

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 138 Session of 2009

INTRODUCED BY GREENLEAF, WILLIAMS, TARTAGLIONE, GORDNER, BROWNE, FERLO, COSTA, EARLL, O'PAKE, LOGAN, STACK AND WASHINGTON, JANUARY 30, 2009

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, JUNE 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. Standards for automotive fuel.

16 4187.5. Automotive fuel rating, disclosure and labeling

17 requirements.

1 4187.6. Investigations.

2 4187.7. Violations and penalties.

3 4187.8. Annual report.

4 § 4187.1. Scope of subchapter.

5 This subchapter relates to automotive fuel testing and  
6 disclosure.

7 § 4187.2. Definitions.

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

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

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

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

23 "Consumer." A person who purchases automotive fuel for  
24 purposes other than resale.

25 "Dispenser" or "dispensing system." A device designed to  
26 measure and deliver automotive fuel into the fuel supply tank of  
27 a motor vehicle.

28 "Distributor." A person who receives automotive fuel in this  
29 Commonwealth for storage and subsequent distribution to another  
30 person other than the consumer.

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

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

3 "Fueling dispensers." Individual fueling points, recognized  
4 by price and volume displays for a dispenser's points of sale.

5 "Load rack terminals." A location where the commercial  
6 transfer of petroleum products at the wholesale level is  
7 conducted utilizing meters employed in the measurement of  
8 product delivered to a seller by a buyer.

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

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

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

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

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

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. 322, 42 U.S.C. § 7401 et seq.).

5 "Retailer." A person who sells automotive fuel to the  
6 consumer.

7 § 4187.3. Automotive Fuel Testing and Disclosure Program.

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

10 (b) Program requirements.--The program shall provide for the  
11 annual testing of automotive fuel on a random, unannounced  
12 basis.

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

15 (1) Take samples of automotive fuel wherever it is  
16 offered or exposed for sale or use or sold in this  
17 Commonwealth. No more than 10% of the automotive fuel  
18 dispensers may be tested. Testing shall be coordinated with  
19 the testing required for proper volumes of gasoline and shall  
20 be conducted using a hand-held, battery-powered, near-  
21 infrared (NIR) analyzer.

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

1           (3) Maintain records of all inspections.

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

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

9           (6) Promulgate regulations as necessary for the  
10 enforcement and administration of this subchapter. All  
11 regulations adopted by the FTC under the Petroleum Marketing  
12 Practices Act to govern the certification, disclosure,  
13 posting and labeling of automotive fuel before, on or after  
14 the effective date of this section are adopted as regulations  
15 in this Commonwealth and shall remain in effect unless  
16 subsequently modified by regulations promulgated by the  
17 department.

18 (d) Sealers of weight and measures.--

19           (1) The department may enter into agreements with any  
20 city or county for which a sealer has been appointed for the  
21 enforcement of provisions of this subchapter and of rules or  
22 regulations promulgated under this subchapter.

23           (2) The sealer of a city or county shall have the same  
24 authority and shall perform the same duties within the city  
25 or county as are granted to and imposed upon the department  
26 with respect to the inspection, testing and taking of  
27 automotive fuel samples.

28           (3) The agreement shall provide that any revenues  
29 generated pursuant to enforcement activities carried out by  
30 the sealer of the city or county shall be retained by the

1 city or county.

2 § 4187.4. Standards for automotive fuel.

3 (a) Adoption of standards.--The department shall adopt the  
4 latest standards for automotive spark ignition engines based on  
5 the latest standards of the ASTM as determined by the FTC. The  
6 standards shall be published as a notice in the Pennsylvania  
7 Bulletin.

8 (b) Automotive fuel.--Gasoline sold, offered or exposed for  
9 sale or stored or held for distribution in this Commonwealth  
10 shall comply with all of the following:

11 (1) ASTM specification D4814.

12 (2) Volatility requirements promulgated by the EPA under  
13 40 CFR Pt. 80 (relating to regulation of fuels and fuel  
14 additives).

15 (3) The Uniform Engine Fuels, Petroleum Products and  
16 Automotive Lubricants Regulation as adopted by the National  
17 Conference on Weights and Measures in the National Institute  
18 of Standards and Technology Handbook 130 and any supplements  
19 and revisions of the regulation.

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 § 4187.5. 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.--

6 (1) Each retailer of automotive fuel in this  
7 Commonwealth shall label in a clear and conspicuous manner  
8 each automotive fuel dispenser which is used to sell or offer  
9 or expose for sale automotive fuel, with the automotive fuel  
10 rating of the fuel, which shall be consistent with the  
11 automotive fuel rating certified to the retailer by the  
12 refiner or distributor, as the case may be.

13 (2) In the case of gasoline which is blended with other  
14 gasoline by the retailer, the automotive fuel rating shall be  
15 the average, weighted by volume, of the octane rating  
16 certified to the retailer by the distributor or refiner for  
17 each gasoline in the blend or consistent with the lowest  
18 octane rating for any gasoline in the blend as certified to  
19 the retailer by a refiner or distributor.

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

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

1 vehicles with a notice stating that the gasoline is  
2 reformulated.

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

6 § 4187.6. Investigations.

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

15 (b) Entry upon premises.--

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

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

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

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

12 (iii) Make copies of automotive fuel shipping,  
13 receiving and invoice documents and records to determine  
14 compliance with sections 4187.4 (relating to standards  
15 for automotive fuel) and 4187.5 (relating to automotive  
16 fuel rating, disclosure and labeling requirements).

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

22 (c) Remedies.--If the department determines that an  
23 automotive fuel sample does not conform with the standards set  
24 forth in section 4187.4 or that a label displayed on a  
25 dispensing system, storage tank or other dispensing device does  
26 not conform with the requirements of section 4187.5, the  
27 department may initiate any or all of the following actions to  
28 prohibit sale of the nonconforming automotive fuel or to  
29 prohibit the use of the nonconforming dispensing system, storage  
30 tank or other 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 4187.7(d) (relating to violations and penalties).

8           (4) Issue a citation.

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

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

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

18 (d) Stop-sale notice.--

19           (1) The department may immediately seize and seal, in  
20 order to prevent further sales, any dispensing system,  
21 storage tank or other dispensing device from which automotive  
22 fuel is sold or offered or exposed for sale in violation of  
23 the provisions of this subchapter and to issue a stop-sale  
24 notice to the retailer or distributor if the department has  
25 reason to believe the retailer or distributor willfully or  
26 intentionally violated this subchapter or the regulations  
27 promulgated in accordance with this subchapter.

28           (2) No automotive fuel subject to a stop-sale notice may  
29 be sold, exposed, offered for sale or transported unless the  
30 retailer or distributor has received approval from the

1 department.

2 (3) No automotive fuel which has been seized and sealed  
3 by the department for violation of section 4187.4 or 4187.5  
4 may be offered or exposed for sale until the department has  
5 been fully satisfied that the automotive fuel has been  
6 blended, refined or properly labeled to meet the requirements  
7 of this subchapter and the retailer or distributor has been  
8 notified of the department's decision to permit the sale or  
9 relabeling of the fuel.

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

17 (f) Notice required to remove seal.--

18 (1) A retailer, distributor or producer who owns an  
19 automotive fuel dispensing system, storage tank or other  
20 dispensing device which has been sealed by the department  
21 shall obtain the approval of the department before the fuel  
22 is removed or a proper label attached.

23 (2) A written notice of any corrective action taken  
24 shall be submitted to the department within three working  
25 days.

26 (3) The department may reinspect the automotive fuel  
27 dispensing system, storage tank or other dispensing device to  
28 determine compliance. The retailer, distributor, producer or  
29 refiner that owns the system or device which has been sealed  
30 shall provide documentation of the corrective action taken,

1 including any applicable shipping papers or bills of lading  
2 showing the disposal or final disposition of the automotive  
3 fuel and any other information necessary to permit the  
4 department to audit and confirm that the corrective action  
5 was as previously approved by the department.

6 (4) No retailer, distributor, producer or refiner may  
7 remove a seal, except when given specific approval by the  
8 department.

9 § 4187.7. Violations and penalties.

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

21 (b) Distributor, producer or refiner violations.--The  
22 department may assess a civil penalty of not more than \$5,000  
23 upon a distributor, producer or refiner who sells or offers or  
24 exposes for sale automotive fuel which does not meet the  
25 automotive fuel rating certified by the distributor, producer or  
26 refiner or who sells or offers or exposes for sale automotive  
27 fuel which does not meet the requirements of section 4187.4  
28 (relating to standards for automotive fuel).

29 (c) Knowledge of deceptive practice.--In addition to any  
30 civil penalty imposed for violations of subsection (a) or (b),

1 the department may assess a distributor, producer, refiner or  
2 retailer with an additional civil penalty equal to:

3 (1) the difference between the price per gallon charged  
4 to the consumer for the automotive fuel in question and the  
5 price per gallon charged to the consumer for the lowest  
6 octane grade at the retail dispensing facility at the time of  
7 the violation; and

8 (2) multiplied by the capacity of the storage tank from  
9 which the product in question was dispensed;

10 if the distributor, producer, refiner or retailer violates any  
11 provisions of this subchapter with actual knowledge that the act  
12 or practice underlying the violation is unfair or deceptive.

13 (d) Repeat violations.--In addition to any civil penalty  
14 assessed in accordance with the provisions of this section, the  
15 department may initiate criminal proceedings for a second or  
16 subsequent violation of sections 4187.4 and 4187.5 (relating to  
17 automotive fuel rating, disclosure and labeling requirements). A  
18 second or subsequent violation shall constitute a misdemeanor of  
19 the third degree.

20 (e) Removal of seals.--The department may assess a civil  
21 penalty of not less than \$1,000 nor more than \$5,000 on any  
22 person, other than a person designated by the department, who:

23 (1) breaks, mutilates or destroys any seal placed upon a  
24 dispensing system, storage tank or other dispensing device  
25 used to deliver or store automotive fuel;

26 (2) removes automotive fuel from a dispensing system,  
27 storage tank or other dispensing device which has been  
28 sealed; or

29 (3) defaces or removes a posted notice of sealing.

30 (f) Hearings.--No civil penalty shall be assessed under this

1 section unless the person charged has been given notice and  
2 opportunity for hearing in accordance with 2 Pa.C.S. (relating  
3 to administrative law and procedure).

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

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

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

26 § 4187.8. Annual report.

27 The department shall file an annual report with the  
28 Transportation Committee of the Senate and the Transportation  
29 Committee of the House of Representatives. The report shall  
30 summarize the details and impact of the program for the year

1 being reported. The department shall file the report no later  
2 than May 1 of the following year.

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

5 SUBCHAPTER [F] G  
6 MISCELLANEOUS PROVISIONS

7 Section 3. This act shall take effect July 1, 2009, or  
8 immediately, whichever is later.