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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 684**      Session of  
2007

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INTRODUCED BY MARKOSEK, CARROLL, LONGIETTI, PAYTON, WAGNER,  
BENNINGTON, CALTAGIRONE, FABRIZIO, FRANKEL, FREEMAN, GEIST,  
GIBBONS, HENNESSEY, JAMES, JOSEPHS, KORTZ, KOTIK, LEVDANSKY,  
MAHONEY, MANN, MYERS, PICKETT, PRESTON, SABATINA, SANTONI,  
STAIRS, SURRA, TANGRETTI, THOMAS, WALKO, WATSON, KULA AND  
HORNAMAN, MARCH 9, 2007

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REFERRED TO COMMITTEE ON TRANSPORTATION, MARCH 9, 2007

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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; and providing for penalties.

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

8 Section 1. Short title.

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

11 Section 2. Definitions.

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

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

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

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

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

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

12 (i) Gasoline.

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

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

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

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

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

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

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

30 "Department." The Department of Agriculture of the

1 Commonwealth.

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

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

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

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

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

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

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

20 "Oxygenate blending facility." A refinery, bulk terminal,  
21 bulk plant, other facility or truck or another place at which  
22 oxygenated gasoline is produced.

23 "Oxygenated gasoline." Gasoline which contains at least 2%  
24 oxygen by weight.

25 "Person." A natural person, corporation, partnership,  
26 association or other legal entity.

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

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

1 "Reformulated gasoline." Any gasoline which is certified by  
2 the Environmental Protection Agency as complying with the  
3 requirements of section 211 of the Clean Air Act (Public Law 95-  
4 95, 42 U.S.C. § 7401 et seq.) and any regulations promulgated  
5 pursuant to the Clean Air Act.

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

18 "Retailer." A person who sells automotive fuel to the  
19 consumer.

20 "Secretary." The Secretary of Agriculture of the  
21 Commonwealth.

22 Section 3. Automotive Fuel Testing and Disclosure Program.

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

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

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

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

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

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

14           (4) Maintain records of all inspections.

15           (5) Inspect and test samples submitted to the department  
16 by a distributor or retailer. The department may by  
17 regulation establish and collect fees from any distributor or  
18 retailer who submits automotive fuel samples to the  
19 department for testing.

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

23           (7) Enter into contractual agreements with qualified  
24 laboratories for the purpose of analyzing automotive fuel  
25 samples.

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

28           (d) Sealers of weight and measures.--The department may  
29 enter into agreements with any city or county for which a sealer  
30 has been appointed for the enforcement of provisions of this act

1 and rules or regulations promulgated under this act. The sealer  
2 of a city or county shall have the same authority and shall  
3 perform the same duties within the city or county as are granted  
4 to and imposed upon the department with respect to the  
5 inspection, testing and taking of automotive fuel samples.

6 Section 4. Standards for automotive fuel.

7 (a) Adoption of standards.--The department shall adopt  
8 standards for automotive spark-ignition engine fuels. The  
9 department shall adopt the latest standards of the ASTM or other  
10 standards as determined by the FTC.

11 (b) Automotive fuel.--Gasoline sold, offered or exposed for  
12 sale, stored or held for distribution in this Commonwealth shall  
13 comply with ASTM specification D4814 and with the volatility  
14 requirements promulgated by the EPA under 40 CFR Part 80.

15 Gasoline may be blended with an agriculturally derived ethanol  
16 or with a detergent additive, antiknock additive or any other  
17 additive approved and registered by the EPA. After gasoline is  
18 sold, transferred or otherwise removed from a refinery, the  
19 gasoline shall not be sold, offered or exposed for sale or  
20 stored or held for distribution to a consumer in this  
21 Commonwealth if it has been:

22 (1) Blended with any other petroleum product which is  
23 not gasoline unless the blended product conforms with ASTM  
24 standards.

25 (2) Blended with products commonly and commercially  
26 known as casinghead gasoline, absorption gasoline,  
27 condensation gasoline, drip gasoline or natural gasoline.

28 (3) Blended with any contaminant.

29 (c) Records and audits.--Each distributor, producer or  
30 retailer who distributes, produces, transports, stores, sells or

1 offers or exposes for sale automotive fuel in this Commonwealth  
2 shall maintain for one year original copies of all bills,  
3 manifests, delivery tickets, invoices and any other information  
4 the department may by regulation require for the purpose of  
5 audits by the department.

6 Section 5. Automotive fuel rating; disclosure and labeling  
7 requirements.

8 (a) Disclosure requirements.--Each distributor, producer or  
9 refiner who sells or offers or exposes for sale, delivers,  
10 distributes or produces automotive fuel in this Commonwealth  
11 shall provide, at the time of delivery, a bill, shipping  
12 manifest or other type of written invoice to the person who  
13 receives the automotive fuel. The bill, shipping manifest or  
14 other written invoice shall state the automotive fuel rating.

15 (b) Posting and labeling requirements.--Each retailer of  
16 automotive fuel in this Commonwealth shall label in a clear and  
17 conspicuous manner each automotive fuel dispenser which is used  
18 to sell or offer or expose for sale automotive fuel, with the  
19 automotive fuel rating of such fuel, which shall be consistent  
20 with the automotive fuel rating certified to such retailer by  
21 the refiner or distributor, as the case may be. In the case of  
22 gasoline which is blended with other gasoline by the retailer,  
23 the automotive fuel rating shall be the average, weighted by  
24 volume, of the octane rating certified to the retailer by the  
25 distributor or refiner for each gasoline in the blend, or  
26 consistent with the lowest octane rating for any gasoline in the  
27 blend as certified to the retailer by a refiner or distributor.

28 (c) Oxygenated gasoline labeling requirements.--Whenever  
29 oxygenated gasoline is sold, a person who sells or offers or  
30 exposes such gasoline for sale shall clearly and conspicuously

1 label the dispenser which is used to sell oxygenated gasoline at  
2 retail or to dispense oxygenated gasoline into the fuel supply  
3 tanks of motor vehicles with a notice stating that the gasoline  
4 is oxygenated and will reduce the carbon monoxide emissions from  
5 the motor vehicle.

6 (d) Reformulated gasoline labeling requirements.--Whenever  
7 reformulated gasoline is required to be sold, a person who sells  
8 or offers or exposes such gasoline for sale shall clearly and  
9 conspicuously label the dispenser which is used to sell  
10 reformulated gasoline at retail or to dispense reformulated  
11 gasoline into the fuel supply tanks of motor vehicles with a  
12 notice stating that the gasoline is reformulated.

13 (e) Representation of antiknock characteristics of  
14 automotive fuel.--No distributor of automotive fuel in this  
15 Commonwealth shall make any representation of the antiknock  
16 characteristics of automotive fuel unless the representation  
17 discloses the minimum antiknock index requirements of the fuel  
18 as adopted by the National Conference of Weights and Measures  
19 and published in Handbook 130, and supplements thereto, or in  
20 any publication revising or superseding Handbook 130.

21 (f) Storage tank labels; retail locations.--Each retailer of  
22 automotive fuel shall attach an identification device on the  
23 inlet end of the fill pipe of an automotive fuel storage tank at  
24 retail locations where automotive fuel is sold or offered or  
25 exposed for sale. The identification device shall clearly  
26 display the automotive fuel rating of the automotive fuel held  
27 in the storage tank. The automotive fuel rating displayed on the  
28 identification device shall be consistent with the automotive  
29 fuel rating displayed on the dispensing system through which the  
30 fuel is dispensed.



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

6 (h) Federal regulations.--All regulations and supplements  
7 thereto or revisions thereof adopted by the FTC pursuant to the  
8 Petroleum Marketing Practices Act (Public Law 95-297, 15 U.S.C.  
9 § 2801 et seq.) to govern the certification, disclosure, posting  
10 and labeling of automotive fuel before, on or after the  
11 effective date of this act are hereby adopted as regulations in  
12 this Commonwealth and shall remain in effect unless subsequently  
13 modified by regulations promulgated by the department.

14 Section 6. Investigations.

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

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

24 (1) Inspect the automotive fuel in storage tanks and  
25 take samples from such tanks and the dispensing system  
26 connected to the storage tanks. The retailer or distributor  
27 may request a second sample to be taken by the inspector at  
28 the same time the initial sample is drawn. All costs of the  
29 second sample shall be paid by the retailer or distributor,  
30 as the case may be, making the request. If the request for a

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

12 (2) Inspect automotive fuel dispensing systems and  
13 related equipment, oxygenate labels, reformulated labels and  
14 octane labels.

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

18 The department shall limit such inspections, auditing and  
19 copying to information and data relating to product quantity,  
20 quality, oxygen content, octane, source and other information as  
21 may be reasonably requested.

22 (c) Remedies.--Whenever the department determines that an  
23 automotive fuel sample does not conform with the standards set  
24 forth in section 4 or that a label displayed on a dispensing  
25 system, storage tank or other dispensing device does not conform  
26 with the requirements of section 5, the department may initiate  
27 any or all of the following actions to prohibit sale of the  
28 nonconforming automotive fuel or to prohibit the use of the  
29 nonconforming dispensing system, storage tank or other  
30 dispensing device:

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

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

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

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 act  
22 and to issue a stop sale notice to the retailer or distributor,  
23 if the department has reason to believe the retailer or  
24 distributor willfully or intentionally violated this act or the  
25 regulations promulgated in accordance with this act. Any  
26 automotive fuel subject to a stop sale notice shall not be sold  
27 or exposed or offered for sale or transported unless the  
28 retailer or distributor has received approval from the  
29 department. Automotive fuel which has been seized and sealed by  
30 the department for violation of section 4 or 5 shall not be

1 offered or exposed for sale until the department has been fully  
2 satisfied that the automotive fuel has been blended or refined  
3 or properly labeled to meet the requirements of this act, and  
4 the retailer or distributor has been notified of the  
5 department's decision to permit the sale or relabeling of the  
6 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 who 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 such  
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 Section 7. 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 act, or  
10 who sells or offers or exposes for sale any automotive fuel  
11 which does not meet the required standards for automotive fuel  
12 rating displayed on the label attached to the dispensing system,  
13 storage tank or other dispensing device, or who sells or offers  
14 or exposes for sale automotive fuel which has been contaminated.

15 (b) Distributor, producer or refiner violations.--The  
16 department may assess a civil penalty of not more than \$5,000  
17 upon a distributor, producer or refiner who sells or offers or  
18 exposes for sale automotive fuel which does not meet the  
19 automotive fuel rating certified by the distributor, producer or  
20 refiner or who sells or offers or exposes for sale automotive  
21 fuel which does not meet the requirements of section 4.

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

1 product in question was dispensed, if the distributor, producer,  
2 refiner or retailer violates any provisions of this act or any  
3 regulations promulgated pursuant to this act with actual  
4 knowledge that the act or practice underlying the violation is  
5 unfair or deceptive.

6 (d) Repeat violations.--In addition to any civil penalty  
7 assessed in accordance with the provisions of this section, the  
8 department may initiate criminal proceedings for a second or  
9 subsequent violation of sections 4 and 5 or any regulations  
10 promulgated pursuant to such sections. Such a second or  
11 subsequent violation shall constitute a misdemeanor of the third  
12 degree.

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

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

26 (g) Innocent sellers exemption.--The department shall not  
27 impose a civil penalty for a violation of subsection (a)  
28 regarding labeling if the retailer labeled the dispensing  
29 system, storage tank or other dispensing device in reasonable  
30 reliance on documentation provided by the distributor, producer

1 or refiner certifying the standards for automotive fuel rating.

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

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

18 Section 8. Annual report.

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

26 Section 9. Effective date.

27 This act shall take effect July 1, 2007.