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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 807 Session of  
2011

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INTRODUCED BY SONNEY, MAHER, CAUSER, J. EVANS, EVERETT AND  
PICKETT, FEBRUARY 23, 2011

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REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS, FEBRUARY  
23, 2011

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AN ACT

1 Amending the act of July 10, 2008 (P.L.1009, No.78), entitled  
2 "An act providing for the study and mandated content of  
3 biofuels," further providing for definitions, for biodiesel  
4 content in diesel fuel sold for on-road use and for  
5 cellulosic ethanol content in gasoline; providing for  
6 blending, registration and other requirements; further  
7 providing for department authority and responsibility;  
8 providing for fees; establishing the Biofuel Development  
9 Account; and imposing penalties.

10 The General Assembly of the Commonwealth of Pennsylvania  
11 hereby enacts as follows:

12 Section 1. Section 2 of the act of July 10, 2008 (P.L.1009,  
13 No.78), known as the Biofuel Development and In-State Production  
14 Incentive Act, is amended by adding definitions to read:

15 Section 2. Definitions.

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

19 "American Society for Testing and Materials International" or  
20 "ASTM." A member-based international standards organization  
21 that develops and publishes voluntary consensus technical

1 standards and test methods for a variety of materials and  
2 products, including automotive fuel and other petroleum  
3 products, or any successor organization.

4 "Annualized basis." The sum of three consecutive months of  
5 in-State production multiplied by four.

6 "Approved biodiesel blending method." A method whereby  
7 diesel fuel is blended with biodiesel under the following  
8 conditions:

9 (1) The method utilizes meters approved by the  
10 Department of Agriculture to individually measure the volume  
11 of each fuel.

12 (2) The method achieves and maintains a consistent blend  
13 throughout the entire volume being blended.

14 (3) The method achieves and maintains the blend  
15 percentage within a margin of one-half of one percent of the  
16 total volume of biodiesel required to make the desired  
17 blending percentage.

18 (4) The blending occurs at a facility capable of  
19 maintaining the biodiesel at a minimum of ten degrees  
20 Fahrenheit above the cloud point of the biodiesel.

21 "ASTM specification." A standard quality specification  
22 developed and published by the American Society for Testing and  
23 Materials International.

24 \* \* \*

25 "Biodiesel blend." A blend of diesel fuel and biodiesel in a  
26 percentage blend to be sold or offered for sale to consumers in  
27 this Commonwealth for use in on-road compression ignition  
28 engines.

29 \* \* \*

30 "Consumer." A natural person who purchases fuel products for

1 purposes other than resale.

2 \* \* \*

3 "Diesel fuel." Petroleum diesel fuel that complies with ASTM  
4 D975 or its successor standard.

5 \* \* \*

6 "Person." A natural person, corporation, partnership,  
7 limited liability company, business trust, association, estate  
8 or foundation.

9 \* \* \*

10 "Retailer." A person that sells, offers for sale or  
11 otherwise transfers title to fuel products, including diesel  
12 fuel, biodiesel and biodiesel blend, to a consumer.

13 Section 2. Sections 3(a) and (f) and 4(a) of the act are  
14 amended to read:

15 Section 3. Biodiesel content in diesel fuel sold for on-road  
16 use.

17 (a) Volume standards.--The following standards shall apply:

18 (1) All diesel fuel sold or offered for sale to  
19 [ultimate] consumers in this Commonwealth for use in on-road  
20 compression ignition engines must [contain] be blended with  
21 biodiesel so as to achieve a biodiesel blend of at least 2%  
22 biodiesel by volume one year after the in-State production  
23 volume of 40,000,000 gallons of biodiesel has been reached  
24 and sustained for three months on an annualized basis as  
25 determined by the department. Biodiesel blend of less than 6%  
26 biodiesel shall comply with ASTM specification D975 or its  
27 successor standard. Biodiesel blend of 6% or more through 20%  
28 biodiesel shall comply with ASTM specification D7467 or its  
29 successor standard. Biodiesel blend of more than 20%  
30 biodiesel shall comply with standards adopted by the

1 department through regulation until an ASTM standard is  
2 applicable.

3 (2) All diesel fuel sold or offered for sale to  
4 [ultimate] consumers in this Commonwealth for use in on-road  
5 compression ignition engines must [contain] be blended with  
6 biodiesel so as to achieve a biodiesel blend of at least 5%  
7 biodiesel by volume one year after the in-State production  
8 volume of 100,000,000 gallons of biodiesel has been reached  
9 and sustained for three months on an annualized basis as  
10 determined by the department. Biodiesel blend of less than 6%  
11 biodiesel shall comply with ASTM specification D975 or its  
12 successor standard. Biodiesel blend of 6% or more through 20%  
13 biodiesel shall comply with ASTM specification D7467 or its  
14 successor standard. Biodiesel blend of more than 20%  
15 biodiesel shall comply with standards adopted by the  
16 department through regulation until an ASTM standard is  
17 applicable.

18 (3) All diesel fuel sold or offered for sale to  
19 [ultimate] consumers in this Commonwealth for use in on-road  
20 compression ignition engines must [contain] be blended with  
21 biodiesel so as to achieve a biodiesel blend of at least 10%  
22 biodiesel by volume one year after the in-State production  
23 volume of 200,000,000 gallons of biodiesel has been reached  
24 and sustained for three months on an annualized basis as  
25 determined by the department. Biodiesel blend of 10% or more  
26 through 20% biodiesel shall comply with ASTM specification  
27 D7467 or its successor standard. Biodiesel blend of more than  
28 20% biodiesel shall comply with standards adopted by the  
29 department through regulation until an ASTM standard is  
30 applicable.

1 (4) All diesel fuel sold or offered for sale to  
2 [ultimate] consumers in this Commonwealth for use in on-road  
3 compression ignition engines must [contain] be blended with  
4 biodiesel so as to achieve a biodiesel blend of at least 20%  
5 biodiesel by volume one year after the in-State production  
6 volume of 400,000,000 gallons of biodiesel has been reached  
7 and sustained for three months on an annualized basis as  
8 determined by the department. Biodiesel blend of 20%  
9 biodiesel shall comply with ASTM specification D7467 or its  
10 successor standard. Biodiesel blend of more than 20%  
11 biodiesel shall comply with standards adopted by the  
12 department through regulation until an ASTM standard is  
13 applicable.

14 \* \* \*

15 (f) [Exception] Exceptions.--The requirements of this  
16 section shall not apply to [aviation]:

17 (1) Aviation fuel, home heating fuel or where prohibited  
18 by law.

19 (2) Diesel fuel produced from 100% Pennsylvania grade  
20 crude oil by a small refiner, as defined by 40 CFR 80.1101(g)  
21 (relating to definitions). This paragraph shall expire  
22 January 1, 2011.

23 (3) Fuel stored at a nuclear power plant.

24 (4) The blend percentage requirements of subsection (a)  
25 (2), (3) and (4) shall not apply to diesel fuel produced from  
26 100% Pennsylvania grade crude oil by a small refiner, as  
27 defined by 40 CFR 80.1101(g).

28 Section 4. Cellulosic ethanol content in gasoline.

29 (a) Cellulosic ethanol content required.--All gasoline sold  
30 or offered for sale to [ultimate] consumers in this Commonwealth

1 must contain at least 10% cellulosic ethanol by volume as  
2 determined by an appropriate Environmental Protection Agency or  
3 American Society for Testing Materials standard method of  
4 analysis one year after the in-State production volume of  
5 350,000,000 gallons of cellulosic ethanol has been reached and  
6 sustained for three months on an annualized basis as determined  
7 by the department.

8 \* \* \*

9 Section 3. The act is amended by adding a section to read:

10 Section 4.1. Blending, registration and other requirements.

11 (a) Blending requirements.--Biodiesel blend shall be created  
12 using an approved biodiesel blending method.

13 (b) Registration requirements.--Any person that offers for  
14 sale, sells or otherwise transfers title in this Commonwealth to  
15 biodiesel blend or biodiesel for use by consumers in on-road  
16 compression ignition engines shall register annually with the  
17 department. Each location in this Commonwealth where the person  
18 conducts the activity shall be separately registered, but may be  
19 submitted in a single form. This subsection shall apply to in-  
20 State and out-of-State persons. The application for registration  
21 shall be on a form prescribed by the department and may be  
22 accepted electronically by the department.

23 (c) Bill of lading.--

24 (1) Each time biodiesel blend is sold, offered for sale  
25 or title to which is otherwise transferred for ultimate sale  
26 to consumers in this Commonwealth, a bill of lading or  
27 shipping manifest meeting the requirements of paragraph (2)  
28 shall be provided to the person that receives the biodiesel  
29 blend. For sales of biodiesel blend made directly to  
30 consumers by the person that created it, the bill of lading

1 or shipping manifest shall be retained at the point of sale  
2 for a period of one year from delivery of the biodiesel blend  
3 or for a longer period of time, if the bill of lading or  
4 shipping manifest is part of an enforcement action initiated  
5 during the one-year period.

6 (2) The bill of lading or shipping manifest required  
7 under paragraph (1) shall:

8 (i) Include a certification by the person that  
9 created the biodiesel blend stating that it was created  
10 by an approved biodiesel blending method and that the  
11 information contained in the bill of lading or shipping  
12 manifest is true and correct. The certification shall be  
13 subject to the penalties under 18 Pa.C.S. § 4904  
14 (relating to unsworn falsification to authorities).

15 (ii) Contain the following information:

16 (A) The name and location of the person that  
17 created the biodiesel blend and, if the biodiesel  
18 blend was created in this Commonwealth, the  
19 registration number assigned by the department to the  
20 subject location.

21 (B) The biodiesel content, stated as volume  
22 percentage, based upon gallons of biodiesel per  
23 gallons of diesel fuel base-stock, or an ASTM "Bxx"  
24 designation where "xx" denotes the volume percentage  
25 biodiesel included in the blended product.

26 (C) The ASTM specification of the biodiesel used  
27 in the biodiesel blend.

28 (D) The grade and ASTM specification of the  
29 diesel fuel.

30 (E) The ASTM specification of the biodiesel

1           blend.

2           (F) The total gallons of biodiesel blend sold,  
3           offered for sale or title to which is otherwise being  
4           transferred.

5           (3) A retailer selling, offering to sell or otherwise  
6           transferring title to a biodiesel blend shall retain a copy  
7           of the bill of lading or shipping manifest required under  
8           paragraph (1) for a period of one year from receipt of the  
9           biodiesel blend or for a longer period of time, if the bill  
10           of lading or shipping manifest is part of an enforcement  
11           action initiated during the one-year period. The bill of  
12           lading or shipping manifest must remain at the facility where  
13           the biodiesel blend has been offered for sale, sold or title  
14           to which has otherwise been transferred at least until the  
15           biodiesel blend physically leaves the facility, after which  
16           it may be retained at the corporate headquarters of the  
17           retailer. Failure by a retailer to make a copy of a bill of  
18           lading or shipping manifest immediately available to the  
19           department for inspection at the facility where the biodiesel  
20           blend was offered for sale, sold or title to which was  
21           otherwise transferred shall not be deemed a violation of this  
22           act if the copy is submitted to the department within two  
23           business days following the inspection.

24           (d) Certification.--

25           (1) Any time biodiesel is sold, offered for sale or  
26           title to which is otherwise transferred in this Commonwealth  
27           for use in biodiesel blend, the person selling, offering for  
28           sale or otherwise transferring title to the biodiesel shall  
29           provide a certification stating that the biodiesel is  
30           compliant with the definition and quality standards for

1 biodiesel under this act, including ASTM D-6751-02, or its  
2 successor standard. The certification shall also contain the  
3 name and location of the person that manufactured the  
4 biodiesel and, if the biodiesel was manufactured in this  
5 Commonwealth, the registration number assigned by the  
6 department to the subject location and shall be subject to  
7 the penalties of 18 Pa.C.S. § 4904.

8 (2) A copy of the certification required under paragraph  
9 (1) shall be provided to any person that receives the  
10 biodiesel, the person that blends the biodiesel with the  
11 diesel fuel to create the biodiesel blend and to any person  
12 that receives the biodiesel blend. The person providing the  
13 certification and each person that receives a copy of the  
14 certification shall retain a copy of the certification for a  
15 period of one year from the delivery of the biodiesel or  
16 biodiesel blend, as applicable, or for a longer period of  
17 time, if the bill of lading or shipping manifest is part of  
18 an enforcement action initiated during the one-year period.  
19 With respect to a retailer that receives the biodiesel blend,  
20 a copy of the certification must remain at a facility where  
21 the biodiesel blend made with the biodiesel is offered for  
22 sale, sold or title to which is otherwise transferred at  
23 least until it physically leaves the facility, after which it  
24 may be retained at the corporate headquarters of the  
25 retailer. Failure by a retailer to make a copy of the  
26 certification immediately available to the department for  
27 inspection at a facility where biodiesel blend made with the  
28 biodiesel is offered for sale, sold or title to which is  
29 otherwise transferred shall not be deemed a violation of this  
30 act if the copy is submitted to the department within two

1 business days following the inspection.

2 Section 4. Section 5 heading and (a) of the act are amended  
3 and the section is amended by adding subsections to read:

4 Section 5. [Agency responsibilities] Department authority and  
5 responsibility.

6 (a) [Compliance] Enforcement.--With the exception of section  
7 3(d), the department shall [ensure compliance with] enforce this  
8 act and[, in consultation with the Department of Transportation  
9 and the Department of Environmental Protection,] shall  
10 promulgate regulations as necessary to implement and enforce the  
11 requirements of this act. The department may employ all proper  
12 means for the enforcement of this act, including issuing notices  
13 and orders, initiating criminal prosecutions, seeking injunctive  
14 relief, imposing civil penalties and entering into consent  
15 agreements.

16 \* \* \*

17 (e) Authority.--

18 (1) The department shall have the following authority:

19 (i) To access during regular business hours and to  
20 conduct unannounced random inspections of any facility  
21 located in this Commonwealth that stores, holds, blends,  
22 sells, offers for sale or otherwise transfers title to  
23 diesel fuel, biodiesel or biodiesel blend. Inspections  
24 shall include the premises of the facility, tanks,  
25 storage facilities, transportation and storage vehicles,  
26 dispensing devices and any other place where diesel fuel,  
27 biodiesel or biodiesel blend is stored, held, blended,  
28 sold, offered for sale, or title to which is otherwise  
29 transferred.

30 (ii) To take samples of and test the diesel fuel,

1 biodiesel and biodiesel blend being stored, held,  
2 blended, sold, offered for sale or title to which is  
3 otherwise being transferred.

4 (iii) To audit and copy the books and records  
5 pertaining to the diesel fuel, biodiesel or biodiesel  
6 blend being stored, held, sold, offered for sale or title  
7 to which is otherwise being transferred, and its  
8 component parts, including:

9 (A) Delivery invoices, sales invoices, bills of  
10 lading and shipping manifests.

11 (B) Inventory records.

12 (C) Relevant contracts and agreements.

13 (iv) To issue stop-sale orders with respect to all  
14 biodiesel blend and biodiesel stored, held, blended, sold  
15 or title to which is otherwise transferred or offered for  
16 sale to consumers in this Commonwealth for use in on-road  
17 compression ignition engines if the department  
18 determines, after sampling and analysis, that the  
19 biodiesel blend or biodiesel does not comply with the  
20 standards established under this act or the regulations  
21 promulgated under this act and would be detrimental to  
22 the operation of on-road compression ignition engines if  
23 used for its intended use. The department may release the  
24 noncompliant biodiesel blend or biodiesel for sale only  
25 when the department determines the biodiesel blend or  
26 biodiesel is either brought into compliance with this act  
27 or regulations promulgated under this act or it would no  
28 longer be detrimental to the operation of on-road  
29 compression ignition engines if used for its intended  
30 use. All such biodiesel blend or biodiesel must be

1 properly labeled as to its noncompliant characteristics  
2 if released and permitted to be sold without being  
3 brought into compliance with this act or regulations  
4 promulgated under this act. A person that knowingly  
5 sells, offers for sale or otherwise transfers title to  
6 biodiesel blend or biodiesel in this Commonwealth subject  
7 to a stop-sale order for use by consumers in on-road  
8 compression ignition engines commits a misdemeanor of the  
9 third degree.

10 (2) A person that willfully and intentionally interferes  
11 with an employee of the department in the performance of the  
12 duties conferred upon the department under the provisions of  
13 this act commits a misdemeanor of the third degree.

14 (f) Penalties.--

15 (1) (i) The department may assess a civil penalty of  
16 not less than \$100 nor more than \$1,000 per day for each  
17 knowing violation of this act or a regulation promulgated  
18 under this act.

19 (ii) If a person fails to pay all or a portion of a  
20 penalty assessed against the person, the department may  
21 refer the matter to the Office of General Counsel or the  
22 Office of Attorney General, which shall institute an  
23 action in the appropriate court to recover the penalty.

24 (2) A person that knowingly violates a provision of this  
25 act or a rule or regulation adopted or order issued under  
26 this act:

27 (i) Unless otherwise specified in this act, for the  
28 first offense, commits a summary offense and shall, upon  
29 conviction, be sentenced to pay a fine of not less than  
30 \$100 nor more than \$500 plus costs of prosecution or to

1 imprisonment for not more than 90 days, or both.

2 (ii) For a subsequent offense at one location that  
3 occurs within two years of sentencing for the prior  
4 violation at the same location, commits a misdemeanor of  
5 the third degree and shall, upon conviction, be sentenced  
6 to pay a fine of not less than \$500 nor more than \$1,000  
7 plus costs of prosecution or to imprisonment of not more  
8 than one year, or both.

9 (3) In addition to any other remedies under this act, a  
10 violation of this act or a regulation promulgated under this  
11 act shall be abatable in any manner provided by law or  
12 equity. In addition to any remedy ordered in an equity  
13 proceeding, the court may assess civil penalties in  
14 accordance with this act.

15 (g) Account.--

16 (1) There is established a restricted account within the  
17 State Treasury to be known as the Biofuel Development  
18 Account. All money in the account is hereby appropriated on a  
19 continuing basis to the department for the enforcement and  
20 administration of this act.

21 (2) The following shall be deposited in the Biofuel  
22 Development Account:

23 (i) Federal and State funds appropriated to the  
24 department for implementation and administration of this  
25 act.

26 (ii) Notwithstanding the provisions of 42 Pa.C.S. §§  
27 3733 (relating to deposits into account) and 3733.1  
28 (relating to surcharge), all fines, judgments and  
29 penalties, including administrative, civil and criminal  
30 penalties, and interest on the foregoing collected by the

1           department under this act.

2           (iii) Interest and any other earnings on money in  
3           the account.

4           (iv) Funds from any other source, including gifts  
5           and other contributions from public and private sources.

6           Section 5. This act shall take effect in 30 days.