
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 684 Session of
2007

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,
HORNAMAN, SIPTROTH, RAMALEY, SCAVELLO, COSTA, MAHER, GERGELY,
GRUCELA, GOODMAN AND PAYNE, MARCH 9, 2007

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL
LICENSURE, IN SENATE, AS AMENDED, JUNE 24, 2008

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 AMENDING TITLE 3 (AGRICULTURE) OF THE PENNSYLVANIA CONSOLIDATED <—
8 STATUTES, ESTABLISHING AN AUTOMOTIVE FUEL TESTING AND
9 DISCLOSURE PROGRAM.

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

12 ~~Section 1. Short title.~~ <—

13 ~~This act shall be known and may be cited as the Automotive~~
14 ~~Fuel Testing Act.~~

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~~

1 ~~context clearly indicates otherwise:~~

2 ~~"American Society for Testing and Materials" or "ASTM." An~~
3 ~~organization which develops quality standards and test methods~~
4 ~~for petroleum products.~~

5 ~~"Antiknock characteristics." The number assigned to an~~
6 ~~automotive fuel which designates the antiknock quality of such~~
7 ~~fuel.~~

8 ~~"Antiknock quality." The distinctive properties or~~
9 ~~components of a grade or type of automotive fuel which enhance~~
10 ~~the performance of such fuel.~~

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

14 ~~(1) Automotive spark ignition engine fuel, which~~
15 ~~includes, but is not limited to:~~

16 ~~(i) Gasoline.~~

17 ~~(ii) Gasohol, a mixture of unleaded gasoline and at~~
18 ~~least 10% denatured ethanol.~~

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

22 ~~(2) Alternative liquid automotive fuels, including, but~~
23 ~~not limited to:~~

24 ~~(i) Methanol, denatured ethanol and other alcohols.~~

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

27 ~~"Automotive fuel rating." For automotive spark ignition~~
28 ~~engine fuel, the octane rating or, for alternative liquid~~
29 ~~automotive fuel, the commonly used name of the fuel with a~~
30 ~~disclosure of the amount, expressed as a minimum percent by~~

1 ~~volume, of the principal components of the fuel.~~

2 ~~"Consumer." A person who purchases automotive fuel for~~
3 ~~purposes other than resale.~~

4 ~~"Department." The Department of Agriculture of the~~
5 ~~Commonwealth.~~

6 ~~"Dispenser" or "dispensing system." A device designed to~~
7 ~~measure and deliver automotive fuel into the fuel supply tank of~~
8 ~~a motor vehicle.~~

9 ~~"Distributor." A person who receives automotive fuel in this~~
10 ~~Commonwealth for storage and subsequent distribution to another~~
11 ~~person other than the consumer.~~

12 ~~"EPA." The United States Environmental Protection Agency.~~

13 ~~"FTC." The United States Federal Trade Commission.~~

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

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

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

26 ~~"Oxygenate." A substance which, when added to gasoline,~~
27 ~~increases the amount of oxygen in that gasoline blend.~~

28 ~~"Oxygenate blender." A person who owns, leases, operates,~~
29 ~~controls or supervises an oxygenate blending facility.~~

30 ~~"Oxygenate blending facility." A refinery, bulk terminal,~~

1 ~~bulk plant, other facility or truck or another place at which~~
2 ~~oxygenated gasoline is produced.~~

3 ~~"Oxygenated gasoline."— Gasoline which contains at least 2%~~
4 ~~oxygen by weight.~~

5 ~~"Person."— A natural person, corporation, partnership,~~
6 ~~association or other legal entity.~~

7 ~~"Producer."— A person who purchases component elements and~~
8 ~~blends them to produce automotive fuel.~~

9 ~~"Refiner."— A person engaged in the manufacture, production~~
10 ~~or importation of automotive fuel.~~

11 ~~"Reformulated gasoline."— Any gasoline which is certified by~~
12 ~~the Environmental Protection Agency as complying with the~~
13 ~~requirements of section 211 of the Clean Air Act (Public Law 95-~~
14 ~~95, 42 U.S.C. § 7401 et seq.) and any regulations promulgated~~
15 ~~pursuant to the Clean Air Act.~~

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

28 ~~"Retailer."— A person who sells automotive fuel to the~~
29 ~~consumer.~~

30 ~~"Secretary."— The Secretary of Agriculture of the~~

1 Commonwealth.

2 ~~Section 3. Automotive Fuel Testing and Disclosure Program.~~

3 ~~(a) Establishment. The department shall establish and~~
4 ~~implement the Automotive Fuel Testing and Disclosure Program.~~

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

9 ~~(c) Duties of department. The department shall enforce the~~
10 ~~provisions of this act and shall:~~

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

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

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

24 ~~(4) Maintain records of all inspections.~~

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

30 ~~(6) Inspect the labeling of automotive fuel dispensers~~

1 ~~and storage tanks at retail businesses or locations where~~
2 ~~such products are sold or offered or exposed for sale or use.~~

3 ~~(7) Enter into contractual agreements with qualified~~
4 ~~laboratories for the purpose of analyzing automotive fuel~~
5 ~~samples.~~

6 ~~(8) Promulgate such regulations as necessary for the~~
7 ~~enforcement and administration of this act.~~

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 act~~
11 ~~and rules or regulations promulgated under this act. The sealer~~
12 ~~of a city or county shall have the same authority and shall~~
13 ~~perform the same duties within the city or county as are granted~~
14 ~~to and imposed upon the department with respect to the~~
15 ~~inspection, testing and taking of automotive fuel samples. The~~
16 ~~agreement shall provide that any revenues generated pursuant to~~
17 ~~enforcement activities carried out by the sealer of the city or~~
18 ~~county shall be retained by the city or county.~~

19 ~~Section 4. Standards for automotive fuel.~~

20 ~~(a) Adoption of standards. The department shall adopt~~
21 ~~standards for automotive spark ignition engine fuels. The~~
22 ~~department shall adopt the latest standards of the ASTM or other~~
23 ~~standards as determined by the FTC.~~

24 ~~(b) Automotive fuel. Gasoline sold, offered or exposed for~~
25 ~~sale, stored or held for distribution in this Commonwealth shall~~
26 ~~comply with ASTM specification D4814 and with the volatility~~
27 ~~requirements promulgated by the EPA under 40 CFR Pt. 80~~
28 ~~(relating to regulation of fuels and fuel additives). Gasoline~~
29 ~~may be blended with an agriculturally derived ethanol or with a~~
30 ~~detergent additive, antiknock additive or any other additive~~

1 ~~approved and registered by the EPA. After gasoline is sold,~~
2 ~~transferred or otherwise removed from a refinery, the gasoline~~
3 ~~shall not be sold, offered or exposed for sale or stored or held~~
4 ~~for distribution to a consumer in this Commonwealth if it has~~
5 ~~been:~~

6 ~~(1) Blended with any other petroleum product which is~~
7 ~~not gasoline unless the blended product conforms with ASTM~~
8 ~~standards.~~

9 ~~(2) Blended with products commonly and commercially~~
10 ~~known as casinghead gasoline, absorption gasoline,~~
11 ~~condensation gasoline, drip gasoline or natural gasoline.~~

12 ~~(3) Blended with any contaminant.~~

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

20 ~~Section 5. Automotive fuel rating; disclosure and labeling~~
21 ~~requirements.~~

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

29 ~~(b) Posting and labeling requirements. Each retailer of~~
30 ~~automotive fuel in this Commonwealth shall label in a clear and~~

1 ~~conspicuous manner each automotive fuel dispenser which is used~~
2 ~~to sell or offer or expose for sale automotive fuel, with the~~
3 ~~automotive fuel rating of such fuel, which shall be consistent~~
4 ~~with the automotive fuel rating certified to such retailer by~~
5 ~~the refiner or distributor, as the case may be. In the case of~~
6 ~~gasoline which is blended with other gasoline by the retailer,~~
7 ~~the automotive fuel rating shall be the average, weighted by~~
8 ~~volume, of the octane rating certified to the retailer by the~~
9 ~~distributor or refiner for each gasoline in the blend, or~~
10 ~~consistent with the lowest octane rating for any gasoline in the~~
11 ~~blend as certified to the retailer by a refiner or distributor.~~

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

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

27 ~~(e) Representation of antiknock characteristics of~~
28 ~~automotive fuel. No distributor of automotive fuel in this~~
29 ~~Commonwealth shall make any representation of the antiknock~~
30 ~~characteristics of automotive fuel unless the representation~~

1 ~~discloses the minimum antiknock index requirements of the fuel~~
2 ~~as adopted by the National Conference of Weights and Measures~~
3 ~~and published in Handbook 130, and supplements thereto, or in~~
4 ~~any publication revising or superseding Handbook 130.~~

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

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

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

28 ~~Section 6. Investigations.~~

29 ~~(a) General rule. The department may conduct investigations~~
30 ~~to determine compliance with this act or any regulation~~

1 ~~promulgated pursuant to this act. Inspections shall be performed~~
2 ~~during normal business hours and shall include the collection~~
3 ~~and removal of samples for laboratory testing.~~

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

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

26 ~~(2) Inspect automotive fuel dispensing systems and~~
27 ~~related equipment, oxygenate labels, reformulated labels and~~
28 ~~octane labels.~~

29 ~~(3) Audit and make copies of automotive fuel shipping,~~
30 ~~receiving and invoice documents and records to determine~~

1 ~~compliance with sections 4 and 5.~~

2 ~~The department shall limit such inspections, auditing and~~
3 ~~copying to information and data relating to product quantity,~~
4 ~~quality, oxygen content, octane, source and other information as~~
5 ~~may be reasonably requested.~~

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

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

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

20 ~~(3) Initiate criminal proceedings under section 7(d).~~

21 ~~(4) Issue a citation.~~

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

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

29 ~~(7) Issue a written warning directing the retailer or~~
30 ~~distributor to correct the nonconforming label.~~

1 ~~(d) Stop sale notice. The department shall have the~~
2 ~~authority to immediately seize and seal, in order to prevent~~
3 ~~further sales, any dispensing system, storage tank or other~~
4 ~~dispensing device from which automotive fuel is sold or offered~~
5 ~~or exposed for sale in violation of the provisions of this act~~
6 ~~and to issue a stop sale notice to the retailer or distributor,~~
7 ~~if the department has reason to believe the retailer or~~
8 ~~distributor willfully or intentionally violated this act or the~~
9 ~~regulations promulgated in accordance with this act. Any~~
10 ~~automotive fuel subject to a stop sale notice shall not be sold~~
11 ~~or exposed or offered for sale or transported unless the~~
12 ~~retailer or distributor has received approval from the~~
13 ~~department. Automotive fuel which has been seized and sealed by~~
14 ~~the department for violation of section 4 or 5 shall not be~~
15 ~~offered or exposed for sale until the department has been fully~~
16 ~~satisfied that the automotive fuel has been blended or refined~~
17 ~~or properly labeled to meet the requirements of this act, and~~
18 ~~the retailer or distributor has been notified of the~~
19 ~~department's decision to permit the sale or relabeling of the~~
20 ~~fuel.~~

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

29 ~~(f) Notice required to remove seal. Any retailer,~~
30 ~~distributor or producer who owns an automotive fuel dispensing~~

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

18 ~~Section 7. Violations and penalties.~~

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

29 ~~(b) Distributor, producer or refiner violations. The~~
30 ~~department may assess a civil penalty of not more than \$5,000~~

1 ~~upon a distributor, producer or refiner who sells or offers or~~
2 ~~exposes for sale automotive fuel which does not meet the~~
3 ~~automotive fuel rating certified by the distributor, producer or~~
4 ~~refiner or who sells or offers or exposes for sale automotive~~
5 ~~fuel which does not meet the requirements of section 4.~~

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

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

27 ~~(e) Removal of seals. The department may assess a civil~~
28 ~~penalty of not less than \$1,000 nor more than \$5,000 on any~~
29 ~~person, other than a person designated by the department, who~~
30 ~~breaks, mutilates or destroys any seal placed upon a dispensing~~

1 ~~system, storage tank or other dispensing device used to deliver~~
2 ~~or store automotive fuel, or who removes automotive fuel from a~~
3 ~~dispensing system, storage tank or other dispensing device which~~
4 ~~has been sealed, or who defaces or removes a posted notice of~~
5 ~~sealing.~~

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

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

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

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

1 ~~pursuant to this act.~~

2 ~~(j) Additional remedy. In addition to any civil penalty~~
3 ~~imposed for violations of this section, a consumer may file a~~
4 ~~civil action suit against a retailer, distributor, producer,~~
5 ~~oxygenate blender or refiner, as the case may be, of the~~
6 ~~nonconforming automotive fuel. A retailer, distributor,~~
7 ~~producer, oxygenate blender or refiner of the nonconforming~~
8 ~~automotive fuel shall be liable in damages to the consumer for~~
9 ~~any ascertainable loss of money or property, as decided by a~~
10 ~~court of competent jurisdiction.~~

11 ~~Section 8. Annual report.~~

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

19 ~~Section 9. Octane Testing Account.~~

20 ~~(a) Establishment. The Octane Testing Account is~~
21 ~~established as a restricted revenue account in the General Fund.~~
22 ~~The following are the sources of money for the Octane Testing~~
23 ~~Account:~~

24 ~~(1) Fees per year as follows:~~

25 ~~1-9 fueling dispensers - \$100 per year~~

26 ~~10-19 fueling dispensers - \$200 per year~~

27 ~~20 or more fueling dispensers — \$300 per year~~

28 ~~(2) Fees per load rack terminal as follows:~~

29 ~~1-9 meters - \$500 per year~~

30 ~~10 or more meters - \$1,000 per year~~

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

3 ~~(b) Appropriations from account. Money in the Octane~~
4 ~~Testing Account is hereby appropriated, upon approval by the~~
5 ~~Governor, to be used exclusively for the implementation and~~
6 ~~administration of this act.~~

7 ~~Section 10. Effective date.~~

8 ~~This act shall take effect July 1, 2007.~~

9 SECTION 1. CHAPTER 41 OF TITLE 3 OF THE PENNSYLVANIA
10 CONSOLIDATED STATUTES IS AMENDED BY ADDING A SUBCHAPTER TO READ:

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11 SUBCHAPTER F
12 AUTOMOTIVE FUEL TESTING
13 AND DISCLOSURE PROGRAM

14 SEC.

15 4187.1. SCOPE OF SUBCHAPTER.

16 4187.2. DEFINITIONS.

17 4187.3. AUTOMOTIVE FUEL TESTING AND DISCLOSURE PROGRAM.

18 4187.4. STANDARDS FOR AUTOMOTIVE FUEL.

19 4187.5. AUTOMOTIVE FUEL RATING, DISCLOSURE AND LABELING
20 REQUIREMENTS.

21 4187.6. INVESTIGATIONS.

22 4187.7. VIOLATIONS AND PENALTIES.

23 4187.8. ANNUAL REPORT.

24 § 4187.1. SCOPE OF SUBCHAPTER.

25 THIS SUBCHAPTER RELATES TO AUTOMOTIVE FUEL TESTING
26 AND DISCLOSURE.

27 § 4187.2. DEFINITIONS.

28 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS SUBCHAPTER
29 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
30 CONTEXT CLEARLY INDICATES OTHERWISE:

1 "AMERICAN SOCIETY FOR TESTING AND MATERIALS INTERNATIONAL" OR
2 "ASTM." THE INTERNATIONAL VOLUNTARY CONSENSUS STANDARDS
3 ORGANIZATION FORMED FOR THE DEVELOPMENT OF STANDARDS ON
4 CHARACTERISTICS AND PERFORMANCE OF MATERIALS, PRODUCTS, SYSTEMS,
5 SERVICES AND THE PROMOTION OF RELATED KNOWLEDGE.

6 "ANTIKNOCK CHARACTERISTICS." THE NUMBER ASSIGNED TO AN
7 AUTOMOTIVE FUEL WHICH DESIGNATES THE ANTIKNOCK QUALITY OF THE
8 FUEL.

9 "ANTIKNOCK QUALITY." THE DISTINCTIVE PROPERTIES OR
10 COMPONENTS OF A GRADE OR TYPE OF AUTOMOTIVE FUEL WHICH ENHANCE
11 THE PERFORMANCE OF THE FUEL.

12 "AUTOMOTIVE FUEL." ANY LIQUID OR GASEOUS MATTER USED FOR THE
13 GENERATION OF POWER IN AN INTERNAL COMBUSTION ENGINE.

14 "AUTOMOTIVE FUEL RATING." FOR AUTOMOTIVE SPARK-IGNITION
15 ENGINE FUEL, THE OCTANE RATING OR, FOR ALTERNATIVE LIQUID
16 AUTOMOTIVE FUEL, THE COMMONLY USED NAME OF THE FUEL WITH A
17 DISCLOSURE OF THE AMOUNT, EXPRESSED AS A MINIMUM PERCENT BY
18 VOLUME, OF THE PRINCIPAL COMPONENTS OF THE FUEL.

19 "CONSUMER." A PERSON WHO PURCHASES AUTOMOTIVE FUEL FOR
20 PURPOSES OTHER THAN RESALE.

21 "DEPARTMENT." THE DEPARTMENT OF AGRICULTURE OF THE
22 COMMONWEALTH.

23 "DISPENSER" OR "DISPENSING SYSTEM." A DEVICE DESIGNED TO
24 MEASURE AND DELIVER AUTOMOTIVE FUEL INTO THE FUEL SUPPLY TANK OF
25 A MOTOR VEHICLE.

26 "DISTRIBUTOR." A PERSON WHO RECEIVES AUTOMOTIVE FUEL IN THIS
27 COMMONWEALTH FOR STORAGE AND SUBSEQUENT DISTRIBUTION TO ANOTHER
28 PERSON OTHER THAN THE CONSUMER.

29 "EPA." THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

30 "FTC." THE UNITED STATES FEDERAL TRADE COMMISSION.

1 "FUELING DISPENSERS." INDIVIDUAL FUELING POINTS, RECOGNIZED
2 BY PRICE AND VOLUME DISPLAYS FOR THE DEVICES' POINTS OF SALE.

3 "LOAD RACK TERMINALS." A LOCATION WHERE THE COMMERCIAL
4 TRANSFER OF PETROLEUM PRODUCTS AT THE WHOLESALE LEVEL IS
5 CONDUCTED UTILIZING METERS EMPLOYED IN THE MEASUREMENT OF
6 PRODUCT DELIVERED TO THE SELLER BY THE BUYER.

7 "OCTANE RATING" OR "OCTANE NUMBER." THE RATING OF THE
8 ANTIKNOCK CHARACTERISTICS OF A GRADE OR TYPE OF AUTOMOTIVE FUEL
9 AS DETERMINED BY DIVIDING BY TWO THE SUM OF THE RESEARCH OCTANE
10 NUMBER PLUS THE MOTOR OCTANE NUMBER UNLESS ANOTHER PROCEDURE IS
11 DETERMINED BY THE DEPARTMENT OF AGRICULTURE TO BE MORE
12 APPROPRIATE FOR THE PURPOSES OF THIS SUBCHAPTER.

13 "OXYGENATE." A SUBSTANCE WHICH, WHEN ADDED TO GASOLINE,
14 INCREASES THE AMOUNT OF OXYGEN IN THE GASOLINE BLEND.

15 "OXYGENATE BLENDER." A PERSON WHO OWNS, LEASES, OPERATES,
16 CONTROLS OR SUPERVISES AN OXYGENATE BLENDING FACILITY.

17 "OXYGENATE BLENDING FACILITY." A REFINERY, BULK TERMINAL,
18 BULK PLANT, OTHER FACILITY OR TRUCK OR ANOTHER PLACE AT WHICH
19 OXYGENATED GASOLINE IS PRODUCED.

20 "OXYGENATED GASOLINE." GASOLINE WHICH CONTAINS AT LEAST 2%
21 OXYGEN BY WEIGHT.

22 "PERSON." A NATURAL PERSON, CORPORATION, PARTNERSHIP,
23 ASSOCIATION OR OTHER LEGAL ENTITY.

24 "PRODUCER." A PERSON WHO PURCHASES COMPONENT ELEMENTS AND
25 BLENDS THEM TO PRODUCE AUTOMOTIVE FUEL.

26 "PROGRAM." THE AUTOMOTIVE FUEL TESTING AND DISCLOSURE
27 PROGRAM.

28 "REFINER." A PERSON ENGAGED IN THE MANUFACTURE, PRODUCTION
29 OR IMPORTATION OF AUTOMOTIVE FUEL.

30 "REFORMULATED GASOLINE." ANY GASOLINE WHICH IS CERTIFIED BY

1 THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AS COMPLYING
2 WITH THE REQUIREMENTS OF 42 U.S.C. § 7545 (RELATING TO
3 REGULATION OF FUELS) AND ANY REGULATIONS PROMULGATED UNDER THE
4 CLEAN AIR ACT (69 STAT. 42 U.S.C. § 7401 ET SEQ.).

5 "RESEARCH OCTANE NUMBER" AND "MOTOR OCTANE NUMBER." THE
6 TERMS SHALL HAVE THE MEANINGS GIVEN THEM IN THE SPECIFICATIONS
7 OF THE AMERICAN SOCIETY FOR TESTING AND MATERIALS ENTITLED
8 "STANDARD SPECIFICATIONS FOR AUTOMOTIVE SPARK-IGNITION ENGINE
9 FUEL," DESIGNATED D4814, AND, WITH RESPECT TO ANY GRADE OR TYPE
10 OF AUTOMOTIVE FUEL, ARE DETERMINED IN ACCORDANCE WITH THE TEST
11 METHODS SET FORTH IN AMERICAN SOCIETY FOR TESTING AND MATERIALS
12 STANDARD TEST METHODS, DESIGNATED D2699, "STANDARD TEST METHOD
13 FOR KNOCK CHARACTERISTICS OF MOTOR FUELS BY THE RESEARCH
14 METHOD," AMERICAN SOCIETY FOR TESTING AND MATERIALS D2700,
15 "STANDARD TEST METHOD FOR KNOCK CHARACTERISTICS OF MOTOR AND
16 AVIATION FUELS BY THE MOTOR METHOD."

17 "RETAILER." A PERSON WHO SELLS AUTOMOTIVE FUEL TO THE
18 CONSUMER.

19 "SECRETARY." THE SECRETARY OF AGRICULTURE OF THE
20 COMMONWEALTH.

21 § 4187.3. AUTOMOTIVE FUEL TESTING AND DISCLOSURE PROGRAM.

22 (A) ESTABLISHMENT.--THE DEPARTMENT SHALL ESTABLISH AND
23 IMPLEMENT THE AUTOMOTIVE FUEL TESTING AND DISCLOSURE PROGRAM.

24 (B) PROGRAM REQUIREMENTS.--THE AUTOMOTIVE FUEL TESTING AND
25 DISCLOSURE PROGRAM SHALL PROVIDE FOR THE ANNUAL TESTING OF
26 AUTOMOTIVE FUEL ON A RANDOM, UNANNOUNCED BASIS AND OTHERWISE AS
27 DETERMINED NECESSARY BY THE DEPARTMENT.

28 (C) DUTIES OF DEPARTMENT.--THE DEPARTMENT SHALL ENFORCE THE
29 PROVISIONS OF THIS SUBCHAPTER AND SHALL:

30 (1) TAKE SAMPLES OF AUTOMOTIVE FUEL WHEREVER IT IS

1 OFFERED OR EXPOSED FOR SALE OR USE OR SOLD IN THIS
2 COMMONWEALTH. NO MORE THAN 10% OF THE AUTOMOTIVE FUEL
3 DISPENSERS MAY BE TESTED. TESTING SHALL BE COORDINATED WITH
4 THE TESTING REQUIRED FOR PROPER VOLUMES OF GASOLINE.

5 (2) INSPECT AND TEST ON A RANDOM, UNANNOUNCED BASIS. IF
6 THE OCTANE LEVEL OF THE READING DOES NOT MATCH THE OCTANE
7 RATING AS DISPLAYED ON THE FUELING DISPENSER, THE AUTOMOTIVE
8 FUEL SAMPLE SHALL BE TESTED IN ACCORDANCE WITH THE METHODS OF
9 THE ASTM OR OTHER TEST METHODS ADOPTED BY THE FTC UNDER THE
10 PETROLEUM MARKETING PRACTICES ACT (PUBLIC LAW 95-297, 15
11 U.S.C. § 2801 ET SEQ.) TO ENSURE THAT THE MOTOR FUEL SAMPLE
12 IS IN COMPLIANCE WITH THE MOTOR FUEL SPECIFICATIONS OF THE
13 ASTM.

14 (3) MAINTAIN RECORDS OF ALL INSPECTIONS.

15 (4) INSPECT THE LABELING OF AUTOMOTIVE FUEL DISPENSERS
16 AND STORAGE TANKS AT RETAIL BUSINESSES OR LOCATIONS WHERE THE
17 PRODUCTS ARE SOLD OR OFFERED OR EXPOSED FOR SALE OR USE.

18 (5) ENTER INTO CONTRACTUAL AGREEMENTS WITH QUALIFIED
19 LABORATORIES FOR THE PURPOSE OF ANALYZING AUTOMOTIVE FUEL
20 SAMPLES, IF THE OCTANE LEVEL OF THE AUTOMOTIVE FUEL IS
21 QUESTIONED, AS A COST-SAVING MEASURE.

22 (6) PROMULGATE REGULATIONS AS NECESSARY FOR THE
23 ENFORCEMENT AND ADMINISTRATION OF THIS SUBCHAPTER. ALL
24 REGULATIONS AND SUPPLEMENTS THERETO OR REVISIONS THEREOF
25 ADOPTED BY THE FTC UNDER THE PETROLEUM MARKETING PRACTICES
26 ACT TO GOVERN THE CERTIFICATION, DISCLOSURE, POSTING AND
27 LABELING OF AUTOMOTIVE FUEL BEFORE, ON OR AFTER THE EFFECTIVE
28 DATE OF THIS SECTION ARE HEREBY ADOPTED AS REGULATIONS IN
29 THIS COMMONWEALTH AND SHALL REMAIN IN EFFECT UNLESS
30 SUBSEQUENTLY MODIFIED BY REGULATIONS PROMULGATED BY THE

1 DEPARTMENT.

2 (D) SEALERS OF WEIGHT AND MEASURES.--THE DEPARTMENT MAY
3 ENTER INTO AGREEMENTS WITH ANY CITY OR COUNTY FOR WHICH A SEALER
4 HAS BEEN APPOINTED FOR THE ENFORCEMENT OF PROVISIONS OF THIS
5 SUBCHAPTER AND OF RULES OR REGULATIONS PROMULGATED UNDER THIS
6 SUBCHAPTER. THE SEALER OF A CITY OR COUNTY SHALL HAVE THE SAME
7 AUTHORITY AND SHALL PERFORM THE SAME DUTIES WITHIN THE CITY OR
8 COUNTY AS ARE GRANTED TO AND IMPOSED UPON THE DEPARTMENT WITH
9 RESPECT TO THE INSPECTION, TESTING AND TAKING OF AUTOMOTIVE FUEL
10 SAMPLES. THE AGREEMENT SHALL PROVIDE THAT ANY REVENUES GENERATED
11 PURSUANT TO ENFORCEMENT ACTIVITIES CARRIED OUT BY THE SEALER OF
12 THE CITY OR COUNTY SHALL BE RETAINED BY THE CITY OR COUNTY.

13 § 4187.4. STANDARDS FOR AUTOMOTIVE FUEL.

14 (A) ADOPTION OF STANDARDS.--THE DEPARTMENT SHALL ADOPT THE
15 LATEST STANDARDS FOR AUTOMOTIVE SPARK IGNITION ENGINES BASED ON
16 THE LATEST STANDARDS OF THE ASTM AS DETERMINED BY THE FTC. THE
17 STANDARDS SHALL BE PUBLISHED IN THE PENNSYLVANIA BULLETIN.

18 (B) AUTOMOTIVE FUEL.--GASOLINE SOLD, OFFERED OR EXPOSED FOR
19 SALE OR STORED OR HELD FOR DISTRIBUTION IN THIS COMMONWEALTH
20 SHALL COMPLY WITH ASTM SPECIFICATION D4814 AND WITH THE
21 VOLATILITY REQUIREMENTS PROMULGATED BY THE EPA UNDER 40 CFR PT.
22 80 (RELATING TO REGULATION OF FUELS AND FUEL ADDITIVES).

23 (C) RECORDS AND COMPLIANCE REVIEW.--EACH DISTRIBUTOR,
24 PRODUCER OR RETAILER WHO DISTRIBUTES, PRODUCES, TRANSPORTS,
25 STORES, SELLS OR OFFERS OR EXPOSES FOR SALE AUTOMOTIVE FUEL IN
26 THIS COMMONWEALTH SHALL MAINTAIN FOR ONE YEAR ORIGINAL COPIES OF
27 ALL BILLS, MANIFESTS, DELIVERY TICKETS, INVOICES FOR THE PURPOSE
28 OF COMPLIANCE REVIEW.

29 § 4187.5. AUTOMOTIVE FUEL RATING, DISCLOSURE AND LABELING
30 REQUIREMENTS.

1 (A) DISCLOSURE REQUIREMENTS.--EACH DISTRIBUTOR, PRODUCER OR
2 REFINER WHO SELLS OR OFFERS OR EXPOSES FOR SALE OR DELIVERS,
3 DISTRIBUTES OR PRODUCES AUTOMOTIVE FUEL IN THIS COMMONWEALTH
4 SHALL PROVIDE, AT THE TIME OF DELIVERY, A BILL, SHIPPING
5 MANIFEST OR OTHER TYPE OF WRITTEN INVOICE TO THE PERSON WHO
6 RECEIVES THE AUTOMOTIVE FUEL. THE BILL, SHIPPING MANIFEST OR
7 OTHER WRITTEN INVOICE SHALL STATE THE AUTOMOTIVE FUEL RATING.

8 (B) POSTING AND LABELING REQUIREMENTS.--EACH RETAILER OF
9 AUTOMOTIVE FUEL IN THIS COMMONWEALTH SHALL LABEL IN A CLEAR AND
10 CONSPICUOUS MANNER EACH AUTOMOTIVE FUEL DISPENSER WHICH IS USED
11 TO SELL OR OFFER OR EXPOSE FOR SALE AUTOMOTIVE FUEL, WITH THE
12 AUTOMOTIVE FUEL RATING OF THE FUEL, WHICH SHALL BE CONSISTENT
13 WITH THE AUTOMOTIVE FUEL RATING CERTIFIED TO THE RETAILER BY THE
14 REFINER OR DISTRIBUTOR, AS THE CASE MAY BE. IN THE CASE OF
15 GASOLINE WHICH IS BLENDED WITH OTHER GASOLINE BY THE RETAILER,
16 THE AUTOMOTIVE FUEL RATING SHALL BE THE AVERAGE, WEIGHTED BY
17 VOLUME, OF THE OCTANE RATING CERTIFIED TO THE RETAILER BY THE
18 DISTRIBUTOR OR REFINER FOR EACH GASOLINE IN THE BLEND OR
19 CONSISTENT WITH THE LOWEST OCTANE RATING FOR ANY GASOLINE IN THE
20 BLEND AS CERTIFIED TO THE RETAILER BY A REFINER OR DISTRIBUTOR.

21 (C) OXYGENATED GASOLINE LABELING REQUIREMENTS.--IF
22 OXYGENATED GASOLINE IS SOLD, A PERSON WHO SELLS OR OFFERS OR
23 EXPOSES THE OXYGENATED GASOLINE FOR SALE SHALL CLEARLY AND
24 CONSPICUOUSLY LABEL THE DISPENSER WHICH IS USED TO SELL
25 OXYGENATED GASOLINE AT RETAIL OR TO DISPENSE OXYGENATED GASOLINE
26 INTO THE FUEL SUPPLY TANKS OF MOTOR VEHICLES WITH A NOTICE
27 STATING THAT THE GASOLINE IS OXYGENATED.

28 (D) REFORMULATED GASOLINE LABELING REQUIREMENTS.--IF
29 REFORMULATED GASOLINE IS SOLD, A PERSON WHO SELLS OR OFFERS OR
30 EXPOSES THE REFORMULATED GASOLINE FOR SALE SHALL CLEARLY AND

1 CONSPICUOUSLY LABEL THE DISPENSER WHICH IS USED TO SELL
2 REFORMULATED GASOLINE AT RETAIL OR TO DISPENSE REFORMULATED
3 GASOLINE INTO THE FUEL SUPPLY TANKS OF MOTOR VEHICLES WITH A
4 NOTICE STATING THAT THE GASOLINE IS REFORMULATED.

5 (E) REPRESENTATION OF ANTIKNOCK CHARACTERISTICS OF
6 AUTOMOTIVE FUEL.--NO DISTRIBUTOR OF AUTOMOTIVE FUEL IN THIS
7 COMMONWEALTH SHALL MAKE ANY REPRESENTATION OF THE ANTIKNOCK
8 CHARACTERISTICS OF AUTOMOTIVE FUEL UNLESS THE REPRESENTATION
9 DISCLOSES THE MINIMUM ANTIKNOCK INDEX REQUIREMENTS OF THE FUEL
10 AS ADOPTED BY THE NATIONAL CONFERENCE OF WEIGHTS AND MEASURES.

11 (F) LABELING TOLERANCE.--LABELING SHALL BE IN ACCORDANCE
12 WITH SPECIFICATIONS OF THE ASTM ENTITLED "SPECIFICATIONS FOR
13 AUTOMOTIVE SPARK-IGNITION ENGINE FUEL," DESIGNATED D4814.

14 § 4187.6. INVESTIGATIONS.

15 (A) GENERAL RULE.--THE DEPARTMENT MAY CONDUCT INVESTIGATIONS
16 TO DETERMINE COMPLIANCE WITH THIS SUBCHAPTER. INVESTIGATIONS
17 SHALL BE CONDUCTED IN ACCORDANCE WITH SECTIONS 4116 (RELATING TO
18 INVESTIGATIONS) AND 4120 (RELATING TO POLICE POWERS; RIGHT OF
19 ENTRY AND STOPPAGE). INSPECTIONS MAY BE PERFORMED DURING NORMAL
20 BUSINESS HOURS AND MAY INCLUDE THE COLLECTION AND REMOVAL OF
21 SAMPLES FOR LABORATORY TESTING IF THE QUALITY OR RELIABILITY OF
22 THE AUTOMOTIVE FUEL IS QUESTIONED.

23 (B) ENTRY UPON PREMISES.--

24 (1) THE DEPARTMENT SHALL HAVE THE RIGHT OF ACCESS TO THE
25 PREMISES AND RECORDS OF ANY ESTABLISHMENT WHERE AUTOMOTIVE
26 FUEL IS STORED, HELD, PROCESSED, DISTRIBUTED, OFFERED OR
27 EXPOSED FOR SALE OR SOLD IN THIS COMMONWEALTH TO:

28 (I) INSPECT THE AUTOMOTIVE FUEL IN STORAGE TANKS AND
29 TAKE SAMPLES FROM THE TANKS AND THE DISPENSING SYSTEM
30 CONNECTED TO THE STORAGE TANKS. THE RETAILER OR

1 DISTRIBUTOR MAY REQUEST A SECOND SAMPLE TO BE TAKEN BY
2 THE INSPECTOR AT THE SAME TIME THE INITIAL SAMPLE IS
3 DRAWN. ALL COSTS OF THE SECOND SAMPLE SHALL BE PAID BY
4 THE RETAILER OR DISTRIBUTOR, AS THE CASE MAY BE, MAKING
5 THE REQUEST. IF THE REQUEST FOR A SECOND SAMPLE IS MADE
6 BY THE RETAILER IN ACCORDANCE WITH PROCEDURES ESTABLISHED
7 THROUGH AN AGREEMENT WITH THE DISTRIBUTOR, PRODUCER OR
8 REFINER, ALL COSTS OF DRAWING, HANDLING AND SHIPPING THE
9 SAMPLE SHALL BE BORNE BY THE DISTRIBUTOR, PRODUCER OR
10 REFINER WHO SUPPLIED THE AUTOMOTIVE FUEL TO THE RETAILER.
11 IF THE REQUEST FOR A SECOND SAMPLE IS MADE BY THE
12 DISTRIBUTOR IN ACCORDANCE WITH PROCEDURES ESTABLISHED
13 THROUGH AN AGREEMENT WITH THE PRODUCER OR REFINER, ALL
14 COSTS OF DRAWING, HANDLING AND SHIPPING THE SAMPLE SHALL
15 BE BORNE BY THE PRODUCER OR REFINER WHO SUPPLIED THE
16 AUTOMOTIVE FUEL TO THE DISTRIBUTOR.

17 (II) INSPECT AUTOMOTIVE FUEL DISPENSING SYSTEMS AND
18 RELATED EQUIPMENT, OXYGENATE LABELS, REFORMULATED LABELS
19 AND OCTANE LABELS.

20 (III) MAKE COPIES OF AUTOMOTIVE FUEL SHIPPING,
21 RECEIVING AND INVOICE DOCUMENTS AND RECORDS TO DETERMINE
22 COMPLIANCE WITH SECTIONS 4187.4 (RELATING TO STANDARDS
23 FOR AUTOMOTIVE FUEL) AND 4187.5 (RELATING TO AUTOMOTIVE
24 FUEL RATING, DISCLOSURE AND LABELING REQUIREMENTS).

25 (2) THE DEPARTMENT SHALL LIMIT INSPECTIONS, COMPLIANCE
26 REVIEWS AND COPYING UNDER THIS SUBSECTION TO INFORMATION AND
27 DATA RELATING TO PRODUCT QUANTITY, QUALITY, OXYGEN CONTENT,
28 OCTANE, SOURCE AND OTHER INFORMATION AS MAY BE REASONABLY
29 REQUESTED.

30 (C) REMEDIES.--IF THE DEPARTMENT DETERMINES THAT AN

1 AUTOMOTIVE FUEL SAMPLE DOES NOT CONFORM WITH THE STANDARDS SET
2 FORTH IN SECTION 4187.4 OR THAT A LABEL DISPLAYED ON A
3 DISPENSING SYSTEM, STORAGE TANK OR OTHER DISPENSING DEVICE DOES
4 NOT CONFORM WITH THE REQUIREMENTS OF SECTION 4187.5, THE
5 DEPARTMENT MAY INITIATE ANY OR ALL OF THE FOLLOWING ACTIONS TO
6 PROHIBIT SALE OF THE NONCONFORMING AUTOMOTIVE FUEL OR TO
7 PROHIBIT THE USE OF THE NONCONFORMING DISPENSING SYSTEM, STORAGE
8 TANK OR OTHER DISPENSING DEVICE:

9 (1) REJECT AND MARK AS REJECTED THE DISPENSING SYSTEM,
10 STORAGE TANK OR OTHER DISPENSING DEVICE FROM WHICH THE SAMPLE
11 WAS OBTAINED OR ON WHICH THE NONCONFORMING LABEL IS ATTACHED.

12 (2) SEAL AND MARK AS SEALED THE STORAGE TANKS FROM WHICH
13 THE SAMPLE WAS DRAWN OR THE NONCONFORMING LABEL ATTACHED.

14 (3) INITIATE CRIMINAL PROCEEDINGS UNDER SECTION
15 4187.7(D) (RELATING TO VIOLATIONS AND PENALTIES).

16 (4) ISSUE A CITATION.

17 (5) ISSUE A STOP-SALE NOTICE UNDER SUBSECTION (D).

18 (6) ADVISE THE RETAILER OR DISTRIBUTOR THAT THE
19 AUTOMOTIVE FUEL MUST BE BLENDED WITH ANOTHER AUTOMOTIVE FUEL
20 TO BRING IT INTO COMPLIANCE, PROVIDED THAT THE PRODUCT DOES
21 NOT ENDANGER PUBLIC HEALTH OR SAFETY OR ADVERSELY AFFECT THE
22 EMISSIONS CHARACTERISTICS OF THE MOTOR VEHICLES IN WHICH IT
23 IS USED.

24 (7) ISSUE A WRITTEN WARNING DIRECTING THE RETAILER OR
25 DISTRIBUTOR TO CORRECT THE NONCONFORMING LABEL.

26 (D) STOP-SALE NOTICE.--THE DEPARTMENT SHALL HAVE THE
27 AUTHORITY TO IMMEDIATELY SEIZE AND SEAL, IN ORDER TO PREVENT
28 FURTHER SALES, ANY DISPENSING SYSTEM, STORAGE TANK OR OTHER
29 DISPENSING DEVICE FROM WHICH AUTOMOTIVE FUEL IS SOLD OR OFFERED
30 OR EXPOSED FOR SALE IN VIOLATION OF THE PROVISIONS OF THIS

1 SUBCHAPTER AND TO ISSUE A STOP-SALE NOTICE TO THE RETAILER OR
2 DISTRIBUTOR IF THE DEPARTMENT HAS REASON TO BELIEVE THE RETAILER
3 OR DISTRIBUTOR WILLFULLY OR INTENTIONALLY VIOLATED THIS
4 SUBCHAPTER OR THE REGULATIONS PROMULGATED IN ACCORDANCE WITH
5 THIS SUBCHAPTER. ANY AUTOMOTIVE FUEL SUBJECT TO A STOP-SALE
6 NOTICE SHALL NOT BE SOLD, EXPOSED, OFFERED FOR SALE OR
7 TRANSPORTED UNLESS THE RETAILER OR DISTRIBUTOR HAS RECEIVED
8 APPROVAL FROM THE DEPARTMENT. AUTOMOTIVE FUEL WHICH HAS BEEN
9 SEIZED AND SEALED BY THE DEPARTMENT FOR VIOLATION OF SECTION
10 4187.4 OR 4187.5 SHALL NOT BE OFFERED OR EXPOSED FOR SALE UNTIL
11 THE DEPARTMENT HAS BEEN FULLY SATISFIED THAT THE AUTOMOTIVE FUEL
12 HAS BEEN BLENDED, REFINED OR PROPERLY LABELED TO MEET THE
13 REQUIREMENTS OF THIS SUBCHAPTER AND THE RETAILER OR DISTRIBUTOR
14 HAS BEEN NOTIFIED OF THE DEPARTMENT'S DECISION TO PERMIT THE
15 SALE OR RELABELING OF THE FUEL.

16 (E) POSTING OF STOP-SALE NOTICE.--THE DEPARTMENT SHALL CAUSE
17 TO BE POSTED, IN A CONSPICUOUS PLACE ON THE PREMISES WHERE A
18 DISPENSING SYSTEM, STORAGE TANK OR OTHER DISPENSING DEVICE HAS
19 BEEN SEALED, A NOTICE STATING THAT SEALING HAS TAKEN PLACE AND
20 GIVING WARNING THAT IT SHALL BE UNLAWFUL TO BREAK, MUTILATE OR
21 DESTROY THE SEAL OR TO REMOVE THE CONTENTS OF THE DISPENSING
22 SYSTEM, STORAGE TANK OR OTHER DISPENSING DEVICE WITHOUT THE
23 APPROVAL OF THE DEPARTMENT.

24 (F) NOTICE REQUIRED TO REMOVE SEAL.--ANY RETAILER,
25 DISTRIBUTOR OR PRODUCER WHO OWNS AN AUTOMOTIVE FUEL DISPENSING
26 SYSTEM, STORAGE TANK OR OTHER DISPENSING DEVICE WHICH HAS BEEN
27 SEALED BY THE DEPARTMENT SHALL OBTAIN THE APPROVAL OF THE
28 DEPARTMENT BEFORE THE FUEL IS REMOVED OR A PROPER LABEL
29 ATTACHED. A WRITTEN NOTICE OF ANY CORRECTIVE ACTION TAKEN SHALL
30 BE SUBMITTED TO THE DEPARTMENT WITHIN THREE WORKING DAYS. THE

1 DEPARTMENT MAY REINSPECT THE AUTOMOTIVE FUEL DISPENSING SYSTEM,
2 STORAGE TANK OR OTHER DISPENSING DEVICE TO DETERMINE COMPLIANCE.
3 THE RETAILER, DISTRIBUTOR, PRODUCER OR REFINER THAT OWNS THE
4 SYSTEM OR DEVICE WHICH HAS BEEN SEALED SHALL PROVIDE
5 DOCUMENTATION OF THE CORRECTIVE ACTION TAKEN, INCLUDING ANY
6 APPLICABLE SHIPPING PAPERS OR BILLS OF LADING SHOWING THE
7 DISPOSAL OR FINAL DISPOSITION OF THE AUTOMOTIVE FUEL AND ANY
8 OTHER INFORMATION NECESSARY TO PERMIT THE DEPARTMENT TO AUDIT
9 AND CONFIRM THAT THE CORRECTIVE ACTION WAS AS PREVIOUSLY
10 APPROVED BY THE DEPARTMENT. A RETAILER, DISTRIBUTOR, PRODUCER OR
11 REFINER SHALL NOT REMOVE A SEAL EXCEPT WHEN GIVEN SPECIFIC
12 APPROVAL BY THE DEPARTMENT.

13 § 4187.7. VIOLATIONS AND PENALTIES.

14 (A) RETAIL VIOLATIONS.--THE DEPARTMENT MAY ASSESS A CIVIL
15 PENALTY OF NOT MORE THAN \$5,000 UPON A RETAILER WHO SELLS OR
16 OFFERS OR EXPOSES FOR SALE AUTOMOTIVE FUEL FROM ANY DISPENSING
17 SYSTEM, STORAGE TANK OR OTHER DISPENSING DEVICE WHICH HAS NOT
18 BEEN LABELED IN ACCORDANCE WITH THE PROVISIONS OF THIS
19 SUBCHAPTER, OR WHO SELLS OR OFFERS OR EXPOSES FOR SALE ANY
20 AUTOMOTIVE FUEL WHICH DOES NOT MEET THE REQUIRED STANDARDS FOR
21 THE AUTOMOTIVE FUEL RATING DISPLAYED ON THE LABEL ATTACHED TO
22 THE DISPENSING SYSTEM, STORAGE TANK OR OTHER DISPENSING DEVICE,
23 OR WHO SELLS OR OFFERS OR EXPOSES FOR SALE AUTOMOTIVE FUEL WHICH
24 HAS BEEN CONTAMINATED.

25 (B) DISTRIBUTOR, PRODUCER OR REFINER VIOLATIONS.--THE
26 DEPARTMENT MAY ASSESS A CIVIL PENALTY OF NOT MORE THAN \$5,000
27 UPON A DISTRIBUTOR, PRODUCER OR REFINER WHO SELLS OR OFFERS OR
28 EXPOSES FOR SALE AUTOMOTIVE FUEL WHICH DOES NOT MEET THE
29 AUTOMOTIVE FUEL RATING CERTIFIED BY THE DISTRIBUTOR, PRODUCER OR
30 REFINER OR WHO SELLS OR OFFERS OR EXPOSES FOR SALE AUTOMOTIVE

1 FUEL WHICH DOES NOT MEET THE REQUIREMENTS OF SECTION 4187.4
2 (RELATING TO STANDARDS FOR AUTOMOTIVE FUEL).

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 SUBCHAPTER
14 WITH ACTUAL KNOWLEDGE THAT THE ACT OR PRACTICE UNDERLYING THE
15 VIOLATION IS UNFAIR OR DECEPTIVE.

16 (D) REPEAT VIOLATIONS.--IN ADDITION TO ANY CIVIL PENALTY
17 ASSESSED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, THE
18 DEPARTMENT MAY INITIATE CRIMINAL PROCEEDINGS FOR A SECOND OR
19 SUBSEQUENT VIOLATION OF SECTIONS 4187.4 AND 4187.5 (RELATING TO
20 AUTOMOTIVE FUEL RATING, DISCLOSURE AND LABELING REQUIREMENTS). A
21 SECOND OR SUBSEQUENT VIOLATION SHALL CONSTITUTE A MISDEMEANOR OF
22 THE THIRD DEGREE.

23 (E) REMOVAL OF SEALS.--THE DEPARTMENT MAY ASSESS A CIVIL
24 PENALTY OF NOT LESS THAN \$1,000 NOR MORE THAN \$5,000 ON ANY
25 PERSON, OTHER THAN A PERSON DESIGNATED BY THE DEPARTMENT, WHO
26 BREAKS, MUTILATES OR DESTROYS ANY SEAL PLACED UPON A DISPENSING
27 SYSTEM, STORAGE TANK OR OTHER DISPENSING DEVICE USED TO DELIVER
28 OR STORE AUTOMOTIVE FUEL, OR WHO REMOVES AUTOMOTIVE FUEL FROM A
29 DISPENSING SYSTEM, STORAGE TANK OR OTHER DISPENSING DEVICE WHICH
30 HAS BEEN SEALED, OR WHO DEFACTS OR REMOVES A POSTED NOTICE OF

1 SEALING.

2 (F) HEARINGS.--NO CIVIL PENALTY SHALL BE ASSESSED UNDER THIS
3 SECTION UNLESS THE PERSON CHARGED HAS BEEN GIVEN NOTICE AND
4 OPPORTUNITY FOR HEARING IN ACCORDANCE WITH 2 PA.C.S. (RELATING
5 TO ADMINISTRATIVE LAW AND PROCEDURE).

6 (G) INNOCENT SELLERS EXEMPTION.--THE DEPARTMENT SHALL NOT
7 IMPOSE A CIVIL PENALTY FOR A VIOLATION OF SUBSECTION (A)
8 REGARDING LABELING IF THE RETAILER LABELED THE DISPENSING
9 SYSTEM, STORAGE TANK OR OTHER DISPENSING DEVICE IN REASONABLE
10 RELIANCE ON DOCUMENTATION PROVIDED BY THE DISTRIBUTOR, PRODUCER
11 OR REFINER CERTIFYING THE STANDARDS FOR AUTOMOTIVE FUEL RATING.

12 (H) PRIVATE ACTION BY RETAILER.--IF A RETAILER UNKNOWINGLY
13 AND WITHOUT DECEPTION SELLS OR OFFERS OR EXPOSES FOR SALE
14 AUTOMOTIVE FUEL WHICH DOES NOT CONFORM WITH THE PROVISIONS OF
15 THIS SUBCHAPTER, THE DISTRIBUTOR, PRODUCER, OXYGENATE BLENDER OR
16 REFINER, AS THE CASE MAY BE, OF THE NONCONFORMING AUTOMOTIVE
17 FUEL SHALL BE LIABLE IN DAMAGES TO THE RETAILER FOR ANY
18 ASCERTAINABLE LOSS OF MONEY OR PROPERTY.

19 (I) ACTS OR PRACTICES CONSTITUTING UNFAIR TRADE.--IT SHALL
20 BE AN UNFAIR METHOD OF COMPETITION AND AN UNFAIR OR DECEPTIVE
21 ACT OR PRACTICE IN OR AFFECTING TRADE AND COMMERCE IN THIS
22 COMMONWEALTH WITHIN THE MEANING OF SECTION 3 OF THE ACT OF
23 DECEMBER 17, 1968 (P.L.1224, NO.387), KNOWN AS THE UNFAIR TRADE
24 PRACTICES AND CONSUMER PROTECTION LAW, FOR ANY RETAILER,
25 PRODUCER, DISTRIBUTOR, OXYGENATE BLENDER OR REFINER TO VIOLATE
26 THE PROVISIONS OF THIS SUBCHAPTER OR ANY REGULATIONS PROMULGATED
27 UNDER THIS SUBCHAPTER.

28 § 4187.8. ANNUAL REPORT.

29 THE DEPARTMENT SHALL FILE AN ANNUAL REPORT WITH THE
30 TRANSPORTATION COMMITTEE OF THE SENATE AND THE TRANSPORTATION

1 COMMITTEE OF THE HOUSE OF REPRESENTATIVES. THE REPORT SHALL
2 SUMMARIZE THE DETAILS AND IMPACT OF THE PROGRAM FOR THE YEAR
3 BEING REPORTED. THE DEPARTMENT SHALL FILE THE REPORT NO LATER
4 THAN MAY 1 OF THE FOLLOWING YEAR.

5 SECTION 2. THE HEADING OF SUBCHAPTER F OF CHAPTER 41 OF
6 TITLE 3 IS AMENDED TO READ:

7 SUBCHAPTER [F] Z

8 MISCELLANEOUS PROVISIONS

9 SECTION 3. THIS ACT SHALL TAKE EFFECT JULY 1, 2008, OR
10 IMMEDIATELY, WHICHEVER IS LATER.