

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1173 Session of
2009

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K. SMITH, STURLA, VULAKOVICH AND WALKO, APRIL 1, 2009

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS, APRIL 1,
2009

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
2 Statutes, establishing an Automotive Fuel Testing and
3 Disclosure Program.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Chapter 41 of Title 3 of the Pennsylvania
7 Consolidated Statutes is amended by adding a subchapter to read:

8 SUBCHAPTER F

9 AUTOMOTIVE FUEL TESTING

10 AND DISCLOSURE PROGRAM

11 Sec.

12 4187.1. Scope of subchapter.

13 4187.2. Definitions.

14 4187.3. Automotive Fuel Testing and Disclosure Program.

15 4187.4. Additional testing authority.

16 4187.5. Standards for automotive fuel.

1 4187.6. Automotive fuel rating, disclosure and labeling
2 requirements.

3 4187.7. Investigations.

4 4187.8. Violations and penalties.

5 4187.9. Annual report.

6 § 4187.1. Scope of subchapter.

7 This subchapter relates to automotive fuel testing and
8 disclosure.

9 § 4187.2. Definitions.

10 The following words and phrases when used in this subchapter
11 shall have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "American Society for Testing and Materials International" or
14 "ASTM." The international voluntary consensus standards
15 organization formed for the development of standards on
16 characteristics and performance of materials, products, systems,
17 services and the promotion of related knowledge.

18 "Automotive fuel." Any liquid or gaseous matter used for the
19 generation of power in an internal combustion engine.

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

25 "Consumer." A person who purchases automotive fuel for
26 purposes other than resale.

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

29 "Dispenser" or "dispensing system." A device designed to
30 measure and deliver automotive fuel into the fuel supply tank of

1 a motor vehicle.

2 "Distributor." A person who receives automotive fuel in this
3 Commonwealth for storage and subsequent distribution to another
4 person other than the consumer.

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

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

7 "Fueling dispensers." Individual fueling points, recognized
8 by price and volume displays for the devices' points of sale.

9 "Load rack terminals." A location where the commercial
10 transfer of petroleum products at the wholesale level is
11 conducted utilizing meters employed in the measurement of
12 product delivered to the seller by the buyer.

13 "Octane rating" or "octane number." The rating of the
14 characteristics of a grade or type of automotive fuel as
15 determined by dividing by two the sum of the research octane
16 number plus the motor octane number unless another procedure is
17 determined by the Department of Agriculture to be more
18 appropriate for the purposes of this subchapter.

19 "Oxygenate." A substance which, when added to gasoline,
20 increases the amount of oxygen in the gasoline blend.

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

23 "Oxygenate blending facility." A refinery, bulk terminal,
24 bulk plant, other facility or truck or another place at which
25 oxygenated gasoline is produced.

26 "Oxygenated gasoline." Gasoline which contains at least 2%
27 oxygen by weight.

28 "Person." A natural person, corporation, partnership,
29 association or other legal entity.

30 "Producer." A person who purchases component elements and

1 blends them to produce automotive fuel.

2 "Program." The Automotive Fuel Testing and Disclosure
3 Program.

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

6 "Reformulated gasoline." Any gasoline which is certified by
7 the United States Environmental Protection Agency as complying
8 with the requirements of 42 U.S.C. § 7545 (relating to
9 regulation of fuels) and any regulations promulgated under the
10 Clean Air Act (69 Stat. 322, 42 U.S.C. § 7401 et seq.).

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

23 "Retailer." A person who sells automotive fuel to the
24 consumer.

25 "Secretary." The Secretary of Agriculture of the
26 Commonwealth.

27 § 4187.3. Automotive Fuel Testing and Disclosure Program.

28 (a) Establishment.--The department shall establish and
29 implement the Automotive Fuel Testing and Disclosure Program.

30 (b) Program requirements.--The Automotive Fuel Testing and

1 Disclosure Program shall provide for the annual testing of
2 automotive fuel on a random, unannounced basis and otherwise as
3 determined necessary by the department.

4 (c) Duties of department.--The department shall enforce the
5 provisions of this subchapter and shall:

6 (1) Take samples of automotive fuel wherever it is
7 offered or exposed for sale or use or sold in this
8 Commonwealth. No more than 10% of the automotive fuel
9 dispensers may be tested. Testing shall be coordinated with
10 the testing required for proper volumes of gasoline.

11 (2) Inspect and test on a random, unannounced basis. If
12 the octane level of the reading does not match the octane
13 rating as displayed on the fueling dispenser, the automotive
14 fuel sample shall be tested in accordance with the methods of
15 the ASTM or other test methods adopted by the FTC under the
16 Petroleum Marketing Practices Act (Public Law 95-297, 15
17 U.S.C. § 2801 et seq.) to ensure that the motor fuel sample
18 is in compliance with the motor fuel specifications of the
19 ASTM.

20 (3) Maintain records of all inspections.

21 (4) Inspect the labeling of automotive fuel dispensers
22 and storage tanks at retail businesses or locations where the
23 products are sold or offered or exposed for sale or use.

24 (5) Enter into contractual agreements with qualified
25 laboratories for the purpose of analyzing automotive fuel
26 samples, if the octane level of the automotive fuel is
27 questioned, as a cost-saving measure.

28 (6) Promulgate regulations as necessary for the
29 enforcement and administration of this subchapter. All
30 regulations and supplements thereto or revisions thereof

1 adopted by the FTC under the Petroleum Marketing Practices
2 Act to govern the certification, disclosure, posting and
3 labeling of automotive fuel before, on or after the effective
4 date of this section are hereby adopted as regulations in
5 this Commonwealth and shall remain in effect unless
6 subsequently modified by regulations promulgated by the
7 department.

8 (d) Sealers of weight and measures.--The department may
9 enter into agreements with any city or county for which a sealer
10 has been appointed for the enforcement of provisions of this
11 subchapter and of rules or regulations promulgated under this
12 subchapter. The sealer of a city or county shall have the same
13 authority and shall perform the same duties within the city or
14 county as are granted to and imposed upon the department with
15 respect to the inspection, testing and taking of automotive fuel
16 samples. The agreement shall provide that any revenues generated
17 pursuant to enforcement activities carried out by the sealer of
18 the city or county shall be retained by the city or county.

19 § 4187.4. Additional testing authority.

20 (a) Testing.--Upon the complaint of any distributor,
21 retailer or consumer, or when it deems necessary, the department
22 shall test or cause to be tested automotive fuel sold or offered
23 for sale, on a random sample basis, to determine the quality of
24 the automotive fuel.

25 (b) Contracting.--If the department does not have the
26 laboratory capability to test the automotive fuel in accordance
27 with the requirements of this subchapter, it may contract with
28 laboratories capable of testing of automotive fuel samples
29 submitted by the department.

30 (c) Fees and costs.--In addition to any civil penalty

1 imposed for a violation under § 4187.8 (relating to violations
2 and penalties), the department shall assess and collect a fee of
3 \$100 for administrative costs, collect a fee for sampling in an
4 amount not to exceed the actual cost and collect the actual cost
5 for the laboratory testing of each sample which fails to comply
6 with the standards of this subchapter.

7 (d) Duty of last seller.--The last seller of the automotive
8 fuel sample which fails to comply with this subchapter shall pay
9 the administrative, sampling and laboratory testing costs.

10 § 4187.5. Standards for automotive fuel.

11 (a) Adoption of standards.--The department shall adopt the
12 latest standards for automotive spark ignition engines based on
13 the latest standards of the ASTM as determined by the FTC. The
14 standards shall be published in the Pennsylvania Bulletin.

15 (b) Automotive fuel.--Gasoline sold, offered or exposed for
16 sale or stored or held for distribution in this Commonwealth
17 shall comply with ASTM specification D4814 and with the
18 volatility requirements promulgated by the EPA under 40 CFR Pt.
19 80 (relating to regulation of fuels and fuel additives).

20 (c) Records and compliance review.--Each distributor,
21 producer or retailer who distributes, produces, transports,
22 stores, sells or offers or exposes for sale automotive fuel in
23 this Commonwealth shall maintain for one year original copies of
24 all bills, manifests, delivery tickets and invoices for the
25 purpose of compliance review.

26 § 4187.6. Automotive fuel rating, disclosure and labeling
27 requirements.

28 (a) Disclosure requirements.--Each distributor, producer or
29 refiner who sells or offers or exposes for sale or delivers,
30 distributes or produces automotive fuel in this Commonwealth

1 shall provide, at the time of delivery, a bill, shipping
2 manifest or other type of written invoice to the person who
3 receives the automotive fuel. The bill, shipping manifest or
4 other written invoice shall state the automotive fuel rating.

5 (b) Posting and labeling requirements.--Each retailer of
6 automotive fuel in this Commonwealth shall label, in a clear and
7 conspicuous manner, each automotive fuel dispenser which is used
8 to sell or offer or expose for sale automotive fuel, with the
9 automotive fuel rating of the fuel, which shall be consistent
10 with the automotive fuel rating certified to the retailer by the
11 refiner or distributor, as the case may be. In the case of
12 gasoline which is blended with other gasoline by the retailer,
13 the automotive fuel rating shall be the average, weighted by
14 volume, of the octane rating certified to the retailer by the
15 distributor or refiner for each gasoline in the blend or
16 consistent with the lowest octane rating for any gasoline in the
17 blend as certified to the retailer by a refiner or distributor.

18 (c) Oxygenated gasoline labeling requirements.--If
19 oxygenated gasoline is sold, a person who sells or offers or
20 exposes the oxygenated gasoline for sale shall clearly and
21 conspicuously label the dispenser which is used to sell
22 oxygenated gasoline at retail or to dispense oxygenated gasoline
23 into the fuel supply tanks of motor vehicles with a notice
24 stating that the gasoline is oxygenated.

25 (d) Reformulated gasoline labeling requirements.--If
26 reformulated gasoline is sold, a person who sells or offers or
27 exposes the reformulated gasoline for sale shall clearly and
28 conspicuously label the dispenser which is used to sell
29 reformulated gasoline at retail or to dispense reformulated
30 gasoline into the fuel supply tanks of motor vehicles with a

1 notice stating that the gasoline is reformulated.

2 (e) Labeling tolerance.--Labeling shall be in accordance
3 with specifications of the ASTM entitled "Specifications for
4 Automotive Spark-Ignition Engine Fuel," designated D4814.

5 § 4187.7. Investigations.

6 (a) General rule.--The department may conduct investigations
7 to determine compliance with this subchapter. Investigations
8 shall be conducted in accordance with sections 4116 (relating to
9 investigations) and 4120 (relating to police powers; right of
10 entry and stoppage). Inspections may be performed during normal
11 business hours and may include the collection and removal of
12 samples for laboratory testing if the quality or reliability of
13 the automotive fuel is questioned.

14 (b) Entry upon premises.--

15 (1) The department shall have the right of access to the
16 premises and records of any establishment where automotive
17 fuel is stored, held, processed, distributed, offered or
18 exposed for sale or sold in this Commonwealth to:

19 (i) Inspect the automotive fuel in storage tanks and
20 take samples from the tanks and the dispensing system
21 connected to the storage tanks. The retailer or
22 distributor may request a second sample to be taken by
23 the inspector at the same time the initial sample is
24 drawn. All costs of the second sample shall be paid by
25 the retailer or distributor, as the case may be, making
26 the request. If the request for a second sample is made
27 by the retailer in accordance with procedures established
28 through an agreement with the distributor, producer or
29 refiner, all costs of drawing, handling and shipping the
30 sample shall be borne by the distributor, producer or

1 refiner who supplied the automotive fuel to the retailer.
2 If the request for a second sample is made by the
3 distributor in accordance with procedures established
4 through an agreement with the producer or refiner, all
5 costs of drawing, handling and shipping the sample shall
6 be borne by the producer or refiner who supplied the
7 automotive fuel to the distributor.

8 (ii) Inspect automotive fuel dispensing systems and
9 related equipment, oxygenate labels, reformulated labels
10 and octane labels.

11 (iii) Make copies of automotive fuel shipping,
12 receiving and invoice documents and records to determine
13 compliance with sections 4187.5 (relating to standards
14 for automotive fuel) and 4187.6 (relating to automotive
15 fuel rating, disclosure and labeling requirements).

16 (2) The department shall limit inspections, compliance
17 reviews and copying under this subsection to information and
18 data relating to product quantity, quality, oxygen content,
19 octane, source and other information as may be reasonably
20 requested.

21 (c) Remedies.--If the department determines that an
22 automotive fuel sample does not conform with the standards set
23 forth in section 4187.5 or that a label displayed on a
24 dispensing system, storage tank or other dispensing device does
25 not conform with the requirements of section 4187.6, the
26 department may initiate any or all of the following actions to
27 prohibit sale of the nonconforming automotive fuel or to
28 prohibit the use of the nonconforming dispensing system, storage
29 tank or other dispensing device:

30 (1) Reject and mark as rejected the dispensing system,

1 storage tank or other dispensing device from which the sample
2 was obtained or on which the nonconforming label is attached.

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

5 (3) Initiate criminal proceedings under section
6 4187.8(d) (relating to violations and penalties).

7 (4) Issue a citation.

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

9 (6) Advise the retailer or distributor that the
10 automotive fuel must be blended with another automotive fuel
11 to bring it into compliance, provided that the product does
12 not endanger public health or safety or adversely affect the
13 emissions characteristics of the motor vehicles in which it
14 is used.

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

17 (d) Stop-sale notice.--The department shall have the
18 authority to immediately seize and seal, in order to prevent
19 further sales, any dispensing system, storage tank or other
20 dispensing device from which automotive fuel is sold or offered
21 or exposed for sale in violation of the provisions of this
22 subchapter and to issue a stop-sale notice to the retailer or
23 distributor if the department has reason to believe the retailer
24 or distributor willfully or intentionally violated this
25 subchapter or the regulations promulgated in accordance with
26 this subchapter. Any automotive fuel subject to a stop-sale
27 notice shall not be sold, exposed, offered for sale or
28 transported unless the retailer or distributor has received
29 approval from the department. Automotive fuel which has been
30 seized and sealed by the department for violation of section

1 4187.5 or 4187.6 shall not be offered or exposed for sale until
2 the department has been fully satisfied that the automotive fuel
3 has been blended, refined or properly labeled to meet the
4 requirements of this subchapter and the retailer or distributor
5 has been notified of the department's decision to permit the
6 sale or relabeling of the fuel.

7 (e) Posting of stop-sale notice.--The department shall cause
8 to be posted, in a conspicuous place on the premises where a
9 dispensing system, storage tank or other dispensing device has
10 been sealed, a notice stating that sealing has taken place and
11 giving warning that it shall be unlawful to break, mutilate or
12 destroy the seal or to remove the contents of the dispensing
13 system, storage tank or other dispensing device without the
14 approval of the department.

15 (f) Notice required to remove seal.--Any retailer,
16 distributor or producer who owns an automotive fuel dispensing
17 system, storage tank or other dispensing device which has been
18 sealed by the department shall obtain the approval of the
19 department before the fuel is removed or a proper label
20 attached. A written notice of any corrective action taken shall
21 be submitted to the department within three working days. The
22 department may reinspect the automotive fuel dispensing system,
23 storage tank or other dispensing device to determine compliance.
24 The retailer, distributor, producer or refiner that owns the
25 system or device which has been sealed shall provide
26 documentation of the corrective action taken, including any
27 applicable shipping papers or bills of lading showing the
28 disposal or final disposition of the automotive fuel and any
29 other information necessary to permit the department to audit
30 and confirm that the corrective action was as previously

1 approved by the department. A retailer, distributor, producer or
2 refiner shall not remove a seal except when given specific
3 approval by the department.

4 § 4187.8. Violations and penalties.

5 (a) Retail violations.--The department may assess a civil
6 penalty of not more than \$5,000 upon a retailer who sells or
7 offers or exposes for sale automotive fuel from any dispensing
8 system, storage tank or other dispensing device which has not
9 been labeled in accordance with the provisions of this
10 subchapter, or who sells or offers or exposes for sale any
11 automotive fuel which does not meet the required standards for
12 the automotive fuel rating displayed on the label attached to
13 the dispensing system, storage tank or other dispensing device,
14 or who sells or offers or exposes for sale automotive fuel which
15 has been contaminated.

16 (b) Distributor, producer or refiner violations.--The
17 department may assess a civil penalty of not more than \$5,000
18 upon a distributor, producer or refiner who sells or offers or
19 exposes for sale automotive fuel which does not meet the
20 automotive fuel rating certified by the distributor, producer or
21 refiner or who sells or offers or exposes for sale automotive
22 fuel which does not meet the requirements of section 4187.5
23 (relating to standards for automotive fuel).

24 (c) Knowledge of deceptive practice.--In addition to any
25 civil penalty imposed for violations of subsection (a) or (b),
26 the department may assess a distributor, producer, refiner or
27 retailer with an additional civil penalty equal to the
28 difference between the price per gallon charged to the consumer
29 for the automotive fuel in question and the price per gallon
30 charged to the consumer for the lowest octane grade at the

retail dispensing facility at the time of the violation,
multiplied by the capacity of the storage tank from which the
product in question was dispensed, if the distributor, producer,
refiner or retailer violates any provisions of this subchapter
with actual knowledge that the act or practice underlying the
violation is unfair or deceptive.

(d) Repeat violations.--In addition to any civil penalty
assessed in accordance with the provisions of this section, the
department may initiate criminal proceedings for a second or
subsequent violation of sections 4187.5 and 4187.6 (relating to
automotive fuel rating, disclosure and labeling requirements). A
second or subsequent violation shall constitute a misdemeanor of
the third degree.

(e) Removal of seals.--The department may assess a civil
penalty of not less than \$1,000 nor more than \$5,000 on any
person, other than a person designated by the department, who
breaks, mutilates or destroys any seal placed upon a dispensing
system, storage tank or other dispensing device used to deliver
or store automotive fuel, or who removes automotive fuel from a
dispensing system, storage tank or other dispensing device which
has been sealed, or who defaces or removes a posted notice of
sealing.

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

(g) Innocent sellers exemption.--The department shall not
impose a civil penalty for a violation of subsection (a)
regarding labeling if the retailer labeled the dispensing
system, storage tank or other dispensing device in reasonable

1 reliance on documentation provided by the distributor, producer
2 or refiner certifying the standards for automotive fuel rating.

3 (h) Private action by retailer.--If a retailer unknowingly
4 and without deception sells or offers or exposes for sale
5 automotive fuel which does not conform with the provisions of
6 this subchapter, the distributor, producer, oxygenate blender or
7 refiner, as the case may be, of the nonconforming automotive
8 fuel shall be liable in damages to the retailer for any
9 ascertainable loss of money or property.

10 (i) Acts or practices constituting unfair trade.--It shall
11 be an unfair method of competition and an unfair or deceptive
12 act or practice in or affecting trade and commerce in this
13 Commonwealth within the meaning of section 3 of the act of
14 December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade
15 Practices and Consumer Protection Law, for any retailer,
16 producer, distributor, oxygenate blender or refiner to violate
17 the provisions of this subchapter or any regulations promulgated
18 under this subchapter.

19 § 4187.9. Annual report.

20 The department shall file an annual report with the
21 Transportation Committee of the Senate and the Transportation
22 Committee of the House of Representatives. The report shall
23 summarize the details and impact of the program for the year
24 being reported. The department shall file the report no later
25 than May 1 of the following year.

26 Section 2. The heading of Subchapter F of Chapter 41 of
27 Title 3 is amended to read:

28 SUBCHAPTER [F] Z

29 MISCELLANEOUS PROVISIONS

30 Section 3. This act shall take effect July 1, 2010, or

1 immediately, whichever is later.