

MAR 19 2003

HOUSE FILE 642
BY COMMITTEE ON AGRICULTURE

APPROPRIATIONS

(SUCCESSOR TO HSB 294)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of motor vehicle fuel,
2 providing for penalties, providing for a compliance fund, and
3 providing for an appropriation.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 642

1 Section 1. Section 214A.1, Code 2003, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 1A. "Department" means the department of
4 agriculture and land stewardship.

5 Sec. 2. Section 214A.11, Code 2003, is amended by striking
6 the section and inserting in lieu thereof the following:

7 214A.11 CIVIL PENALTIES -- DEPOSIT IN THE COMPLIANCE FUND.

8 1. The department shall establish, by rule, civil
9 penalties which may be administratively or judicially assessed
10 against a person who violates this chapter.

11 2. a. The amount of a civil penalty shall not exceed
12 three thousand dollars for a violation other than a violation
13 of section 214A.18.

14 b. The amount of a civil penalty for a violation of
15 section 214A.18 shall not exceed five hundred dollars. Each
16 day that a violation continues shall constitute a separate
17 violation. However, a person shall not be subject to a civil
18 penalty of more than twenty-five thousand dollars for a
19 continuing violation.

20 c. Moneys collected in civil penalties by the department
21 or the attorney general shall be deposited in the compliance
22 fund created in section 214A.14A. However, if the attorney
23 general is the prevailing party in a court action, the
24 attorney general shall be awarded court costs and reasonable
25 attorney fees, which shall be taxed as part of the costs of
26 the action.

27 3. A civil penalty may be administratively assessed only
28 after an opportunity for a contested case hearing under
29 chapter 17A. The department may be represented in an
30 administrative hearing or judicial proceeding by the attorney
31 general. A civil penalty shall be paid within thirty days
32 from the date that an order or judgment for the penalty
33 becomes final. When a person against whom a civil penalty is
34 administratively assessed under this section seeks timely
35 judicial review of an order imposing the penalty as provided

1 under chapter 17A, the order is not final until all judicial
2 review processes are completed. When a person against whom a
3 civil penalty is judicially assessed under this section seeks
4 a timely appeal of judgment, the judgment is not final until
5 the right of appeal is exhausted.

6 4. A person who fails to timely pay a civil penalty as
7 provided in this section shall pay, in addition to the
8 penalty, interest at the rate of one and one-half percent of
9 the unpaid balance of the assessed penalty for each month or
10 part of a month that the penalty remains unpaid.

11 Sec. 3. NEW SECTION. 214A.14A COMPLIANCE FUND.

12 1. A compliance fund is created in the state treasury
13 under the control of the department. The compliance fund is
14 separate from the general fund of the state.

15 2. The compliance fund is composed of moneys appropriated
16 by the general assembly and moneys available to and obtained
17 or accepted by the department from the United States
18 government or private sources for placement in the compliance
19 fund. The compliance fund shall include moneys deposited into
20 the fund from civil penalties as provided in section 214A.11.

21 3. Moneys in the compliance fund are appropriated to the
22 department exclusively to pay the expenses of the department
23 in administering and enforcing the provisions of this chapter.
24 The moneys shall not be transferred, used, obligated,
25 appropriated, or otherwise encumbered except as provided in
26 this subsection.

27 4. Moneys in the fund, which may be subject to warrants
28 written by the director of revenue and finance, shall be drawn
29 upon the written requisition of the secretary or an authorized
30 representative of the secretary.

31 5. Notwithstanding section 8.33, any unexpended balance in
32 the compliance fund at the end of the fiscal year shall be
33 retained in the fund. Notwithstanding section 12C.7,
34 subsection 2, interest, earnings on investments, or time
35 deposits of the moneys in the compliance fund shall be

1 credited to the fund.

2 Sec. 4. NEW SECTION. 214A.14B DEPARTMENTAL USE OF MONEYS
3 FROM COMPLIANCE FUND -- MTBE.

4 For the fiscal period beginning July 1, 2003, and ending
5 June 30, 2010, the department shall use moneys deposited in
6 the compliance fund created in section 214A.14A and
7 appropriated to the department pursuant to that section
8 exclusively for purposes of detecting and monitoring the
9 presence of MTBE in this state. The department shall use the
10 moneys for purposes of purchasing equipment and supporting
11 full-time equivalent positions in addition to those supported
12 from the general fund of the state.

13 Sec. 5. Section 214A.14B, Code 2003, is repealed.

14 Sec. 6. EFFECTIVE DATE. The section of this Act repealing
15 section 214A.14B takes effect July 1, 2010.

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EXPLANATION

17 Code chapter 214A provides for the regulation of motor
18 vehicle fuel and its contents by the department of agriculture
19 and land stewardship. During the 2000 Legislative Session,
20 the general assembly enacted provisions codified in Code
21 section 214A.18 which prohibited a person from selling or
22 storing more than trace amounts of methyl tertiary butyl ether
23 (MTBE). According to the Code section, a trace amount is not
24 more than one-half of 1 percent by volume.

25 According to Code section 214A.11, the penalty for a
26 violation of the Code chapter is a simple misdemeanor. A
27 simple misdemeanor is punishable by confinement for no more
28 than 30 days or a fine of at least \$50 but not more than \$500
29 or by both.

30 This bill replaces the criminal penalty with a civil
31 penalty to be administered by the department. The amount of
32 the civil penalty cannot exceed \$3,000 for a violation unless
33 the violation involves the storing or selling of MTBE. In
34 that case, the amount of the civil penalty cannot exceed \$500
35 per day. The bill provides that a person is not subject to a

1 civil penalty of more than \$25,000 for a continuing violation.
2 The moneys collected in civil penalties are to be deposited in
3 a compliance fund, created in the bill. However, if the
4 attorney general is a prevailing party in a court action, the
5 attorney general is awarded court costs and reasonable
6 attorney fees.

7 The compliance fund is a fund under the control of the
8 department and is to be used exclusively to pay the expenses
9 of the department in administering and enforcing the
10 provisions of Code chapter 214A. The bill also provides that
11 through June 30, 2010, the department must use moneys
12 deposited in the compliance fund exclusively for purposes of
13 detecting and monitoring the presence of MTBE in this state.

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HF 642 - Methyl Tertiary Butyl Ether Violations (LSB 2701 HV)
Analyst: Debra Kozel (Phone: (515) 281-6767) (deb.kozel@legis.state.ia.us)
Fiscal Note Version — New

Description

House File 642 replaces the criminal penalty for selling motor vehicle fuel with trace amounts of methyl tertiary butyl ether (MTBE) with a civil penalty that will be administered by the Department of Agriculture and Land Stewardship. The fines collected will be deposited into a compliance fund that is administered by the Department.

Assumptions

1. The cost of a near-infrared liquid fuel analyzer with calibrations for gasoline and ethanol is estimated at \$23,000.
2. The cost of one van equipped with benches and work areas is estimated at \$51,000.
3. The cost for a gasoline and ethanol inspector is estimated at \$47,000 per year.
4. The cost for other support expenditures (computers and other equipment) is estimated at \$4,000 for FY 2004 and \$1,200 for FY 2005 and subsequent years.
5. Moneys from fines collected are not anticipated to be sufficient to cover the costs for the purchase of the equipment or the inspector during FY 2004 and FY 2005.

Correctional Impact

House File 642 is expected to have a minimal correctional impact.

Fiscal Impact

The estimated fiscal impact of HF 642 is an increase in General Fund expenditures of \$125,000 for FY 2004 and \$48,000 for FY 2005 and subsequent years. The breakdown of estimated expenditures is as follows:

| | <u>FY 2004</u> | <u>FY 2005</u> |
|--------------------|-------------------|------------------|
| Salaries | \$ 47,000 | \$ 47,000 |
| Support | 4,000 | 1,000 |
| Equipment | 74,000 | 0 |
| Total Expenditures | <u>\$ 125,000</u> | <u>\$ 48,000</u> |

Fines collected and deposited into the compliance fund will not be sufficient to cover costs incurred in FY 2004 and FY 2005.

Sources

Department of Agriculture and Land Stewardship
Department of Human Rights, Criminal and Juvenile Justice Planning Division

/s/ Dennis C Prouty

March 25, 2003

Kuhn - Chair
Drake
Klemme

Succeeded by
OF 0642

HSB 294
Agriculture

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON DRAKE)

Passed House, Date _____

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Vote: Ayes _____ Nays _____

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