

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1161 Session of
1995

INTRODUCED BY RUDY, CAPPABIANCA, BELARDI, HORSEY, McCALL,
JOSEPHS, READSHAW, BEBKO-JONES, LAUGHLIN, MELIO, CURRY,
CIVERA, SURRA, DONATUCCI, CORRIGAN, YOUNGBLOOD, PISTELLA,
HALUSKA AND JAROLIN, MARCH 15, 1995

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 15, 1995

AN ACT

1 Providing for notice display requirements for the sale of fruits
2 and vegetables that have been irradiated and for violations;
3 and imposing penalties for noncompliance.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Irradiated
8 Food Notice Act.

9 Section 2. Definitions.

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

13 "Department." The Department of Agriculture of the
14 Commonwealth.

15 "Food store." A store primarily engaged in the sale of food
16 items at retail for consumption off the premises.

17 "Irradiated." The process of exposing a food item to

1 radiation for the purpose of extending its shelf life or to kill
2 bacteria.

3 "Person." An individual, firm, partnership, copartnership,
4 corporation or association.

5 "Secretary." The Secretary of Agriculture of the
6 Commonwealth.

7 Section 3. Notice display requirements.

8 (a) Notice.--Every food store that sells vegetables or
9 fruits that have been irradiated shall display a sign, in a
10 conspicuous place as close as possible to the irradiated
11 vegetables or fruits offered for sale, indicating which
12 vegetables and fruits have been irradiated.

13 (b) Violation.--A food store to which this section applies
14 that demonstrates a pattern of failing to post the notice
15 required by subsection (a) commits a violation of subsection
16 (a). A failure to provide the required notice that was caused by
17 an unintentional or technical error shall not, however,
18 constitute a violation of subsection (a). Any violation for one
19 fruit or vegetable shall constitute a single violation for a
20 day. Every day a violation continues constitutes a separate
21 violation.

22 Section 4. Penalty.

23 A food store which violates section 3 commits a summary
24 offense and shall, upon conviction, be sentenced to pay a fine
25 of not more than \$1,000 for each violation.

26 Section 5. Enforcement.

27 (a) Injunction.--Whenever the secretary or a district
28 attorney has reason to believe that a person is using or is
29 about to use any method, act or practice which violates this
30 act, he may bring an action in the name of the Commonwealth

1 against the person to restrain by temporary or permanent
2 injunction the use of the method, act or practice.

3 (b) Assurance of voluntary compliance.--The secretary or
4 district attorney may accept an assurance of voluntary
5 compliance with respect to any method, act or practice
6 considered to be in violation of this act from any person who
7 has engaged or was about to engage in the method, act or
8 practice. The assurance shall be in writing and shall be filed
9 with the court of common pleas of the judicial district in which
10 the food store is located and with the department. The assurance
11 of voluntary compliance shall not be considered an admission of
12 violation for any purpose. Matters closed by filing a written
13 assurance may at any time be reopened by the secretary or
14 district attorney for further proceedings in the public
15 interest.

16 (c) Willful violations.--In an action brought under this
17 act, if the court finds that a person is willfully using or has
18 willfully used a method, act or practice which violates the
19 terms of an injunction issued under this section or any of the
20 terms of an assurance of voluntary compliance duly filed in
21 court, the secretary or the appropriate district attorney,
22 acting in the name of the Commonwealth, may recover on behalf of
23 the Commonwealth a civil penalty of not more than \$1,000 per
24 violation, which civil penalty shall be in addition to other
25 relief which may be granted under this act. For the purposes of
26 this section, the court issuing an injunction, or in which an
27 assurance of voluntary compliance is filed, shall retain
28 jurisdiction, and the cause shall be continued; and in those
29 cases, the secretary or the appropriate district attorney,
30 acting in the name of the Commonwealth, may petition for

1 recovery of civil penalties and any other equitable relief
2 considered necessary or proper.

3 Section 6. Preemption.

4 No local ordinance, rule, resolution or regulation which
5 relates to the sale of vegetables or fruits shall be adopted
6 which is inconsistent with the provisions of this act and the
7 rules and regulations adopted under this act.

8 Section 7. Rules and regulations.

9 The department shall promulgate rules and regulations
10 necessary to carry out this act.

11 Section 8. Legal action.

12 (a) Failure of department to take action.--A person may
13 bring an action to do either or both of the following if the
14 department fails to initiate action within 60 days after
15 receiving notice of an alleged violation:

16 (1) Obtain a declaratory judgment that a practice is in
17 violation of this act.

18 (2) Enjoin by temporary or permanent injunction a person
19 who is engaging or is about to engage in a practice in
20 violation of this act.

21 (b) Action for loss.--A person who suffers a loss as a
22 result of a violation of this act may bring an individual or
23 class action to recover actual damages or \$200, whichever is
24 greater, for each day on which violations of this act have been
25 found, together with reasonable attorney fees of not more than
26 \$100 in an individual action.

27 Section 9. Effective date.

28 This act shall take effect in 60 days.