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112TH CONGRESS
1ST SESSION

# H. R. 523

To make the United States exclusively liable for certain claims of liability to the extent such liability is a claim for damages resulting from, or aggravated by, the inclusion of ethanol in transportation fuel.

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 2011

Mr. GONZALEZ introduced the following bill; which was referred to the Committee on the Judiciary

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# A BILL

To make the United States exclusively liable for certain claims of liability to the extent such liability is a claim for damages resulting from, or aggravated by, the inclusion of ethanol in transportation fuel.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "American Fuel Protection Act of 2011".

**SEC. 2. FINDINGS.**

The Congress finds as follows:

(1) Ethanol is currently widely distributed in commerce for general use in all conventional gasoline-powered onroad and nonroad vehicles and nonroad engines in widespread use.

(2) A decision to increase the current blending limit of ethanol into gasoline for motor vehicle and equipment engines requires an agency finding that the increased emission products will not cause or contribute to a failure of any emission control device or system (over the useful life of the motor vehicle, motor vehicle engine, nonroad engine or nonroad vehicle in which such device or system is used).

(3) Significant questions and concerns exist as to the effects of increasing the current blending limit of ethanol into gasoline for motor vehicle and equipment engines on the performance of such engines.

(4) Effects such as increased engine failures, decreased engine performance, increased consumer complaints, increased litigation, or other unforeseen effects could have a significant impact on interstate commerce.

(5) The Federal Trade Commission has proposed labeling requirements for all fuels distributed in commerce that exceed the current blending limit of ethanol into gasoline to disclose to consumers that

using such fuels may harm some conventional vehicles.

(6) A multi-faceted Federal testing regimen is currently underway on newer motor vehicles to determine the effects on motor vehicle engines of increasing the current blending limit of ethanol into gasoline.

(7) There is insufficient data on the effects of increasing the current blending limit of ethanol into gasoline on older vehicles and nonroad engines.

(8) Nonetheless, the executive branch—

(A) has statutory authority to increase the current blending limit of ethanol into gasoline; and

(B) is currently undertaking a process to reach a decision on this issue.

(9) It is appropriate for Congress to mitigate undue effects on parties engaged in interstate commerce resulting from a Federal decision to allow an increase of the current blending limit of ethanol into gasoline.

**SEC. 3. LIABILITY FOR CLAIMS BASED ON DAMAGES RESULTING FROM, OR AGGRAVATED BY, THE INCLUSION OF ETHANOL IN CERTAIN FUEL.**

(a) EXCLUSIVE REMEDY AGAINST UNITED STATES.—

(1) Notwithstanding any other provision of law, any claim of liability described in subsection (b) against a qualified entity is deemed to be a claim of liability against the United States, and any such claim shall lie exclusively against the United States.

(2) Sovereign immunity is abrogated as to the United States to the extent set forth in this section.

(b) CLAIM OF LIABILITY.—A claim of liability is described in this subsection to the extent such liability is based upon damages resulting from, or aggravated by, the use of any transportation fuel (as defined in section 211(o) of the Clean Air Act) containing ethanol in concentrations greater than 10 percent pursuant to a waiver under section 211(f)(4) of the Clean Air Act to operate an internal combustion engine.

(c) LIMIT ON DAMAGES.—Damages awarded for such a claim shall not exceed the actual damages sustained by the claimant.

(d) EXCLUSIVE JURISDICTION.—The district courts shall have exclusive jurisdiction of any civil action on a claim of liability described under subsection (b).

(e) DEFINITION.—In this section, the term ''qualified entity'' means an entity engaged in the manufacture, use, sale, or distribution of—

(1) transportation fuel or renewable fuel (as defined in section 211(o) of the Clean Air Act); or

(2) products which use transportation fuel.

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