POLLED OUT OF COMMITTEE

MAJORITY FAVORABLE

May 7, 2009

**H. 3707**

Introduced by Reps. T.R. Young, Cato, Cobb‑Hunter, Toole, Ott, Cooper, Gambrell, Bowen, Agnew, McLeod, J.H. Neal, Gunn, Hayes, Stewart, Thompson, White, Duncan, Moss, H.B. Brown, Knight, Frye, Spires, Neilson, Vick, Hutto, Sellers and Rice

S. Printed 5/7/09--S.

Read the first time May 5, 2009.

**THE COMMITTEE ON**

**AGRICULTURE AND NATURAL RESOURCES**

To whom was referred a Bill (H. 3707) to amend the Code of Laws of South Carolina, 1976, by adding Section 39‑41‑235 so as to require motor fuel terminals to offer for sale products that, etc., respectfully

**REPORT:**

Has polled the Bill out majority favorable.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT** 1/

This bill is expected to raise local revenues by $9,600 and state revenues by $11,360 in FY 2009-10. The proportionate share of state revenues for the general fund is $4,246. While this bill could also raise revenue in penalties from settlements/court judgments in UTP civil actions that would be distributed in whole, or in part, to the state general fund and to earmarked funds of the Attorney General (AG) or another state agency, as applicable, no such revenue is anticipated in FY 2009-10.

**Explanation:**

This bill requires motor fuel terminals in this State to offer for sale to a retailer or distributor that has qualified as an acceptable blender of record with the Internal Revenue Service (IRS) an unblended petroleum product that is suitable for subsequent blending with ethanol, and an unblended diesel fuel suitable to be blended to produce biodiesel or biodiesel blend. A person or entity is further prohibited from taking an action to deny a motor fuel distributor or retailer from being the blender of record. Such a violation of Article 1, Chapter 41 of Title 39 is deemed an unfair trade practice (UTP), which is a civil action in this State, and each violation is a separate offense. Furthermore, a violation is a misdemeanor criminal offense and, upon conviction, a person or entity must be fined not more than $5,000 or imprisoned for not more than thirty days.

Based on advice from the Office of the Attorney General and Court Administration, it is unlikely that any civil action would culminate in fine collections during the initial year of enforcement and no such revenue is anticipated in FY 2009-10. A criminal case would be prosecuted in Court of General Sessions, and a conviction would incur a fine and applicable assessments and surcharges relative to the total fine levied. Based on a first-year scenario of two convictions on one count each with a maximum fine of $5,000 imposed, adoption of the bill would raise total revenue of $20,960 in FY 2009-10 from court fines, assessments and surcharges, to be apportioned at $9,600 in local revenues and $11,360 in state revenues. Of that state allocation, $4,246 would go to the state general fund.

*Approved By:*

William C. Gillespie

Board of Economic Advisors

1/ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 39‑41‑235 SO AS TO REQUIRE MOTOR FUEL TERMINALS TO OFFER FOR SALE PRODUCTS THAT ARE SUITABLE FOR SUBSEQUENT BLENDING EITHER WITH ETHANOL OR BIODIESEL; TO PROHIBIT A PERSON OR ENTITY FROM TAKING AN ACTION TO DENY A MOTOR FUEL DISTRIBUTOR OR RETAILER FROM BEING THE BLENDER OF RECORD; TO REQUIRE MOTOR FUEL DISTRIBUTORS, RETAILERS, AND REFINERS TO UTILIZE THE RENEWABLE IDENTIFICATION NUMBER; AND TO DECLARE VIOLATIONS AN UNFAIR TRADE PRACTICE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The General Assembly finds that the use of blended fuels reduces the dependence on imported oil and therefore the protection thereof is reasonable and necessary to accomplish this legitimate public purpose. The General Assembly further finds that promoting and protecting the use of blended fuels in order to reduce the dependence on imported oil protects a basic societal interest. The General Assembly also finds that it is in the best societal interest not to restrict or prevent the blending of ethanol or biodiesel below the terminal rack by distributors or retailers. Therefore, any provision of any contract that would restrict or prevent a distributor or retailer from blending below the terminal rack is contrary to the public purpose of this act and is deemed void.

SECTION 2. Article 1, Chapter 41, Title 39 of the 1976 Code is amended by adding:

“Section 39‑41‑235. (A) Regardless of other products offered, every terminal, as defined in Section 12‑28‑110(56), located within the State must offer for sale a petroleum product that is not already preblended with ethanol and that is suitable for subsequent blending of the product with ethanol.

(B) Regardless of other products offered, every terminal, as defined in Section 12‑28‑110(56), located within the State must offer for sale diesel fuel that is not already preblended to produce biodiesel or a biodiesel blend and that is suitable for subsequent blending to produce biodiesel or biodiesel blend.

(C) No person or entity shall take an action to deny a distributor, as defined in Section 12‑28‑110(17), or retailer, as defined in Section 12‑28‑110(52) who is doing business in this State and who has registered with the Internal Revenue Service on Form 637 (M) from being the blender of record afforded them by the acceptance by the Internal Revenue Service of Form 637 (M).

(D) A distributor or retailer and a refiner must utilize the Renewable Identification Number (RIN) system. Nothing in this section may be construed to imply a market value for the RINs.

(E) A violation of this article is deemed an unfair trade practice, and each violation is a separate offense. A person or entity violating the provisions of this article is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than thirty days for each violation.”

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor.

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