

AMENDED IN ASSEMBLY AUGUST 29, 1997

AMENDED IN SENATE JUNE 3, 1997

AMENDED IN SENATE MAY 22, 1997

AMENDED IN SENATE APRIL 22, 1997

AMENDED IN SENATE APRIL 7, 1997

SENATE BILL

No. 521

**Introduced by Senators Mountjoy, Haynes, Johannessen,
Knight, and Monteith**

(Coauthors: Assembly Members Frusetta, House, Margett,
McClintock, Richter, and Woods)

February 24, 1997

An act to ~~add Sections 39667.5 and 116366 to~~ amend Section 13480 of the Business and Professions Code, to amend Section 43830 of, and to add Sections 25299.37.1, 39667.5, and 116366 to, the Health and Safety Code, and to add Section 13285 to the Water Code, relating to gasoline, making an appropriation therefor and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 521, as amended, Mountjoy. Gasoline: MTBE.

(1) Existing regulations adopted by the State Department of Health Services pursuant to the California Safe Drinking Water Act require monitoring to collect data on the frequency and levels of occurrence of methyl tertiary butyl ether (MTBE) in drinking water.

This bill would enact the MTBE Public Health and Environmental Protection Act of 1997. The bill would appropriate \$500,000 from an unspecified fund to the University of California for a specified study and assessment of the human health and environmental risks and benefits, if any, of MTBE, to be submitted to the ~~Director of Health Services~~ Governor by January 1, 1999. The bill would require the ~~director~~ Governor to take prescribed actions, including certifying whether there is a risk to human health or the environment of using MTBE in gasoline, and taking appropriate action to protect public health and the environment if ~~the director certifies that~~ there is such a risk.

~~The bill would appropriate \$10,000,000 from an unspecified fund to the department for drinking water monitoring, as specified.~~

~~The bill would require the State Air Resources Board to list MTBE as a toxic air contaminant and to adopt one or more airborne toxic control measures, thereby imposing a state-mandated local program by imposing new duties on air pollution control districts and air quality management districts to enforce those control measures, and by creating new crimes.~~

~~The bill~~

~~(2) Existing law makes it a misdemeanor to sell any petroleum product that does not have a prescribed sign or label relating to the ethanol or methanol content.~~

~~This bill would include additional specified fuel constituent within that provision, thereby imposing a state-mandated local program by creating new crimes.~~

~~(3) Existing law provides for the issuance of a specified closure letter relative to the completion of an investigation and remedial action for an underground storage tank.~~

~~This bill would prohibit the issuance of such a closure letter unless the soil and groundwater have been tested for MTBE, as specified.~~

~~(4) Existing law provides that specified blends of gasoline shall not violate a State Air Resources Board Reid vapor pressure standard unless test results show increased emissions, as specified.~~



This bill would provide that those blends shall not violate other state board regulations limiting the oxygen content of gasoline unless such test results show increase emissions.

(5) *The bill would require cleanup of MTBE discharges to water, as specified, and would provide that no water system, or its customers, shall be responsible for remediation or treatment costs of water contained by MTBE or a product containing MTBE.* ~~{BDO75}(2)-~~

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified ~~reasons~~ reason.

~~(3)-~~

(7) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be
2 cited, as the MTBE Public Health and Environmental
3 Protection Act of 1997.

4 SEC. 2. The Legislature hereby finds and declares
5 that the purpose of this act is to provide the public and the
6 Legislature with a thorough and objective evaluation of
7 ~~the human health and environmental risks and benefits~~
8 ~~of the use of methyl tertiary butyl ether (MTBE), as~~
9 ~~compared to other oxygenates, additives, or compounds,~~
10 *the human health and environmental risks and benefits,*
11 *if any, of the use of methyl tertiary butyl ether (MTBE),*
12 *as compared to ethyl tertiary butyl ether (ETBE),*
13 *tertiary amyl methyl ether (TAME) and ethanol, in*
14 *gasoline, and to ensure that the air, water quality, and soil*
15 *impacts of the use of MTBE are fully mitigated.*

16 SEC. 3. (a) The sum of five hundred thousand dollars
17 (\$500,000) is hereby appropriated from the _____
18 Fund to the University of California to ~~be used by the~~



1 ~~Center For Environmental Risk Reduction, the~~
2 ~~Statewide Air Pollution Research Center, and the~~
3 ~~Graduate School of Public Health to jointly conduct an~~
4 independent study and assessment of the human health
5 and environmental risks and benefits, if any, associated
6 with the use of MTBE, as compared to ~~other oxygenates,~~
7 ~~additives, or compounds, in gasoline in this state.~~

8 ~~(b) No person employed by the centers or the~~
9 ~~graduate school who is conducting research or consulting~~
10 ~~for the gas, oil, or MTBE industry, or for the California~~
11 ~~Environmental Protection Agency or its boards,~~
12 ~~departments, or offices, may participate in any manner in~~
13 ~~the assessment required pursuant to this section. *ETBE,*~~
14 ~~*TAME, and ethanol.*~~

15 ~~(b) It is the intent of the Legislature that this study be~~
16 ~~undertaken by the University of California to assure that~~
17 ~~the results will be objective and academically sound, and~~
18 ~~that the report will reflect the high standards expressed~~
19 ~~in the university's Policy on Integrity in Research.~~

20 ~~(c) The assessment shall commence immediately~~
21 ~~upon the effective date of this act *university's agreement*~~
22 and shall include, but not be limited to, all of the following
23 components:

24 (1) An assessment of the risks and benefits, ~~if any,~~ to
25 human health and the environment of MTBE and its
26 combustion byproducts found in air, water, and soil, and
27 a comparison of those risks and benefits to ~~other~~
28 ~~oxygenates, additives, or components that could be used~~
29 ~~*ETBE, TAME, and ethanol that could be used in lieu of*~~
30 ~~MTBE in gasoline.~~

31 (2) An assessment of *available research and data on*
32 the impact of MTBE on human health and the
33 environment in each state where MTBE has been used in
34 gasoline at levels of 10 percent or greater, by volume,
35 within the last five years.

36 (3) An assessment of the risks to human health and the
37 environment associated with MTBE leaking from
38 underground and aboveground storage tanks, from
39 surface watercraft and other sources of MTBE pollution



1 in surface water bodies, and from oceangoing tankers in
2 coastal waterways of this state.

3 (4) An analysis of current levels of MTBE in the state's
4 drinking water, reservoirs, lakes, and streams, ~~which shall~~
5 ~~be based upon data developed by the Office of Drinking~~
6 ~~Water in the State Department of Health Services, and by~~
7 ~~public and private water systems in the state pursuant to~~
8 ~~Section 116366 of the Health and Safety Code.~~

9 (5) An evaluation of the costs and effectiveness of
10 treatment technologies available to remove MTBE from
11 surface waters, groundwaters, and drinking water.

12 (6) An assessment of the impact of MTBE on vehicle
13 parts and the efficient operation of vehicles, ~~in~~
14 ~~consultation with recognized experts on the matter.~~

15 (7) An assessment of the corrosive effects of MTBE on
16 the structural integrity of fiberglass storage tanks, *which*
17 *may be undertaken*, in consultation with the California
18 Fire Chiefs Association and other recognized experts on
19 the matter.

20 (8) *A comparison of the incidence of asthma before*
21 *and after the level of MTBE was increased in California*
22 *gasoline, considering appropriate factors relating to a*
23 *nexus between any change in the incidence of asthma and*
24 *the actual introduction of MTBE into California gasoline.*

25 (9) *Identification and quantification of all of the*
26 *combustion byproducts of MTBE in California's*
27 *reformulated oxygenated fuel and the type of analytical*
28 *methods used and their sensitivity.*

29 (10) An evaluation of the scientific peer-reviewed
30 research and literature on the human health and
31 environmental effects of MTBE, as well as any original
32 research necessary to provide the information specified
33 in paragraphs (1) to ~~(7)~~(9), inclusive.

34 ~~(d) Prior to issuing the final report required pursuant~~
35 ~~to subdivision (e), the centers and the graduate school~~
36 ~~shall submit a draft report to the United States Geologic~~
37 ~~Survey and the Agency for Toxic Substances and Disease~~
38 ~~Registry at the Centers for Disease Control for comment.~~
39 ~~Those comments shall be reviewed and analyzed for~~
40 ~~inclusion in the final report.~~



1 ~~(c) On or before January 1, 1999, the centers and the~~
2 ~~graduate school shall submit a final report on the~~
3 ~~assessment conducted pursuant to this section to the~~
4 ~~Director of Health Services. Upon receiving the report,~~
5 ~~the director shall take all of the following actions:~~

6 ~~(1) Immediately make the assessment and the report~~
7 ~~available to the public as they were submitted to the~~
8 ~~director, without any alteration.~~

9 *(d) On or before January 1, 1999, the university shall*
10 *submit a draft report on the assessment conducted*
11 *pursuant to this section to the Governor. Upon receiving*
12 *the draft report, the Governor shall take all of the*
13 *following actions:*

14 *(1) Immediately transmit the draft report without any*
15 *alteration to the United States Geological Survey and to*
16 *the Agency for Toxic Substances and Disease Registry at*
17 *the Centers for Disease Control for the comments, which*
18 *shall be part of the public record. The comment period*
19 *shall be approximately six weeks.*

20 *(2) Issue a notice of intent to hold two public hearings,*
21 *one in northern California and one in southern California,*
22 *on dates that are not more than 30 days from the date of*
23 *receipt of the report—comments from the United States*
24 *Geological Survey and the Agency for Toxic Substances*
25 *and Disease Registry at the Centers for Disease Control,*
26 *for the purpose of accepting public testimony on the*
27 *assessment and report.*

28 *(3) Hold the public hearings.*

29 ~~(f)~~

30 *(e) Within 10 days from the date of the completion of*
31 *the public hearings held pursuant to subdivision—(e)*
32 *paragraph (2) of subdivision (d), the Director of Health*
33 ~~Services~~*Governor shall issue a written certification as to*
34 *the human health and environmental risks of using*
35 *MTBE in gasoline in this state. The certification shall be*
36 *based solely upon the assessment and report submitted*
37 *pursuant to this section and any testimony presented at*
38 *the public hearings. The certification shall state either of*
39 *the following conclusions:*



1 (1) That, on balance, there is no significant risk to
2 human health or the environment of using MTBE in
3 gasoline in this state.

4 (2) That, on balance, there is a significant risk to
5 human health or the environment of using MTBE in
6 gasoline in this state.

7 ~~(g) If the director~~

8 *(f) If the Governor* makes the certification described
9 under paragraph (2) of subdivision ~~(f)~~—*(e)*, then,
10 notwithstanding any other provision of law, the ~~director~~
11 *Governor* shall take appropriate action to protect public
12 health and the environment.

13 SEC. 4. (a) If the sale and use of MTBE in gasoline is
14 discontinued pursuant to subdivision (g) of Section 3 of
15 this act, the state shall not thereafter adopt or implement
16 any rule or regulation that permits or requires the use of
17 MTBE in gasoline.

18 (b) If the sale and use of MTBE is to be discontinued
19 pursuant to subdivision (g) of Section 3 of this act, the
20 State Air Resources Board shall immediately notify the
21 Environmental Protection Agency that the use of MTBE
22 in gasoline in this state will be discontinued.

23 ~~SEC. 5. Section 39667.5 is added to the Health and
24 Safety Code, to read:~~

25 ~~39667.5. On or before January 1, 1998, the state board
26 shall do both of the following:~~

27 ~~(a) List, pursuant to Article 3 (commencing with
28 Section 39660) methyl tertiary butyl ether (MTBE) as a
29 toxic air contaminant.~~

30 ~~(b) Adopt one or more airborne toxic control
31 measures to reduce emissions of MTBE.~~

32 ~~SEC. 6.—~~

33 *SEC. 5. Section 13480 of the Business and Professions
34 Code is amended to read:*

35 13480. (a) It is unlawful for any person to sell any
36 petroleum product referred to in this chapter at any place
37 where petroleum products are kept or stored for sale,
38 unless there is affixed to each container, receptacle,
39 pump, dispenser, and inlet end of the fill pipe of each
40 underground storage tank, from which or into which that



1 product is drawn or poured out for sale or delivery, a sign
2 or label plainly visible consisting of the name of the
3 product, the brand, trademark, or trade name of the
4 product, and, in the case of engine fuel and kerosene, the
5 grade or brand name designation.

6 (b) When the product is oil, as defined by Section
7 13401, each sign or label shall also have in letters or
8 numerals, plainly visible, the viscosity grade classification
9 as determined in accordance with the Society of
10 Automotive Engineers (SAE) latest standard for engine
11 oil viscosity classification SAE J300 or manual
12 transmission and axle lubricants viscosity classification
13 SAE J306, as applicable, and shall be preceded by the
14 letters "SAE".

15 (c) When the product is automotive spark-ignition
16 engine fuel, except M-85 and M-100 methanol fuel, there
17 shall be conspicuously displayed on the dispensing device
18 at least one sign or label showing the minimum octane
19 number or antiknock index, as defined in Section 13403,
20 of the product sold therefrom.

21 (d) When the product is a motor fuel ~~which that~~
22 contains at least 1 percent by volume ethanol (ethyl
23 alcohol) or methanol (methyl alcohol), or a combination
24 thereof, *or ethyl tertiary butyl ether; or methyl tertiary*
25 *butyl ether; or tertiary amyl methyl ether;* there shall be
26 conspicuously displayed on the dispensing device at least
27 one sign or label correctly stating the applicable one of
28 the following statements:

- 29 (1) "Contains alcohol (ethanol)."
30 (2) "Contains alcohol (methanol)."
31 (3) "Contains alcohol (ethanol and methanol)."
32 (4) "*Contains ETBE (ethyl tertiary butyl ether).*"
33 (5) "*Contains MTBE (methyl tertiary butyl ether).*"
34 (6) "*Contains TAME (tertiary amyl methyl ether).*"

35 **Devices**

36 (e) (1) *Devices* dispensing M-85 or M-100 methanol
37 fuel shall be exempt from ~~the requirements of this~~
38 subdivision (d) if the dispenser is labeled pursuant to
39 subdivisions (a) and (f) using the word "methanol" as the



1 product name and M-85 or M-100, as applicable, as grade
2 designations.

3 (2) *Devices dispensing E-85 or E-100 ethanol fuel shall*
4 *be exempt from subdivision (d) if the dispenser is labeled*
5 *pursuant to subdivisions (a) and (f) using the word*
6 *“ethanol” as the product name and E-85 or E-100, as*
7 *applicable, as grade designations.*

8 ~~(e)~~

9 (f) When the product is a motor fuel consisting of a
10 mixture or premixture of gasoline and oil or
11 gasoline-oxygenate blend and motor oil, there shall be
12 conspicuously displayed on the dispensing device at least
13 one sign or label stating the ratio of gasoline to motor oil
14 or gasoline-oxygenate blend to motor oil.

15 ~~(f)~~

16 (g) All signs or labels required by this section for retail
17 motor fuel dispensers and containers of more than one
18 gallon capacity shall be in letters and numerals not less
19 than one-half inch (12.70 mm) in height. On containers
20 of one gallon or less, the signs or labels shall be in letters
21 and numerals not less than one-fourth inch (6.35 mm) in
22 height and one-sixteenth inch (1.59 mm) in width.

23 ~~(g)~~

24 (h) The provisions of this section pertaining to octane
25 numbers or antiknock index and motor oil SAE viscosity
26 number grade shall not apply to products sold for aviation
27 purposes.

28 ~~(h)~~

29 (i) This section shall apply, with respect to thinners or
30 solvents, only to the sale, delivery, or offer for sale of the
31 products through service stations, garages, and other
32 retail outlets.

33 *SEC. 6. Section 25299.37.1 is added to the Health and*
34 *Safety Code, to read:*

35 *25299.37.1. No closure letter pursuant to this chapter*
36 *shall be issued unless the soil and groundwater at the site*
37 *have been tested for MTBE and the results of that testing*
38 *are known to the regional board.*

39 *SEC. 7. Section 43830 of the Health and Safety Code*
40 *is amended to read:*



1 43830. (a) The state board shall establish, by
2 regulation, maximum standards for the volatility of
3 gasoline at or below nine pounds per square inch Reid
4 vapor pressure as determined by the American Society
5 for Testing and Materials, Test D 323-58, or by an
6 appropriate test determined by the state board, for
7 gasoline sold in this state.

8 (b) The state board, in adopting the regulations, shall
9 give full consideration to topography and climatic
10 conditions and may provide that the standards imposed
11 thereby shall apply in those areas which the state board
12 determines necessary ~~in order~~ to carry out the purposes
13 of this division.

14 (c) Notwithstanding any other law or regulation, until
15 October 1, 1993, any blend of gasoline of at least 10
16 percent ethyl alcohol shall not result in a violation of any
17 regulation adopted by the state board pursuant to this
18 section unless the volatility of the gasoline used in the
19 blend exceeds the applicable standard of the state board.

20 (d) For the purposes of this section, “ethyl alcohol”
21 (also known as ethanol) means fuel that meets all of the
22 following requirements:

23 (1) It is produced from agricultural commodities,
24 renewable resources, or coal.

25 (2) It is rendered unsuitable for human consumption
26 at the time of its manufacture or immediately thereafter.

27 (e) For the purposes of determining the percentage of
28 ethyl alcohol contained in gasoline, the volume of alcohol
29 includes the volume of any denaturant approved for that
30 purpose by the United States Bureau of Alcohol, Tobacco
31 and Firearms, provided these denaturants do not exceed
32 5 percent of the volume of alcohol (including
33 denaturants).

34 (f) From October 1, 1993, to December 31, 1995,
35 inclusive, any blend of gasoline of at least 10 percent ethyl
36 alcohol shall not result in a violation of the Reid vapor
37 pressure standard adopted by the state board pursuant to
38 this section unless it is determined by the state board on
39 the basis of independently verifiable automobile exhaust
40 and evaporative emission tests performed on a



1 representative fleet of automobiles that the blend would
2 result in a net increase in the ozone forming potential of
3 the total emissions, excluding emissions of oxides of
4 nitrogen, when compared to the total emissions,
5 excluding emissions of oxides of nitrogen, from the same
6 automobile fleet using gasoline that meets all applicable
7 specifications for Phase I gasoline established by the state
8 board.

9 (g) On and after January 1, 1996, any blend of gasoline
10 of at least 10 percent ethyl alcohol shall not result in a
11 violation of the Reid vapor pressure standard adopted by
12 the state board pursuant to this section *or any regulation*
13 *adopted by the state board limiting the oxygen content*
14 *of gasoline* unless it is determined by the state board on
15 the basis of independently verifiable automobile exhaust
16 and evaporative emission tests performed on a
17 representative fleet of automobiles that the blend would
18 result in a net increase in the ozone forming potential of
19 the total emissions, excluding emissions of oxides of
20 nitrogen, when compared to the total emissions,
21 excluding emissions of oxides of nitrogen, from the same
22 automobile fleet using gasoline that meets all applicable
23 specifications for Phase II gasoline established by the state
24 board.

25 (h) Notwithstanding subdivisions (f) and (g), at any
26 time that the state board adopts, by regulation, standards
27 specifying acceptable levels for emissions of oxides of
28 nitrogen for all reformulated fuels, any blend of gasoline
29 of at least 10 percent ethyl alcohol that exceeds those
30 levels no longer qualifies for an exemption from the Reid
31 vapor pressure standard established by the state board.

32 *SEC. 8.* Section 116366 is added to the Health and
33 Safety Code, to read:

34 116366. ~~(a)~~ Notwithstanding any other provision of
35 law, no remediation or treatment of contaminants in
36 drinking water consisting of methyl tertiary butyl ether
37 (MTBE), or products containing MTBE, shall be paid for
38 by water systems or their customers. All costs associated
39 with remediation or treatment of contaminants in



1 drinking water containing MTBE, or products containing
2 MTBE, shall be paid from the ____ Fund.

3 ~~(b) Notwithstanding any other provision of law, the~~
4 ~~sum of ten million dollars (\$10,000,000) is hereby~~
5 ~~appropriated from the ____ Fund to the department~~
6 ~~for the following purposes:~~

7 ~~(1) One million dollars (\$1,000,000) for the~~
8 ~~department to immediately establish and administer a~~
9 ~~statewide MTBE drinking water monitoring program.~~

10 ~~(2) Nine million dollars (\$9,000,000) for the~~
11 ~~department to provide direct emergency grants to public~~
12 ~~water systems for the purpose of establishing local~~
13 ~~monitoring programs for surface and groundwater for~~
14 ~~MTBE in drinking water.~~

15 ~~SEC. 7.—~~

16 *SEC. 9.* Section 13285 is added to the Water Code, to
17 read:

18 13285. (a) Notwithstanding any other provision of
19 law, any discharge from a storage tank, pipeline, or other
20 container of methyl tertiary butyl ether (MTBE), or of
21 any pollutant that contains MTBE, that poses a threat to
22 drinking water, or to groundwater or surface water that
23 may reasonably be used for drinking water, or to coastal
24 waters shall be cleaned up to a level that poses no
25 significant threat to human health or the environment,
26 plus an adequate margin of safety.

27 (b) Notwithstanding any other provision of law, no
28 water system, or its customers, shall be responsible for
29 remediation or treatment costs of water contaminated by
30 MTBE or a product that contains MTBE.

31 ~~SEC. 8. No reimbursement is required by this act~~
32 ~~pursuant to Section 6 of Article XIII B of the California~~
33 ~~Constitution for certain costs that may be incurred by a~~
34 ~~local agency or school district because in that regard this~~
35 ~~act creates a new crime or infraction, eliminates a crime~~
36 ~~or infraction, or changes the penalty for a crime or~~
37 ~~infraction, within the meaning of Section 17556 of the~~
38 ~~Government Code, or changes the definition of a crime~~
39 ~~within the meaning of Section 6 of Article XIII B of the~~
40 ~~California Constitution.~~



1 ~~Moreover, no reimbursement is required by this act~~
2 ~~pursuant to Section 6 of Article XIII B of the California~~
3 ~~Constitution for certain other costs because a local agency~~
4 ~~or school district has the authority to levy service charges,~~
5 ~~fees, or assessments sufficient to pay for the program or~~
6 ~~level of service mandated by this act, within the meaning~~
7 ~~of Section 17556 of the Government Code.~~

8 ~~Notwithstanding Section 17580 of the Government~~
9 ~~Code, unless otherwise specified, the provisions of this act~~
10 ~~shall become operative on the same date that the act~~
11 ~~takes effect pursuant to the California Constitution.~~

12 ~~SEC. 9.—~~

13 *SEC. 10. No reimbursement is required by this act*
14 *pursuant to Section 6 of Article XIII B of the California*
15 *Constitution because the only costs that may be incurred*
16 *by a local agency or school district will be incurred*
17 *because this act creates a new crime or infraction,*
18 *eliminates a crime or infraction, or changes the penalty*
19 *for a crime or infraction, within the meaning of Section*
20 *17556 of the Government Code, or changes the definition*
21 *of a crime within the meaning of Section 6 of Article*
22 *XIII B of the California Constitution.*

23 *Notwithstanding Section 17580 of the Government*
24 *Code, unless otherwise specified, the provisions of this act*
25 *shall become operative on the same date that the act*
26 *takes effect pursuant to the California Constitution.*

27 *SEC. 11. This act is an urgency statute necessary for*
28 *the immediate preservation of the public peace, health,*
29 *and safety within the meaning of Article I of the*
30 *Constitution and shall go into immediate effect. The facts*
31 *constituting the necessity are:*

32 *In order to protect human health and the environment*
33 *from the effects of MTBE, as well as to remedy past*
34 *environmental damage from using MTBE in gasoline, it*
35 *is necessary that this act take effect immediately.*

