

As Introduced

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H. B. No. 297

Representatives Weddington, Fende

**Cosponsors: Representatives Hagan, R., Foley, Antonio, Murray, Driehaus,
Ashford, Patmon**

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A B I L L

To amend section 1327.99, to enact new section 1
1327.70 and section 319.56, and to repeal section 2
1327.70 of the Revised Code to require the 3
Department of Agriculture to establish a motor 4
fuel quality testing program under which county 5
auditors may conduct such testing. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 1327.99 be amended and new section 7
1327.70 and section 319.56 of the Revised Code be enacted to read 8
as follows: 9

Sec. 319.56. (A) As used in this section, "motor fuel" has 10
the same meaning as in section 1327.70 of the Revised Code. 11

(B) In accordance with the motor fuel quality testing program 12
established under section 1327.70 of the Revised Code and rules 13
adopted under it, a county auditor, or a person who is designated 14
by the county auditor to act as a motor fuel inspector, may 15
inspect and test motor fuel that is sold in the auditor's county, 16
sediment from motor fuel pumps, and water in motor fuel storage 17
tanks that are located in the auditor's county. If a county 18

auditor or a person who is designated by the county auditor to act 19
as a motor fuel inspector inspects and tests motor fuel that is 20
sold in the auditor's county, sediment from motor fuel pumps, or 21
water in motor fuel storage tanks that are located in the 22
auditor's county, the auditor or the person who is designated to 23
act as a motor fuel inspector shall determine the frequency of 24
inspections of retailers that sell or offer for sale motor fuel in 25
the auditor's county. A county auditor may terminate motor fuel 26
testing in the auditor's county by sending written notice of the 27
termination to the director of agriculture. 28

Sec. 1327.70. (A) As used in this section: 29

(1) "Authorized testing equipment" means any type of testing 30
equipment that is authorized for use in the motor fuel quality 31
testing program in rules adopted under division (B) of this 32
section. 33

(2) "Diesel fuel" has the same meaning as in section 5735.01 34
of the Revised Code. 35

(3) "Motor fuel" means gasoline or diesel fuel that is sold 36
by a retailer. 37

(B) The director of agriculture shall establish a motor fuel 38
quality testing program. In establishing the program, the director 39
shall adopt rules in accordance with Chapter 119. of the Revised 40
Code that do all of the following: 41

(1)(a) Establish requirements that are modeled on the uniform 42
laws and regulations of the national institute of standards and 43
technology published in handbook 130 and that incorporate 44
standards for motor fuel based on standards developed by the 45
American society for testing and materials committee D02 on 46
petroleum products and lubricants; 47

(b) Specify the types of testing equipment that may be used 48

in the motor fuel quality testing program, which shall include 49
portable scanning devices. 50

(2) Authorize a county auditor, or a person who is designated 51
by the county auditor to act as a motor fuel inspector, to do any 52
or all of the following: 53

(a) Inspect and test motor fuel that is sold in the auditor's 54
county; 55

(b) Inspect each location at which a retailer sells or offers 56
for sale motor fuel in the auditor's county to determine whether 57
the retailer is in compliance with the program; 58

(c) Upon the county auditor's own initiative or upon a 59
complaint made by a person, inspect any location where a retailer 60
sells or offers for sale motor fuel; 61

(d) Determine the frequency of inspections of retailers that 62
sell or offer for sale motor fuel in the auditor's county; 63

(e) Terminate motor fuel testing in the auditor's county by 64
sending written notice of the termination to the director. 65

(3) Require a person who is designated by a county auditor to 66
act as a motor fuel inspector to successfully complete training 67
that is provided by the director, another state, an institution of 68
higher education that has received a certificate of authorization 69
from the Ohio board of regents under section 1713.02 of the 70
Revised Code, a state institution of higher education as defined 71
in section 3345.011 of the Revised Code, or a private firm that is 72
approved and monitored by the director; 73

(4) Require a retailer, upon the request of a county auditor 74
or a county auditor's designated inspector, immediately to provide 75
to the auditor or inspector, free of charge and in containers 76
provided by the auditor or inspector, an amount of motor fuel as 77
required by the auditor or inspector for testing. The rules shall 78

require that each motor fuel sample that is provided for purposes 79
of the motor fuel quality testing program be pumped by the county 80
auditor or the county auditor's designated inspector. 81

(5)(a) Require a county auditor or a county auditor's 82
designated inspector to test a sample that is provided in 83
accordance with rules adopted under division (B)(4) of this 84
section using authorized testing equipment to determine whether 85
the motor fuel complies with the standards established for motor 86
fuel by the American society for testing and materials committee 87
D02 on petroleum products and lubricants. In addition, the rules 88
shall require the auditor or inspector to provide the results of 89
the testing to the retailer. 90

(b) Specify that motor fuel is in compliance with standards 91
if it is within one octane point of the applicable octane 92
certification using authorized testing equipment or within 93
six-tenths of one octane point of the applicable octane 94
certification when tested by a certified laboratory. 95

(6)(a) Allow a retailer, if the results of the motor fuel 96
quality testing using authorized testing equipment indicate that 97
the motor fuel is not in compliance with the standards established 98
for octane certification, to challenge the results by immediately 99
submitting a written statement, on a form prescribed by the 100
director, to the county auditor or inspector before the auditor or 101
inspector leaves the retailer's location indicating that the 102
retailer disagrees with the results of the testing. The rules 103
shall require the county auditor or the designated inspector, if 104
the retailer challenges the results of the testing, to submit a 105
sample of the motor fuel, which shall be provided in accordance 106
with rules adopted under division (B)(6)(b) of this section, to a 107
laboratory that is certified by the American society for testing 108
and materials to determine whether the motor fuel is in compliance 109
with the standards. 110

(b) Require a retailer who challenges the results of the motor fuel quality testing using authorized testing equipment immediately to provide the auditor or inspector, free of charge and in containers provided by the auditor or inspector, an additional amount of motor fuel that is from the same fuel from which the original sample was provided and that is necessary to submit a sample of the motor fuel to a certified laboratory.

(7) Require a retailer to take actions to ensure that motor fuel is brought into compliance with the standards established for octane certification if the results of the motor fuel quality testing conducted by a county auditor or a designated inspector indicate that the motor fuel is not in compliance with the standards and the retailer has not challenged the results that were obtained using authorized testing equipment or if the results of any testing conducted by a certified laboratory indicate that the motor fuel is not in compliance with those standards;

(8) Require a county auditor or a designated inspector to issue a warning to a retailer if the results of the motor fuel quality testing indicate that the motor fuel is not in compliance with the standards established for octane certification. In addition, the rules shall require that not later than five days after a test indicates that the motor fuel is not in compliance with the standards for octane certification, a county auditor or a designated inspector retest the motor fuel using a new sample pumped from the same source from which the original sample of motor fuel was obtained that was not in compliance with the standards.

(9) Require county auditors to maintain records that are determined necessary to ascertain compliance with this section and the rules adopted under it. At a minimum, the rules shall require a county auditor to retain, for not less than two years after the date on which the results from motor fuel quality testing were

obtained, all records of testing that indicate that the motor fuel 143
was not in compliance with the standards established for octane 144
certification. 145

(10) Establish requirements and procedures under which the 146
director may examine records of county auditors to ascertain 147
compliance with this section and the rules adopted under it; 148

(11) Prescribe all forms that are necessary for the motor 149
fuel quality testing program; 150

(12)(a) Establish guidelines and standards in accordance with 151
which a county auditor may test sediment from the motor fuel pumps 152
and water in the motor fuel storage tanks of a retailer located in 153
the auditor's county. The guidelines and standards shall be 154
modeled on the uniform laws and regulations of the national 155
institute of standards and technology published in handbook 130. 156
The rules shall allow a county auditor to establish additional 157
guidelines and standards for the testing of water and sediment, 158
provided that the guidelines and standards do not conflict with 159
state or federal laws and regulations. Further, the rules shall 160
allow a county auditor to establish penalties for a violation of 161
the guidelines and standards established by the director or the 162
county auditor, if applicable. 163

(b) Authorize a county auditor or an inspector designated by 164
the auditor to test the sediment from the motor fuel pumps and 165
water in the motor fuel storage tanks of a retailer located in the 166
auditor's county; 167

(c) Require a retailer to allow an auditor or an auditor's 168
designated inspector to test the sediment from the retailer's 169
motor fuel pumps and water in the retailer's motor fuel storage 170
tanks upon the request of the auditor or designated inspector; 171

(d) Require a county auditor or a designated inspector to 172
issue a warning to a retailer if the results of the testing of 173

sediment from the motor fuel pumps or the testing of water in the 174
motor fuel storage tanks conducted by the auditor or inspector 175
indicate that the amount of sediment from a motor fuel pump or the 176
amount of water in a storage tank is not in compliance with the 177
guidelines and standards established in rules adopted under this 178
section. In addition, the rules shall require that not later than 179
five days after a test indicates that the amount of sediment from 180
a motor fuel pump or the amount of water in a storage tank is not 181
in compliance with the guidelines and standards, a county auditor 182
or a designated inspector retest the sediment or water from the 183
same motor fuel pump or in the same motor fuel storage tank. 184

(e) Require a retailer to take actions to ensure that the 185
motor fuel pump is brought into compliance with the guidelines or 186
standards established in rules adopted under this section if the 187
results of the sediment testing from the motor fuel pumps 188
conducted by the county auditor or the designated inspector 189
indicate that the amount of sediment from the motor fuel pump is 190
not in compliance with the guidelines and standards; 191

(f) Require a retailer to take actions to ensure that the 192
storage tank is brought into compliance with the guidelines or 193
standards established in rules adopted under this section if the 194
results of the water testing of the motor fuel storage tanks 195
conducted by the county auditor or the designated inspector 196
indicate that the storage tank is not in compliance with the 197
guidelines and standards. 198

(13) Establish other procedures, criteria, and requirements 199
that are necessary to implement or administer this section. 200

(C)(1) No retailer shall sell or offer for sale motor fuel 201
that fails to comply with the standards for motor fuel that are 202
established in rules adopted under this section. 203

(2) Notwithstanding any other section of the Revised Code 204

governing the crediting of money from fines, money that is 205
collected from fines pursuant to division (B) of section 1327.99 206
of the Revised Code as a result of a violation of division (C)(1) 207
of this section shall be credited to a special fund that shall be 208
created in the county in which the violation occurred. The county 209
auditor of that county shall use the money in the fund to 210
administer the motor fuel quality testing program in the county. 211

(D) A record of or document concerning test results is a 212
public record under section 149.43 of the Revised Code only if the 213
record or document substantiates a fine that is levied under 214
division (B) of section 1327.99 of the Revised Code. 215

Sec. 1327.99. (A) Whoever violates section 1327.54 or 216
division (A), (B), (C), or (D) of section 1327.61 of the Revised 217
Code is guilty of a misdemeanor of the second degree on a first 218
offense; on each subsequent offense within seven years after the 219
first offense, such person is guilty of a misdemeanor of the first 220
degree. 221

(B)(1) Whoever violates division (C)(1) of section 1327.70 of 222
the Revised Code shall be issued a warning. If the violator 223
challenges the results of authorized testing equipment under rules 224
adopted under that section and subsequent testing of the motor 225
fuel in a certified laboratory in accordance with those rules 226
indicates that the fuel violates the motor fuel standards 227
established in those rules, the violator shall pay an amount that 228
is equal to laboratory costs. 229

(2) A violator who commits a second offense within two years 230
after committing the first offense shall be fined two hundred 231
fifty dollars. If the violator challenges the results of 232
authorized testing equipment under rules adopted under section 233
1327.70 of the Revised Code and subsequent testing of the motor 234
fuel in a certified laboratory in accordance with those rules 235

indicates that the fuel violates the motor fuel standards 236
established in those rules, the violator also shall pay an amount 237
that is equal to laboratory costs. 238

(3) A violator who commits a third offense within two years 239
after committing the first offense shall be fined five hundred 240
dollars. If the violator challenges the results of authorized 241
testing equipment under rules adopted under section 1327.70 of the 242
Revised Code and subsequent testing of the motor fuel in a 243
certified laboratory in accordance with those rules indicates that 244
the fuel violates the motor fuel standards established in those 245
rules, the violator also shall pay an amount that is equal to 246
laboratory costs. 247

(4) A violator who commits a fourth offense within two years 248
after committing the first offense shall be fined one thousand 249
dollars. If the violator challenges the results of authorized 250
testing equipment under rules adopted under section 1327.70 of the 251
Revised Code and subsequent testing of the motor fuel in a 252
certified laboratory in accordance with those rules indicates that 253
the fuel violates the motor fuel standards established in those 254
rules, the violator also shall pay an amount that is equal to 255
laboratory costs. 256

(5) A violator who commits a fifth offense within two years 257
after committing the first offense shall be fined two thousand 258
dollars. If the violator challenges the results of authorized 259
testing equipment under rules adopted under section 1327.70 of the 260
Revised Code and subsequent testing of the motor fuel in a 261
certified laboratory in accordance with those rules indicates that 262
the fuel violates the motor fuel standards established in those 263
rules, the violator also shall pay an amount that is equal to 264
laboratory costs. 265

(6) A violator who commits a sixth or subsequent offense 266
within two years after committing the first offense shall be fined 267

an amount that is equal to twice the amount of the most recent 268
fine that was imposed on the violator. If the violator challenges 269
the results of authorized testing equipment under rules adopted 270
under section 1327.70 of the Revised Code and subsequent testing 271
of the motor fuel in a certified laboratory in accordance with 272
those rules indicates that the fuel violates the motor fuel 273
standards established in those rules, the violator also shall pay 274
an amount that is equal to laboratory costs. 275

(C) As used in division (B) of this section: 276

(1) "Authorized testing equipment" has the same meaning as in 277
section 1327.70 of the Revised Code. 278

(2) "Laboratory costs" means all costs associated with 279
testing the octane of a sample of motor fuel at a certified 280
laboratory for purposes of the motor fuel quality testing program 281
established under section 1327.70 of the Revised Code and rules 282
adopted under it. "Laboratory costs" includes, but is not limited 283
to, shipping costs of a sample of motor fuel, fees charged by a 284
certified laboratory for the testing of a sample of motor fuel, 285
taxes, and other similar costs. 286

Section 2. That existing section 1327.99 and section 1327.70 287
of the Revised Code are hereby repealed. 288