



January 25, 2012

## SENATE BILL No. 350

DIGEST OF SB 350 (Updated January 23, 2012 2:14 pm - DI 109)

**Citations Affected:** IC 6-2.5; IC 15-15; IC 34-30.

**Synopsis:** Corn marketing council. Repeals provisions concerning deductions to retail merchants under the E85 reimbursement program. Provides that a motor fuel retail dealer is immune from civil liability for property damages that result from the use in a motor of a motor fuel that was not compatible for use in the motor and was dispensed by the retail dealer, if the incompatible motor fuel: (1) conformed to standards and specifications for the sale of the motor fuel as established under applicable federal and state laws; (2) was selected for use in the motor by a person other than the retail dealer or an employee or agent of the retail dealer; and (3) was dispensed from a motor fuel pump that conspicuously displayed a label that correctly identified the type of motor fuel that was dispensed from the pump. Adds requirements applying to membership on the corn marketing council (council). Changes the date by which a petition for candidacy to the council may be filed. Provides that the council operates on the basis of its own fiscal year. (Current law requires the council to operate on a state fiscal year basis.) Establishes a formula to determine the maximum administrative expenses of the council. Provides that the cost of processing refunds and the cost of applying for grants are not administrative expenses. Requires a first purchaser of corn to remit the corn sale assessment within 30 days after collection. Requires a first purchaser that is not subject to assessment to sign and date an exemption form. Establishes an assessment refund schedule based upon the amount owed. Makes a technical change.

**Effective:** July 1, 2012.

**Gard**

January 9, 2012, read first time and referred to Committee on Agriculture and Natural Resources.  
January 24, 2012, amended, reported favorably — Do Pass.

SB 350—LS 6921/DI 77+



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January 25, 2012

Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

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## SENATE BILL No. 350

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 6-2.5-7-5, AS AMENDED BY P.L.148-2009,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2012]: Sec. 5. (a) Each retail merchant who dispenses  
4 gasoline or special fuel from a metered pump shall, in the manner  
5 prescribed in IC 6-2.5-6, report to the department the following  
6 information:  
7 (1) The total number of gallons of gasoline sold from a metered  
8 pump during the period covered by the report.  
9 (2) The total amount of money received from the sale of gasoline  
10 described in subdivision (1) during the period covered by the  
11 report.  
12 (3) That portion of the amount described in subdivision (2) which  
13 represents state and federal taxes imposed under this article,  
14 IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.  
15 (4) The total number of gallons of special fuel sold from a  
16 metered pump during the period covered by the report.  
17 (5) The total amount of money received from the sale of special

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1 fuel during the period covered by the report.

2 (6) That portion of the amount described in subdivision (5) that  
3 represents state and federal taxes imposed under this article,  
4 IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.

5 (7) The total number of gallons of E85 sold from a metered pump  
6 during the period covered by the report.

7 (b) Concurrently with filing the report, the retail merchant shall  
8 remit the state gross retail tax in an amount which equals six and  
9 fifty-four hundredths percent (6.54%) of the gross receipts, including  
10 state gross retail taxes but excluding Indiana and federal gasoline and  
11 special fuel taxes, received by the retail merchant from the sale of the  
12 gasoline and special fuel that is covered by the report and on which the  
13 retail merchant was required to collect state gross retail tax. The retail  
14 merchant shall remit that amount regardless of the amount of state  
15 gross retail tax which the merchant has actually collected under this  
16 chapter. However, the retail merchant is entitled to deduct and retain  
17 the amounts prescribed in subsection (c); IC 6-2.5-6-10 and  
18 IC 6-2.5-6-11.

19 (c) A retail merchant is entitled to deduct from the amount of state  
20 gross retail tax required to be remitted under subsection (b) the amount  
21 determined under STEP THREE of the following formula:

22 STEP ONE: Determine:

23 (A) the sum of the prepayment amounts made during the  
24 period covered by the retail merchant's report; minus

25 (B) the sum of prepayment amounts collected by the retail  
26 merchant, in the merchant's capacity as a qualified distributor,  
27 during the period covered by the retail merchant's report.

28 STEP TWO: Subject to subsections (d) and (f); for qualified  
29 reporting periods beginning after June 30, 2009; and ending  
30 before July 1, 2020; determine the product of:

31 (A) eighteen cents (\$0.18); multiplied by

32 (B) the number of gallons of E85 sold at retail by the retail  
33 merchant during the period covered by the retail merchant's  
34 report.

35 STEP THREE: Add the amounts determined under STEPS ONE  
36 and TWO.

37 For purposes of this section, a prepayment of the gross retail tax is  
38 presumed to occur on the date on which it is invoiced.

39 (d) The total amount of deductions allowed under subsection (c)  
40 STEP TWO may not exceed the amount of money that the budget  
41 agency determines is available in the retail merchant E85 deduction  
42 reimbursement fund established under IC 15-15-12-30.5 for the

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1 deductions for all retail merchants in a particular qualified reporting  
 2 period. A retail merchant is not required to apply for an allocation of  
 3 deductions under subsection (c) STEP TWO. Before August 1 of each  
 4 year, the budget agency shall estimate whether the amount of  
 5 deductions from the immediately preceding qualified reporting period  
 6 that are subject to reimbursement under IC 15-15-12-30.5(f) and the  
 7 deductions expected to be reported under subsection (c) STEP TWO  
 8 for the qualified reporting periods beginning after December 31 and  
 9 ending before April 1 of the following year will exceed the amount of  
 10 money available in the retail merchant E85 deduction reimbursement  
 11 fund for the deductions. If the budget agency determines that the  
 12 amount of money in the retail merchant E85 deduction reimbursement  
 13 fund is insufficient to cover the amount of the deductions expected to  
 14 be reported, the budget agency shall publish in the Indiana Register a  
 15 notice that the deduction program under subsection (c) STEP TWO is  
 16 suspended with respect to the qualified reporting periods occurring in  
 17 the following calendar year and that no deductions will be granted for  
 18 retail transactions occurring in the qualified reporting periods occurring  
 19 in the following calendar year.

20 (e) As used in this section, "qualified reporting period" refers to a  
 21 reporting period beginning after December 31 and ending before April  
 22 1 of each year.

23 (f) The budget agency may suspend the deduction program under  
 24 subsection (c) STEP TWO for a particular year at any time during a  
 25 qualified reporting period if the budget agency determines that the  
 26 amount of money in the retail merchant E85 deduction reimbursement  
 27 fund and the amount of money that will be transferred to the fund on  
 28 July 1 will not be sufficient to reimburse the deductions expected to  
 29 occur before the deduction program for the year ends on March 31. The  
 30 budget agency shall immediately provide notice to the participating  
 31 retail merchants of the decision to suspend the deduction program for  
 32 that year.

33 SECTION 2. IC 6-2.5-7-6 IS REPEALED [EFFECTIVE JULY 1,  
 34 2012]. Sec. 6: (a) If the deduction under section 5(c) of this chapter  
 35 exceeds the amount of gross retail tax required to be remitted under  
 36 section 5(b) of this chapter, the retail merchant is entitled to a credit.  
 37 The credit shall be used as follows:

38 (1) First, the credit shall be applied against gross retail and use  
 39 tax liability of the retail merchant that is required to be remitted  
 40 under IC 6-2.5-6.

41 (2) Second, any amount remaining shall be applied against the  
 42 gasoline tax liability of the retail merchant, as determined under

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1 IC 6-6-1.1, excluding any liability for gasoline delivered to a  
2 taxable marine facility.

3 A retail merchant may file a claim for a refund instead of taking a  
4 credit or for a refund of any excess tax payment remaining after the  
5 credits allowed by this section. In addition, a retail merchant may file  
6 a claim for a refund under section 12 of this chapter.

7 (b) A retail merchant that is entitled to a refund under this section  
8 must file a claim for the refund on the form approved by the  
9 department and must include any supporting documentation reasonably  
10 required by the department. If a retail merchant files a completed  
11 refund claim form that includes all supporting documentation, the  
12 excess tax payment that is not refunded within ninety (90) days accrues  
13 interest as provided in IC 6-8.1-9-2.

14 (c) Before the fifth day of each month, the department shall  
15 determine and notify the treasurer of state of the amount of credits  
16 applied during the preceding month against the gasoline tax under this  
17 section. The treasurer of state shall transfer from the general fund:

- 18 (1) to the highway, road, and street fund, twenty-five percent  
19 (25%) of the amount set forth in the department's notice; and  
20 (2) to the motor fuel tax fund of the motor vehicle highway  
21 account, seventy-five percent (75%) of the amount set forth in the  
22 department's notice.

23 SECTION 3. IC 6-2.5-7-12 IS AMENDED TO READ AS  
24 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 12. (a) Except as  
25 provided in subsection (b), a distributor that prepays the state gross  
26 retail tax under this chapter shall separately state the amount of tax  
27 prepaid on the invoice the distributor issues to its purchaser or  
28 recipient. The purchaser or recipient shall pay to the distributor an  
29 amount equal to the prepaid tax.

30 (b) A distributor that:  
31 (1) prepays the state gross retail tax under this chapter;  
32 (2) is a retail merchant; and  
33 (3) sells gasoline that is exempt from the gross retail tax, as  
34 evidenced by a purchaser's exemption certificate issued by the  
35 department;

36 may not require the exempt purchaser to pay the gross retail taxes  
37 prepaid in the gasoline sold to the exempt purchaser. A distributor that  
38 has prepaid gross retail taxes and has not been reimbursed because the  
39 gasoline is sold to an exempt purchaser may file a claim for a refund,  
40 (in addition to any claim for a refund under section 6 of this chapter);  
41 if the amount of unreimbursed prepaid gross retail taxes exceeds five  
42 hundred dollars (\$500). A claim for a refund must be on the form

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1 approved by the department and include all supporting documentation  
 2 reasonably required by the department. If a distributor files a completed  
 3 refund claim form that includes all supporting documentation, the  
 4 department shall authorize the auditor of state to issue a warrant for the  
 5 refund.

6 SECTION 4. IC 15-15-12-13, AS ADDED BY P.L.2-2008,  
 7 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8 JULY 1, 2012]: Sec. 13. As used in this chapter, "producer" means a  
 9 person engaged in the business of producing and marketing corn in  
 10 Indiana under:

11 (1) the producer's own name; or

12 (2) **the name of an entity in which the producer has**  
 13 **ownership.**

14 SECTION 5. IC 15-15-12-17, AS ADDED BY P.L.2-2008,  
 15 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 16 JULY 1, 2012]: Sec. 17. (a) The Indiana corn marketing council is  
 17 established. The council is a public body corporate and politic, and  
 18 though it is separate from the state, the exercise by the council of its  
 19 powers constitutes an essential governmental function. The council  
 20 may sue and be sued and plead and be impleaded.

21 (b) The council consists of seventeen (17) voting and eight (8) ex  
 22 officio, nonvoting members. The elected members from districts listed  
 23 under section 21(a) of this chapter must: ~~be:~~

24 (1) ~~be~~ registered as voters in Indiana;

25 (2) ~~be~~ at least eighteen (18) years of age; ~~and~~

26 (3) ~~be~~ producers; ~~and~~

27 (4) **have been subject to an assessment under section 32 of this**  
 28 **chapter made during the previous two (2) years.**

29 (c) Each elected member of the council must reside in the district  
 30 identified in section 21(a) of this chapter from which the member is  
 31 elected.

32 (d) Each member of the council is entitled to reimbursement for  
 33 traveling expenses and other expenses actually incurred in connection  
 34 with the member's duties, as provided in the state travel policies and  
 35 procedures established by the Indiana department of administration and  
 36 approved by the budget agency. However, council members are not  
 37 entitled to a salary or per diem.

38 SECTION 6. IC 15-15-12-23, AS ADDED BY P.L.2-2008,  
 39 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 40 JULY 1, 2012]: Sec. 23. (a) The ballot for the election of a district  
 41 council member must include the name of each producer who:

42 (1) meets the qualifications set forth in section 17(b) of this

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1 chapter; and  
 2 (2) files with the council, ~~before~~ **not later than** June 30 of the  
 3 year of the election, a petition in support of candidacy signed by  
 4 ten (10) other producers who reside in the district.  
 5 (b) The council shall provide petition forms upon request and shall  
 6 make forms available:  
 7 (1) at cooperative extension service offices located in the district;  
 8 and  
 9 (2) via the council's Internet web site.  
 10 (c) The council shall allow a producer to request a ballot through the  
 11 council's Internet web site.  
 12 (d) A name other than the names of the producers who have  
 13 qualified under this section may not be printed on the ballot by the  
 14 council. All names on the ballot must be listed in alphabetical order  
 15 based on the producer's surname.  
 16 (e) The council shall require each producer who submits a ballot to  
 17 provide a separate attestation that the person is an eligible producer.  
 18 SECTION 7. IC 15-15-12-29, AS AMENDED BY P.L.148-2009,  
 19 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20 JULY 1, 2012]: Sec. 29. (a) The council shall pay all expenses incurred  
 21 under this chapter with money from the assessments remitted to the  
 22 council under this chapter.  
 23 (b) The council may invest all money the council receives under this  
 24 chapter, including gifts or grants that are given for the express purpose  
 25 of implementing this chapter, in the same way allowed by law for  
 26 public funds.  
 27 (c) The council may expend money from assessments and from  
 28 investment income not needed for expenses for market development,  
 29 promotion, and research.  
 30 (d) The council may not use money received, collected, or accrued  
 31 under this chapter for any purpose other than the purposes authorized  
 32 by this chapter. The amount of money expended on administering this  
 33 chapter in a ~~state~~ **the council's** fiscal year may not exceed ten percent  
 34 (10%) of the ~~total~~ **average** amount of assessments, grants, and gifts  
 35 received by the council ~~in that state fiscal year~~: **as calculated under**  
 36 **subsection (e).**  
 37 (e) **The council shall determine the amount that it may expend**  
 38 **to administer this chapter using the following formula:**  
 39 **STEP ONE: Determine the amount of assessments, grants,**  
 40 **and gifts received by the council in each of the preceding five**  
 41 **(5) fiscal years beginning with the immediately preceding**  
 42 **fiscal year.**

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1           **STEP TWO: Determine the average annual amount of**  
 2           **assessments, grants, and gifts received by the council in each**  
 3           **fiscal year using three (3) of the five (5) fiscal years described**  
 4           **in STEP ONE after excluding the years in which the total**  
 5           **amount of assessments, grants, and gifts received by the**  
 6           **council were the highest and lowest.**

7           **STEP THREE: Divide the amount in STEP TWO by ten (10).**  
 8           **The amount determined under STEP THREE is the maximum**  
 9           **amount that the council may expend on administering this chapter**  
 10          **for the current fiscal year.**

11          **(f) The cost of processing refunds and the cost of applying for**  
 12          **grants are not administrative expenses under this section.**

13          SECTION 8. IC 15-15-12-30.5 IS REPEALED [EFFECTIVE JULY  
 14          1, 2012]. Sec. 30.5. (a) The retail merchant E85 deduction  
 15          reimbursement fund is established. The fund consists of:

- 16               (1) assessments transferred by the council for deposit in the fund  
 17               under section 32.5 of this chapter;  
 18               (2) gifts; and  
 19               (3) grants.

20          (b) Except as provided in subsection (g), money in the fund may  
 21          only be used for the purposes described in subsection (d).

22          (c) On May 1, the budget agency shall determine the sum of all  
 23          retail merchant deductions allowed under IC 6-2.5-7-5(d) in the  
 24          immediately preceding qualified reporting period (as defined in  
 25          IC 6-2.5-7-5(e)).

26          (d) The budget agency shall transfer the amount determined under  
 27          subsection (c) from the fund for deposit. The amount transferred under  
 28          this subsection shall be deposited in the same manner as state gross  
 29          retail and use taxes are required to be deposited under IC 6-2.5-10-1.

30          (e) The treasurer of state shall invest the money in the fund not  
 31          currently needed to meet the obligations of the fund in the same  
 32          manner as other public money may be invested. Interest that accrues  
 33          from these investments shall be deposited in the fund.

34          (f) If the amount of money in the fund on May 1 is insufficient to  
 35          reimburse the state for all retail merchant deductions allowed under  
 36          IC 6-2.5-7-5(d) in the immediately preceding qualified reporting period  
 37          (as defined in IC 6-2.5-7-5(e)), the budget agency shall deduct from  
 38          any amounts transferred for deposit into the fund in the remainder of  
 39          that calendar year an amount sufficient to cure the insufficiency. The  
 40          budget agency shall transfer any amounts deducted under this  
 41          subsection for deposit in the same manner as state gross retail and use  
 42          taxes are required to be deposited under IC 6-2.5-10-1.



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1 (g) If the retail merchant E85 deduction program is terminated, any  
2 balance in the fund must be transferred to the council.

3 SECTION 9. IC 15-15-12-32, AS ADDED BY P.L.2-2008,  
4 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
5 JULY 1, 2012]: Sec. 32. (a) An assessment of one-half cent (\$0.005)  
6 per bushel must be collected on all corn sold in Indiana. The  
7 assessment may be imposed and collected on a quantity of corn only  
8 once and must be collected by the first purchaser. A buyer of corn who  
9 purchases more than one hundred thousand (100,000) bushels annually  
10 for the buyer's own use as seed or feed is responsible only for collecting  
11 checkoff assessments on corn purchases made after the buyer exceeds  
12 the one hundred thousand (100,000) bushel threshold and becomes a  
13 first purchaser. The rate of the assessment imposed by this section may  
14 be changed only by the general assembly.

15 (b) The first purchaser of a quantity of corn shall deduct the  
16 assessment on the corn from the money to be paid to the producer  
17 based on the sale of the corn. A first purchaser shall accumulate  
18 assessments collected under this subsection throughout each of the  
19 following periods:

- 20 (1) January, February, and March.
- 21 (2) April, May, and June.
- 22 (3) July, August, and September.
- 23 (4) October, November, and December.

24 (c) At the end of each period, the first purchaser shall remit to the  
25 council all assessments collected during the period. A first purchaser  
26 who remits all assessments collected during a period within thirty (30)  
27 days after the end of the period is entitled to retain three percent (3%)  
28 of the total of the assessments as a handling fee.

29 **(d) The assessment on the sale of the corn must occur when the**  
30 **payment for the corn is received by the producer.**

31 **(e) A first purchaser who is not subject to the assessment under**  
32 **this section shall sign and date an exemption form. The council**  
33 **shall prepare the exemption form.**

34 SECTION 10. IC 15-15-12-32.5 IS REPEALED [EFFECTIVE  
35 JULY 1, 2012]. Sec. 32.5: (a) On July 1, 2010, the council shall  
36 transfer five hundred thousand dollars (\$500,000) to the budget agency  
37 for deposit in the retail merchant E85 deduction reimbursement fund  
38 established by section 30.5 of this chapter.

39 (b) On July 1, 2011, and each year thereafter, the council shall  
40 transfer to the budget agency for deposit in the retail merchant E85  
41 deduction reimbursement fund established by section 30.5 of this  
42 chapter an amount equal to the difference between:



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1           (1) five hundred thousand dollars (\$500,000); minus  
 2           (2) the balance remaining in the fund on June 30:  
 3 However, the amount transferred under this subsection may not exceed  
 4 five hundred thousand dollars (\$500,000).

5           SECTION 11. IC 15-15-12-33, AS AMENDED BY P.L.148-2009,  
 6 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 2012]: Sec. 33. (a) If a producer has sold corn and the state  
 8 assessment was deducted from the sale price of the corn, the producer  
 9 may secure a refund equal to the amount deducted upon filing a written  
 10 application.

11           (b) A producer's application for a refund under this section must be  
 12 made to the council not more than one hundred eighty (180) days after  
 13 the state assessment is deducted from the sale price of the producer's  
 14 corn.

15           (c) The council shall provide application forms to a first purchaser  
 16 for purposes of this section upon request and make application forms  
 17 available on the council's Internet web site. ~~Before July 1, 2009, a first~~  
 18 ~~purchaser shall provide an application form to each producer along~~  
 19 ~~with each settlement form that shows a deduction. After June 30, 2009,~~  
 20 A first purchaser shall make application forms available in plain view  
 21 at the first purchaser's place of business.

22           (d) Proof that an assessment has been deducted from the sale price  
 23 of a producer's corn must be attached to each application for a refund  
 24 submitted under this section by a producer. The proof that an  
 25 assessment was deducted may be in the form of a duplicate or an  
 26 original copy of the purchase invoice or settlement sheet from the first  
 27 purchaser. The refund form and proof of assessment may be mailed or  
 28 faxed to the council. The refund form must clearly state how to request  
 29 a refund, the address where the form may be mailed, and the fax  
 30 number where the form may be faxed.

31           (e) If a refund is due under this section, the council shall remit the  
 32 refund to the producer **as follows:**

33           **(1) For:**  
 34           **(A) refunds of more than twenty-five dollars (\$25); or**  
 35           **(B) multiple refunds that total more than twenty-five**  
 36           **dollars (\$25);**  
 37           **the council shall remit the refund** not later than thirty (30) days  
 38 after the date the producer's completed application and proof of  
 39 assessment are received.

40           **(2) For refunds of twenty-five dollars (\$25) or less, the council**  
 41 **shall remit the refund:**  
 42           **(A) on March 31, if the producer's completed application**

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1                   **and proof of assessment are received before March 1; or**  
 2                   **(B) on September 30, if the producer's completed**  
 3                   **application and proof of assessment are received on or**  
 4                   **after March 1 and before September 1.**

5                   SECTION 12. IC 34-30-24-1, AS ADDED BY P.L.122-2006,  
 6                   SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7                   JULY 1, 2012]: Sec. 1. (a) As used in this chapter, "E85" has the  
 8                   meaning set forth in IC 6-6-1.1-103.

9                   (b) As used in this chapter, "flexible fuel vehicle" means any vehicle  
 10                   that is equipped to operate when fueled entirely by E85.

11                   **(c) As used in this chapter, "incompatible motor fuel" means a**  
 12                   **motor fuel that is not compatible with use in a motor as determined**  
 13                   **by the manufacturer of the motor.**

14                   **(d) As used in this chapter, "motor fuel outlet" means a location**  
 15                   **where motor fuel is sold at retail to the public.**

16                   (e) As used in this chapter, "qualified person or entity" means  
 17                   any person or entity that sells, supplies, distributes, manufactures, or  
 18                   refines E85.

19                   **(f) As used in this chapter, "retail dealer" means a person who**  
 20                   **sells motor fuel at retail.**

21                   SECTION 13. IC 34-30-24-3 IS ADDED TO THE INDIANA  
 22                   CODE AS A NEW SECTION TO READ AS FOLLOWS  
 23                   [EFFECTIVE JULY 1, 2012]: **Sec. 3. A retail dealer is immune from**  
 24                   **civil liability for property damages that result from the use in a**  
 25                   **motor of an incompatible motor fuel dispensed by the retail dealer**  
 26                   **at a motor fuel outlet if the incompatible motor fuel:**

- 27                   **(1) conformed to standards and specifications for the motor**
- 28                   **fuel as established under applicable federal and state laws;**
- 29                   **(2) was selected for use in the motor by a person other than:**
  - 30                   **(A) the retail dealer; or**
  - 31                   **(B) an employee or agent of the retail dealer; and**
- 32                   **(3) was dispensed from a motor fuel pump that conspicuously**
- 33                   **displayed a label that correctly identified the type of motor**
- 34                   **fuel that was dispensed from the pump.**

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## COMMITTEE REPORT

Madam President: The Senate Committee on Agriculture and Natural Resources, to which was referred Senate Bill No. 350, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, between lines 22 and 23, begin a new paragraph and insert:

"SECTION 3. IC 6-2.5-7-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 12. (a) Except as provided in subsection (b), a distributor that prepays the state gross retail tax under this chapter shall separately state the amount of tax prepaid on the invoice the distributor issues to its purchaser or recipient. The purchaser or recipient shall pay to the distributor an amount equal to the prepaid tax.

(b) A distributor that:

- (1) prepays the state gross retail tax under this chapter;
- (2) is a retail merchant; and
- (3) sells gasoline that is exempt from the gross retail tax, as evidenced by a purchaser's exemption certificate issued by the department;

may not require the exempt purchaser to pay the gross retail taxes prepaid in the gasoline sold to the exempt purchaser. A distributor that has prepaid gross retail taxes and has not been reimbursed because the gasoline is sold to an exempt purchaser may file a claim for a refund, ~~(in addition to any claim for a refund under section 6 of this chapter)~~; if the amount of unreimbursed prepaid gross retail taxes exceeds five hundred dollars (\$500). A claim for a refund must be on the form approved by the department and include all supporting documentation reasonably required by the department. If a distributor files a completed refund claim form that includes all supporting documentation, the department shall authorize the auditor of state to issue a warrant for the refund.

SECTION 4. IC 15-15-12-13, AS ADDED BY P.L.2-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13. As used in this chapter, "producer" means a person engaged in the business of producing and marketing corn in Indiana under:

- (1) the producer's own name; or
- (2) **the name of an entity in which the producer has ownership.**

Page 4, line 35, after "producers;" insert "**and**".

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Page 4, delete line 36.

Page 4, line 37, delete "(5)" and insert "(4)".

Page 4, line 38, delete "years; and" and insert "years."

Page 4, delete lines 39 through 40.

Page 7, delete lines 27 through 42, begin a new paragraph and insert:

"(b) The first purchaser of a quantity of corn shall deduct the assessment on the corn from the money to be paid to the producer based on the sale of the corn. A first purchaser shall accumulate assessments collected under this subsection throughout each of the following periods:

- (1) January, February, and March.
- (2) April, May, and June.
- (3) July, August, and September.
- (4) October, November, and December.

(c) At the end of each period, the first purchaser shall remit to the council all assessments collected during the period. A first purchaser who remits all assessments collected during a period within thirty (30) days after the end of the period is entitled to retain three percent (3%) of the total of the assessments as a handling fee.

**(d) The assessment on the sale of the corn must occur when the payment for the corn is received by the producer."**

Page 8, line 1, delete "(d)" and insert "(e)".

Page 9, after line 16, begin a new paragraph and insert:

"SECTION 10. IC 34-30-24-1, AS ADDED BY P.L.122-2006, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) As used in this chapter, "E85" has the meaning set forth in IC 6-6-1.1-103.

(b) As used in this chapter, "flexible fuel vehicle" means any vehicle that is equipped to operate when fueled entirely by E85.

**(c) As used in this chapter, "incompatible motor fuel" means a motor fuel that is not compatible with use in a motor as determined by the manufacturer of the motor.**

**(d) As used in this chapter, "motor fuel outlet" means a location where motor fuel is sold at retail to the public.**

~~(e)~~ (e) As used in this chapter, "qualified person or entity" means any person or entity that sells, supplies, distributes, manufactures, or refines E85.

**(f) As used in this chapter, "retail dealer" means a person who sells motor fuel at retail.**

SECTION 11. IC 34-30-24-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS



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[EFFECTIVE JULY 1, 2012]: **Sec. 3. A retail dealer is immune from civil liability for property damages that result from the use in a motor of an incompatible motor fuel dispensed by the retail dealer at a motor fuel outlet if the incompatible motor fuel:**

- (1) conformed to standards and specifications for the motor fuel as established under applicable federal and state laws;**
- (2) was selected for use in the motor by a person other than:
  - (A) the retail dealer; or**
  - (B) an employee or agent of the retail dealer; and****
- (3) was dispensed from a motor fuel pump that conspicuously displayed a label that correctly identified the type of motor fuel that was dispensed from the pump."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 350 as introduced.)

MISHLER, Chairperson

Committee Vote: Yeas 10, Nays 0.

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