
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 175 Session of
1991

INTRODUCED BY STAIRS, COLE, HERSHEY, GEIST, BARLEY, ARMSTRONG,
RUDY, LEH, PITTS, M. N. WRIGHT, PERZEL, HALUSKA, NOYE,
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SEMMELE, TELEK AND BROUJOS, JANUARY 30, 1991

SENATOR TILGHMAN, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, JULY 3, 1991

AN ACT

1 Regulating the refrigeration of eggs stored, distributed or held
2 for commercial sale or use; providing for additional duties
3 of the Department of Agriculture and the Department of
4 Environmental Resources; and providing for civil and criminal
5 penalties.

6 The General Assembly finds and declares as follows:

7 (1) That the egg industry constitutes an important part
8 of the economy of this Commonwealth. Recent national
9 outbreaks of salmonellosis in human beings have raised
10 concerns among consumers about the safety of eggs and foods
11 made with eggs and have threatened the loss of egg markets
12 within and outside this Commonwealth. A human being may
13 contract salmonellosis if he ingests an egg or a food made
14 with an egg containing a sufficient number of the salmonella
15 enteritidis bacteria. The purpose of this act is to establish
16 uniform temperature requirements for shell eggs in order to
17 retard the growth of the salmonella enteritidis bacteria.

1 Adequate refrigeration along with proper food preparation and
2 handling can significantly reduce the risk that a human being
3 will contract salmonellosis from eggs.

4 (2) That the intent of this act is to preserve egg
5 markets for Pennsylvania producers and ensure the quality of
6 Pennsylvania eggs, by establishing reasonable standards of
7 refrigeration for shell eggs for public eating and drinking
8 establishments, food processors, retail food stores, AND FOOD <—
9 distributors ~~and other food establishments.~~ <—

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

12 Section 1. Short title.

13 This act shall be known and may be cited as the Egg
14 Refrigeration Law.

15 Section 2. Definitions.

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

19 "Consumer receptacle." A container used for the sale of
20 shell eggs at retail including, but not limited to, a paper bag,
21 a cardboard box, a shoe box, an egg case or an egg carton.

22 "Date of lay." The Julian date on which the eggs were
23 produced by the domesticated fowl.

24 "Date of process." The Julian date on which the eggs were
25 washed and packed in containers or consumer receptacles.

26 "Egg" or "shell egg." The product of domesticated fowl,
27 enclosed in a shell, to be used for human consumption.

28 "Egg processor" or "processor." A person who collects,
29 washes and packs shell eggs for commercial sale or distribution.

30 "Julian date." The sequential number of each day of a

1 calendar year.

2 "Person." An individual, firm, corporation, association or
3 other business entity.

4 Section 3. Standards prescribed.

5 (a) General standards.--Except as provided in subsection

6 (b), within 24 hours of being laid, a shell egg sold or produced
7 within this Commonwealth shall be subjected to and maintained at
8 an ambient temperature not to exceed 55 degrees Fahrenheit.

9 After the shell egg is washed and packed, it shall be subjected
10 to and maintained at an ambient temperature not to exceed 45
11 degrees Fahrenheit.

12 (b) Refrigeration until use or purchase.--At any public
13 eating or drinking establishment, food processor, retail food
14 store, distributor or other food establishment, a shell egg
15 shall be maintained at an internal temperature not to exceed 45
16 degrees Fahrenheit until use or preparation or until purchase by
17 a consumer.

18 (c) Identifying code.--Each container or consumer receptacle
19 shall be labeled with a printed code which permits the processor
20 to identify the date of process and the flock of origin of the
21 eggs contained therein. The processor may meet the requirement
22 of this subsection either by marking each container or consumer
23 receptacle with the date of process and the flock of origin or
24 by having in place a system, approved by the Secretary of
25 Agriculture, that permits the processor to readily and
26 accurately identify the date of process and the flock of origin
27 for a particular container or consumer receptacle of shell eggs.

28 (d) Additional labeling.--The words "keep refrigerated"
29 shall be marked in a plain and conspicuous manner on each
30 container or consumer receptacle of shell eggs, as prescribed by

1 the Secretary of Agriculture.

2 (e) Recordkeeping.--

3 (1) The processor of shell eggs shall keep records as
4 are necessary to permit him to readily and accurately
5 identify the flock of origin and the date of lay for each
6 consumer receptacle of shell eggs and to permit the
7 Department of Agriculture to verify that the temperature
8 requirements established in subsection (a) have been complied
9 with.

10 (2) A record required to be kept under this subsection
11 shall be maintained for at least six months and shall be made
12 immediately available to the Department of Agriculture and
13 the Department of Environmental Resources upon request.

14 (f) Certain small egg processors.--

15 (1) This section shall not apply to an egg processor who
16 meets all of the following requirements:

17 (i) maintained at all times during the prior 12-
18 month period a flock of not more than 3,200 laying hens
19 in the aggregate;

20 (ii) sells or markets eggs predominantly within a
21 100-mile radius of the facility in which the eggs were
22 produced and processed for sale or distribution; ~~and~~ <—

23 (iii) sells or markets eggs within ~~two~~ FIVE days of <—
24 the date of lay; AND <—

25 (IV) STORES THE EGGS PRIOR TO SALE AT A TEMPERATURE
26 OF 60 DEGREES FAHRENHEIT OR LESS.

27 (2) In a proceeding under section 5 or 6, this
28 subsection shall be presumed to be inapplicable in absence of
29 proof to the contrary.

30 (3) Small egg processors exempted under this section

1 shall print clearly and conspicuously on each container or
2 consumer receptacle the date of lay of eggs contained
3 therein.

4 Section 4. Unlawful conduct.

5 No person may sell, distribute, use or store an egg that was
6 not at all times in conformance with this act. Each business day
7 during which a violation of this section occurs shall constitute
8 a separate offense.

9 Section 5. Criminal penalty.

10 (a) Summary offense.--

11 (1) A person who violates section 4 commits a summary
12 offense and shall, upon conviction, be sentenced to pay a
13 fine of not less than \$100.

14 (2) A person who violates section 4 after being
15 convicted under paragraph (1), commits a summary offense and
16 shall, upon conviction, be sentenced to pay a fine of not
17 less than \$300.

18 (b) Misdemeanor.--A person who violates section 4 after
19 being convicted under paragraphs (1) and (2), commits a
20 misdemeanor of the third degree and shall, upon conviction, be
21 sentenced to pay a fine of not less than \$1,000.

22 Section 6. Civil penalty.

23 (a) Assessment by the Department of Agriculture.--

24 (1) The ~~Secretary~~ DEPARTMENT of Agriculture may assess a <—
25 civil penalty of not more than \$10,000 upon a person for each
26 violation of section 4. Such penalty may be assessed whether
27 or not the violation was willful or negligent.

28 (2) If a civil penalty is assessed against a person
29 under subsection (a), the ~~Secretary~~ DEPARTMENT of Agriculture <—
30 shall notify the person by certified mail of the nature of

1 the violation, the amount of the civil penalty and that the
2 person may notify the ~~secretary~~ DEPARTMENT OF AGRICULTURE in <—
3 writing within ~~ten~~ 30 calendar days that the person wishes to <—
4 contest the civil penalty.

5 (3) If within ~~ten~~ 30 calendar days from the receipt of <—
6 the notification referred to in paragraph (2) the person does
7 not notify the ~~Secretary~~ DEPARTMENT of Agriculture of this <—
8 intent to contest the assessed penalty, the civil penalty
9 shall become final. If timely notification of the intent to
10 contest the civil penalty is given, the person contesting the
11 civil penalty shall be provided with a hearing in accordance
12 with 2 Pa.C.S. (relating to administrative law and
13 procedure).

14 (b) Assessment by the Department of Environmental
15 Resources.--

16 (1) The Department of Environmental Resources may assess
17 a civil penalty of not more than \$10,000 upon a person for
18 each violation of section 4. The penalty may be assessed
19 whether or not the violation was willful or negligent.

20 (2) When the department assesses a civil penalty, it
21 shall inform the person of the amount of the penalty. The
22 person charged with the penalty shall then have 30 days to
23 pay the penalty in full or, if the person wishes to contest
24 either the amount of the penalty or the fact of the
25 violation, the person shall within the 30-day period, file an
26 appeal of the action with the Environmental Hearing Board.

27 (i) Failure to appear within 30 days shall result in
28 a waiver of all legal rights to contest the violation or
29 the amount of the penalty.

30 (ii) A person may challenge either the fact of the

1 violation or the amount of the penalty once an appeal of
2 the issue has been perfected. In either challenge, the
3 appellant will be bound as to any actions of the
4 department which have become final under section 4 of the
5 act of July 13, 1988 (P.L.530, No.94), known as the
6 Environmental Hearing Board Act. A final action includes
7 a compliance order which has become final, even though
8 the order addresses the same violation for which a civil
9 penalty is assessed.

10 (c) Limit on assessments.--Only one assessment under either
11 subsection (a) or (b) may be made for a particular violation.

12 Section 7. Injunctions.

13 (a) Action in equity.--The Attorney General, at the request
14 of the ~~Secretary~~ DEPARTMENT of Agriculture, may initiate in the <—
15 Commonwealth Court or the court of common pleas of the county in
16 which the defendant resides or has a place of business, an
17 action in equity for an injunction to restrain any violation of
18 this act. The Commonwealth shall not be required to furnish a
19 bond or other security in connection with this proceeding.

20 (b) Restraint of violations.--In addition to any other
21 remedies in this act, the Department of Environmental Resources
22 may institute a suit in equity in the name of the Commonwealth
23 where a violation of law or nuisance exists for an injunction to
24 restrain a violation of this act or the rules, regulations,
25 standards or orders adopted or issued thereunder and to restrain
26 the maintenance or threat of a public nuisance. In this
27 proceeding, the court shall, upon motion of the Commonwealth,
28 issue a prohibitory or mandatory preliminary injunction if it
29 finds that the defendant is engaging in unlawful conduct as
30 defined by this act or is engaged in conduct which is causing

1 immediate and irreparable harm to the public. The Commonwealth
2 shall not be required to furnish a bond or other security in
3 connection with these proceedings. In addition to an injunction,
4 the court, in these equity proceedings, may levy civil penalties
5 as specified in section 6.

6 Section 8. Concurrent remedies.

7 The penalties and remedies prescribed by this act shall be
8 deemed concurrent and the existence or exercise of any remedy
9 shall not prevent the exercise of any other remedy, whether at
10 law or at equity.

11 Section 9. Enforcement.

12 (a) Department of Agriculture.--The Department of
13 Agriculture shall have the following powers and duties:

14 (1) To administer and enforce the provisions of this
15 act.

16 (2) To periodically inspect food processors,
17 distributors, retail food stores and other food
18 establishments for compliance with this act. The Department
19 of Agriculture may enter upon any public or private premises
20 during hours of their operation and other reasonable times,
21 without prior notice, to inspect, conduct tests, take
22 samples, and examine records as it deems necessary to
23 determine compliance with this act.

24 (3) To impose civil penalties against persons as a
25 result of the inspections and sampling referred to in
26 paragraph (2).

27 (4) To conduct hearings under 2 Pa.C.S. (relating to
28 administrative law and procedure).

29 (5) To adopt the rules and regulations as are necessary
30 to carry out this act.

1 (b) Department of Environmental Resources.--The Department
2 of Environmental Resources shall have the following powers and
3 duties:

4 (1) To issue orders and to administer and enforce the
5 provisions of this act as it relates to any public eating and
6 drinking establishment.

7 (2) To periodically inspect public eating and drinking
8 establishments for compliance with this act. The Department
9 of Environmental Resources may enter upon any public or
10 private premises during hours of their operation and other
11 reasonable times, without prior notice, to inspect, conduct
12 tests, take samples, and examine records as it deems
13 necessary to determine compliance with this act.

14 (3) To impose civil penalties against persons as a
15 result of the inspections and sampling referred to in
16 paragraph (2).

17 (4) To develop policies and regulations and to make
18 recommendations of regulations to the Environmental Quality
19 Board for adoption to carry out the provisions of this act.

20 (c) Environmental Hearing Board.--The Environmental Hearing
21 Board shall hear appeals, in accordance with the act of July 13,
22 1988 (P.L.530, No.94), known as the Environmental Hearing Board
23 Act, of actions taken by the Department of Environmental
24 Resources pursuant to this act.

25 Section 10. Effective date.

26 This act shall take effect immediately.