultural Alcohol Fuel Tax Fund is hereby created. The fund shall be administered by the board. The fund shall contain (a) money credited pursuant to section 66-489, (b) all sums of money received from fees resulting from any conference or event held by the board, (c) gifts, grants, and contributions made by public or private entities, and (d) transfers as authorized by the Legislature. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The fund shall be used for the following purposes:

(a) Establishment, in collaboration with industry, of procedures and processes necessary to the manufacture and marketing of ethanol, ethanol coproducts, and products derived from ethanol or ethanol coproducts;

(b) Establishment and enhancement of procedures for entering blended fuel into the marketplace;

(c) Implementation of marketing and education procedures and programs to increase acceptance and awareness of ethanol, ethanol coproducts, and products derived from ethanol or ethanol coproducts;

(d) Collaboration with industry to establish ethanol or agricultural production facilities in Nebraska to supply demand for ethanol, ethanol coproducts, and products derived from ethanol or ethanol coproducts;

(e) Sponsoring research and development of industrial and commercial uses

for ethanol, ethanol coproducts, and products derived from ethanol or ethanol coproducts;

(f) Promotion of state and national air quality improvement programs and influencing federal legislation that requires or encourages the use of fuels oxygenated by the inclusion of ethanol or fuels derived from ethanol;

(g) Promotion of the use of ethanol and fuels derived from ethanol as a partial replacement for imported oil and for the energy and economic security of the nation;

(h) Participation in development and passage of state and national legislation dealing with research, development, and promotion of United States production of fuels oxygenated by the inclusion of ethanol or its derivatives, access to potential markets, tax incentives, imports of foreign-produced fuel, and related concerns that may develop in the future; and

(i) As the board may otherwise direct to fulfill the goals set forth under the Ethanol Development Act, including monitoring contracts for ethanol program commitments and solicitation of federal funds.

Sec. 8. Section 66-1335, Revised Statutes Cumulative Supplement, 2024, is amended to read:

66-1335 (1) The Nebraska Ethanol Board is hereby established. The board shall consist of nine members to be appointed by the Governor with the approval of a majority of the Legislature.

(2)(a) Four members shall be actually engaged in farming in this state, one in general farming and one each in the production of corn, wheat, and sorghum.

(b)(i) Until August 31, 2026, one member shall be actively engaged in business in this state.

(ii) Beginning September 1, 2026, the member under this subdivision (2)(b) shall be an ethanol producer in this state. If the member under this subdivision (2)(b) is an ethanol producer on August 31, 2026, then such member may serve as the member under this subdivision (2)(b) for the remainder of the term without reappointment by the Governor. If the member under this

subdivision (2)(b) is not an ethanol producer on August 31, 2026, the Governor shall appoint a new member that is an ethanol producer to serve as the member under this subdivision (2)(b) for the remainder of the term within thirty days after September 1, 2026.

(c) One member shall represent labor interests in this state.

(d) One member shall represent Nebraska petroleum marketers in this state.

(e) Two members shall be ethanol producers in this state, and such members shall be in addition to the member that is an ethanol producer under subdivision (2)(b) of this section. The Governor shall make the initial appointments of such members within thirty days after September 1, 2026.

(3) Members shall be appointed for terms of four years, except that the initial terms of the two initial appointees under subdivision (2)(e) of this section shall expire on August 31, 2028, for one of such members and on August 31, 2029, for the other of such members. A member shall serve until a successor is appointed and qualified. Not more than five members shall be members of the same political party.

(4) A vacancy on the board shall exist in the event of death, disability, resignation, or removal for cause of a member. Any vacancy on the board arising other than from the expiration of a term shall be filled by appointment for the unexpired portion of the term. An appointment to fill a vacancy shall be made by the Governor with the approval of a majority of the Legislature, and any person so appointed shall have the same qualifications as the person whom he or she succeeds.

(5) The board shall meet at least once annually.

(6) The members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177. The members shall receive twenty-five dollars for each day while engaged in the performance of board duties.

Sec. 9. Section 66-1337, Reissue Revised Statutes of Nebraska, is amended to read:

66-1337 The board may rent office space and employ such personnel as may be necessary for the performance of its duties. The board may employ the

services of experts and consultants and expend funds necessary to promote air quality improvement programs or to otherwise carry out the board's duties under the Ethanol Development Act.

Sec. 10. Section 66-1338, Reissue Revised Statutes of Nebraska, is amended to read:

66-1338 The board may appropriate funds and become a member of any national promotion or trade organization that is necessary or advantageous for the carrying out of the duties of the board under the Ethanol Development Act.

Sec. 11. Section 66-1340, Reissue Revised Statutes of Nebraska, is amended to read:

66-1340 The board may accept gifts, donations, money, and services to carry out the Ethanol Development Act.

Sec. 12. Section 66-1521, Revised Statutes Cumulative Supplement, 2024, is amended to read:

66-1521 (1) A petroleum release remedial action fee is hereby imposed upon the producer, refiner, importer, distributor, wholesaler, or supplier who engages in the sale, distribution, delivery, and use of petroleum within this state, except that the fee shall not be imposed on petroleum that is exported or diesel fuel which is indelibly dyed. The amount of the fee shall be nine-tenths of one cent per gallon on motor vehicle fuel as defined in section 66-482 and six-tenths of one cent per gallon on diesel fuel as defined in section 66-482. The amount of the fee shall be used first for payment of claims approved by the State Claims Board pursuant to section 66-1531; second, up to three million dollars of the fee per year shall be used for reimbursement of owners and operators under the Petroleum Release Remedial Action Act for investigations of releases ordered pursuant to section 81-15,124; and third, the remainder of the fee shall be used for any other purpose authorized by section 66-1519. The fee shall be paid by all producers, refiners, importers, distributors, wholesalers, and suppliers subject to the fee by filing a monthly return on or before the twentieth day of the calendar month following the monthly period to which it relates. The pertinent provisions, specifically

including penalty provisions, of the motor fuel laws as defined in section 66-712 shall apply to the administration and collection of the fee except for the treatment given refunds. There shall be a refund allowed on any fee paid on petroleum which was taxed and then exported, destroyed, or purchased for use by the United States Government or its agencies. The department may also adjust for all errors in the payment of the fee. In each calendar year, no claim for refund related to the fee can be for an amount less than ten dollars.

(2) No producer, refiner, importer, distributor, wholesaler, or supplier shall engage in the sale, distribution, delivery, or use of petroleum in this state without having first obtained a petroleum release remedial action license. Application for a license shall be made to the Department of Revenue upon a form prepared and furnished by the Department of Revenue. If the applicant is an individual, the application shall include the applicant's social security number. Failure to obtain a license prior to engaging in the sale, distribution, delivery, or use of petroleum shall be a Class IV misdemeanor. The Department of Revenue may suspend or cancel the license of any producer, refiner, importer, distributor, wholesaler, or supplier who fails to pay the fee imposed by subsection (1) of this section in the same manner as licenses are suspended or canceled pursuant to section 66-720.

(3) The Department of Revenue may adopt and promulgate rules and regulations necessary to carry out this section.

(4) The Department of Revenue shall deduct and withhold from the petroleum release remedial action fee collected pursuant to this section an amount sufficient to reimburse the direct costs of collecting and administering the petroleum release remedial action fee. Such costs shall not exceed one hundred fifty thousand dollars for each fiscal year. The one hundred fifty thousand dollars shall be prorated, based on the number of months the fee is collected, whenever the fee is collected for only a portion of a year. The amount deducted and withheld for costs shall be deposited in the Petroleum Release Remedial Action Collection Fund which is hereby created. The Petroleum Release Remedial Action Collection Fund shall be appropriated to the Department of Revenue,

except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Petroleum Release Remedial Action Collection Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) The Department of Revenue shall collect the fee imposed by subsection (1) of this section.

Sec. 13. Sections 1, 2, 3, 7, 12, and 15 of this act become operative on October 1, 2026. The other sections of this act become operative on their effective date.

Sec. 14. Original sections 66-1331, 66-1332, 66-1333, 66-1337, 66-1338, and 66-1340, Reissue Revised Statutes of Nebraska, and section 66-1335, Revised Statutes Cumulative Supplement, 2024, are repealed.

Sec. 15. Original section 66-726, Reissue Revised Statutes of Nebraska, and sections 66-489, 66-739, 66-1334, and 66-1521, Revised Statutes Cumulative Supplement, 2024, are repealed.

Sec. 16. The following sections are outright repealed: Sections 66-1342, 66-1344.01, 66-1345, 66-1345.05, and 66-1348, Reissue Revised Statutes of Nebraska, and section 66-1344, Revised Statutes Supplement, 2025.

PRESIDENT OF THE LEGISLATURE

*THIS IS TO CERTIFY that the within LB 815 was passed by the One Hundred Ninth
Legislature of Nebraska at its Second Session on the day
of 20.....*

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR