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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 175      Session of  
1991

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INTRODUCED BY STAIRS, COLE, HERSHEY, GEIST, BARLEY, ARMSTRONG,  
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SEMMELE AND TELEK, JANUARY 30, 1991

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REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,  
JANUARY 30, 1991

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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.  
18 Adequate refrigeration along with proper food preparation and

1 handling can significantly reduce the risk that a human being  
2 will contract salmonellosis from eggs.

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

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

11 Section 1. Short title.

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

14 Section 2. Definitions.

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

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

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

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

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

27 "Julian date." The sequential number of each day of a  
28 calendar year.

29 "Person." An individual, firm, corporation, association or  
30 other business entity.

1 Section 3. Standards prescribed.

2 (a) General standards.--Except as provided in subsection  
3 (b), within 24 hours of being laid, a shell egg sold or produced  
4 within this Commonwealth shall be subjected to and maintained at  
5 an ambient temperature not to exceed 55 degrees Fahrenheit.  
6 After the shell egg is washed and packed, it shall be subjected  
7 to and maintained at an ambient temperature not to exceed 45  
8 degrees Fahrenheit.

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

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

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

30 (e) Recordkeeping.--

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

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

12          (f) Certain small egg processors.--

13           (1) This section shall not apply to an egg processor  
14          who:

15               (i) maintained at all times during the prior 12-  
16               month period a flock of not more than 3,200 birds in the  
17               aggregate;

18               (ii) sells or markets eggs predominantly within a  
19               25-mile radius of the facility in which the eggs were  
20               produced and processed for sale or distribution; and

21               (iii) sells or markets eggs within two days of the  
22               date of lay.

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

26          Section 4. Unlawful conduct.

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

1 Section 5. Criminal penalty.

2 (a) Summary offense.--

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

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

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

14 Section 6. Civil penalty.

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

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

20 (2) If a civil penalty is assessed against a person  
21 under subsection (a), the Secretary of Agriculture shall  
22 notify the person by certified mail of the nature of the  
23 violation, the amount of the civil penalty and that the  
24 person may notify the secretary in writing within ten  
25 calendar days that the person wishes to contest the civil  
26 penalty.

27 (3) If within ten calendar days from the receipt of the  
28 notification referred to in paragraph (2) the person does not  
29 notify the Secretary of Agriculture of this intent to contest  
30 the assessed penalty, the civil penalty shall become final.

1 If timely notification of the intent to contest the civil  
2 penalty is given, the person contesting the civil penalty  
3 shall be provided with a hearing in accordance with 2 Pa.C.S.  
4 (relating to administrative law and procedure).

5 (b) Assessment by the Department of Environmental  
6 Resources.--

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

11 (2) When the department assesses a civil penalty, it  
12 shall inform the person of the amount of the penalty. The  
13 person charged with the penalty shall then have 30 days to  
14 pay the penalty in full or, if the person wishes to contest  
15 either the amount of the penalty or the fact of the  
16 violation, the person shall within the 30-day period, file an  
17 appeal of the action with the Environmental Hearing Board.

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

21 (ii) A person may challenge either the fact of the  
22 violation or the amount of the penalty once an appeal of  
23 the issue has been perfected. In either challenge, the  
24 appellant will be bound as to any actions of the  
25 department which have become final under section 4 of the  
26 act of July 13, 1988 (P.L.530, No.94), known as the  
27 Environmental Hearing Board Act. A final action includes  
28 a compliance order which has become final, even though  
29 the order addresses the same violation for which a civil  
30 penalty is assessed.

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

3 Section 7. Injunctions.

4 (a) Action in equity.--The Attorney General, at the request  
5 of the Secretary of Agriculture, may initiate in the  
6 Commonwealth Court or the court of common pleas of the county in  
7 which the defendant resides or has a place of business, an  
8 action in equity for an injunction to restrain any violation of  
9 this act. The Commonwealth shall not be required to furnish a  
10 bond or other security in connection with this proceeding.

11 (b) Restraint of violations.--In addition to any other  
12 remedies in this act, the Department of Environmental Resources  
13 may institute a suit in equity in the name of the Commonwealth  
14 where a violation of law or nuisance exists for an injunction to  
15 restrain a violation of this act or the rules, regulations,  
16 standards or orders adopted or issued thereunder and to restrain  
17 the maintenance or threat of a public nuisance. In this  
18 proceeding, the court shall, upon motion of the Commonwealth,  
19 issue a prohibitory or mandatory preliminary injunction if it  
20 finds that the defendant is engaging in unlawful conduct as  
21 defined by this act or is engaged in conduct which is causing  
22 immediate and irreparable harm to the public. The Commonwealth  
23 shall not be required to furnish a bond or other security in  
24 connection with these proceedings. In addition to an injunction,  
25 the court, in these equity proceedings, may levy civil penalties  
26 as specified in section 6.

27 Section 8. Concurrent remedies.

28 The penalties and remedies prescribed by this act shall be  
29 deemed concurrent and the existence or exercise of any remedy  
30 shall not prevent the exercise of any other remedy, whether at

1 law or at equity.

2 Section 9. Enforcement.

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

5 (1) To administer and enforce the provisions of this  
6 act.

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

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

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

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

22 (b) Department of Environmental Resources.--The Department  
23 of Environmental Resources shall have the following powers and  
24 duties:

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

28 (2) To periodically inspect public eating and drinking  
29 establishments for compliance with this act. The Department  
30 of Environmental Resources may enter upon any public or



1 private premises during hours of their operation and other  
2 reasonable times, without prior notice, to inspect, conduct  
3 tests, take samples, and examine records as it deems  
4 necessary to determine compliance with this act.

5 (3) To impose civil penalties against persons as a  
6 result of the inspections and sampling referred to in  
7 paragraph (2).

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

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

16 Section 10. Effective date.

17 This act shall take effect immediately.