

No. 1991-32

AN ACT

HB 175

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

The General Assembly finds and declares as follows:

(1) That the egg industry constitutes an important part of the economy of this Commonwealth. Recent national outbreaks of salmonellosis in human beings have raised concerns among consumers about the safety of eggs and foods made with eggs and have threatened the loss of egg markets within and outside this Commonwealth. A human being may contract salmonellosis if he ingests an egg or a food made with an egg containing a sufficient number of the salmonella enteritidis bacteria. The purpose of this act is to establish uniform temperature requirements for shell eggs in order to retard the growth of the salmonella enteritidis bacteria. Adequate refrigeration along with proper food preparation and handling can significantly reduce the risk that a human being will contract salmonellosis from eggs.

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

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

Section 1. Short title.

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

Section 2. Definitions.

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

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

“Date of lay.” The Julian date on which the eggs were produced by the domesticated fowl.

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

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

“Egg processor” or “processor.” A person who collects, washes and packs shell eggs for commercial sale or distribution.

“Julian date.” The sequential number of each day of a calendar year.

“Person.” An individual, firm, corporation, association or other business entity.

Section 3. Standards prescribed.

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

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

(c) Identifying code.—Each container or consumer receptacle shall be labeled with a printed code which permits the processor to identify the date of process and the flock of origin of the eggs contained therein. The processor may meet the requirement of this subsection either by marking each container or consumer receptacle with the date of process and the flock of origin or by having in place a system, approved by the Department of Agriculture, that permits the processor to readily and accurately identify the date of process and the flock of origin for a particular container or consumer receptacle of shell eggs.

(d) Additional labeling.—The words “keep refrigerated” shall be marked in a plain and conspicuous manner on each container or consumer receptacle of shell eggs, as prescribed by the Department of Agriculture.

(e) Recordkeeping.—

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

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

(f) Certain small egg processors.—

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

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

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

- (iii) sells or markets eggs within five days of the date of lay; and
- (iv) stores the eggs prior to sale at a temperature of 60 degrees Fahrenheit or less.

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

(3) Small egg processors exempted under this section shall print clearly and conspicuously on each container or consumer receptacle the date of lay of eggs contained therein.

Section 4. Unlawful conduct.

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

Section 5. Criminal penalty.

(a) Summary offense.—

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

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

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

Section 6. Civil penalty.

(a) Assessment by the Department of Agriculture.—

(1) The Department of Agriculture may assess a civil penalty of not more than \$5,000 upon a person for each violation of section 4.

(2) If a civil penalty is assessed against a person under subsection (a), the Department of Agriculture shall notify the person by certified mail of the nature of the violation, the amount of the civil penalty and that the person may notify the Department of Agriculture in writing within 30 calendar days that the person wishes to contest the civil penalty.

(3) If, within 30 calendar days from the receipt of the notification referred to in paragraph (2), the person does not notify the Department of Agriculture of this intent to contest the assessed penalty, the civil penalty shall become final. If timely notification of the intent to contest the civil penalty is given, the person contesting the civil penalty shall be provided with a hearing in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

(b) Assessment by the Department of Environmental Resources.—

(1) The Department of Environmental Resources may assess a civil penalty of not more than \$5,000 upon a person for each violation of section 4.

(2) When the department assesses a civil penalty, it shall inform the person of the amount of the penalty. The person charged with the penalty shall then have 30 days to pay the penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, the

person shall, within the 30-day period, file an appeal of the action with the Environmental Hearing Board.

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

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

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

Section 7. Injunctions.

(a) Action in equity.—The Attorney General, at the request of the Department of Agriculture, may initiate in the court of common pleas of the judicial district in which the defendant resides or has a place of business an action in equity for an injunction to restrain any violation of this act. The Commonwealth shall not be required to furnish a bond or other security in connection with this proceeding.

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

Section 8. Concurrent remedies.

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

Section 9. Enforcement.

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

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

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

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

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

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

(b) Department of Environmental Resources.—The Department of Environmental Resources shall have the following powers and duties:

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

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

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

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

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

Section 10. Effective date.

This act shall take effect in 30 days.

APPROVED—The 6th day of August, A. D. 1991.

ROBERT P. CASEY