

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 341 Session of 2011

INTRODUCED BY GREENLEAF, TARTAGLIONE, STACK, FONTANA, BREWSTER, KASUNIC, ALLOWAY, FERLO, GORDNER, WASHINGTON, BROWNE AND FARNESE, JANUARY 28, 2011

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, MARCH 26, 2012

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
2 Statutes, ~~establishing~~ AUTHORIZING an Automotive Fuel Testing and 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~~ AUTHORIZATION.--The department shall MAY ←
9 establish and implement the Automotive Fuel Testing and
10 Disclosure Program. ←

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

14 (c) (B) Duties of department.--The department shall MAY ←
15 enforce the provisions of this subchapter and shall HAVE THE ←
16 FOLLOWING AUTHORITY:

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

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

1 is in compliance with the motor fuel specifications of the
2 ASTM.

3 (3) Maintain records of all inspections.

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

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

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

20 ~~(d)~~ (C) Sealers of weight and measures.--



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

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

30 (3) The agreement shall provide that any revenues

1 generated pursuant to enforcement activities carried out by
2 the sealer of the city or county shall be retained by the
3 city or county.

4 § 4187.4. Standards for automotive fuel.

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

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

13 (1) ASTM specification D4814.

14 (2) Volatility requirements promulgated by the EPA under
15 40 CFR Pt. 80 (relating to regulation of fuels and fuel
16 additives).

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

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

28 § 4187.5. Automotive fuel rating, disclosure and labeling
29 requirements.

30 (a) Disclosure requirements.--Each distributor, producer or

1 refiner who sells or offers or exposes for sale or delivers,
2 distributes or produces automotive fuel in this Commonwealth
3 shall provide, at the time of delivery, a bill, shipping
4 manifest or other type of written invoice to the person who
5 receives the automotive fuel. The bill, shipping manifest or
6 other written invoice shall state the automotive fuel rating.

7 (b) Posting and labeling requirements.--

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

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

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

28 (d) Reformulated gasoline labeling requirements.--A person
29 who sells or offers or exposes the reformulated gasoline for
30 sale shall clearly and conspicuously label the dispenser which

1 is used to sell reformulated gasoline at retail or to dispense
2 reformulated gasoline into the fuel supply tanks of motor
3 vehicles with a notice stating that the gasoline is
4 reformulated.

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

8 § 4187.6. Investigations.

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

17 (b) Entry upon premises.--

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

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

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

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

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

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

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

1 prohibit the use of the nonconforming dispensing system, storage
2 tank or other dispensing device:

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

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

8 (3) Initiate criminal proceedings under section
9 4187.7(d) (relating to violations and penalties).

10 (4) Issue a citation.

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

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

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

20 (d) Stop-sale notice.--

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

30 (2) No automotive fuel subject to a stop-sale notice may

1 be sold, exposed, offered for sale or transported unless the
2 retailer or distributor has received approval from the
3 department.

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

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

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

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

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

28 (3) The department may reinspect the automotive fuel
29 dispensing system, storage tank or other dispensing device to
30 determine compliance. The retailer, distributor, producer or

1 refiner that owns the system or device which has been sealed
2 shall provide documentation of the corrective action taken,
3 including any applicable shipping papers or bills of lading
4 showing the disposal or final disposition of the automotive
5 fuel and any other information necessary to permit the
6 department to audit and confirm that the corrective action
7 was as previously approved by the department.

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

11 § 4187.7. Violations and penalties.

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

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

1 (c) Knowledge of deceptive practice.--In addition to any
2 civil penalty imposed for violations of subsection (a) or (b),
3 the department may assess a distributor, producer, refiner or
4 retailer with an additional civil penalty equal to:

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

10 (2) multiplied by the capacity of the storage tank from
11 which the product in question was dispensed;
12 if the distributor, producer, refiner or retailer violates any
13 provisions of this subchapter with actual knowledge that the act
14 or practice underlying the violation is unfair or deceptive.

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

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

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

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

1 (3) defaces or removes a posted notice of 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] G

8 MISCELLANEOUS PROVISIONS

9 ~~Section 3. The Automotive Fuel Testing and Disclosure~~ ←
10 ~~Program established in 3 Pa.C.S. Ch 41 Subch. F shall be subject~~
11 ~~to available funds appropriated for that purpose.~~

12 Section 4 3. This act shall take effect ~~July 1, 2011, or~~ ←
13 ~~immediately, whichever is later~~ IN 30 DAYS. ←