

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 1178

(SENATE AUTHORS: WESTROM)

DATE	D-PG	OFFICIAL STATUS
02/18/2021	458	Introduction and first reading
		Referred to Agriculture and Rural Development Finance and Policy
03/15/2021	887a	Comm report: To pass as amended and re-refer to Commerce and Consumer Protection Finance and Policy

- 1.1 A bill for an act
- 1.2 relating to agriculture; providing a biofuels education and marketing program;
- 1.3 establishing a council on biofuels education and promotion; requiring compliance
- 1.4 with certain compatibility standards; modifying minimum biofuel standard; making
- 1.5 technical changes; requiring reports; amending Minnesota Statutes 2020, sections
- 1.6 116.49, by adding a subdivision; 239.791, subdivisions 1, 2a, 2b, 2c, 3, 7, 8, 15,
- 1.7 by adding subdivisions; proposing coding for new law in Minnesota Statutes,
- 1.8 chapter 41A.
- 1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.10 Section 1. **41A.27 BIOFUELS EDUCATION AND MARKETING PROGRAM.**
- 1.11 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have
- 1.12 the meanings given.
- 1.13 (b) "Account" means the biofuels education and marketing account established in
- 1.14 subdivision 3.
- 1.15 (c) "Commissioner" means the commissioner of agriculture.
- 1.16 (d) "Council on Biofuels Education and Promotion" means the Council on Biofuels
- 1.17 Education and Promotion established under section 41A.28.
- 1.18 (e) "Program" means the biofuels education and marketing program established in this
- 1.19 section.
- 1.20 (f) "Technical assistance" means individualized guidance, presentations, workshops,
- 1.21 trainings, printed materials, or other guidance and resources on topics relevant to the purposes
- 1.22 of the program as provided in subdivision 2.

2.1 Subd. 2. **Program established.** A biofuels education and marketing program is
2.2 established within the Department of Agriculture to ensure a coordinated program of
2.3 education about and promotion of biofuels among consumers and auto industry professionals
2.4 in Minnesota. The commissioner, in cooperation with public and private partners, must
2.5 establish and implement the program as provided in this section. The commissioner's actions
2.6 under this subdivision are not subject to chapter 14.

2.7 Subd. 3. **Biofuels education and marketing account.** A biofuels education and
2.8 marketing account is established in the agricultural fund. The account consists of money
2.9 appropriated to the commissioner and any other money donated, allotted, transferred, or
2.10 otherwise provided to the account. Money in the account, including interest, is appropriated
2.11 to the commissioner for the purposes of this section, and shall be used, to the extent
2.12 practicable, to leverage other forms of public and private financial assistance.

2.13 Subd. 4. **Program administration.** (a) The commissioner is the administrator of the
2.14 account for auditing purposes and must establish program requirements and a competitive
2.15 process for qualifying entities to apply for grants or to make proposals for professional or
2.16 technical services contracts.

2.17 (b) The commissioner may receive money or other assets from any source, including
2.18 but not limited to philanthropic foundations and financial investors, for deposit into the
2.19 account.

2.20 (c) Money in the account at the close of each fiscal year does not cancel. In each
2.21 biennium, the commissioner must determine the appropriate proportion of money to be
2.22 allocated to loans, grants, technical assistance, and any other types of financial assistance.

2.23 (d) To encourage public-private, cross-sector collaboration and investment in the account
2.24 and program and to ensure that the program intent is maintained throughout implementation,
2.25 the commissioner must convene and maintain the Council on Biofuels Education and
2.26 Promotion.

2.27 (e) The commissioner, in cooperation with the Council on Biofuels Education and
2.28 Promotion, shall manage the program, establish program criteria, facilitate leveraging of
2.29 additional public and private investment, and promote the program statewide.

2.30 (f) The commissioner, in cooperation with the Council on Biofuels Education and
2.31 Promotion, must establish annual monitoring and accountability mechanisms for all activities
2.32 receiving financing or other financial or technical assistance through this program.

3.1 Subd. 5. Eligible activities. (a) The commissioner, in cooperation with the program
3.2 partners and advisers, must establish project eligibility guidelines and application processes
3.3 to be used to review and select project applicants for financial or technical assistance, and
3.4 scopes of work to be used for procurement of professional or technical services.

3.5 (b) Activities eligible for financial assistance such as grants or technical assistance, or
3.6 for professional or technical services contracts, must fulfill the purposes as provided in
3.7 subdivision 2.

3.8 Subd. 6. Qualifying entities. An applicant for a grant, or a proposer for a professional
3.9 or technical services contract, may be a for-profit or not-for-profit entity, including but not
3.10 limited to a sole proprietorship, limited liability company, corporation, cooperative, nonprofit
3.11 organization, or nonprofit community development organization. Each applicant or proposer
3.12 must demonstrate the capacity to successfully implement the activity.

3.13 Subd. 7. Legislative report. The commissioner must submit a report on the biofuels
3.14 education and marketing program by January 15 of each year to the chairs and ranking
3.15 minority members of the legislative committees and divisions with jurisdiction over
3.16 agriculture policy and finance. The annual report must include but not be limited to a
3.17 summary of the following metrics:

3.18 (1) the number and types of activities financed;

3.19 (2) the amount of dollars leveraged or matched per project;

3.20 (3) the number and types of technical assistance recipients;

3.21 (4) any market expansion associated with increased education and promotion; and

3.22 (5) the costs of the program.

3.23 **Sec. 2. [41A.28] COUNCIL ON BIOFUELS EDUCATION AND PROMOTION.**

3.24 Subdivision 1. Definitions. As used in this section, the following terms have the meanings
3.25 given them:

3.26 (1) "commissioner" means the commissioner of agriculture;

3.27 (2) "council" means the Council on Biofuels Education and Promotion created in
3.28 subdivision 2; and

3.29 (3) "program" means the biofuels education and marketing program under section
3.30 17.1019.

4.1 Subd. 2. **Creation.** The Council on Biofuels Education and Promotion consists of no
 4.2 more than 15 members representing entities and organizations with knowledge and expertise
 4.3 regarding education and promotion of biofuels appointed by the commissioner. The
 4.4 commissioner may remove members and fill vacancies as provided in section 15.059,
 4.5 subdivision 4.

4.6 Subd. 3. **Duties.** The council must advise the commissioner of agriculture on managing
 4.7 the program, establishing program criteria, establishing project eligibility guidelines,
 4.8 establishing application processes and additional selection criteria, establishing annual
 4.9 monitoring and accountability mechanisms, facilitating leveraging of additional public and
 4.10 private investments, and promoting the program statewide.

4.11 Sec. 3. Minnesota Statutes 2020, section 116.49, is amended by adding a subdivision to
 4.12 read:

4.13 Subd. 5. **Minimum compatibility standard for new equipment.** (a) Any underground
 4.14 storage tank system for gasoline installed after December 31, 2022, must meet compatibility
 4.15 standards in rules adopted under authority of this section for gasoline containing up to 25
 4.16 percent ethanol.

4.17 (b) If a new mid-level blend certification for ethanol or biodiesel is established, the
 4.18 agency must consider revising the minimum compatibility standards required under paragraph
 4.19 (a).

4.20 Sec. 4. Minnesota Statutes 2020, section 239.791, subdivision 1, is amended to read:

4.21 Subdivision 1. **Minimum biofuel content required standard.** (a) Except as provided
 4.22 in subdivisions 10 to ~~14~~ 18, a person responsible for the product shall ensure that all gasoline
 4.23 sold or offered for sale in Minnesota ~~must contain~~ contains at least the quantity of biofuel
 4.24 required by the greater of clause (1) or (2); ~~at the option of the person responsible for the~~
 4.25 ~~product:~~

4.26 ~~(1) the greater of:~~

4.27 ~~(i)~~ (1) 10.0 percent conventional or advanced biofuel by volume; or

4.28 ~~(ii) the maximum percent~~ (2) at least the stated percentage of conventional or advanced
 4.29 biofuel by volume authorized in a waiver granted by the United States Environmental
 4.30 Protection Agency; ~~or~~ under United States Code, title 42, section 7545, no sooner than the
 4.31 following dates:

4.32 (i) 15 percent by July 1, 2022; and

5.1 (ii) 25 percent by July 1, 2031.

5.2 ~~(2) 10.0 percent of a biofuel, other than a conventional biofuel, by volume authorized~~
 5.3 ~~in a waiver granted by the United States Environmental Protection Agency or a biofuel~~
 5.4 ~~formulation registered by the United States Environmental Protection Agency under United~~
 5.5 ~~States Code, title 42, section 7545.~~

5.6 (b) For purposes of enforcing the requirement of paragraph (a), clause (1), ~~item (i),~~ a
 5.7 gasoline/biofuel blend will be construed to be in compliance if the biofuel content, exclusive
 5.8 of denaturants and other permitted components, comprises not less than 9.2 percent by
 5.9 volume and not more than 10.0 percent by volume of the blend as determined by an
 5.10 appropriate United States Environmental Protection Agency or American Society of Testing
 5.11 Materials standard method of analysis.

5.12 (c) For purposes of enforcing the requirement of paragraph (a), clause (2), item (i), a
 5.13 gasoline and biofuel blend is considered to be in compliance if the biofuel content, exclusive
 5.14 of denaturants and other permitted components, comprises not less than 13.8 percent by
 5.15 volume and not more than 15 percent by volume of the blend as determined by an appropriate
 5.16 United States Environmental Protection Agency or American Society of Testing Materials
 5.17 standard method of analysis. Dispensers dispensing the blend specified in paragraph (a),
 5.18 clause (2), item (i), must be marked according to rules adopted by the commissioner.

5.19 (d) For purposes of enforcing the requirement of paragraph (a), clause (2), item (ii), a
 5.20 gasoline and biofuel blend is considered to be in compliance if the biofuel content, exclusive
 5.21 of denaturants and other permitted components, comprises not less than 23 percent by
 5.22 volume and not more than 25 percent by volume of the blend as determined by an appropriate
 5.23 United States Environmental Protection Agency or American Society of Testing Materials
 5.24 standard method of analysis. Dispensers dispensing the blend specified in paragraph (a),
 5.25 clause (2), item (ii), must be marked according to rules adopted by the commissioner.

5.26 ~~(e) The aggregate~~ (e) Of the total amount of biofuel blended pursuant to this subdivision
 5.27 ~~may be any biofuel; however~~ each year, conventional biofuel must comprise no less than
 5.28 the portion specified on and after the specified dates:

5.29	(1)	July 1, 2013	90 percent
5.30	(2)	January 1, 2015	80 percent
5.31	(3)	January 1, 2017	70 percent
5.32	(4)	January 1, 2020	60 percent
5.33	(5)	January 1, 2025	no minimum

6.1 Sec. 5. Minnesota Statutes 2020, section 239.791, subdivision 2a, is amended to read:

6.2 Subd. 2a. **Federal Clean Air Act waivers; conditions.** (a) Before a waiver granted by
6.3 the United States Environmental Protection Agency under United States Code, title 42,
6.4 section 7545, may alter the minimum content level required by subdivision 1, paragraph
6.5 (a), clause ~~(1)~~, ~~item (ii)~~ (2), the waiver must:

6.6 (1) apply to all over 90 percent of gasoline-powered motor vehicles irrespective of model
6.7 year; and

6.8 (2) allow for special regulatory treatment of Reid vapor pressure under Code of Federal
6.9 Regulations, title 40, section ~~80.27, paragraph (d)~~ 1090.215(b), for blends of gasoline and
6.10 ~~ethanol~~ biofuel up to the maximum percent of denatured ~~ethanol~~ biofuel by volume authorized
6.11 under the waiver.

6.12 (b) The minimum biofuel requirement in subdivision 1, paragraph (a), clause ~~(1)~~, ~~item~~
6.13 ~~(ii)~~ (2), shall, upon the grant of the federal waiver, be effective ~~the day after the commissioner~~
6.14 ~~of commerce publishes notice in the State Register. In making this determination, the~~
6.15 ~~commissioner shall consider the amount of time required by refiners, retailers, pipeline and~~
6.16 ~~distribution terminal companies, and other fuel suppliers, acting expeditiously, to make the~~
6.17 ~~operational and logistical changes required to supply fuel in compliance with the minimum~~
6.18 ~~biofuel requirement.~~ only if the commissioners of agriculture, commerce, transportation,
6.19 and pollution control publish notice in the State Register and provide written notice to the
6.20 chairs of the legislative committees with jurisdiction over agriculture, commerce,
6.21 environment, and transportation policy and finance at least 270 days prior to the date of the
6.22 scheduled increase that the following conditions have been met and the state is prepared to
6.23 move to the scheduled minimum content level:

6.24 (1) an American Society for Testing and Materials specification or equivalent federal
6.25 standard exists for the next minimum gasoline and biofuel blend;

6.26 (2) the next minimum content level is approved for sale by the United States
6.27 Environmental Protection Agency;

6.28 (3) a distributor who distributes or sells petroleum products in Minnesota has had adequate
6.29 time to ensure that all fuel-dispensing equipment is capable of dispensing and storing gasoline
6.30 containing up to the scheduled minimum biofuel content in subdivision 1, in conformance
6.31 with standards of the United States Environmental Protection Agency, rules adopted under
6.32 section 116.49, and the state fire code, considering factors such as the availability of
6.33 fuel-dispensing equipment and the availability of fuel-dispensing equipment installers and
6.34 service providers; and

7.1 (4) a distributor who distributes or sells petroleum products in Minnesota and who
 7.2 operates two or fewer distribution locations in Minnesota or elsewhere has been afforded
 7.3 a reasonable opportunity to obtain financial assistance for bringing fuel-dispensing equipment
 7.4 into conformance with standards of the United States Environmental Protection Agency
 7.5 and rules adopted under sections 116.49 and 299F.011.

7.6 Sec. 6. Minnesota Statutes 2020, section 239.791, subdivision 2b, is amended to read:

7.7 Subd. 2b. **Limited liability waiver.** No motor fuel shall be deemed to be a defective
 7.8 product by virtue of the fact that the motor fuel is formulated or blended pursuant to the
 7.9 requirements of subdivision 1, ~~paragraph (a), clause (1), item (ii),~~ under any theory of
 7.10 liability except for simple or willful negligence or fraud. This subdivision does not preclude
 7.11 an action for negligent, fraudulent, or willful acts. This subdivision does not affect a person
 7.12 whose liability arises under chapter 115, water pollution control; 115A, waste management;
 7.13 115B, environmental response and liability; 115C, leaking underground storage tanks; or
 7.14 299J, pipeline safety; under public nuisance law for damage to the environment or the public
 7.15 health; under any other environmental or public health law; or under any environmental or
 7.16 public health ordinance or program of a municipality as defined in section 466.01.

7.17 Sec. 7. Minnesota Statutes 2020, section 239.791, subdivision 2c, is amended to read:

7.18 Subd. 2c. ~~Fuel-dispensing equipment~~ **Fuel-dispensing labeling; blends over ten**
 7.19 **percent ethanol biofuel.** ~~Notwithstanding any other law or rule, fuel-dispensing equipment~~
 7.20 ~~authorized to dispense fuel under subdivision 1, paragraph (a), clause (1), is authorized to~~
 7.21 ~~dispense fuel under subdivision 1, paragraph (a), clause (2), or subdivision 1a. Equipment~~
 7.22 dispensing gasoline and biofuel blends under subdivision 1, paragraph (a), clause (2), item
 7.23 (i), must be labeled according to Code of Federal Regulations, title 40, section 1090.1510.

7.24 Sec. 8. Minnesota Statutes 2020, section 239.791, subdivision 3, is amended to read:

7.25 Subd. 3. **Blending restriction.** When gasoline contains an oxygenate, a person responsible
 7.26 for the product shall not blend the product with ~~ethanol~~ biofuel or with any other oxygenate
 7.27 after it is transferred or otherwise removed from a refinery or terminal.

7.28 Sec. 9. Minnesota Statutes 2020, section 239.791, subdivision 7, is amended to read:

7.29 Subd. 7. ~~Ethanol~~ **Biofuel records; state audit.** The director shall audit the records of
 7.30 registered ~~ethanol~~ biofuel blenders to ensure that each blender has met all requirements in
 7.31 this chapter. Specific information or data relating to sales figures or to processes or methods

8.1 of production unique to the blender or that would tend to adversely affect the competitive
 8.2 position of the blender must be only for the confidential use of the director, unless otherwise
 8.3 specifically authorized by the registered blender.

8.4 Sec. 10. Minnesota Statutes 2020, section 239.791, subdivision 8, is amended to read:

8.5 Subd. 8. **Disclosure.** (a) A refinery or terminal, shall provide, at the time gasoline is
 8.6 sold or transferred from the refinery or terminal, a bill of lading or shipping manifest to the
 8.7 person who receives the gasoline. For oxygenated gasoline, the bill of lading or shipping
 8.8 manifest must include the identity and the volume percentage or gallons of oxygenate
 8.9 included in the gasoline, and it must state: "This fuel contains an oxygenate. Do not blend
 8.10 this fuel with ethanol or with any other oxygenate." For nonoxygenated gasoline ~~sold or~~
 8.11 ~~transferred after September 30, 1997~~, the bill or manifest must state: "This fuel is not
 8.12 oxygenated. It must not be sold at retail in Minnesota." This subdivision does not apply to
 8.13 sales or transfers of gasoline between refineries, between terminals, or between a refinery
 8.14 and a terminal.

8.15 (b) A delivery ticket required under section 239.092 for biofuel blended with gasoline
 8.16 must state the volume percentage of biofuel blended into gasoline delivered through a meter
 8.17 into a storage tank used for dispensing by persons not exempt under subdivisions 10 to ~~14~~
 8.18 16.

8.19 Sec. 11. Minnesota Statutes 2020, section 239.791, subdivision 15, is amended to read:

8.20 Subd. 15. **Exemption for certain blend pumps.** (a) If subdivision 1, paragraph (a),
 8.21 clause (1), is in effect, a person responsible for the product, who offers for sale, sells, or
 8.22 dispenses nonoxygenated premium gasoline under one or more of the exemptions in
 8.23 subdivisions 10 to 14, may sell, offer for sale, or dispense oxygenated gasoline that contains
 8.24 less than the minimum amount of ethanol required under subdivision 1, paragraph (a), clause
 8.25 (1), if all of the following conditions are met:

8.26 (1) the blended gasoline has an octane rating of 88 or greater;

8.27 (2) the gasoline is a blend of oxygenated gasoline meeting the requirements of subdivision
 8.28 1, paragraph (a), clause (1), with nonoxygenated premium gasoline;

8.29 (3) the blended gasoline contains not more than ten percent nonoxygenated premium
 8.30 gasoline;

8.31 (4) the blending of oxygenated gasoline with nonoxygenated gasoline occurs within the
 8.32 gasoline dispenser; and

9.1 (5) the gasoline station at which the gasoline is sold, offered for sale, or delivered is
9.2 equipped to store gasoline in not more than two storage tanks.

9.3 (b) This subdivision applies only to those persons who met the conditions in paragraph
9.4 (a), clauses (1) through (5), on August 1, 2004, and registered with the director by November
9.5 1, 2004.

9.6 Sec. 12. Minnesota Statutes 2020, section 239.791, is amended by adding a subdivision
9.7 to read:

9.8 **Subd. 17. Exemption for vehicles not approved to use more than ten percent**
9.9 **biofuel.** A person responsible for the product who offers for sale or sells gasoline and biofuel
9.10 blends at retail may provide one dispenser dispensing a gasoline and biofuel blend containing
9.11 9.2 to ten percent biofuel for use by motorists who cannot lawfully use a gasoline and biofuel
9.12 blend containing more than ten percent biofuel pursuant to waivers granted by the United
9.13 States Environmental Protection Agency under United States Code, title 42, section 7545.
9.14 Dispensers dispensing the blend allowed under this subdivision must be labeled "INTENDED
9.15 FOR USE IN 2000 AND OLDER PASSENGER VEHICLES". The label must be positioned
9.16 to clearly identify the control for selecting this product. Labeling under this subdivision is
9.17 not required for exemptions under subdivision 18.

9.18 Sec. 13. Minnesota Statutes 2020, section 239.791, is amended by adding a subdivision
9.19 to read:

9.20 **Subd. 18. Persons exempt from higher blending requirements; new fuel storage,**
9.21 **handling, and dispensing equipment.** A distributor who distributes or sells petroleum
9.22 products in Minnesota and who operates two or fewer distribution locations in Minnesota
9.23 or elsewhere may sell gasoline and biofuel blends containing 9.2 to ten percent biofuel at
9.24 distribution locations that do not have fuel-dispensing equipment capable of dispensing and
9.25 storing gasoline containing the biofuel content in subdivision 1 in conformance with standards
9.26 of the United States Environmental Protection Agency and rules adopted under sections
9.27 116.49 and 299F.011. This exemption does not apply to distribution locations with
9.28 fuel-dispensing equipment that have fuel-dispensing equipment capable of dispensing and
9.29 storing gasoline containing the biofuel content in subdivision 1 in conformance with standards
9.30 of the United States Environmental Protection Agency and rules adopted under sections
9.31 116.49 and 299F.011.