
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 653 Session of
2013

INTRODUCED BY LEACH, WOZNIAK, BREWSTER, FONTANA, GREENLEAF,
FARNESE, SOLOBAY, FERLO, HUGHES, SMITH, WASHINGTON AND
YUDICHAK, APRIL 3, 2013

REFERRED TO AGRICULTURE AND RURAL AFFAIRS, APRIL 3, 2013

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
2 Statutes, in food protection, further providing for food
3 safety.

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

6 Section 1. Section 5722 of Title 3 of the Pennsylvania
7 Consolidated Statutes is amended by adding definitions to read:
8 § 5722. Definitions.

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

12 "Agriculture." The science, art or practice of cultivating
13 the soil, producing crops and raising livestock or fish and, in
14 varying degrees, the preparation and marketing of the resulting
15 products.

16 * * *

17 "Distributor." An individual or business engaged in any
18 method of distributing or transporting a food or food product

1 from one place to another.

2 "Enzyme." A protein that catalyzes chemical reactions of
3 other substances without itself being destroyed or altered upon
4 completion of the reactions.

5 * * *

6 "Genetically engineered." Produced from an organism or
7 organisms in which the genetic material has been changed
8 through:

9 (1) the application of in vitro nucleic acid techniques,
10 which include, but are not limited to, recombinant
11 deoxyribonucleic acid (DNA), direct injection of nucleic acid
12 into cells or organelles, encapsulation, gene deletion and
13 doubling; or

14 (2) the application of methods of fusing cells beyond
15 the taxonomic family that overcome natural physiological
16 reproductive or recombinant barriers and that are not
17 techniques used in traditional breeding and selection such as
18 conjugation, transduction and hybridization; or

19 * * *

20 "Manufacturer." The individual or business that makes,
21 processes, combines or packages food ingredients or is engaged
22 in the production or processing of seed, seed stock, food or any
23 food product.

24 "Medical food." A food which is formulated to be consumed or
25 administered entirely under the supervision of a physician and
26 which is intended for the specific dietary management of a
27 disease or condition for which distinctive nutritional
28 requirements, based on recognized scientific principles, are
29 established by medical evaluation.

30 * * *

1 "Processed food." Any food other than a raw agricultural
2 commodity or any food produced from a raw agricultural commodity
3 that has been subject to processing such as canning, smoking,
4 pressing, cooking, freezing, dehydration, fermentation or
5 milling.

6 "Processing aid." A substance that is added to a food:

7 (1) during the processing of the food but is removed in
8 some manner from the food before it is packaged in its final
9 form;

10 (2) during processing, is converted into constituents
11 normally present in the food and does not significantly
12 increase the amount of the constituents found in the food; or

13 (3) for its technical or functional effects in the
14 processing but is present in the finished food at
15 insignificant levels and does not have any technical or
16 functional effect in that finished food.

17 * * *

18 "Retailer." An individual or business engaged in selling the
19 food from individuals or businesses to the end-user.

20 * * *

21 Section 2. Sections 5725(b) of Title 3 is amended and the
22 section is amended by adding a subsection to read:

23 § 5725. Penalties.

24 * * *

25 (b) Civil penalties.--

26 (1) In addition to proceeding under any other remedy
27 available at law or in equity for a violation of this
28 subchapter, or a rule or regulation adopted or any order
29 issued under this subchapter, the secretary may assess a
30 civil penalty upon an individual or business not to exceed:

1 (i) For a violation other than under section
2 5729(a)(13) (relating to misbranding of food), \$10,000
3 [upon an individual or business] for each offense.

4 (ii) For a violation under section 5729(a)(13),
5 \$1,000 per day for each offense. Calculation of this fine
6 shall not be made or multiplied by the number of
7 individual packages of the same product displayed or
8 offered for retail sale. Fines shall only be assessed on
9 each uniquely named, designed or marked product.

10 (2) No civil penalty shall be assessed unless the person
11 charged has been given notice and opportunity for a hearing
12 in accordance with law. In determining the amount of the
13 penalty, the secretary shall consider the gravity of the
14 violation. Whenever the secretary finds a violation which did
15 not cause harm to human health, the secretary may issue a
16 warning in lieu of assessing a penalty. In case of inability
17 to collect the civil penalty or failure of any person to pay
18 all or any portion of the penalty as the secretary may
19 determine, the secretary may refer the matter to the Attorney
20 General, who shall recover the amount by action in the
21 appropriate court.

22 * * *

23 (f) Retailer liability for a misbranded genetically
24 engineered food.--A retailer that sells or advertises a
25 processed food product that does not comply with the
26 requirements of section 5729(a)(13)(ii) shall not be found
27 criminally or civilly liable under this subchapter. For purposes
28 of this subsection, "retailer" excludes any manufacturer when
29 the manufacturer is also acting as a retailer of the genetically
30 engineered food.

1 Section 3. Section 5729(b) of Title 3 is amended and
2 subsection (a) is amended by adding a paragraph to read:
3 § 5729. Misbranding of food.

4 (a) General rule.--A food shall be misbranded:

5 * * *

6 (13) If it is entirely or partially produced with
7 genetic engineering, unless either of the following apply:

8 (i) In the case of a raw agricultural commodity,
9 the words "genetically engineered" appear clearly and
10 conspicuously on the front of the label of the
11 package of the commodity, or if the commodity is not
12 separately packaged or labeled, the words
13 "genetically engineered" appear clearly and
14 conspicuously on a label appearing on the shelf or
15 bin of the retail store where the commodity is
16 displayed for sale.

17 (ii) In the case of processed food containing
18 some products of genetic engineering, the words
19 "produced with genetic engineering" or "partially
20 produced with genetic engineering" appear clearly and
21 conspicuously on the front of the label of the
22 processed food.

23 (b) Exceptions and applicability.--The following shall
24 apply:

25 (1) The provisions of subsection (a) (1), (2), (3), (4),
26 (5), (6), (7), (8), (9), (10) and (11) shall not apply to the
27 following:

28 [(1)] (i) Bakery goods sold at retail by the bakery
29 directly to the consumer in a store or market stand
30 operated by the bakery. The bakery goods must be made by

1 the bakery, the bakery must guarantee that they are in
2 compliance with this act in all other respects and the
3 required information in subsection (a)(1), (2), (3), (4),
4 (5), (6), (7), (8) and (9) must be available to the
5 public at the point-of-sale.

6 [(2)] (ii) Bakery goods sold to the operators of
7 retail food facilities when the required information in
8 subsection (a)(1), (2), (3), (4), (5), (6), (7), (8),
9 (9), (10) and (11) is available to the public on the
10 premises of the retail food facility.

11 (2) The provisions of subsection (a)(13) shall not be
12 construed to require the words identifying the use of genetic
13 engineering to be placed immediately before any common name
14 or primary product descriptor of a food.

15 (3) Until July 1, 2019, any processed food that does not
16 comply with the provisions of subsection (a)(13) is not
17 misbranded provided that the genetically engineered materials
18 in the aggregate do not account for more than nine-tenths of
19 one percent of the total weight of the processed food.

20 (4) The provisions of subsection (a)(13) shall not apply
21 to any of the following:

22 (i) Food consisting entirely of, or derived entirely
23 from, an animal that has not itself been genetically
24 engineered, regardless of whether the animal has been fed
25 or injected with any food produced with genetic
26 engineering or any drug or vaccine that has been produced
27 through means or genetic engineering.

28 (ii) A raw agricultural commodity or food that has
29 been grown, raised, produced or derived without the
30 knowing and intentional use of genetically engineered

1 food as long as the retailer obtains from the supplier,
2 manufacturer, wholesale dealer, jobber or distributor
3 from whom the commodity or food was purchased or procured
4 a sworn statement that the commodity or food:

5 (A) Has not been knowingly or intentionally
6 genetically engineered.

7 (B) Has been segregated from and has not been
8 knowingly or intentionally commingled with foods that
9 may have been genetically engineered at any time.

10 In providing the sworn statement, a supplier,
11 manufacturer, wholesale dealer, jobber or distributor may
12 rely on a sworn statement from his or her own supplier
13 that contains such an affirmation.

14 (iii) Any processed food that would be subject to
15 subsection (a) (13) solely because one or more processing
16 aids or enzymes were produced or derived with genetic
17 engineering.

18 (iv) Food that has been lawfully certified to be
19 labeled, marketed and offered for sale as "organic" under
20 the Organic Foods Production Act of 1990 (Public Law 101-
21 624, 104 Stat. 3935) and the regulations promulgated by
22 the United States Department of Agriculture thereunder.

23 (v) Food that is not packaged for retail sale and:

24 (A) is a processed food prepared and intended
25 for immediate human consumption; or

26 (B) is served, sold or otherwise provided in any
27 restaurant or other food service establishment that
28 is primarily engaged in the sale of food prepared and
29 intended for immediate human consumption.

30 (vi) Medical food.

1 * * *

2 Section 4. This act shall take effect as follows:

3 (1) The amendment or addition of 3 Pa. C.S. §§ 5722,
4 5725(b) and (f) and 5729(a)(13) and (b) shall take effect in
5 540 days.

6 (2) The remainder of this act shall take effect
7 immediately.