
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1309 Session of
2007

INTRODUCED BY CALTAGIRONE, BIANCUCCI, CURRY, DeLUCA, FREEMAN,
HALUSKA, JAMES, JOSEPHS, KIRKLAND, KORTZ, KULA, LEACH,
SIPTROTH AND YOUNGBLOOD, MAY 18, 2007

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES, MAY 18, 2007

AN ACT

1 Regulating the sale of tableware; imposing duties and
2 responsibilities upon the Department of Health; and imposing
3 penalties.

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 Safe
8 Tableware 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 Health of the Commonwealth.

14 "Distributor." A person who brings tableware into this
15 Commonwealth from another state for the purpose of selling it in
16 this Commonwealth.

17 "Importer." A person who brings tableware into this

1 Commonwealth from another country for the purpose of selling it
2 in this Commonwealth.

3 "Manufacturer." A person who makes tableware for the purpose
4 of selling it in this Commonwealth.

5 "Secretary." The Secretary of Health of the Commonwealth.

6 "Small business." A manufacturer, importer or distributor
7 whose gross annual revenue from the sale of tableware is \$30,000
8 or less.

9 "Tableware." A glazed ceramic, enamel metalware or pewter
10 article, container or utensil that may be used in the
11 preparation, serving or storage of food or drink.

12 Section 3. Prohibition.

13 No person may manufacture, process, import, sell, deliver,
14 hold for sale, supply or offer for sale in this Commonwealth
15 tableware that releases any level of lead or cadmium in
16 violation of the standards set by the department, which shall be
17 at least as stringent as the standards adopted by the Food and
18 Drug Administration.

19 Section 4. Marking of tableware required.

20 (a) General rule.--Except as provided in subsection (b),
21 each piece of tableware sold or offered for sale in this
22 Commonwealth shall be permanently and indelibly marked with the
23 name of the manufacturer or importer responsible for the sale of
24 the tableware.

25 (b) Exceptions.--

26 (1) Subsection (a) shall not apply to any tableware
27 manufactured without using lead or cadmium as an
28 intentionally added ingredient.

29 (2) Subsection (a) shall not apply to any tableware
30 product that is of a peculiar structure or too small to

1 enable the name of the manufacturer or importer to be marked
2 thereon pursuant to the provisions of this section, provided
3 that the product is:

4 (i) permanently and indelibly marked with a
5 registered trademark which has been filed with the
6 department;

7 (ii) described and depicted in a certificate of
8 registration which has been filed with the department; or

9 (iii) part of a tableware set, one or more pieces of
10 which are marked pursuant to the provisions of subsection
11 (a).

12 (c) Definition.--As used in this section, the term
13 "permanently and indelibly marked" means fired or manufactured
14 into glazed tableware.

15 Section 5. Administration.

16 The department shall administer and enforce this act. Upon
17 request, the department shall report to the General Assembly
18 concerning the number and findings of inspections performed and
19 samples taken to determine compliance with this act.

20 Section 6. Fee.

21 (a) Amount.--

22 (1) For fiscal years 2008-2009 and 2009-2010, the
23 department shall levy a fee of \$500 upon each manufacturer,
24 importer and distributor of tableware to be used for the
25 purposes of this act, except that the department shall levy a
26 fee of \$150 upon small businesses.

27 (2) No later than July 1, 2009, the department shall
28 establish a schedule, applicable to future fiscal years,
29 assessing an annual fee upon manufacturers, importers and
30 distributors. The schedule shall be based on the anticipated

1 cost of implementing and enforcing this act. The department
2 shall publish the schedule as a notice in the Pennsylvania
3 Bulletin.

4 (b) Interest.--A penalty of 10% per month shall be added to
5 fees which are not paid in a timely manner.

6 Section 7. Local health agencies.

7 The department may enter into an agreement designating local
8 health agencies of governmental subdivisions as the department's
9 authorized agents for purposes of enforcing this act. When an
10 agreement is executed pursuant to this section, the department
11 shall make fee revenues available to the appropriate
12 governmental subdivision for performing duties relating to
13 enforcing this act.

14 Section 8. Powers of inspectors.

15 (a) General rule.--In order to enforce this act, an
16 authorized agent of the department may, upon presenting
17 credentials and at a reasonable time, do any of the following:

18 (1) Enter a factory, warehouse or establishment in which
19 tableware is manufactured, held, distributed, used or sold.

20 (2) Enter a vehicle that is being used to transport or
21 hold tableware.

22 (3) Enter a place where tableware may be held or sold in
23 violation of this act.

24 (4) Inspect a factory, warehouse, establishment, vehicle
25 or place in which tableware is manufactured, held,
26 transported, distributed, used or sold, and any raw, finished
27 or unfinished materials, equipment, containers and tableware
28 therein. The inspection shall include a record, file, paper,
29 process, control and facility that has a bearing on whether
30 the tableware complies with this act.

1 (5) Secure a sample or specimen of tableware or a
2 release of lead or cadmium from tableware. If an agent
3 obtains a sample prior to leaving the premises, the agent
4 shall leave a receipt describing the sample obtained. The
5 department shall secure only the quantity of tableware that
6 is reasonably necessary to conduct the tests to determine the
7 release of lead or cadmium as determined appropriate by the
8 department.

9 (6) Have access to all records of carriers in commerce
10 relating to movement in commerce of tableware or the holding
11 for sale of tableware and the quantity, shipper and consignee
12 thereof.

13 (b) Refusal to permit entry.--It is unlawful for a person to
14 refuse to permit entry or inspection or the taking of samples or
15 other evidence, including photographs, to refuse access to
16 copying of records pursuant to this act or to conceal samples or
17 evidence or withhold evidence concerning them.

18 Section 9. Publication.

19 The department may publish or publicly distribute any
20 information regarding tableware, including results of tests and
21 investigations, after assuring the accuracy of those tests and
22 investigations to the extent necessary for protection of public
23 health and consumer safety or for the protection of the consumer
24 from fraud.

25 Section 10. Sanctions.

26 (a) Civil penalty.--The department may impose a civil
27 penalty, payable to the department, upon a person who violates
28 this act or any regulation adopted pursuant to this act in the
29 amount of not more than \$5,000 per day. Each day that a
30 violation continues shall be considered a separate violation.

1 (b) Complaint.--If, after examination of a possible
2 violation and the facts surrounding that possible violation, the
3 department concludes that a violation has occurred, the
4 department may issue a complaint alleging acts or failures to
5 act that constitute the basis for the violation and the amount
6 of the penalty. The complaint shall be served upon the person
7 alleged to have committed the violation by personal service or
8 by certified mail and shall inform the person so served of the
9 right to a hearing.

10 (c) Hearing.--

11 (1) A person served with a complaint may, within 20 days
12 after service of the complaint, request a hearing by filing
13 with the department a notice of defense. A notice of defense
14 is deemed to have been filed within the 20-day period if it
15 is postmarked within the 20-day period.

16 (2) If a hearing is requested by the person, it shall be
17 conducted within 90 days after the receipt by the department
18 of the notice of defense. If no notice of defense is filed
19 within 20 days after service of the complaint, the department
20 shall issue an order setting the penalty as proposed in the
21 complaint unless the department and the person have entered
22 into a settlement agreement. In that case the department
23 shall issue an order setting the penalty in the amount
24 specified in the settlement agreement.

25 (3) When the person has not filed a notice of defense or
26 where the department and the person have entered into a
27 settlement agreement, the order shall not be subject to
28 review by a court or agency.

29 (d) Conduct of hearing.--Except as otherwise provided in
30 this section, a hearing required under this section shall be

conducted in accordance with the provisions of 2 Pa.C.S.
(relating to administrative law and procedure).

(e) Order.--An order setting civil penalties under this section shall become effective and final upon issuance thereof, and payment shall be made within 30 days of issuance. A copy of the order shall be served by personal service or by certified mail upon the person served with the complaint.

(f) Appeal.--

(1) Within 30 days after service of a copy of a decision issued by the secretary after a hearing, the person served may appeal to the Commonwealth Court.

(2) A person who fails to file the petition within this 30-day period may not challenge the reasonableness or validity of the decision or order of the secretary in a judicial proceeding brought to enforce the decision or order or for other remedies.

(3) In proceedings pursuant to this subsection, the court shall uphold the decision of the secretary if the decision is based upon substantial evidence in the whole record.

(4) The filing of an appeal shall not stay a corrective action required pursuant to this act or the accrual of penalties assessed pursuant to this section.

(5) This subsection shall not be construed to prohibit a court from granting appropriate relief within its jurisdiction.

(g) Remedies not exclusive.--The remedies under this section are in addition to and do not supersede or limit the availability of other civil or criminal remedies.

(h) Criminal penalty.--If a violation of this act is

1 committed after a previous imposition of a penalty under this
2 section which has become final, if the violation was committed
3 with intent to mislead or defraud or if the violation concerns
4 tableware primarily used by children or marketed for children,
5 the offender shall, upon conviction, be sentenced to pay a fine
6 of \$10,000 or to imprisonment for not more than one year, or
7 both.

8 Section 11. Regulations.

9 The department shall promulgate such rules and regulations as
10 may be required in order to administer this act.

11 Section 12. Effective date.

12 This act shall take effect July 1, 2008, or immediately,
13 whichever is later.