

Act No. 13  
Public Acts of 2002  
Approved by the Governor  
February 18, 2002  
Filed with the Secretary of State  
February 19, 2002  
EFFECTIVE DATE: February 19, 2002

**STATE OF MICHIGAN  
91ST LEGISLATURE  
REGULAR SESSION OF 2002**

Introduced by Reps. Julian, Birkholz, Ehardt, Richardville, Toy, Pappageorge, Gilbert, Bovin and Jansen

# ENROLLED HOUSE BILL No. 5005

AN ACT to amend 1984 PA 44, entitled "An act to provide purity and quality standards for motor fuels; to regulate the transfer, sale, dispensing, or offering motor fuels for sale; to provide for an inspection and testing program; to provide for the powers and duties of certain state agencies; to provide for the licensing of certain persons engaged in the transfer, sale, dispensing, or offering of motor fuels for sale; to regulate stage I and stage II vapor-recovery systems at certain facilities; to provide for fees; and to provide remedies and prescribe penalties," by amending sections 3, 4a, 5, 6, 9i, 10a, and 10b (MCL 290.643, 290.644a, 290.645, 290.646, 290.649i, 290.650a, and 290.650b), section 3 as amended by 2000 PA 206, section 4a as added by 1986 PA 127, and sections 5 and 6 as amended and sections 9i, 10a, and 10b as added by 1993 PA 236.

*The People of the State of Michigan enact:*

Sec. 3. (1) The director shall establish standards pursuant to this act to ensure the purity and quality of gasoline sold or offered for sale in this state.

(2) The director shall establish standards for the amount and type of additives allowed to be included in gasoline.

(3) The director shall establish standards for the grading of gasoline, including, but not limited to, subregular with a minimum 85 AKI, regular with a minimum 87 AKI and a minimum 82 MON, midgrade 88 with a minimum 88 AKI and a minimum 82 MON, midgrade 89 with a minimum 89 AKI and a minimum 83 MON, premium with a minimum 90 AKI, premium 91 with a minimum 91 AKI, premium 92 with a minimum 92 AKI, premium 93 with a minimum 93 AKI, and premium 94 with a minimum 94 AKI.

(4) The director shall establish standards for Reid vapor pressure as specified by the American society for testing and materials, except as otherwise required to conform to federal or state law. The director shall establish the Reid vapor pressure as 9.0 pounds per square inch (psi) for retail outlets during the period beginning June 1 through September 15 of each year, except for dispensing facilities where the director shall establish the Reid vapor pressure as 7.8 psi in the year 1996 and thereafter. As used in this subsection and section 10d, "Reid vapor pressure" means the vapor pressure of gasoline or gasoline oxygenate blend as determined by ASTM test method D323, standard test method for vapor pressure of petroleum products (Reid method) or test method D4953, standard test method for vapor pressure of gasoline and gasoline oxygenate blends (dry method).

(5) In establishing additive and grading standards the director shall adopt the latest standards for gasoline established by the American society for testing and materials and shall adopt the latest standards for gasoline established by federal law or regulation. The standards established by the director shall not prohibit a gasoline blend that is permitted by a valid waiver granted by the United States environmental protection agency pursuant to the fuel or fuel additive waiver in section 211(f)(4) of part A of title II of the clean air act, chapter 360, 81 Stat. 502, 42 U.S.C. 7545, and the ethanol waiver of 1.0 psi in section 211(h)(4) of part A of title II of the clean air act, chapter 360, 81 Stat. 502, 42 U.S.C. 7545, if the gasoline blend meets all of the conditions set forth in the waiver. Beginning June 1, 2003, the

director shall not permit the use of the additive methyl tertiary butyl ether (MTBE) in this state. The director, in consultation with the department of environmental quality, shall determine if the additive is likely to cause harmful effects on the environment or public health within the state. By June 1, 2002, the director, in consultation with the director of the department of environmental quality, shall review the status of the use of MTBE in this state. The review shall include the following:

(a) The amount of the additive methyl tertiary butyl ether (MTBE) currently in use in gasoline in this state.

(b) An estimate of the amount of MTBE that is imported in gasoline transported into this state from other states or countries.

(c) Recommendations as to whether the June 1, 2003 prohibition can be achieved and, if not, determine a more feasible date.

(d) Any other information considered appropriate.

(6) Standards established pursuant to this section shall be by rules promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 4a. A storage tank at a retail outlet shall be periodically tested by the retail dealer to insure that the tank does not have water or water-alcohol at the bottom of that tank in an amount greater than 2 inches. If there is more than 2 inches of water or water-alcohol at the bottom of the storage tank, gasoline shall not be sold to a consumer from that tank until the water or water-alcohol level is reduced to a level of less than 2 inches. Adequate testing supplies, as determined by the department, shall be maintained at the retail outlet and shall also be made available to the department to determine the water or water-alcohol level in the storage tank. The department may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this section.

Sec. 5. (1) Except as provided by federal law or regulation, in the manufacture of gasoline at any refinery in this state, a refiner shall not manufacture gasoline at a refinery in this state unless the gasoline meets the requirements in section 3. Except as provided by federal law or regulation, a blender shall not blend gasoline unless the finished blend meets the requirements in section 3.

(2) Except as provided by federal law or regulation, a distributor shall not sell or transfer to any distributor, retail dealer, or bulk purchaser-end user any gasoline unless that gasoline meets the requirements in section 3.

(3) A carrier or an employee or agent of a carrier, whether operating under contract or tariff, shall not cause gasoline tendered to the carrier for shipment or transfer to another carrier, distributor, or retail dealer to fail to comply, at the time of delivery, with the requirements in section 3.

(4) A person shall not knowingly sell, dispense, or offer for sale gasoline unless that gasoline meets the requirements in section 3.

(5) A refiner or distributor shall not transfer, sell, dispense, or offer gasoline for sale in this state to a distributor unless the refiner or distributor indicates on each bill, invoice, or other instrument evidencing a delivery of gasoline, the name of the wholesale distributor who received delivery of the gasoline.

(6) A distributor or refiner shall not transfer, sell, dispense, or offer gasoline for sale in this state to a retail dealer unless the distributor indicates on each bill, invoice, or other instrument evidencing a delivery of gasoline, the name and license number issued pursuant to this act, of the retail dealer who received delivery of the gasoline.

(7) A bill, invoice, or other instrument evidencing a delivery of gasoline issued by a refiner or distributor for deliveries of gasoline to purchasers who are not required to hold a license issued pursuant to the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170, or this act shall clearly indicate the name and address and other information necessary to identify the purchaser of the gasoline.

(8) A bill, invoice, or other instrument evidencing a delivery of gasoline required by subsection (5), (6), or (7) shall include a guarantee that the gasoline delivered meets the requirements in section 3 and shall indicate the concentration range of alcohol in the gasoline, except for alcohols or ethers that have a molecular weight greater than ethanol and are not mixed with methanol or ethanol, or both, and shall indicate the possible presence, without regard to concentration range, of any alcohols or ethers that have a molecular weight greater than ethanol and are not mixed with methanol or ethanol, or both.

(9) A refiner, distributor, bulk purchaser-end user, or retail dealer shall not transfer, sell, dispense, or offer gasoline for sale unless that gasoline is visibly free of undissolved water, sediments, and other suspended matter and is clear and bright at an ambient temperature or 70 degrees Fahrenheit, whichever is greater.

(10) A person who violates this section or rules promulgated under this section is liable for a civil fine not to exceed \$10,000.00 for each day of the continuance of the violation. A civil fine ordered pursuant to this section shall be submitted to the state treasurer for deposit in the gasoline inspection and testing fund created by section 8.

Sec. 6. (1) Before a distributor or retail dealer engages in transferring, selling, dispensing, or the offering for sale gasoline in this state, the distributor or retail dealer shall obtain a license from the department for each retail outlet operated by that person. In administering the licensing under this section, the department may attempt to coordinate such licensing with the licensing applicable to gasoline administered by the department of treasury pursuant to the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170, and the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78.

(2) A license expires annually on November 30 unless renewed before December 1 of each year or unless suspended, denied, or revoked by the department.

(3) The fee for a license is \$15.00 for each year or portion of a year through July 31, 2002, \$50.00 for each year or portion of a year through July 31, 2003, \$75.00 for each year or portion of a year through July 31, 2004, and \$100.00 beginning August 1, 2004 and each year or portion of a year thereafter. A license shall not be issued or renewed until the fee and any administrative fines issued under section 10a have been paid. A hearing is not required before the refusal to issue or renew a license under this subsection. Fees collected shall be deposited in the gasoline inspection and testing fund. The department shall conduct a review of the fee structure provided by this subsection and the status of the gasoline inspection and testing fund in the 2003 calendar year and report its recommendations for any change or adjustment in the fee schedule to the house and senate transportation committees not later than January 1, 2004.

(4) An application for a license shall be made to the department upon a form furnished by the department. The completed form shall contain the information requested by the department and shall be accompanied by the fee specified in subsection (3).

(5) The director may suspend, deny, or revoke a license issued pursuant to this act for failure to comply with the requirements provided for in section 3, for failure to provide notice as provided in section 4, for violating section 31 of the weights and measures act of 1964, 1964 PA 283, MCL 290.631, if that violation occurs at any of the licensee's retail outlets and involves the transferring, selling, dispensing, or the offering for sale of gasoline in this state, or for otherwise failing to comply with this act or a rule promulgated under this act or an order issued under this act.

(6) This section does not apply until June 29, 1985.

(7) If a person licensed under this act is convicted of a willful violation under section 31 of the weights and measures act of 1964, 1964 PA 283, MCL 290.631, any license issued pursuant to this act shall be revoked for 2 years.

(8) A suspension, revocation, or denial of a license of a person who is an individual shall result in the suspension, revocation, or denial of any other license held or applied for by that individual under this act. The license of a corporation, partnership, or other association shall be suspended when a license or license application of a partner, trustee, director, or officer, member, or a person exercising control of the corporation, partnership, or other association is suspended, revoked, or denied. The suspension shall remain in force until the director determines that the disability created by the suspension, revocation, or denial has been removed.

(9) Before a blender engages in the transferring, selling, dispensing, or offering for sale blended gasoline in this state, the blender shall register the finished product with the department and provide to the department test results as the department considers necessary. If the product does not comply with the requirements of section 3, the blender shall provide the department with a written list of the business names and addresses to whom the blended product is sold.

Sec. 9i. (1) A dispensing facility constructed after November 15, 1990, shall obtain a dispensing permit. The fee for a dispensing permit is \$25.00 for each year or portion of a year.

(2) Before a dispensing permit is issued, a dispensing facility shall install an approved stage I and, if required, stage II vapor-recovery system and, in addition to the fee for the dispensing permit, shall pay a registration fee for each dispensing unit located at the dispensing facility. A permit shall not be issued or renewed until all fees and administrative fines issued under section 10a are paid. A hearing shall not be required before the refusal to issue or renew a permit under this subsection.

(3) A dispensing permit expires annually on November 30 unless renewed before December 1 of each year or unless suspended, denied, or revoked by the department. Application for a dispensing permit shall be made on a form furnished by the department. The completed form shall contain the information requested by the department and shall be accompanied by the fees specified.

(4) The director may suspend, deny, or revoke a dispensing permit issued pursuant to this act for failure to pay the fee required by subsection (1) or (2), or for failure to comply with the requirements of sections 9a to 10c.

(5) A fee shall be charged to the operator of stage I and stage II vapor-recovery or gasoline-dispensing equipment for its inspection if any of the following occur:

(a) The inspection is a reinspection of equipment that has already been tested and found to contain a substantial defect as defined under section 9c.

(b) The inspection is performed at the request of the operator.

(6) The department shall establish the fees and expenses for special services, including the fee for an operator requested inspection or reinspection, for registrations, for training courses, and for accreditation of a trainer, to provide that each fee is sufficient to cover the cost of an operator requested inspection, reinspection, registration, training, or trainer accreditation, respectively, and that the aggregate of all fees collected is sufficient to pay for all salaries and other expenses connected with the activity. The department shall review and adjust the fees at the end of each year and have all fees approved by the director before they are adopted. Fees collected under this section shall be deposited in the gasoline inspection and testing fund and reserved for conducting the vapor-recovery program.

Sec. 10a. (1) A person who individually, or by the action of his or her agent or employee, or as the agent or employee of another violates this act or a rule promulgated under this act is subject to an administrative fine. Upon the request of a person to whom an administrative fine is issued, the director shall conduct a hearing conducted pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A fine authorized by this section shall be as follows:

(a) For a first violation, not less than \$100.00 or more than \$500.00, plus actual costs of the investigation and double the amount of any economic benefit associated with the violation.

(b) For a second violation within 5 years after the first violation, not less than \$500.00 or more than \$1,000.00, plus actual costs of the investigation and double the amount of any economic benefit associated with the violation.

(c) For a third violation within 5 years after the date of the first violation, not less than \$1,000.00 or more than \$2,000.00, plus actual costs of the investigation and double the amount of any economic benefit associated with the violation.

(2) A decision of the director under this section is subject to judicial review as provided by law.

(3) The director shall advise the attorney general of the failure of any person to pay an administrative fine imposed under this section. The attorney general shall bring an action in court of competent jurisdiction to recover the fine.

(4) Any administrative fine, costs, and the recovery of any economic benefit associated with a violation collected under this section shall be paid to the state treasury and deposited into the gasoline inspection and testing fund.

Sec. 10b. (1) A person who individually, or by the action of his or her agent or employee, or as the agent or employee of another, performs any of the following is guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not less than \$1,000.00 or more than \$2,000.00, or both:

(a) Renders less effective or inoperable any part of a stage I or stage II vapor-recovery system.

(b) Makes a false statement, representation, or certification on an application, report, plan, label, or other document that is required to be maintained under this act or rules promulgated under this act.

(c) Fails to disclose to the department any knowledge or information relating to or observation of any modification of a stage I or stage II vapor-recovery system which makes the system less effective or inoperable, or falsification of records required to be maintained under this act or rules promulgated under this act.

(d) Removes a tag, seal, or mark placed on a dispensing device by the director.

(e) Violates this act or a rule promulgated under this act for which a specific penalty is not prescribed.

(2) A person who individually, or by the action of his or her agent or employee, or as the agent or employee of another, performs any of the following acts is guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not less than \$2,000.00 or more than \$10,000.00, or both:

(a) Violates a prohibited act listed in this section within 24 months after another violation of this section that results in a conviction.

(b) Impersonates in any way the director or any department inspector.

(3) A person who individually, or by the action of his or her agent or employee, or as the agent or employee of another, performs any of the following acts is guilty of a felony punishable by imprisonment for not more than 2 years, or a fine of not less than \$10,000.00 or more than \$15,000.00, or both:

(a) Intentionally commits a prohibited act under this section.

(b) Violates a prohibited act listed in this section within 24 months after 2 previous violations of this section that result in convictions.

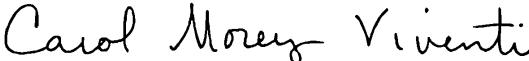
(4) If a violation of this section results in a conviction, the court shall assess against the defendant the costs of the department's investigation, and these costs shall be paid to the state treasury and deposited in the gasoline inspection and testing fund to be used for the enforcement of this act.

Enacting section 1. Except as otherwise provided in this amendatory act, this amendatory act takes effect January 1, 2002.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives.



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Secretary of the Senate.

Approved .....

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Governor.