AS PASSED BY THE SENATE

March 11, 2010

**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 3/11/10--S.

Read the first time May 5, 2009.

**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.

Amend Title To Conform

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 by distributors or retailers. Therefore, any provision of any contract that is executed, modified, renewed, or amended on or after the effective date of this act that would restrict or prevent a distributor or retailer from blending 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 all grades of petroleum products that are 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 all grades of diesel fuel that are not already preblended to produce biodiesel or a biodiesel blend and that are suitable for subsequent blending to produce biodiesel or biodiesel blends.

(C) A terminal shall not offer for sale an unblended product that omits any additive found in a product preblended with ethanol. A terminal shall not offer for sale an unblended product that does not contain a comparable amount of any additive found in a product preblended with ethanol.

(D) 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).

(E) 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.

(F) 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 for each violation.

(G) Wholesalers purchasing gasoline, gasoline blending stock, or diesel are responsible for ensuring that their activities result in gasolines and diesels that meet the standards promulgated by the Commissioner of Agriculture. Refiners, suppliers, and permissive suppliers shall not be liable for fines, penalties, injuries, or damages arising out of the subsequent blending of gasoline, gasoline blending stock, or diesel pursuant to this section. An entity that does not blend the product at issue has no duty with respect to blending and shall not be liable for fines, penalties, injuries, or damages arising out of blending that does not meet those standards.

(H) An entity that purchases an unblended product and subsequently blends that product with ethanol or biodiesel shall provide notice to the purchasing entity’s consumers, at the pump or another prominent location near the pump, identifying the entity that performed the blending.”

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. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 5. (A) Section 39‑41‑235 (A) and Section 39‑41‑235 (B) as contained in SECTION 2 of this act take effect sixty days after approval of the Governor.

(B) Except as provided in subsection (A) of this SECTION, this act takes effect upon approval of the Governor.

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