

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 684** Session of
2007

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GRUCELA, GOODMAN AND PAYNE, MARCH 9, 2007

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 29, 2007

AN ACT

1 Providing for the establishment of an automotive fuel testing
2 and disclosure program, for standards for automotive fuel and
3 for inspection, sampling and testing of automotive fuel;
4 imposing powers and conferring duties on the Department of
5 Agriculture; establishing the Octane Testing Account; and
6 providing for penalties.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Automotive
11 Fuel Testing Act.

12 Section 2. Definitions.

13 The following words and phrases when used in this act shall
14 have the meanings given to them in this section unless the
15 context clearly indicates otherwise:

16 "American Society for Testing and Materials" or "ASTM." An
17 organization which develops quality standards and test methods

1 for petroleum products.

2 "Antiknock characteristics." The number assigned to an
3 automotive fuel which designates the antiknock quality of such
4 fuel.

5 "Antiknock quality." The distinctive properties or
6 components of a grade or type of automotive fuel which enhance
7 the performance of such fuel.

8 "Automotive fuel." A liquid fuel of a type distributed for
9 use as a fuel in any motor vehicle. The term shall include, but
10 is not limited to:

11 (1) Automotive spark-ignition engine fuel, which
12 includes, but is not limited to:

13 (i) Gasoline.

14 (ii) Gasohol, a mixture of unleaded gasoline and at
15 least 10% denatured ethanol.

16 (iii) Fuels developed to comply with the Clean Air
17 Act (Public Law 95-95, 42 U.S.C. § 7401 et seq.), such as
18 reformulated gasoline and oxygenated gasoline.

19 (2) Alternative liquid automotive fuels, including, but
20 not limited to:

21 (i) Methanol, denatured ethanol and other alcohols.

22 (ii) Mixtures of gasoline containing 85% or more by
23 volume of methanol, denatured ethanol and other alcohols.

24 "Automotive fuel rating." For automotive spark-ignition
25 engine fuel, the octane rating or, for alternative liquid
26 automotive fuel, the commonly used name of the fuel with a
27 disclosure of the amount, expressed as a minimum percent by
28 volume, of the principal components of the fuel.

29 "Consumer." A person who purchases automotive fuel for
30 purposes other than resale.

1 "Department." The Department of Agriculture of the
2 Commonwealth.

3 "Dispenser" or "dispensing system." A device designed to
4 measure and deliver automotive fuel into the fuel supply tank of
5 a motor vehicle.

6 "Distributor." A person who receives automotive fuel in this
7 Commonwealth for storage and subsequent distribution to another
8 person other than the consumer.

9 "EPA." The United States Environmental Protection Agency.

10 "FTC." The United States Federal Trade Commission.

11 "Fueling dispensers." Individual fueling points, recognized
12 by price and/or volume displays for the devices' points of sale.

13 "Load rack terminals." A location where the commercial
14 transfer of petroleum products at the wholesale level is
15 conducted utilizing meters employed in the measurement of
16 product delivered to the seller by the buyer.

17 "Octane rating" or "octane number." The rating of the
18 antiknock characteristics of a grade or type of automotive fuel,
19 as determined by dividing by two the sum of the research octane
20 number plus the motor octane number, unless another procedure is
21 determined by the Department of Agriculture to be more
22 appropriate for the purposes of this act.

23 "Oxygenate." A substance which, when added to gasoline,
24 increases the amount of oxygen in that gasoline blend.

25 "Oxygenate blender." A person who owns, leases, operates,
26 controls or supervises an oxygenate blending facility.

27 "Oxygenate blending facility." A refinery, bulk terminal,
28 bulk plant, other facility or truck or another place at which
29 oxygenated gasoline is produced.

30 "Oxygenated gasoline." Gasoline which contains at least 2%

1 oxygen by weight.

2 "Person." A natural person, corporation, partnership,
3 association or other legal entity.

4 "Producer." A person who purchases component elements and
5 blends them to produce automotive fuel.

6 "Refiner." A person engaged in the manufacture, production
7 or importation of automotive fuel.

8 "Reformulated gasoline." Any gasoline which is certified by
9 the Environmental Protection Agency as complying with the
10 requirements of section 211 of the Clean Air Act (Public Law 95-
11 95, 42 U.S.C. § 7401 et seq.) and any regulations promulgated
12 pursuant to the Clean Air Act.

13 "Research octane number" and "motor octane number." The
14 terms shall have the meanings given these terms in the
15 specifications of the American Society for Testing and Materials
16 entitled "Standard Specifications for Automotive Spark Ignition
17 Engine Fuel," designated D4814, and, with respect to any grade
18 or type of automotive fuel, are determined in accordance with
19 the test methods set forth in American Society for Testing and
20 Materials standard test methods, designated D2699, "Standard
21 Test Method for Knock Characteristics of Motor Fuels by the
22 Research Method," and ASTM D2700, "Standard Test Method for
23 Knock Characteristics of Motor and Aviation Fuels by the Motor
24 Method."

25 "Retailer." A person who sells automotive fuel to the
26 consumer.

27 "Secretary." The Secretary of Agriculture of the
28 Commonwealth.

29 Section 3. Automotive Fuel Testing and Disclosure Program.

30 (a) Establishment.--The department shall establish and

1 implement the Automotive Fuel Testing and Disclosure Program.

2 (b) Program requirements.--The Automotive Fuel Testing and
3 Disclosure Program shall provide for the testing of automotive
4 fuel on a random, unannounced basis and otherwise as determined
5 necessary by the department.

6 (c) Duties of department.--The department shall enforce the
7 provisions of this act and shall:

8 (1) Appoint or employ such inspectors as may be
9 necessary to carry out the provisions of this act.

10 (2) Take samples of automotive fuel wherever it is
11 processed, produced, blended, held, stored, imported,
12 transferred, offered or exposed for sale or use or sold in
13 this Commonwealth. The samples shall be taken in accordance
14 with procedures and standards prescribed by ASTM.

15 (3) Inspect and test automotive fuel samples in
16 accordance with the methods of the ASTM or other test methods
17 adopted by the FTC pursuant to the Petroleum Marketing
18 Practices Act (Public Law 95-297, 15 U.S.C. § 2801 et seq.)
19 or by regulation of the department to determine whether such
20 automotive fuel complies with the requirements of this act.

21 (4) Maintain records of all inspections.

22 (5) Inspect and test samples submitted to the department
23 by a distributor or retailer. The department may by
24 regulation establish and collect fees from any distributor or
25 retailer who submits automotive fuel samples to the
26 department for testing.

27 (6) Inspect the labeling of automotive fuel dispensers
28 and storage tanks at retail businesses or locations where
29 such products are sold or offered or exposed for sale or use.

30 (7) Enter into contractual agreements with qualified

1 laboratories for the purpose of analyzing automotive fuel
2 samples.

3 (8) Promulgate such regulations as necessary for the
4 enforcement and administration of this act.

5 (d) Sealers of weight and measures.--The department may
6 enter into agreements with any city or county for which a sealer
7 has been appointed for the enforcement of provisions of this act
8 and rules or regulations promulgated under this act. The sealer
9 of a city or county shall have the same authority and shall
10 perform the same duties within the city or county as are granted
11 to and imposed upon the department with respect to the
12 inspection, testing and taking of automotive fuel samples. THE ←
13 AGREEMENT SHALL PROVIDE THAT ANY REVENUES GENERATED PURSUANT TO
14 ENFORCEMENT ACTIVITIES CARRIED OUT BY THE SEALER OF THE CITY OR
15 COUNTY SHALL BE RETAINED BY THE CITY OR COUNTY.

16 Section 4. Standards for automotive fuel.

17 (a) Adoption of standards.--The department shall adopt
18 standards for automotive spark-ignition engine fuels. The
19 department shall adopt the latest standards of the ASTM or other
20 standards as determined by the FTC.

21 (b) Automotive fuel.--Gasoline sold, offered or exposed for
22 sale, stored or held for distribution in this Commonwealth shall
23 comply with ASTM specification D4814 and with the volatility
24 requirements promulgated by the EPA under 40 CFR Pt. 80
25 (relating to regulation of fuels and fuel additives). Gasoline
26 may be blended with an agriculturally derived ethanol or with a
27 detergent additive, antiknock additive or any other additive
28 approved and registered by the EPA. After gasoline is sold,
29 transferred or otherwise removed from a refinery, the gasoline
30 shall not be sold, offered or exposed for sale or stored or held

1 for distribution to a consumer in this Commonwealth if it has
2 been:

3 (1) Blended with any other petroleum product which is
4 not gasoline unless the blended product conforms with ASTM
5 standards.

6 (2) Blended with products commonly and commercially
7 known as casinghead gasoline, absorption gasoline,
8 condensation gasoline, drip gasoline or natural gasoline.

9 (3) Blended with any contaminant.

10 (c) Records and audits.--Each distributor, producer or
11 retailer who distributes, produces, transports, stores, sells or
12 offers or exposes for sale automotive fuel in this Commonwealth
13 shall maintain for one year original copies of all bills,
14 manifests, delivery tickets, invoices and any other information
15 the department may by regulation require for the purpose of
16 audits by the department.

17 Section 5. Automotive fuel rating; disclosure and labeling
18 requirements.

19 (a) Disclosure requirements.--Each distributor, producer or
20 refiner who sells or offers or exposes for sale, delivers,
21 distributes or produces automotive fuel in this Commonwealth
22 shall provide, at the time of delivery, a bill, shipping
23 manifest or other type of written invoice to the person who
24 receives the automotive fuel. The bill, shipping manifest or
25 other written invoice shall state the automotive fuel rating.

26 (b) Posting and labeling requirements.--Each retailer of
27 automotive fuel in this Commonwealth shall label in a clear and
28 conspicuous manner each automotive fuel dispenser which is used
29 to sell or offer or expose for sale automotive fuel, with the
30 automotive fuel rating of such fuel, which shall be consistent

1 with the automotive fuel rating certified to such retailer by
2 the refiner or distributor, as the case may be. In the case of
3 gasoline which is blended with other gasoline by the retailer,
4 the automotive fuel rating shall be the average, weighted by
5 volume, of the octane rating certified to the retailer by the
6 distributor or refiner for each gasoline in the blend, or
7 consistent with the lowest octane rating for any gasoline in the
8 blend as certified to the retailer by a refiner or distributor.

9 (c) Oxygenated gasoline labeling requirements.--Whenever
10 oxygenated gasoline is sold, a person who sells or offers or
11 exposes such gasoline for sale shall clearly and conspicuously
12 label the dispenser which is used to sell oxygenated gasoline at
13 retail or to dispense oxygenated gasoline into the fuel supply
14 tanks of motor vehicles with a notice stating that the gasoline
15 is oxygenated and will reduce the carbon monoxide emissions from
16 the motor vehicle.

17 (d) Reformulated gasoline labeling requirements.--Whenever
18 reformulated gasoline is required to be sold, a person who sells
19 or offers or exposes such gasoline for sale shall clearly and
20 conspicuously label the dispenser which is used to sell
21 reformulated gasoline at retail or to dispense reformulated
22 gasoline into the fuel supply tanks of motor vehicles with a
23 notice stating that the gasoline is reformulated.

24 (e) Representation of antiknock characteristics of
25 automotive fuel.--No distributor of automotive fuel in this
26 Commonwealth shall make any representation of the antiknock
27 characteristics of automotive fuel unless the representation
28 discloses the minimum antiknock index requirements of the fuel
29 as adopted by the National Conference of Weights and Measures
30 and published in Handbook 130, and supplements thereto, or in

1 any publication revising or superseding Handbook 130.

2 (f) Storage tank labels; retail locations.--Each retailer of
3 automotive fuel shall attach an identification device on the
4 inlet end of the fill pipe of an automotive fuel storage tank at
5 retail locations where automotive fuel is sold or offered or
6 exposed for sale. The identification device shall clearly
7 display the automotive fuel rating of the automotive fuel held
8 in the storage tank. The automotive fuel rating displayed on the
9 identification device shall be consistent with the automotive
10 fuel rating displayed on the dispensing system through which the
11 fuel is dispensed.

12 (g) Labeling tolerance.--In accordance with specifications
13 of the ASTM entitled "Specifications for Automotive Spark
14 Ignition-Engine Fuel," designated D4814, in the case of
15 gasoline, tolerance allowed shall be limited to 0.7 for 87
16 octane and under and 0.6 for all other octane grades.

17 (h) Federal regulations.--All regulations and supplements
18 thereto or revisions thereof adopted by the FTC pursuant to the
19 Petroleum Marketing Practices Act (Public Law 95-297, 15 U.S.C.
20 § 2801 et seq.) to govern the certification, disclosure, posting
21 and labeling of automotive fuel before, on or after the
22 effective date of this act are hereby adopted as regulations in
23 this Commonwealth and shall remain in effect unless subsequently
24 modified by regulations promulgated by the department.

25 Section 6. Investigations.

26 (a) General rule.--The department may conduct investigations
27 to determine compliance with this act or any regulation
28 promulgated pursuant to this act. Inspections shall be performed
29 during normal business hours and shall include the collection
30 and removal of samples for laboratory testing.

1 (b) Entry upon premises.--The department shall have the
2 right of access to the premises and records of any establishment
3 where automotive fuel is stored, held, processed, distributed,
4 offered or exposed for sale or sold in this Commonwealth to:

5 (1) Inspect the automotive fuel in storage tanks and
6 take samples from such tanks and the dispensing system
7 connected to the storage tanks. The retailer or distributor
8 may request a second sample to be taken by the inspector at
9 the same time the initial sample is drawn. All costs of the
10 second sample shall be paid by the retailer or distributor,
11 as the case may be, making the request. If the request for a
12 second sample is made by the retailer in accordance with
13 procedures established through an agreement with the
14 distributor, producer or refiner, all costs of drawing,
15 handling and shipping the sample shall be borne by the
16 distributor, producer or refiner who supplied the automotive
17 fuel to the retailer. If the request for a second sample is
18 made by the distributor in accordance with procedures
19 established through an agreement with the producer or
20 refiner, all costs of drawing, handling and shipping the
21 sample shall be borne by the producer or refiner who supplied
22 the automotive fuel to the distributor.

23 (2) Inspect automotive fuel dispensing systems and
24 related equipment, oxygenate labels, reformulated labels and
25 octane labels.

26 (3) Audit and make copies of automotive fuel shipping,
27 receiving and invoice documents and records to determine
28 compliance with sections 4 and 5.

29 The department shall limit such inspections, auditing and
30 copying to information and data relating to product quantity,

1 quality, oxygen content, octane, source and other information as
2 may be reasonably requested.

3 (c) Remedies.--Whenever the department determines that an
4 automotive fuel sample does not conform with the standards set
5 forth in section 4 or that a label displayed on a dispensing
6 system, storage tank or other dispensing device does not conform
7 with the requirements of section 5, the department may initiate
8 any or all of the following actions to prohibit sale of the
9 nonconforming automotive fuel or to prohibit the use of the
10 nonconforming dispensing system, storage tank or other
11 dispensing device:

12 (1) Reject and mark as rejected the dispensing system,
13 storage tank or other dispensing device from which the sample
14 was obtained or on which the nonconforming label is attached.

15 (2) Seal and mark as sealed the storage tanks from which
16 the sample was drawn or the nonconforming label attached.

17 (3) Initiate criminal proceedings under section 7(d).

18 (4) Issue a citation.

19 (5) Issue a stop sale notice under subsection (d).

20 (6) Advise the retailer or distributor that the
21 automotive fuel must be blended with another automotive fuel
22 to bring it into compliance, provided that the product does
23 not endanger public health or safety or adversely affect the
24 emissions characteristics of the motor vehicles in which it
25 is used.

26 (7) Issue a written warning directing the retailer or
27 distributor to correct the nonconforming label.

28 (d) Stop sale notice.--The department shall have the
29 authority to immediately seize and seal, in order to prevent
30 further sales, any dispensing system, storage tank or other

1 dispensing device from which automotive fuel is sold or offered
2 or exposed for sale in violation of the provisions of this act
3 and to issue a stop sale notice to the retailer or distributor,
4 if the department has reason to believe the retailer or
5 distributor willfully or intentionally violated this act or the
6 regulations promulgated in accordance with this act. Any
7 automotive fuel subject to a stop sale notice shall not be sold
8 or exposed or offered for sale or transported unless the
9 retailer or distributor has received approval from the
10 department. Automotive fuel which has been seized and sealed by
11 the department for violation of section 4 or 5 shall not be
12 offered or exposed for sale until the department has been fully
13 satisfied that the automotive fuel has been blended or refined
14 or properly labeled to meet the requirements of this act, and
15 the retailer or distributor has been notified of the
16 department's decision to permit the sale or relabeling of the
17 fuel.

18 (e) Posting of stop sale notice.--The department shall cause
19 to be posted in a conspicuous place on the premises where a
20 dispensing system, storage tank or other dispensing device has
21 been sealed a notice stating that sealing has taken place and
22 giving warning that it shall be unlawful to break, mutilate or
23 destroy the seal or to remove the contents of the dispensing
24 system, storage tank or other dispensing device without the
25 approval of the department.

26 (f) Notice required to remove seal.--Any retailer,
27 distributor or producer who owns an automotive fuel dispensing
28 system, storage tank or other dispensing device which has been
29 sealed by the department shall obtain the approval of the
30 department before the fuel is removed or a proper label

1 attached. A written notice of any corrective action taken shall
2 be submitted to the department within three working days. The
3 department may reinspect the automotive fuel dispensing system,
4 storage tank or other dispensing device to determine compliance.
5 The retailer, distributor, producer or refiner who owns the
6 system or device which has been sealed shall provide
7 documentation of the corrective action taken, including any
8 applicable shipping papers or bills of lading showing the
9 disposal or final disposition of the automotive fuel and such
10 other information necessary to permit the department to audit
11 and confirm that the corrective action was as previously
12 approved by the department. A retailer, distributor, producer or
13 refiner shall not remove a seal except when given specific
14 approval by the department.

15 Section 7. Violations and penalties.

16 (a) Retail violations.--The department may assess a civil
17 penalty of not more than \$5,000 upon a retailer who sells or
18 offers or exposes for sale automotive fuel from any dispensing
19 system, storage tank or other dispensing device which has not
20 been labeled in accordance with the provisions of this act, or
21 who sells or offers or exposes for sale any automotive fuel
22 which does not meet the required standards for automotive fuel
23 rating displayed on the label attached to the dispensing system,
24 storage tank or other dispensing device, or who sells or offers
25 or exposes for sale automotive fuel which has been contaminated.

26 (b) Distributor, producer or refiner violations.--The
27 department may assess a civil penalty of not more than \$5,000
28 upon a distributor, producer or refiner who sells or offers or
29 exposes for sale automotive fuel which does not meet the
30 automotive fuel rating certified by the distributor, producer or

1 refiner or who sells or offers or exposes for sale automotive
2 fuel which does not meet the requirements of section 4.

3 (c) Knowledge of deceptive practice.--In addition to any
4 civil penalty imposed for violations of subsection (a) or (b),
5 the department may assess a distributor, producer, refiner or
6 retailer with an additional civil penalty equal to the
7 difference between the price per gallon charged to the consumer
8 for the automotive fuel in question and the price per gallon
9 charged to the consumer for the lowest octane grade at the
10 retail dispensing facility at the time of the violation,
11 multiplied by the capacity of the storage tank from which the
12 product in question was dispensed, if the distributor, producer,
13 refiner or retailer violates any provisions of this act or any
14 regulations promulgated pursuant to this act with actual
15 knowledge that the act or practice underlying the violation is
16 unfair or deceptive.

17 (d) Repeat violations.--In addition to any civil penalty
18 assessed in accordance with the provisions of this section, the
19 department may initiate criminal proceedings for a second or
20 subsequent violation of sections 4 and 5 or any regulations
21 promulgated pursuant to such sections. Such a second or
22 subsequent violation shall constitute a misdemeanor of the third
23 degree.

24 (e) Removal of seals.--The department may assess a civil
25 penalty of not less than \$1,000 nor more than \$5,000 on any
26 person, other than a person designated by the department, who
27 breaks, mutilates or destroys any seal placed upon a dispensing
28 system, storage tank or other dispensing device used to deliver
29 or store automotive fuel, or who removes automotive fuel from a
30 dispensing system, storage tank or other dispensing device which

1 has been sealed, or who defaces or removes a posted notice of
2 sealing.

3 (f) Hearings.--No civil penalty shall be assessed under this
4 section unless the person charged has been given notice and
5 opportunity for hearing in accordance with 2 Pa.C.S. (relating
6 to administrative law and procedure).

7 (g) Innocent sellers exemption.--The department shall not
8 impose a civil penalty for a violation of subsection (a)
9 regarding labeling if the retailer labeled the dispensing
10 system, storage tank or other dispensing device in reasonable
11 reliance on documentation provided by the distributor, producer
12 or refiner certifying the standards for automotive fuel rating.

13 (h) Private action by retailer.--Whenever a retailer
14 unknowingly and without deception sells or offers or exposes for
15 sale automotive fuel which does not conform with the provisions
16 of this act, the distributor, producer, oxygenate blender or
17 refiner, as the case may be, of the nonconforming automotive
18 fuel shall be liable in damages to the retailer for any
19 ascertainable loss of money or property.

20 (i) Acts or practices constituting unfair trade.--It shall
21 be an unfair method of competition and an unfair or deceptive
22 act or practice in or affecting trade and commerce in this
23 Commonwealth within the meaning of section 3 of the act of
24 December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade
25 Practices and Consumer Protection Law, for any retailer,
26 producer, distributor, oxygenate blender or refiner to violate
27 the provisions of this act or any regulations promulgated
28 pursuant to this act.

29 (J) ADDITIONAL REMEDY.--IN ADDITION TO ANY CIVIL PENALTY
30 IMPOSED FOR VIOLATIONS OF THIS SECTION, A CONSUMER MAY FILE A

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1 CIVIL ACTION SUIT AGAINST A RETAILER, DISTRIBUTOR, PRODUCER,
2 OXYGENATE BLENDER OR REFINER, AS THE CASE MAY BE, OF THE
3 NONCONFORMING AUTOMOTIVE FUEL. A RETAILER, DISTRIBUTOR,
4 PRODUCER, OXYGENATE BLENDER OR REFINER OF THE NONCONFORMING
5 AUTOMOTIVE FUEL SHALL BE LIABLE IN DAMAGES TO THE CONSUMER FOR
6 ANY ASCERTAINABLE LOSS OF MONEY OR PROPERTY, AS DECIDED BY A
7 COURT OF COMPETENT JURISDICTION.

8 Section 8. Annual report.

9 The department shall file an annual report with the
10 Transportation Committee of the Senate and the Transportation
11 Committee of the House of Representatives. The report shall
12 summarize the details and impact of the Automotive Fuel Testing
13 and Disclosure Program for the year being reported. The
14 department shall file the report no later than May 1 of the
15 following year.

16 Section 9. Octane Testing Account.

17 (a) Establishment.--The Octane Testing Account is
18 established as a restricted revenue account in the General Fund.
19 The following are the sources of money for the Octane Testing
20 Account:

21 (1) Fees per year as follows:

22 1-9 fueling dispensers - \$100 per year

23 10-19 fueling dispensers - \$200 per year

24 20 or more fueling dispensers - \$300 per year

25 (2) Fees per load rack terminal as follows:

26 1-9 meters - \$500 per year

27 10 or more meters - \$1,000 per year

28 The department may adjust the fees as necessary. Notice of any
29 fee adjustment shall be published in the Pennsylvania Bulletin.

30 (b) Appropriations from account.--Money in the Octane

1 Testing Account is hereby appropriated, upon approval by the
2 Governor, to be used exclusively for the implementation and
3 administration of this act.

4 Section 10. Effective date.

5 This act shall take effect July 1, 2007.