

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in trade and commerce, providing for
3 the sale of food, over-the-counter drugs and cosmetics after
4 expiration date.

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

7 Section 1. Title 18 of the Pennsylvania Consolidated
8 Statutes is amended by adding a section to read:

9 § 7332. Unlawful sale of certain foods, over-the-counter drugs
10 and cosmetics after expiration date.

11 (a) Provisions.--No person, whether acting for himself or
12 for another, shall directly or indirectly sell or offer for
13 sale:

14 (1) Any over-the-counter drug, infant formula or baby
15 food or any other food subject to expiration dating
16 requirements issued by the Federal Food and Drug
17 Administration, after the expiration, "use by" or "best
18 before" date on its label or packaging has passed.

1 (2) Any cosmetic or food after the expiration, "use by"
2 or "best before" date on its label or packaging has passed,
3 unless such cosmetic or food is offered for sale with
4 information in clear and plain view of the consumer
5 indicating that the cosmetic or food has passed its
6 expiration, "use by" or "best before" date. Such information
7 must be visible on the packaging or label of the expired
8 cosmetic or food. Any business that sells or offers for sale
9 expired cosmetic or food pursuant to this subsection must
10 physically separate all expired cosmetics and food from all
11 unexpired cosmetics and food. The separated, expired products
12 must be offered for sale in close proximity to a clearly
13 visible sign indicating that the cosmetics or food being
14 offered for sale in that location of the business has passed
15 the expiration, "use by or "best before" date.

16 (b) Penalty.--Any person who violates this section is guilty
17 of a summary offense, punishable by a fine of not more than \$300
18 for each item sold or offered for sale after the expiration,
19 "use by" or "best before" date. The fine shall be calculated
20 based upon the number of days past the expiration, "use by" or
21 "best before" date that the product is either found being
22 offered for sale, or if the product is sold, the date of sale as
23 established by evidence of proof of purchase, including, but not
24 limited to, a sales receipt.

25 (c) Enforcement.--The department shall enforce and
26 administer the provisions of this section.

27 (d) Administration.--The department shall promulgate rules
28 and regulations to administer this section and may assess
29 administrative penalties on a person who violates this section
30 and when deemed necessary by the secretary, penalties may

1 include the revocation of any license, including a business
2 privilege license or sales license held by a person who operates
3 a business in violation of this section.

4 (e) Definitions.--As used in this section, the following
5 words and phrases shall have the meanings given to them in this
6 subsection unless the context clearly indicates otherwise:

7 "Baby food." The processing of canned fresh fruits and
8 vegetables, meats, eggs, fruit juices, cereal, formulated
9 entrees, desserts and snacks using fresh, preprocessed or any
10 combination of these and other food ingredients necessary for
11 the production of foods for consumption by a child under two
12 years of age.

13 "Department." The Department of Agriculture of the
14 Commonwealth.

15 "Infant formula." A food which purports to be or is
16 represented for special dietary use solely as a food for infants
17 by reason of its simulation of human milk or its suitability as
18 a complete or partial substitute for human milk.

19 "Over-the-counter drug." A nonprescription drug regulated by
20 the Federal Food and Drug Administration that is required to
21 have an expiration date on its packaging pursuant to the Federal
22 law and Federal regulations adopted pursuant to the Federal act,
23 including, but not limited to, Federal regulations.

24 "Secretary." The Secretary of Agriculture of the
25 Commonwealth.

26 Section 2. This act shall take effect in 60 days.