
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

SENATE AMENDMENTS TO HOUSE AMENDMENTS, IN SENATE, OCTOBER 15,
2012

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
2 Statutes, authorizing 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 # E.1 ←

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." A member-based international standards organization
13 that develops and publishes voluntary consensus technical
14 standards and test methods for a variety of materials and
15 products, including automotive fuel and other petroleum
16 products, or any successor organization.

17 "Automotive fuel." Any liquid or gaseous matter used for the
18 generation of power in an internal combustion engine. The term
19 shall include, but may not be limited to, the following:

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

22 (i) Gasoline.

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

25 (iii) Fuels developed to comply with the Clean Air
26 Act (69 Stat. 1, 42 U.S.C. § 7401 et seq.), such as
27 reformulated gasoline and oxygenated gasoline.

28 (2) Alternative liquid automotive fuels, including, but
29 not limited to:

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

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

3 (iii) Liquefied natural gas.

4 (iv) Liquefied petroleum gas.

5 (v) Coal-derived liquid fuels.

6 "Automotive fuel rating." For gasoline, the octane rating
7 or, for alternative liquid automotive fuel, the commonly used
8 name of the fuel with a disclosure of the amount, expressed as a
9 minimum percent by volume, of the principal components of the
10 fuel.

11 "Consumer." A person who purchases automotive fuel for
12 purposes other than resale.

13 "Dispenser" or "dispensing system." A device designed to
14 measure and deliver automotive fuel into the fuel supply tank of
15 a motor vehicle.

16 "Distributor." A person who receives automotive fuel in this
17 Commonwealth for subsequent distribution to another person other
18 than the consumer.

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

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

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

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

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

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

3 "Oxygenate blending facility." A refinery, bulk terminal,
4 bulk plant, other facility or truck or another place at which
5 oxygenated gasoline is produced or blended.

6 "Oxygenated gasoline." Gasoline which contains at least 2%
7 oxygen by weight.

8 "Producer." A person who purchases component elements and
9 blends them to produce or market automotive fuel.

10 "Program." The Automotive Fuel Testing and Disclosure
11 Program.

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

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

19 "Research octane number" and "motor octane number." The
20 terms shall have the meanings given to them in the
21 specifications of the American Society for Testing and Materials
22 International entitled "Standard Specifications for Automotive
23 Spark Engine Fuel," designated D4814 or any subsequent updated
24 specification, and, with respect to any grade or type of
25 automotive fuel, are determined in accordance with the test
26 methods set forth in American Society for Testing and Materials
27 International standard test methods for research octane number
28 and motor octane number as may be adopted by the Federal Trade
29 Commission.

30 "Retailer." A person who sells or offers for sale automotive

1 fuel to the general public for ultimate consumption.

2 § 4187.3. Automotive Fuel Testing and Disclosure Program.

3 (a) Authorization.--The department may establish and
4 implement the Automotive Fuel Testing and Disclosure Program to
5 provide for the testing of automotive fuel on a random,
6 unannounced basis.

7 (b) Duties of department.--The department may enforce the
8 provisions of this subchapter and shall have the following
9 authority:

10 (1) Take samples of automotive fuel for testing of its
11 octane rating wherever it is offered or exposed for sale or
12 use or sold by a retailer in this Commonwealth. When testing
13 occurs, it shall be coordinated with the testing required for
14 proper volumes of gasoline.

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

24 (3) Maintain records of all inspections.

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

28 (5) Enter into contractual agreements with qualified
29 laboratories as a cost-saving measure for the purpose of
30 analyzing automotive fuel samples, if the octane level of the

1 automotive fuel is questioned.

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

11 (c) Sealers of weight and measures.--

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

16 (2) The sealer of a city or county shall have the same
17 authority and shall perform the same duties within the city
18 or county as are granted to and imposed upon the department
19 with respect to the inspection, testing and taking of
20 automotive fuel samples.

21 (3) The agreement shall provide that any revenues
22 generated pursuant to enforcement activities carried out by
23 the sealer of the city or county shall be retained by the
24 city or county.

25 § 4187.4. Standards for automotive fuel.

26 (a) Adoption of standards.--The department shall adopt the
27 latest standards for automotive spark ignition engines based on
28 the latest standards of the ASTM as determined by the FTC. The
29 standards shall be published as a notice in the Pennsylvania
30 Bulletin.

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

4 ~~(1) ASTM specification D4814 or any subsequent updated~~ ←
5 ~~specifications as determined by the American Society for~~
6 ~~Testing and Materials International.~~

7 ~~(2) (1) Volatility requirements promulgated by the EPA~~ ←
8 ~~under 40 CFR Pt. 80 (relating to regulation of fuels and fuel~~
9 ~~additives) or any supplement thereto or revisions thereof.~~

10 ~~(3) For oxygenated gasoline, the (2) THE Uniform Engine~~ ←
11 ~~Fuels, Petroleum Products and Automotive Lubricants~~
12 ~~Regulation as adopted by the National Conference on Weights~~
13 ~~and Measures in the National Institute of Standards and~~
14 ~~Technology Handbook 130 and any supplements and revisions of~~
15 ~~the regulation.~~

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

22 § 4187.5. Automotive fuel rating, disclosure and labeling
23 requirements.

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

1 (b) Posting and labeling requirements.--

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

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

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

23 (d) (Reserved).

24 ~~(e) Labeling tolerance. Labeling shall be in accordance~~ ←
25 ~~with specifications of the ASTM entitled "Specifications for~~
26 ~~Automotive Spark Ignition Engine Fuel," designated D4814 or any~~
27 ~~supplements thereto or revisions thereof.~~

28 § 4187.6. Investigations.

29 (a) General rule.--The department may conduct investigations
30 to determine compliance with this subchapter. Investigations

1 shall be conducted in accordance with sections 4116 (relating to
2 investigations) and 4120 (relating to police powers; right of
3 entry and stoppage). Inspections may be performed during normal
4 business hours and may include the collection and removal of
5 samples for laboratory testing if the quality or reliability of
6 the automotive fuel is questioned.

7 (b) Entry upon premises.--

8 (1) The department may enter the premises and access
9 records of any establishment where automotive fuel is stored,
10 held, produced, distributed, offered or exposed for sale or
11 sold in this Commonwealth to:

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

1 (ii) Inspect automotive fuel dispensing systems and
2 related equipment, oxygenate labels, reformulated labels
3 and octane labels.

4 (iii) Make copies of automotive fuel shipping,
5 receiving and invoice documents and records to determine
6 compliance with sections 4187.4 (relating to standards
7 for automotive fuel) and 4187.5 (relating to automotive
8 fuel rating, disclosure and labeling requirements).

9 (2) The department shall limit inspections, compliance
10 reviews and copying under this subsection to information and
11 data relating to product quantity, quality, oxygen content,
12 octane, source and other information as may be reasonably
13 requested.

14 (c) Remedies.--If the department determines that an
15 automotive fuel sample does not conform with the standards set
16 forth in section 4187.4 or that a label displayed on a
17 dispensing system, storage tank or other dispensing device does
18 not conform with the requirements of section 4187.5, the
19 department may initiate any or all of the following actions to
20 prohibit sale of the nonconforming automotive fuel or to
21 prohibit the use of the nonconforming dispensing system, storage
22 tank or other dispensing device:

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

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

28 (3) Initiate criminal proceedings under section
29 4187.7(d) (relating to violations and penalties).

30 (4) Issue a citation.

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

2 (6) Advise the retailer or distributor that the
3 automotive fuel must be blended with another automotive fuel
4 to bring it into compliance, provided that the product does
5 not endanger public health or safety or adversely affect the
6 emissions characteristics of the motor vehicles in which it
7 is used.

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

10 (d) Stop-sale notice.--

11 (1) The department may immediately seize and seal, in
12 order to prevent further sales, any dispensing system,
13 storage tank or other dispensing device from which automotive
14 fuel is sold or offered or exposed for sale in violation of
15 the provisions of this subchapter and to issue a stop-sale
16 notice to the retailer or distributor if the department has
17 reason to believe the retailer or distributor willfully or
18 intentionally violated this subchapter or the regulations
19 promulgated in accordance with this subchapter.

20 (2) No automotive fuel subject to a stop-sale notice may
21 be sold, exposed, offered for sale or transported unless the
22 retailer or distributor has received approval from the
23 department.

24 (3) No automotive fuel which has been seized and sealed
25 by the department for violation of section 4187.4 or 4187.5
26 may be offered or exposed for sale until the department has
27 been fully satisfied that the automotive fuel has been
28 blended, refined or properly labeled to meet the requirements
29 of this subchapter and the retailer or distributor has been
30 notified of the department's decision to permit the sale or

1 relabeling of the fuel.

2 (e) Posting of stop-sale notice.--The department shall post,
3 in a conspicuous place on the premises where a dispensing
4 system, storage tank or other dispensing device has been sealed,
5 a notice stating that sealing has taken place and warning that
6 it shall be unlawful to break, mutilate or destroy the seal or
7 to remove the contents of the dispensing system, storage tank or
8 other dispensing device without the approval of the department.

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

10 (1) A retailer, distributor or producer who owns an
11 automotive fuel dispensing system, storage tank or other
12 dispensing device which has been sealed by the department
13 shall obtain the approval of the department before the fuel
14 is removed or a proper label attached.

15 (2) A written notice of any corrective action taken
16 shall be submitted to the department within three working
17 days.

18 (3) The department may reinspect the automotive fuel
19 dispensing system, storage tank or other dispensing device to
20 determine compliance. The retailer, distributor, producer or
21 refiner that owns the system or device which has been sealed
22 shall provide documentation of the corrective action taken,
23 including any applicable shipping papers or bills of lading
24 showing the disposal or final disposition of the automotive
25 fuel and any other information necessary to permit the
26 department to audit and confirm that the corrective action
27 was as previously approved by the department.

28 (4) No retailer, distributor, producer or refiner may
29 remove a seal, except when given specific approval by the
30 department.

1 § 4187.7. Violations and penalties.

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

13 (b) Distributor, producer or refiner violations.--The
14 department may assess a civil penalty of not more than \$5,000
15 upon a distributor, producer or refiner who sells or offers or
16 exposes for sale automotive fuel which does not meet the
17 automotive fuel rating certified by the distributor, producer or
18 refiner or who sells or offers or exposes for sale automotive
19 fuel which does not meet the requirements of section 4187.4
20 (relating to standards for automotive fuel).

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

25 (1) the difference between the price per gallon charged
26 to the consumer for the automotive fuel in question and the
27 price per gallon charged to the consumer for the lowest
28 octane grade at the retail dispensing facility at the time of
29 the violation; and

30 (2) multiplied by the capacity of the storage tank from

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

5 (d) Repeat violations.--In addition to any civil penalty
6 assessed in accordance with the provisions of this section, the
7 department may initiate criminal proceedings for a second or
8 subsequent violation of sections 4187.4 and 4187.5 (relating to
9 automotive fuel rating, disclosure and labeling requirements). A
10 second or subsequent violation shall constitute a misdemeanor of
11 the third degree.

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

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

18 (2) removes automotive fuel from a dispensing system,
19 storage tank or other dispensing device which has been
20 sealed; or

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

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

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

1 or refiner certifying the standards for automotive fuel rating.

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

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

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

20 SUBCHAPTER [F] G
21 MISCELLANEOUS PROVISIONS

22 Section 3. This act shall take effect in 30 days.