

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1282 Session of  
2010

INTRODUCED BY ERICKSON, PILEGGI, MUSTO, FONTANA, O'PAKE, ARGALL,  
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DINNIMAN, WASHINGTON, STACK, MENSCH AND COSTA, MARCH 18, 2010

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MARCH 18, 2010

AN ACT

Amending the act of July 10, 2008 (P.L.1009, No.78), entitled "An act providing for the study and mandated content of biofuels," further providing for definitions, for biodiesel content in diesel fuel sold for on-road use, for agency responsibilities and for infrastructure reports; and providing for Biofuel Development Fund.

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

Section 1. Section 2 of the act of July 10, 2008 (P.L.1009, No.78), known as the Biofuel Development and In-State Production Incentive Act, is amended by adding definitions to read:

Section 2. Definitions.

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

"American Society for Testing and Materials International" or "ASTM." A private organization that utilizes committees of industry representatives and regulators to develop product

quality standards and test methods to be used by industries, regulatory agencies and purchasing agents.

"Annualized basis." The sum of three consecutive months of in-State production multiplied by four.

"Approved biodiesel blending method." A blending method where biodiesel, diesel fuel, off-road diesel fuel or oilheat fuel are blended to maintain a consistent blend throughout the entire volume and done at a facility capable of maintaining the biodiesel at ten degrees Fahrenheit above the cloud point of the biodiesel through the use of department-approved meters to track the volume of each product individually and maintaining the blend percentage within a margin of one half of one percent of the total volume of biodiesel required to make the desired blending percentage.

"ASTM specification." A standard quality specification developed and published by the American Society for Testing and Materials International. Each specification includes references to standard test methods, also developed and published by ASTM.

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"Biodiesel blend." A blend of biodiesel, diesel fuel, off-road diesel fuel or oilheat fuel intended to be sold or offered for sale to ultimate consumers in this Commonwealth for use in on-road or off-road compression ignition engines or for residential, commercial or industrial heating applications.

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"Consumer." A person that purchases biodiesel blend, diesel fuel, off-road diesel fuel or oilheat fuel for purposes other than resale.

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"Diesel fuel." Petroleum diesel fuel that complies with ASTM

D975 or its successor standard having a maximum allowable sulphur content at the point of use of no more than 15 parts per million (PPM).

"Distributor." A person that manufactures, refines, receives for storage, distributes or sells diesel fuel, off-road diesel fuel or oilheat fuel biodiesel or biodiesel blend in this Commonwealth for subsequent distribution to another person other than the consumer.

"Fund." The Biofuel Development Fund established in section 8(a).

"Manufacture." To produce, mix, blend, repackage or further process.

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"Off-road diesel fuel." Fuel as defined in 75 Pa.C.S. § 9002 (relating to definitions) as "dyed diesel fuel" which is intended to be sold for or used in off-road compression ignition engines that complies with ASTM D975 or its successor standard having a maximum allowable sulphur content at the point of use of no more than 500 parts per million (PPM), or other lower maximum allowable sulphur content as shall become required by Federal law.

"Oilheat fuel." Petroleum heating fuel that complies with ASTM D396 or its successor standard having a maximum allowable sulphur content at the point of use of no more than 2,000 parts per million (PPM), or other lower maximum allowable sulphur content as shall become required by this act and intended to be sold for or used in residential, commercial or industrial heating applications.

"Person." An individual, corporation, partnership, stock company, society, association or business unit or agent or

employee thereof.

"Petroleum load rack terminals." A location, supplied by pipeline, barge, or direct refinery access, where the commercial transfer of diesel fuel, off-road diesel fuel or oilheat fuel, biodiesel and biodiesel blend, at the wholesale level is conducted utilizing meters employed in the measurement of product delivered to a seller by a buyer.

"Producer." A person that purchases component elements and blends them to produce biodiesel blend.

"Refinery" or "terminal." A petroleum refinery, pipeline terminal, river terminal, load rack terminal, storage facility, producer facility or other point of origin of diesel fuel, off-road diesel fuel or oilheat fuel, biodiesel and biodiesel blend, that is manufactured, blended or imported by rail, truck, barge or pipe and held, stored, transferred, offered for distribution, distributed, offered for sale or sold.

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"Retailer." A person that sells diesel fuel, off-road diesel fuel or oilheat fuel, biodiesel or biodiesel blend to the consumer.

"Sale," "sell" or "sold." To transfer title for consideration.

"Unclassified importer." A person that imports or causes to be imported diesel fuel, off-road diesel fuel or oilheat fuel, biodiesel or biodiesel blend for use, distribution or sale in this Commonwealth, but that does not qualify as a distributor.

Section 2. Section 3 heading and subsections (a) and (f) of the act are amended to read:

Section 3. Biodiesel and sulphur content in diesel fuel sold for on-road [use] or off-road use and oilheat fuel.

(a) [Volume standards] Standards.--The following standards shall apply:

(1) All diesel fuel sold or offered for sale to ultimate consumers in this Commonwealth for use in on-road compression ignition engines must [contain] be blended with biodiesel so as to achieve a biodiesel blend of at least 2% biodiesel by volume one year after the in-State production volume of 40,000,000 gallons of biodiesel has been reached and sustained for three months on an annualized basis as determined by the department. The biodiesel blend shall comply with ASTM specification D975 or its successor standard.

(2) All diesel fuel sold or offered for sale to ultimate consumers in this Commonwealth for use in on-road compression ignition engines must [contain] be blended with biodiesel so as to achieve a biodiesel blend of at least 5% biodiesel by volume one year after the in-State production volume of 100,000,000 gallons of biodiesel has been reached and sustained for three months on an annualized basis as determined by the department. The biodiesel blend shall comply with ASTM specification D975 or its successor standard.

(3) All diesel fuel sold or offered for sale to ultimate consumers in this Commonwealth for use in on-road compression ignition engines must [contain] be blended with biodiesel so as to achieve a biodiesel blend of at least 10% biodiesel by volume one year after the in-State production volume of 200,000,000 gallons of biodiesel has been reached and sustained for three months on an annualized basis as determined by the department. The biodiesel blend shall

comply with ASTM specification D7467 or its successor standard.

(4) All diesel fuel sold or offered for sale to ultimate consumers in this Commonwealth for use in on-road compression ignition engines must [contain] be blended with biodiesel so as to achieve a biodiesel blend of at least 20% biodiesel by volume one year after the in-State production volume of 400,000,000 gallons of biodiesel has been reached and sustained for three months on an annualized basis as determined by the department. The biodiesel blend shall comply with ASTM specification D7467 or its successor standard.

(5) All oilheat fuel and off-road diesel fuel sold or offered for sale to ultimate consumers in this Commonwealth must be blended with biodiesel to achieve a biodiesel blend of at least 5% biodiesel by volume after May 1, 2011.

(6) All oilheat fuel and off-road diesel fuel sold or offered for sale to ultimate consumers in this Commonwealth must be blended with biodiesel to achieve a biodiesel blend of at least 10% biodiesel by volume after May 1, 2013, provided one of the following conditions is met:

(i) The national biodiesel board and the national oilheat research alliance both certify by resolution to the department that a blend of oilheat fuel and biodiesel of at least 10% biodiesel by volume is not detrimental to the operation of a residential, commercial or industrial heating system if used for its intended use.

(ii) The ASTM amends its standard D396 to include blends of at least 10% biodiesel.

(7) (i) On or after May 1, 2011, oilheat fuel sold for

use in residential, commercial or industrial heating within this Commonwealth shall have a sulphur content of no more than 15 parts per million (PPM).

(ii) The department, with the concurrence of the Department of Environmental Protection, may suspend or modify to increase the allowable sulphur content of oilheat fuel required by this subsection if the department determines the suspension or modification is warranted by an insufficient quantity of reasonable available oilheat fuel of the required sulphur content in a particular geographic area.

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(f) Exception.--The requirements of this section shall not apply [to aviation fuel, home heating fuel or where prohibited by law.]:

(1) to aviation fuel;

(2) to locomotive fuel;

(3) to marine fuel;

(4) to grades of fuel oil other than grades numbered 1 and 2 under ASTM specifications D396 AND D975;

(5) to diesel fuel produced from 100% Pennsylvania grade crude oil by a small refiner, as defined in 40 CFR 80.1101(g) (relating to definitions), through December 31, 2010; or

(6) where prohibited by law.

Section 3. Section 5 of the act is amended by adding subsections to read:

Section 5. Agency responsibilities.

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(e) Enforcement.--

(1) The department is charged with the general

enforcement of this act. The department may employ all proper means for the enforcement of this act, including issuing notices and orders, filing violations for criminal prosecution, seeking injunctive relief, imposing civil penalties and entering into consent agreements.

(2) Any person that imports, transfers, offers for sale or sells biodiesel, diesel fuel, off-road diesel fuel, oilheat fuel or biodiesel blend in this Commonwealth for use in on-road or off-road compression ignition engines or for residential, commercial or industrial heating applications shall register with the department.

(3) Biodiesel blend shall be created using an approved biodiesel blending method at such a time and place where the diesel fuel, off-road diesel fuel or oilheat fuel is loaded out of a petroleum load rack terminal in this Commonwealth for further distribution, storage, transfer, offer for sale or sale in this Commonwealth.

(4) Diesel fuel, off-road diesel fuel and oilheat fuel imported into this Commonwealth must be imported by registered importers and must be blended with biodiesel to create biodiesel blend by an approved biodiesel blending method before the fuel may be sold or offered for sale within this Commonwealth to any person other than the importer.

(5) If a person has multiple locations where the person conducts the activities set forth in paragraphs (2), (3) and (4), each location shall be separately registered, but may be submitted in a single electronic form. This paragraph includes in-State and out-of-State persons, such as refineries, terminals, distributors, producers, retailers and unclassified importers that transfer, sell or offer for sale



biodiesel and biodiesel blend products for use in on-road or off-road compression ignition engines or for residential, commercial or industrial heating applications in this Commonwealth.

(6) Any time biodiesel blend is sold or transferred from a refinery, terminal, distributor, producer, unclassified importer or any person, for sale to ultimate consumers in this Commonwealth, either directly or through a retailer or other person, a bill of lading or shipping manifest shall be provided to the person that receives the biodiesel blend. The shipping manifest or bill of lading shall accompany the biodiesel blend to the retailer. For direct consumer sales of biodiesel blend by a refinery, terminal, distributor, producer, unclassified importer or any person other than a retailer, such bills of lading or shipping manifest shall be retained at the point of sale. A copy of such records shall be retained by the refinery, terminal, distributor, producer, unclassified importer or person conducting the sale for a period of one year from delivery of the biodiesel blend product or for a longer period of time if part of an enforcement action. For biodiesel blend, the bill of lading or shipping manifest shall contain and disclose the following information:

(i) The Pennsylvania registration number, name and location of the terminal, refinery, distributor, producer, unclassified importer or person that created the biodiesel blend.

(ii) The biodiesel content, stating volume percentage, based upon gallons of biodiesel per gallons of diesel fuel base-stock, or an ASTM "Bxx" designation

where "xx" denotes the volume percentage biodiesel included in the blended product.

(iii) The ASTM specification of the biodiesel used in the biodiesel blend.

(iv) The grade and ASTM specification of the diesel fuel, off-road diesel fuel or oilheat fuel used in the biodiesel blend and, for biodiesel blends made with oilheat fuel, the sulfur content of the oilheat fuel.

(v) The ASTM specification of the biodiesel blend.

(vi) The total gallons of biodiesel blend sold, shipped or transferred.

(vii) A certification signed by the refinery, terminal, distributor, producer, unclassified importer or other person that created the biodiesel blend stating that it was created by an approved biodiesel blending method and the information contained in the bill of lading or shipping manifest is true and correct subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(7) Retailers offering a biodiesel blend product for ultimate sale to consumers for use in on-road or off-road compression ignition engines or for residential, commercial or industrial heating applications in this Commonwealth shall:

(i) Assure they receive and retain a copy of the bills of lading and shipping manifests required by this section.

(ii) With regard to the sale or delivery of biodiesel blending utilizing oilheat fuel, provide the consumer as part of the sale or delivery a receipt

showing the Pennsylvania registration number of the person that created the biodiesel blend and the biodiesel and sulfur content as required to be included in the bills of lading by subsection (e)(6)(ii) and (iv). These records shall be retained for a period of one year from receipt of the biodiesel blend product, or for a longer period of time if requested by the department as part of an enforcement action, either at the facility where the product is sold or at the corporate headquarters, so long as the bills of lading and shipping manifests remain at the facility where the product is sold until such time as that product is sold or is no longer present at the facility. Notwithstanding the provisions of this subsection, no retailer shall be found in violation of this act for failure to make the records required by this section immediately available to the department upon inspection of the facility where the product is sold, provided that the records are submitted to the department within two business days.

(8) Any time biodiesel is sold or transferred from any person to be sold or offered for sale to ultimate consumers in this Commonwealth for use in on-road or off-road compression ignition engines or for residential, commercial or industrial heating applications as part of a biodiesel blend, a certification shall be provided to the person that receives the biodiesel. The certification shall accompany the biodiesel to the person that creates the biodiesel blend and shall accompany the biodiesel blend into which the biodiesel has been incorporated to the retailer. The certification shall be signed by the person selling or transferring the

biodiesel and state that the biodiesel is compliant with the definition and quality standards for biodiesel under this act, including ASTM D-6751-02, or its successor standard, and be made subject to the penalties of 18 Pa.C.S. § 4904. A copy of the certification shall be retained by the person selling or transferring the biodiesel, the person creating the biodiesel blend and by the retailer for a period of one year from delivery of the biodiesel or biodiesel blend, as applicable, or for a longer period of time if requested by the department as part of an enforcement action. With regard to a retailer, a copy of the certification may be retained at the corporate headquarters so long as the certification remains at the facility where the product is sold until such time as that product is sold or is no longer present at the facility. Notwithstanding the provisions of this subsection, no retailer shall be found in violation of this act for failure to make the records required by this section immediately available to the department upon inspection of the facility where the product is sold, provided that the records are submitted to the department within two business days.

(9) The department shall have the following authority:

(i) To conduct unannounced random inspections of any person or establishment located in this Commonwealth that stores, holds, blends, sells or offers for sale diesel fuel, off-road diesel fuel, oilheat fuel, biodiesel or biodiesel blend. Inspections shall include the premises, tanks, storage facilities, transportation and storage vehicles, dispensing devices and any other place where diesel fuel, off-road diesel fuel, oilheat fuel,

biodiesel or biodiesel blend is stored, held, blended, sold or offered for sale.

(ii) To take samples of and test the diesel fuel, off-road diesel fuel, oilheat fuel, biodiesel and biodiesel blend being stored, held, blended, sold or offered for sale.

(iii) To audit the books and records, including copying, pertaining to the diesel fuel, off-road diesel fuel, oilheat fuel, biodiesel or biodiesel blend being stored, held, sold or offered for sale, and its component parts, including:

(A) Delivery invoices, bills of lading and shipping manifests.

(B) Sales invoices, bills of lading and shipping manifests.

(C) Inventory records.

(D) Contracts and agreements between suppliers, buyers and sellers.

(10) The department is authorized to access, during regular business hours, the premises, including the tanks, storage facilities, transportation and storage vehicles, dispensing devices and any other place where diesel fuel, off-road diesel fuel, oilheat fuel, biodiesel or biodiesel blend is stored, held, blended, sold or offered for sale, and the records of any establishment, located in this Commonwealth, where diesel fuel, off-road diesel fuel, oilheat fuel, biodiesel or biodiesel blend is stored, held, processed, distributed, offered or exposed for sale or sold in this Commonwealth for the purpose of investigation and enforcement of this act, including auditing records and

taking samples of diesel fuel, off-road diesel fuel, oilheat fuel, biodiesel or biodiesel blend from tanks, storage facilities, transportation and storage vehicles, dispensing devices and any other place where diesel fuel, off-road diesel fuel, oilheat fuel, biodiesel or biodiesel blend is stored, held, blended, sold or offered for sale. A person that willfully and intentionally interferes with an employee of the department in the performance of duties or activities authorized under this act commits a misdemeanor of the third degree.

(11) The department shall have the authority to issue stop-sale orders with respect to all biodiesel and biodiesel blend stored, held, blended, sold or offered for sale to ultimate consumers in this Commonwealth for use in on-road or off-road compression ignition engines or for residential, commercial or industrial heating applications where the department determines, after sampling and analysis, that the biodiesel or biodiesel blend does not comply with the standards established by this act or the regulations promulgated under this act and would be detrimental to the operation of on-road or off-road compression ignition engines or residential, commercial or industrial heating if used for its intended use. The department shall release the noncompliant biodiesel or biodiesel blend for sale only when the department determines the biodiesel or biodiesel blend is either brought into compliance with this act or regulations promulgated under this act or it would no longer be detrimental to the operation of on-road or off-road compression ignition engines or residential, commercial or industrial heating systems if used for its intended use. All

such biodiesel or biodiesel blend must be properly labeled as to its noncompliant characteristics if released and permitted to be sold without being brought into compliance with this act or regulations promulgated under this act. A person that knowingly sells or offers for sale biodiesel or biodiesel blend subject to a stop-sale order in this Commonwealth for use by ultimate consumers in on-road or off-road compression ignition engines or for residential, commercial or industrial heating applications commits a misdemeanor of the third degree.

(f) Penalties.--

(1) The department may assess a civil penalty of not less than \$100 nor more than \$1,000 per day for each knowing violation of this act or a regulation promulgated under this act.

(2) The department shall provide written notice of the penalty amount as well as the general factual and legal basis for the penalty and shall advise the affected person that, within 15 days of receipt of the notice, the person may file with the Secretary of Agriculture a written request for an administrative hearing. Unless a timely request has been filed, the written notice shall become final. If a written request for a hearing is timely filed, the hearing on the penalty assessment shall be held in accordance with the provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

(3) In cases of inability to collect the civil penalty or failure of any person to pay all or a portion of the penalty, the department may refer the matter to the Office of

General Counsel or the Office of Attorney General, which shall institute an action in the appropriate court to recover the penalty.

(4) A person that knowingly violates a provision of this act or a rule or regulation adopted or order issued under this act:

(i) Unless otherwise specified in this act, for the first offense, commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$100 nor more than \$500 plus costs of prosecution or to imprisonment for not more than 90 days, or both.

(ii) For a subsequent offense at a registered location that occurs within two years of sentencing for the prior violation, commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than \$500 nor more than \$1,000 plus costs of prosecution or to imprisonment of not more than one year, or both.

(5) In addition to any other remedies set forth under this act, a violation of this act or a regulation promulgated under this act shall be abatable in the manner provided by law or equity. In cases where the circumstances require it, a mandatory preliminary injunction, special injunction or temporary restraining order may be issued upon the terms prescribed by the court, provided notice of the application has been given to the respondent in accordance with the rules of equity practice. In any proceeding, the court shall issue a prohibitory or mandatory injunction if it finds that the respondent is engaging in unlawful conduct as defined under this act or is engaging in conduct which is causing immediate



and irreparable harm to the public. In addition to the injunction, the court, in the equity proceeding, may assess civil penalties in accordance with this section.

(g) Fees.--The department may impose registration and user fees to recover costs of enforcement, such as, sampling, inspection, lab analysis and testing, supplies, equipment and administration costs and other fixed overhead costs incurred in the enforcement and administration of this act. Unless otherwise specified in this chapter, such fees shall be established by the department through regulations.

Section 4. Section 6(a) of the act is amended to read:

Section 6. Infrastructure reports.

(a) Certification.--At least six months prior to the effective dates of the mandated content requirements contained in sections 3(a)(1), (2), (3) [and], (4), (5) and (6) and 4, the department and the Department of Transportation shall jointly make a certification as to whether there is sufficient transportation, distribution and other necessary infrastructure, including rail capability and terminal facilities, in this Commonwealth to meet the requirements of this act.

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Section 5. The act is amended by adding a section to read:

Section 8. Biofuel Development Fund.

(a) Establishment.--There is hereby established in the State Treasury a nonlapsing fund to be known as the Biofuel Development Fund. Fees, fines and penalties, including administrative, civil and criminal penalties and interest collected by the department under this act or regulations promulgated under it shall be paid into the fund.

(b) Appropriation.--Money and interest in the fund are

hereby appropriated to the department on a continuing basis for activities necessary to meet the requirements of the act and regulations promulgated under it.

(c) Supplements.--The Biofuel Development Fund may be supplemented by money received from the following sources:

(1) Federal funds appropriated to the department.

(2) State funds appropriated to the department.

(3) Proceeds from the sale of bonds made available to the department.

(4) Another source, including, gifts and other contributions from public and private sources.

(d) Administration.--The department shall have authority to adopt procedures for the use of money in the fund including the establishing of accounts within the fund for the purpose of administration of the act and regulations promulgated under it.

(e) Applicability.--The provisions of 42 Pa.C.S. Ch. 37 Subch. C (relating to judicial computer system) shall not apply to the Biofuel Development Fund and fines collected as criminal penalties under the act.

(f) Deposit and use of money.--Administrative action shall not prevent the deposit of money into the fund in the fiscal year in which it is received. The money shall be used only for the purposes authorized under this act and shall not be transferred or diverted to another purpose by administrative action.

Section 6. This act shall take effect in 60 days.