



## 2005 SENATE BILL 723

May 3, 2006 – Introduced by Senators MILLER, ERPENBACH, HANSEN, ROBSON, TAYLOR and WIRCH, cosponsored by Representatives FREESE, GRONEMUS, HAHN, HEBL, HINES, OWENS, SHERIDAN and BERCEAU. Referred to Committee on Agriculture and Insurance.

1     **AN ACT to amend** 78.01 (1) (intro.), 78.015 (1), 78.12 (4) (a) (intro.) and 78.22 (1);  
2             **and to create** 78.005 (5m), 78.018, 78.019, 78.12 (4) (c), 100.515 and 100.55 of  
3             the statutes; **relating to:** the motor vehicle fuel tax imposed on gasoline that  
4             contains at least 85 percent ethanol, prohibiting charging an excessive price for  
5             gasoline that contains at least 85 percent ethanol, prohibiting discrimination  
6             against a retailer of gasoline that contains at least 85 percent ethanol, granting  
7             rule-making authority, and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Under current law, the state imposes a tax on the sale of motor vehicle fuel. The rate of that tax is, until April 1, 2006, 29.9 cents per gallon. On April 1, 2006, the rate will be increased to reflect the increase in the U.S. consumer price index.

Under this bill, the rate of the motor vehicle fuel tax imposed on the sale of gasoline consisting of at least 85 percent ethanol is ten cents per gallon. The rate of the tax imposed on gasoline consisting of at least 85 percent ethanol will increase by five cents per gallon on the first April 1 following the 12-month period in which for any seven months during that period the percentage of total monthly sales of gasoline consisting of at least 85 percent ethanol represents at least 1.5 percent of the monthly sales of all motor vehicle fuel subject to taxation. The rate of the tax imposed on gasoline consisting of at least 85 percent ethanol will increase by five

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cents per gallon with every 0.5 percent increase in the percentage of such gasoline sold as compared to sales of all motor vehicle fuel. However, the rate of the tax imposed on gasoline consisting of at least 85 percent ethanol may not exceed the rate of the tax imposed on other motor vehicle fuel. Under this bill, the rate of the tax imposed on other motor vehicle fuel increases by two-tenths of one cent.

Under the bill, a retailer of gasoline consisting of at least 85 percent ethanol may not charge an excessive price. A price is excessive under the bill if it exceeds 150 percent of the minimum retail price required under the Unfair Sales Act or “minimum markup” law. The Department of Agriculture, Trade and Consumer Protection may bring an action against a person who charges an excessive price to recover a forfeiture (civil penalty) up to \$1,000. Also under the bill, no refiner or wholesaler of motor vehicle fuel may discriminate against a retailer of gasoline consisting of 85 percent ethanol. A violation may be fined up to \$100,000.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 78.005 (5m) of the statutes is created to read:

2           78.005 (5m) “E85 market penetration” means, for any 7 months during a  
3           12-month period, the percentage of total monthly sales of gasoline consisting of at  
4           least 85 percent ethanol as compared to the total monthly sales of all motor vehicle  
5           fuel subject to the tax imposed under s. 78.01.

6           **SECTION 2.** 78.01 (1) (intro.) of the statutes is amended to read:

7           78.01 (1) IMPOSITION OF TAX AND BY WHOM PAID. (intro.) An excise tax at the rate  
8           determined under ss. 78.015 and, 78.017, 78.018, and 78.019 is imposed on all motor  
9           vehicle fuel received by a supplier for sale in this state, for sale for export to this state  
10          or for export to this state except as otherwise provided in this chapter. The motor  
11          vehicle fuel tax is to be computed and paid as provided in this chapter. Except as  
12          otherwise provided in this chapter, a person who receives motor vehicle fuel under  
13          s. 78.07 shall collect from the purchaser of the motor vehicle fuel that is received, and  
14          the purchaser shall pay to the person who receives the motor vehicle fuel under s.

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1 78.07, the tax imposed by this section on each sale of motor vehicle fuel at the time  
2 of the sale, irrespective of whether the sale is for cash or on credit. In each  
3 subsequent sale or distribution of motor vehicle fuel on which the tax has been  
4 collected as provided in this subsection, the tax collected shall be added to the selling  
5 price so that the tax is paid ultimately by the user of the motor vehicle fuel.

6 **SECTION 3.** 78.015 (1) of the statutes, as affected by 2005 Wisconsin Act 85, is  
7 amended to read:

8 78.015 (1) ~~Before~~ Except as provided in s. 78.019, before April 1 the department  
9 shall recompute and publish the rate for the tax imposed under s. 78.01 (1). The new  
10 rate per gallon shall be calculated by multiplying the rate in effect at the time of the  
11 calculation by the amount obtained under sub. (2). After the calculation of the rate  
12 that takes effect on April 1, 2006, the department shall make no further calculation  
13 under this subsection and sub. (2).

14 **SECTION 4.** 78.018 of the statutes is created to read:

15 **78.018 Adjustment for tax imposed on gasoline-ethanol blend.** On the  
16 effective date of this section .... [revisor inserts date], the rate of the tax imposed  
17 under s. 78.01 is increased by two-tenths of one cent.

18 **SECTION 5.** 78.019 of the statutes is created to read:

19 **78.019 Tax imposed on gasoline-ethanol blend. (1)** On the effective date  
20 of this subsection .... [revisor inserts date], gasoline consisting of at least 85 percent  
21 ethanol is not subject to the rate calculated under ss. 78.015, 78.017, and 78.018, but,  
22 instead, the rate of the tax imposed under s. 78.01 on gasoline consisting of at least  
23 85 percent ethanol is 10 cents per gallon.

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1           **(2)** (a) Except as provided in par. (b), the rate of the tax imposed under sub. (1)  
2 shall increase by 5 cents per gallon on April 1 following each 12-month period in  
3 which the following occurs:

4           1. E85 market penetration reaches 1.5 percent.

5           2. E85 market penetration reaches 2 percent.

6           3. E85 market penetration reaches 2.5 percent.

7           4. E85 market penetration reaches 3 percent.

8           5. E85 market penetration reaches 3.5 percent.

9           (b) The rate of the tax imposed under this section may not exceed the rate  
10 calculated under ss. 78.015, 78.017, and 78.018. The rate of the tax determined  
11 under this subsection shall not decrease with any decrease in E85 market  
12 penetration.

13           **SECTION 6.** 78.12 (4) (a) (intro.) of the statutes is amended to read:

14           78.12 (4) (a) (intro.) ~~For~~ Except as provided in par. (c), for gasoline:

15           **SECTION 7.** 78.12 (4) (c) of the statutes is created to read:

16           78.12 (4) (c) For gasoline that is subject to the rate imposed under s. 78.019:

17           1. Subtract the number of gallons under s. 78.01 (2r) for the taxable period from  
18 the number of gallons received during the taxable period.

19           2. Multiply the number of gallons under subd. 1. by the rate under s. 78.018 (1)  
20 as increased under s. 78.018 (2).

21           **SECTION 8.** 78.22 (1) of the statutes is amended to read:

22           78.22 (1) FLOOR TAX IMPOSED. On the date any motor vehicle fuel tax rate change  
23 becomes effective under s. 78.01 or 78.019, a floor tax is hereby imposed upon every  
24 person who is in possession of any motor vehicle fuel held for sale or resale and on  
25 which the motor vehicle fuel tax already has been imposed. The person shall

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1 determine the volume of motor vehicle fuel and shall file by the 15th day of the month  
2 in which the new tax rate becomes effective a return, together with any tax due on  
3 it, determined in accordance with sub. (2).

4 **SECTION 9.** 100.515 of the statutes is created to read:

5 **100.515 Sale of gasoline and ethanol blends.** (1) No refiner, as defined in  
6 s. 100.30 (2) (cm), or wholesaler of motor vehicle fuel, as defined in s. 100.30 (2) (m),  
7 may discriminate, with respect to the terms and conditions of the sale or purchase  
8 of motor vehicle fuel, against a retailer because the retailer offers gasoline consisting  
9 of 85 percent ethanol for retail sale.

10 (2) A person who violates this section may be fined not more than \$100,000.

11 **SECTION 10.** 100.55 of the statutes is created to read:

12 **100.55 Gasoline and ethanol blend; retail price.** (1) No person may sell  
13 motor vehicle fuel containing 85 percent ethanol at an excessive price. For purposes  
14 of this subsection, a price is excessive if it exceeds 150 percent of the cost to retailer,  
15 as defined in s. 100.30 (2) (am) 1m.

16 (2) The department shall promulgate a rule to implement and administer this  
17 section.

18 **SECTION 11. Effective date.**

19 (1) This act takes effect on the first day of the 2nd month beginning after  
20 publication.

21 (END)