

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1422 Session of  
2007

INTRODUCED BY CARROLL, HANNA, BRENNAN, COHEN, COSTA, CURRY,  
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K. SMITH, SOLOBAY AND YUDICHAK, JUNE 1, 2007

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,  
JUNE 1, 2007

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated  
2 Statutes, codifying the Public Eating and Drinking Place Law  
3 and the Food Act; providing for the protection of public  
4 health and for regulations; requiring licensing; further  
5 providing for food employee certification and for farmers'  
6 market; providing for penalties; and making related repeals.

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

9 Section 1. Chapter 57 of Title 3 of the Pennsylvania  
10 Consolidated Statutes is amended by adding subchapters to read:

11 CHAPTER 57

12 FOOD PROTECTION

13 [(Reserved)]

14 Subchapter

15 A. Retail Food Facility Safety

16 B. Food Safety

17 SUBCHAPTER A

18 RETAIL FOOD FACILITY SAFETY

1 Sec.  
2 5701. Short title of chapter.  
3 5702. Definitions.  
4 5703. License required.  
5 5704. Application for license.  
6 5705. Term of license.  
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9 5708. Infectious persons.  
10 5709. Linens, equipment and utensils.  
11 5710. Facility and employee cleanliness.  
12 5711. Toilets, sinks and drains.  
13 5712. Revocation of license.  
14 5713. School cafeterias.  
15 5714. Penalties.  
16 5715. Retail Food Facility Safety Fund.  
17 § 5701. Short title of chapter.

18 This chapter shall be known and may be cited as the Retail  
19 Food Facility Safety Law.

20 § 5702. Definitions.

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

24 "Bed and breakfast homestead or inn." A private residence  
25 which contains ten or fewer bedrooms used for providing  
26 overnight accommodations to the public and in which breakfast is  
27 the only meal served and is included in the charge for the room.

28 "Employee." The license holder, person in charge, person  
29 having supervisory or management duties, person on the payroll,  
30 family member, volunteer, person performing work under

contractual agreement or other person working in a retail food facility.

"Food employee." An individual working with unpackaged food, food equipment or utensils or food contact surfaces.

"Fund." The Retail Food Facility Safety Fund established under section 5715 (relating to Retail Food Facility Safety Fund).

"License." A grant to a licensee to operate a retail food facility.

"Licensor." Any of the following:

(1) The county department of health or joint-county department of health whenever a retail food facility is located in a political subdivision under the jurisdiction of a county department of health or joint-county department of health.

(2) The health authorities of cities, boroughs, incorporated towns and first class townships whenever a retail food facility is located in a city, borough, incorporated town or first class township not under the jurisdiction of a county department of health or joint-county department of health.

(3) The health authorities of second class townships and second class townships which have adopted a home rule charter which elect to issue licenses under this subchapter whenever a retail food facility is located in a second class township or second class township which has adopted a home rule charter not under the jurisdiction of a county department of health or joint-county department of health.

(4) The Department of Agriculture whenever a retail food facility is located in any other area of this Commonwealth.

1 "Proprietor." A person, partnership, association or  
2 corporation conducting or operating a retail food facility  
3 within this Commonwealth.

4 "Public eating or drinking place." A place within this  
5 Commonwealth where food or drink is served to or provided for  
6 the public, with or without charge. The term does not include  
7 dining cars operated by a railroad company in interstate  
8 commerce or a bed and breakfast homestead or inn.

9 "Retail food establishment." A food establishment which  
10 stores, prepares packages, vends, offers for sale or otherwise  
11 provides food for human consumption and which relinquishes  
12 possession of food to a consumer directly, or indirectly,  
13 through a delivery service such as home delivery of grocery  
14 orders or delivery service provided by common carriers. The term  
15 does not include dining cars operated by a railroad company in  
16 interstate commerce or a bed and breakfast homestead or inn.

17 "Retail food facility." A public eating or drinking place or  
18 a retail food establishment.

19 § 5703. License required.

20 (a) Unlawful conduct.--

21 (1) It shall be unlawful for any proprietor to conduct  
22 or operate a retail food facility without first obtaining a  
23 license for each establishment as provided in this  
24 subchapter.

25 (2) A building, structure or place owned, leased or  
26 otherwise in possession of a person or municipal corporation  
27 or public or private organization, used as a farmers' market  
28 by two or more farmers or an association of farmers for the  
29 purpose of selling agricultural commodities directly to  
30 consumers shall be deemed to be a single retail food

facility. A public eating or drinking place within a farmers' market shall be considered to be a retail food facility that is separate and distinct from the farmers' market.

(b) Exempt facilities.--The following retail food facilities are exempt from the license requirements of this section, but are subject to inspection and all other provisions of this subchapter:

(1) A food bank owned by a charitable nonprofit entity and operated for charitable or religious purposes.

(2) A soup kitchen owned by a charitable nonprofit entity and operated for charitable or religious purposes.

(3) A retail food facility that operates on no more than three days each calendar year.

(4) School cafeterias.

(5) Any other retail food facility owned by a charitable nonprofit entity and operated for charitable or religious purposes.

(c) Issuance of license.--A retail food facility license shall be issued by the health authorities of cities, boroughs, incorporated towns and first-class townships, and, if electing to issue licenses under this subchapter, second class townships and second class townships which have adopted a home rule charter, whenever a retail food facility is located in a city, borough, incorporated town or township not under the jurisdiction of a county department of health or joint-county department of health, or by the county department of health or joint-county department of health whenever a retail food facility is located in a political subdivision which is under the jurisdiction of a county department of health or joint-county department of health, or in those townships of the second

class which are not under the jurisdiction of a county department of health or joint-county department of health and which do not elect to issue licenses under this subchapter, by the department.

(d) Inspection.--No license shall be issued until inspection of the premises, facilities and equipment has been made by the licensor and they are found adequate to the protection of the public health. In the case of license renewals, inspections shall be in accordance with section 5705 (relating to term of license).

(e) Reports.--If the licensor is an entity other than the department, the licensor shall provide the department a copy of any inspection report resulting from any inspection conducted under authority of this subchapter within 30 days of the inspection date. This copy may be sent by electronic methods, as approved by the department. The department may, by regulation, require that inspection reports be submitted in a specific electronic format.

(f) Sales and use tax license.--No license shall be issued until the proprietor exhibits proof that the proprietor has applied for or received a sales and use tax license or exemption certificate from the Department of Revenue.

(g) Fees.--

(1) The fees that may be charged under this subchapter are as follows or as established by ordinance of the governing body or by State law and shall be paid into the city, borough, incorporated town, township or county treasury, or to the State Treasury through the Department of Revenue, depending upon the location of the retail food facility:

1           (i) For licensure of a retail food facility that has  
2           not been previously licensed, and that is owner operated,  
3           and that has a seating capacity of less than 50: \$103.

4           (ii) For licensure of a retail food facility that  
5           has not been previously licensed and that is not  
6           described in subparagraph (i): \$241.

7           (iii) For a renewal of a license, or for issuing a  
8           license to reflect a change of ownership: \$82.

9           (iv) For a duplicate license, for each facility  
10          location: \$14.

11          (v) For a temporary license, for a retail food  
12          facility that operates on no less than four and no more  
13          than 14 days in one physical location in a calendar year,  
14          or for an itinerant retail food facility that operates at  
15          a fair, festival or similar temporary event no more than  
16          three different times in one calendar year: \$14.

17          (vi) For conducting a follow-up inspection to  
18          determine whether a noncompliant condition that was  
19          discovered on a prior inspection has been corrected:

20                (A) For the first such follow-up inspection  
21                during the licensure period: \$150.

22                (B) For a second or subsequent follow-up  
23                inspection during the licensure period: \$300.

24          (vii) For conducting an inspection that is not  
25          otherwise required by the department, but that is  
26          conducted at the behest of a licensee: \$150.

27          (2) All funds collected by the department under this  
28          subsection shall be deposited in the fund.

29          (h) Renewal.--The license shall be renewed in accordance  
30          with section 5705.

1     (i) Multiple facilities.--Whenever any proprietor maintains  
2 more than one retail food facility within this Commonwealth, the  
3 proprietor shall be required to apply for and procure a license  
4 for each facility.

5     § 5704. Application for license.

6     Any person owning or operating or desiring to operate a  
7 retail food facility within this Commonwealth shall make  
8 application for license to the licensor on forms furnished by  
9 the licensor. The forms shall be uniform throughout this  
10 Commonwealth and shall set forth such information as the  
11 department may require, including the name and address of the  
12 applicant, together with all the other information deemed  
13 necessary to identify the applicant, provide contact information  
14 for the applicant, identify the location of the retail food  
15 facility that is the subject of the application and facilitate  
16 the licensor's processing of the application. Before granting  
17 any license, the licensor shall visit and inspect the restaurant  
18 or premises on which the applicant conducts or proposes to  
19 conduct the applicant's business. The licensor may refuse to  
20 issue a license if the premises on which the applicant conducts  
21 or proposes to conduct the applicant's business or equipment do  
22 not meet the requirements of this subchapter or the rules and  
23 regulations of the department. The licensor shall state in  
24 writing to the applicant the reason for the refusal.

25     § 5705. Term of license.

26     (a) General rule.--Except as provided in subsection (b),  
27 licenses shall be granted for a period of one year from date of  
28 issue. Application for renewal shall be made one month before  
29 expiration of existing license. A license granted under the  
30 provisions of this subchapter shall be renewed if the most



1 recent inspection by the licensor determined that conditions  
2 specified in section 5704 (relating to application for license)  
3 with respect to the premises and equipment are fulfilled.

4 (b) Temporary license.--A temporary license for a retail  
5 food facility that operates on no less than four and no more  
6 than 14 days in one calendar year or for a retail food facility  
7 operating at a fair, festival or similar temporary event shall  
8 be granted with respect to the calendar year in which it is  
9 issued.

10 § 5706. Contents of license.

11 Licenses shall specify the date of issuance, the period which  
12 is covered, the name of the licensee and the place licensed.

13 Licenses shall be conspicuously displayed at all times in the  
14 place thereby licensed. Licenses shall not be transferable.

15 § 5707. Powers of department.

16 (a) Rules and regulations.--The department shall make such  
17 reasonable rules and regulations as may be deemed necessary for  
18 carrying out the provisions and intent of this subchapter. In  
19 promulgating regulations, the department shall be guided by the  
20 most current edition of the Model Retail Food Code, published by  
21 the United States Department of Health, Food and Drug  
22 Administration. The regulatory standards established by the  
23 department under this section shall be the standards followed  
24 and applied by any licensor with respect to retail food  
25 facilities.

26 (b) Suspension or revocation of licenses.--The department  
27 may on its own motion, or on complaint after investigation and  
28 hearing at which the licensee shall be afforded an opportunity  
29 to be heard, suspend or revoke any license for any violation by  
30 the licensee or the licensee's partner, agent, servant or

employee of the provisions of this subchapter or of any other act relating to the public health and being applicable to the retail food facility or of the rules and regulations of the department or of any of the terms, conditions or provisions of the license by the licensee, or any of the agents, servants or employees of the licensee. Notice of suspension or revocation, and the reasons therefore, as well as any required notice of hearing, shall be given in writing to the licensee at the address contained in the license. Suspension of license shall be terminated when the violation for which it was imposed has been found, upon inspection, to have been corrected. Whenever a license is suspended or revoked, no part of the fee paid therefore shall be returned to the holder.

(c) School cafeterias.--The department shall provide for the inspection of school cafeterias and for training of school cafeteria personnel in accordance with the standards applied to retail food facilities.

(d) Inspection.--If a licensor is required to provide the department a copy of an inspection report pursuant to section 5703(e) (relating to license required) and fails to comply with that requirement, the department may inspect the subject retail food facility. If the department conducts an inspection, it shall promptly provide the licensor a copy of the inspection report.

§ 5708. Infectious persons.

No proprietor shall allow any food employee, family member or other person, including the proprietor, to be in a retail food facility if that person has an infectious or communicable disease, as prohibited under the act of April 23, 1956 (1955 P.L.1510, No.500), known as the Disease Prevention and Control

1 Law of 1955, and its attendant regulations. The department may  
2 promulgate regulations with respect to specific illnesses as  
3 related to operations in a retail food facility as it deems  
4 necessary for the protection of public health.

5 § 5709. Linens, equipment and utensils.

6 No proprietor shall utilize any linens, equipment or utensils  
7 unless the linens, equipment or utensils have been thoroughly  
8 cleansed and sanitized in the manner prescribed by regulation of  
9 the department.

10 § 5710. Facility and employee cleanliness.

11 All retail food facilities, kitchens, dining rooms and all  
12 places where foods are prepared, kept or stored shall be kept in  
13 a clean and sanitary condition and be protected from dust, dirt,  
14 insects and vermin in the manner prescribed by the regulations  
15 of the department. The clothing and hands of employees shall at  
16 all times be clean and sanitary. No domestic pets or other  
17 animals shall be permitted where food or drink is prepared,  
18 handled or stored unless specifically permitted or required  
19 under the Americans with Disabilities Act of 1990 (Public Law  
20 101-336, 104 Stat. 327) or other Federal or State law. No person  
21 shall be permitted to use for living or sleeping purposes any  
22 room or place in any retail food facility which is regularly and  
23 customarily used for the preparation, handling, storing or  
24 serving of food.

25 § 5711. Toilets, sinks and drains.

26 All toilets, hand-wash sinks, tubs, sinks and drains used in  
27 or in connection with any retail food facility shall at all  
28 times be kept in a clean and sanitary condition.

29 § 5712. Revocation of license.

30 Any proprietor who, after investigation made by the licensor,

1 has failed or refused after a reasonable interval to correct  
2 conditions found to constitute a violation of this subchapter,  
3 or of the regulations of the department pertaining to retail  
4 food facilities, shall have the proprietor's license revoked.

5 § 5713. School cafeterias.

6 Officials of schools shall cooperate with the department in  
7 the conduct of school cafeteria health and safety inspections  
8 and shall participate in inspection services and training  
9 programs made available by the department.

10 § 5714. Penalties.

11 (a) Criminal penalty.--A person who violates any provision  
12 of this subchapter or any rule, regulation, standard or order  
13 made under this subchapter commits a summary offense for the  
14 first or second offense. A person who violates any provision of  
15 this subchapter or any rule, regulation, standard or order made  
16 under this subchapter commits a misdemeanor of the third degree  
17 if the violation is a third or subsequent offense and if the  
18 violation occurs within two years of the date of the last  
19 previous offense.

20 (b) Civil penalty.--In addition to proceeding under any  
21 other remedy available at law or in equity for a violation of  
22 this subchapter or a rule or regulation adopted or any order  
23 issued under this subchapter, the secretary may assess a civil  
24 penalty not to exceed \$10,000 upon an individual or business for  
25 each offense. No civil penalty shall be assessed unless the  
26 person charged has been given notice and opportunity for a  
27 hearing in accordance with law. In determining the amount of the  
28 penalty, the secretary shall consider the gravity of the  
29 violation. Whenever the secretary finds a violation which did  
30 not cause harm to human health, the secretary may issue a

warning in lieu of assessing a penalty. In case of inability to collect the civil penalty or failure of any person to pay all or any portion of the penalty as the secretary may determine, the secretary may refer the matter to the Attorney General, who shall recover the amount by action in the appropriate court.

§ 5715. Retail Food Facility Safety Fund.

There is hereby created a special fund in the State Treasury to be known as the Retail Food Facility Safety Fund. All funds received or collected by the department under this subchapter shall be deposited in the fund. All moneys in the fund and the accrued interest are appropriated to the department to use to pay any direct or incidental expense incurred in carrying out the responsibilities of the department under this subchapter. These expenses include, but are not limited to, personnel and operating expenses.

SUBCHAPTER B

FOOD SAFETY

Sec.

5721. Short title of subchapter.

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6 § 5721. Short title of subchapter.

7 This subchapter shall be known and may be cited as the Food  
8 Safety Act.

9 § 5722. Definitions.

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

13 "Color additive." A material which is a dye, pigment or  
14 other substance made by a process of synthesis or similar  
15 artifice or extracted, isolated or otherwise derived, with or  
16 without intermediate or final change of identity, from a  
17 vegetable, animal, mineral or other source and when added or  
18 applied to a food is capable, along or through reaction with  
19 other substances, of imparting color thereto. The term includes  
20 black, white and intermediate grays. The term does not include:

21 (1) Any material which the Secretary of Agriculture, by  
22 regulation, determines is used or intended to be used solely  
23 for a purpose or purposes other than coloring.

24 (2) Any pesticide chemical, soil or plant nutrient or  
25 other agricultural chemical solely because of its effect in  
26 aiding, retarding or otherwise affecting, directly or  
27 indirectly, the growth or other natural physiological process  
28 of produce of the soil and thereby affecting its color,  
29 whether before or after harvest.

30 "Federal acts." The Wholesome Meat Act (Public Law 90-201,

1 21 U.S.C. § 601 et seq.), the Federal Food, Drug, and Cosmetic  
2 Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.), the Poultry  
3 Products Inspection Act (Public Law 85-172, 21 U.S.C. § 451 et  
4 seq.), the Fair Packaging and Labeling Act (Public Law 89-755,  
5 15 U.S.C. § 1451 et seq.), the Federal Insecticide, Fungicide,  
6 and Rodenticide Act (61 Stat. 163, 7 U.S.C. § 136 et seq.) and  
7 the Nutritional Labeling and Education Act of 1990 (Public Law  
8 101-535, 104 Stat. 2353).

9 "Food." An article used for food or drink by humans,  
10 including chewing gum and articles used for components of any  
11 article. The term does not include medicines and drugs.

12 "Food additive." A substance, the intended use of which  
13 results or may reasonably be expected to result, directly or  
14 indirectly, in its becoming a component or otherwise affecting  
15 the characteristics of any food if the substance is not  
16 generally recognized among experts qualified by scientific  
17 training and expertise to evaluate its safety, as having been  
18 adequately shown through scientific procedures or, in the case  
19 of a substance used in food prior to January 1, 1958, through  
20 either scientific procedures or experience based on common use  
21 in food to be safe under the conditions of its intended use. The  
22 term does not include the following:

23 (1) A pesticide chemical in or on a raw agricultural  
24 commodity.

25 (2) A pesticide chemical to the extent that it is  
26 intended for use or is used in the production, storage or  
27 transportation of any raw agricultural commodity.

28 (3) A color additive.

29 (4) Any substance used in accordance with a sanction or  
30 approval granted prior to the enactment of this paragraph

1 pursuant to a statute repealed by this act, pursuant to the  
2 Poultry Products Inspection Act (Public Law 85-172, 21 U.S.C.  
3 § 451 et seq.) or pursuant to the Wholesome Meat Inspection  
4 Act (Public Law 90-201, 21 U.S.C. § 601 et seq.).

5 (5) A new animal drug.

6 As used in this definition, the term "substance" includes any  
7 substance intended for use in producing, manufacturing,  
8 packaging, processing, preparing, treating, transporting or  
9 holding food and any source of radiation intended for any use.

10 "Food establishment." A room, building or place or portion  
11 thereof or vehicle maintained, used or operated for the purpose  
12 of commercially storing, packaging, making, cooking, mixing,  
13 processing, bottling, baking, canning, freezing, packing or  
14 otherwise preparing, transporting or handling food. The term  
15 excludes retail food facilities, retail food establishments,  
16 public eating and drinking places and those portions of  
17 establishments operating exclusively under milk or milk products  
18 permits.

19 "Imitation food." A food that is a substitute for and  
20 resembles another food but is nutritionally inferior to that  
21 food.

22 "Label." A display of written, printed or graphic matter  
23 upon the immediate container of any food. The term "immediate  
24 container" does not include package liners.

25 "Labeling." All labels and other written, printed or graphic  
26 matter upon a food or any of its containers or wrappings.

27 "Package." Any container or wrapping in which food is  
28 enclosed for delivery or display to retail purchasers. The term  
29 does not include the following:

30 (1) Shipping containers or wrappings for the



1 transportation of food in bulk or quantity to manufacturers,  
2 packers or processors or to wholesale or retail distributors.

3 (2) Shipping containers or wrappings used by retailers  
4 to ship or deliver food to retail customers, if the  
5 containers or wrappings bear no printed matter pertaining to  
6 food.

7 (3) Containers used for tray pack displays in retail  
8 establishments.

9 (4) Transparent containers or wrappings which do not  
10 bear written, printed or graphic matter which obscures  
11 information required to be displayed on the label.

12 "Pesticide chemical." A substance used in the production,  
13 storage or transportation of raw agricultural commodities which,  
14 alone or in chemical combination or formulation with one or more  
15 other substances, is a pesticide within the meaning of the act  
16 of March 1, 1974 (P.L.90, No.24), known as the Pennsylvania  
17 Pesticide Control Act of 1973.

18 "Principal display panel." A part of a label that is most  
19 likely to be displayed, presented, shown or examined under  
20 normal and customary conditions of display for retail sale and  
21 is large enough to accommodate all the mandatory information  
22 required to be placed on the label.

23 "Public eating and drinking place." As defined in section  
24 5702 (relating to definitions).

25 "Raw agricultural commodity." A food in its raw or natural  
26 state, including all fruits which are washed, colored or  
27 otherwise treated in their unpeeled, natural form prior to  
28 marketing.

29 "Retail food establishment." As defined in section 5702  
30 (relating to definitions).

1 "Retail food facility." As defined in section 5702 (relating  
2 to definitions).

3 "Secretary." Includes an authorized representative, employee  
4 or agent of the Department of Agriculture.

5 § 5723. Prohibited acts.

6 The following acts are prohibited:

7 (1) Manufacture, sale, delivery, consignment, bailment,  
8 holding or offering for sale of any food that is adulterated  
9 or misbranded, except where a person in good faith delivers  
10 or offers to deliver the food and furnishes shipping  
11 documents to the secretary.

12 (2) Adulteration or misbranding of any food.

13 (3) Knowingly receiving in commerce any food which is  
14 adulterated or misbranded and the delivery or proffered  
15 delivery thereof for pay or otherwise.

16 (4) Sale, delivery for sale, holding for sale or  
17 offering for sale any article in violation of section 5731  
18 (relating to poisonous or deleterious substances and  
19 tolerances).

20 (5) Refusal to permit during normal business hours entry  
21 to, inspection of or taking of a sample or access to or  
22 copying of any record at a food establishment as authorized  
23 under section 5732(a)(2) and (3) (relating to inspection,  
24 sampling and analysis).

25 (6) Removal or disposal of a detained or embargoed food  
26 article in violation of section 5726 (relating to detention  
27 and condemnation).

28 (7) Alteration, mutilation, destruction, obliteration or  
29 removal of the whole or any part of the labeling of a food or  
30 the doing of any other act with respect to a food, if the act

1 is done while the food is held for sale and results in the  
2 food being adulterated or misbranded.

3 (8) Forging, counterfeiting, simulating, falsely  
4 representing or using without proper authority any mark,  
5 stamp, tag, label or other identification device authorized  
6 or required by regulation promulgated under this subchapter.

7 (9) Use by any person to his own advantage or revealing,  
8 other than to the secretary or the courts when relevant in  
9 any judicial proceeding under this subchapter, of any  
10 information acquired under authority of this subchapter  
11 concerning any method or process which, as a trade secret or  
12 confidential trade information, is entitled to protection.

13 (10) Holding of any potentially hazardous food as that  
14 term is defined in the most current edition of the Model  
15 Retail Food Code, published by the Food and Drug  
16 Administration, at unsafe temperatures in violation of an  
17 applicable regulation issued under this subchapter.

18 (11) Failure to register with the department under the  
19 provisions of section 5734 (relating to registration of food  
20 establishments).

21 (12) Use of wording which incorrectly indicates or  
22 implies that a label or product has received approval of the  
23 department. A food establishment may not claim registration  
24 either upon its label or package or otherwise, except as  
25 provided in section 5735 (relating to product registration).

26 (13) Sale of confectionery containing alcohol at a level  
27 above one-half of 1% by volume.

28 (14) Failure by a carrier to make records showing the  
29 movement in commerce of any food or the holding thereof  
30 during or after the movement and the quantity, shipper and

consignee thereof available for one year after the initial  
date of movement of the food in commerce.

§ 5724. Temporary or permanent injunctions.

In addition to any other remedies provided in this  
subchapter, the secretary may apply to the Commonwealth Court or  
to any other court having jurisdiction for a temporary or  
permanent injunction restraining a person from violating this  
subchapter or any regulation adopted under this subchapter,  
regardless of whether there exists an adequate remedy at law.

§ 5725. Penalties.

(a) Criminal penalties.--A person who violates any provision  
of this subchapter or any rule, regulation, standard or order  
made under this subchapter commits a summary offense for the  
first or second offense. A person who violates this subchapter  
or any rule, regulation, standard or order made under this  
subchapter commits a misdemeanor of the third degree if the  
violation is a third or subsequent offense and if the violation  
occurs within two years of the date of the last previous  
offense.

(b) Civil penalties.--In addition to proceeding under any  
other remedy available at law or in equity for a violation of  
this subchapter, or a rule or regulation adopted or any order  
issued under this subchapter, the secretary may assess a civil  
penalty not to exceed \$10,000 upon an individual or business for  
each offense. No civil penalty shall be assessed unless the  
person charged has been given notice and opportunity for a  
hearing in accordance with law. In determining the amount of the  
penalty, the secretary shall consider the gravity of the  
violation. Whenever the secretary finds a violation which did  
not cause harm to human health, the secretary may issue a

1 warning in lieu of assessing a penalty. In case of inability to  
2 collect the civil penalty or failure of any person to pay all or  
3 any portion of the penalty as the secretary may determine, the  
4 secretary may refer the matter to the Attorney General, who  
5 shall recover the amount by action in the appropriate court.

6 (c) Guaranty.--

7 (1) No prosecution shall be sustained under the  
8 provisions of this subchapter for the manufacture, delivery,  
9 consignment, bailment, holding or sale of or offering for  
10 sale, exposing for sale or having in possession with intent  
11 to sell any adulterated or misbranded article against a  
12 person from whom the article of food, sample or portion was  
13 obtained by the department if the person can establish a  
14 guaranty to the effect that the article of food is not  
15 adulterated or misbranded within the meaning of this  
16 subchapter, was adulterated or misbranded prior to coming  
17 into the possession of the person and the person did not know  
18 or have reason to know of the adulteration or misbranding or  
19 was adulterated or misbranded after if left the possession  
20 and control of the person. The guaranty must be signed by the  
21 supplier, manufacturer, wholesale dealer, jobber or  
22 distributor from whom the articles of food were purchased or  
23 procured.

24 (2) The guaranty to afford protection shall contain the  
25 name and address of the supplier, manufacturer, wholesale  
26 dealer, jobber or distributor making the sale of the article  
27 of food to the person holding the guaranty. A supplier,  
28 manufacturer, wholesale dealer, jobber or distributor giving  
29 a guaranty under the provisions of this subchapter may be  
30 held responsible and may be proceeded against for the

adulteration or misbranding of any article of food sold under the guaranty and shall be subject to the penalties provided for violation of this subchapter. A guaranty shall not operate as a defense to prosecution for a violation of the provisions of this subchapter if the person holding the guaranty continues to sell the same food after written or printed notice from the secretary that the article is adulterated or misbranded within the meaning of this subchapter. However, if the person violated the provisions of this subchapter by having stored, transported, exposed or kept the article in a way or manner to render it diseased, contaminated or unwholesome, the person may be proceeded against for a violation.

(d) Minor violations.--Nothing in this subchapter shall be construed as requiring prosecution or institution of a proceeding under this subchapter for minor violations of this subchapter if the secretary believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

§ 5726. Detention and condemnation.

(a) Marking detained food.--Whenever the secretary has probable cause to believe that food is adulterated or misbranded, the secretary shall affix to the container or wrapping a tag or other marking. The tag or marking shall give notice that:

(1) The food may be adulterated or misbranded and shall be detained.

(2) It is unlawful to remove the food from the food establishment or to dispose of it without approval of the secretary.

1       (b) Determination and appeal.--The secretary shall determine  
2 whether a food detained under this subchapter may be sold,  
3 delivered, consigned, held or offered for sale as is or whether  
4 it shall be relabeled, reprocessed or destroyed within 40 days  
5 of issuance of the detention order. Any determination by the  
6 secretary that the food shall be relabeled, reprocessed or  
7 destroyed shall be subject, within 30 days of the determination,  
8 to appeal by the owner or operator of the food establishment or  
9 the manufacturer or owner of the food to the court of common  
10 pleas of the county in which the food was located. The detention  
11 order shall expire after five working days from the issuance of  
12 the order, unless the secretary confirms the order. The order  
13 shall clearly and concisely state the facts on which it is  
14 based.

15       (c) Relabeling.--If the secretary determines that the  
16 adulteration or misbranding can be corrected by a proper label  
17 or reprocessing and the determination is not appealed within the  
18 time permitted, the secretary may direct that the food be  
19 released to the claimant to label or process under the  
20 supervision of the secretary. The relabeled or reprocessed food  
21 shall not be released into the market until the secretary has  
22 executed an order indicating that the food is no longer in  
23 violation of this subchapter.

24       (d) Order for destruction.--Food detained under this  
25 subchapter shall be destroyed by the owner under the supervision  
26 of the secretary, if the secretary determines that the food is  
27 unfit for human consumption and the food cannot be reconditioned  
28 so as to be made fit for human consumption and the determination  
29 is not appealed within the time permitted. Food detained under  
30 this subchapter may be used as animal feed or for other

beneficial use, provided that such use is in compliance with other applicable statutes, rules, regulations, standards and orders. The owner shall pay all costs of destruction.

§ 5727. Temporary permits.

Temporary permits granted by Federal agencies for interstate shipment of experimental packs of food varying from the requirements of definitions and standards of identity in Federal acts shall be effective in this Commonwealth under the conditions provided in the permits unless disapproved by the secretary. The secretary may issue intrastate permits where they are necessary to the completion of an investigation and where the interests of consumers are safeguarded for foods not complying with definitions, standards of identity and State laws and regulations. The permits shall be for a period not to exceed one year, although the permit may be extended for a period of up to one additional year if a new standard of identity has been applied for under section 5733 (relating to rules and regulations). The secretary may revoke a permit after notice to the affected party if the application contains misleading statements or if the secretary determines that unfair competitive advantage is gained through the issuance of the permit or that the need no longer exists for the permit.

§ 5728. Adulteration of food.

A food shall be deemed adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health. However, if the substance is not an added substance, the food shall not be considered adulterated under this section if the quantity of the substance in the food does not ordinarily render it injurious to health.



1       (2) If it bears or contains any added poisonous or added  
2       deleterious substance which is unsafe within the meaning of  
3       section 5731 (relating to poisonous or deleterious substances  
4       and tolerances). This paragraph does not apply to a pesticide  
5       chemical in or on a raw agricultural commodity, a food  
6       additive or a color additive.

7       (3) If it is a raw agricultural commodity and bears or  
8       contains a pesticide chemical which is unsafe within the  
9       meaning of section 5731, except that where a pesticide  
10       chemical has been used in or on a raw agricultural commodity  
11       with an exemption granted or tolerance prescribed under  
12       section 5731 or under any of the Federal acts and the raw  
13       agricultural commodity has been subjected to processing such  
14       as canning, cooking, freezing, dehydrating or milling, the  
15       residue of the pesticide remaining in or on the processed  
16       food shall, notwithstanding the provisions of section 5731  
17       and this paragraph, not be deemed unsafe if the residue in or  
18       on the raw agricultural commodity has been removed to the  
19       extent possible in good manufacturing practice and the  
20       concentration of the residue in the processed food when ready  
21       to eat is not greater than the tolerance prescribed for the  
22       raw agricultural commodity.

23       (4) It if bears or contains any food additive which is  
24       unsafe within the meaning of section 5731 or under any of the  
25       Federal acts.

26       (5) If it consists in whole or in part of any diseased,  
27       contaminated, filthy, putrid or decomposed substance or is  
28       otherwise unfit for food.

29       (6) It is has been produced, prepared, packed or held  
30       under unsanitary conditions so that it may have become

1 contaminated with filth or may have been rendered diseased,  
2 unwholesome or injurious to health.

3 (7) If it is, in whole or in part, the product of a  
4 diseased animal or of an animal which has died otherwise than  
5 by slaughter.

6 (8) If its container is composed, in whole or in part,  
7 of any poisonous or deleterious substance which may render  
8 the contents injurious to health, unless the container is  
9 fabricated or manufactured with good manufacturing practice  
10 as that standard is defined and delineated by any of the  
11 Federal acts and their regulations.

12 (9) If it has been intentionally subjected to radiation,  
13 unless the use of the radiation was in conformity with a  
14 regulation or exemption in effect under section 5731 or under  
15 one of the Federal acts.

16 (10) If:

17 (i) any valuable constituent has been, in whole or  
18 in part, omitted or abstracted therefrom;

19 (ii) any substance has been substituted wholly or in  
20 part;

21 (iii) damage or inferiority has been concealed in  
22 any manner; or

23 (iv) any substance has been added thereto or mixed  
24 or packed so as to increase its bulk or weight or reduce  
25 its quality or strength or make it appear better or of  
26 greater value than it is.

27 (11) If it bears or contains any color additive which is  
28 unsafe within the meaning of section 5731 or under one of the  
29 Federal acts.

30 (12) If it bears or contains eggs processed by or egg

products derived from a manufacturing, processing or preparing method wherein whole eggs are broken using a centrifuge-type egg breaking machine that separates the egg's liquid interior from the shell.

§ 5729. Misbranding of food.

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

(1) If its labeling is false or misleading in any way.

(2) If it is offered for sale under the name of another food.

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food that is simulated.

(4) If its container is so made, formed or filled as to be misleading.

(5) If it is in a package that does not bear a label containing:

(i) The name and place of business of the manufacturer, packer or distributor.

(ii) An accurate statement of the quantity of the contents in terms of weight, measure or numerical count.

Reasonable variations are permitted and exemptions as to small packages shall be established in regulations promulgated by the secretary.

(6) If it is represented as a food for which a definition and standard of identity has been prescribed by regulation under this subchapter or under any of the Federal acts, unless it conforms to the definition and standard and its label bears the name of the food specified in the definition and standard and the common names of optional

ingredients, other than spices, flavoring and coloring,  
present in the food.

(7) Unless its label bears the following:

(i) The common or usual name of the food, if any.

(ii) If made from two or more ingredients, the  
common or usual name of each ingredient is listed in  
descending order of predominance by weight, except that  
spices, flavorings and colorings not required to be  
certified under any of the Federal acts, other than those  
sold as such, may be designated as spices, flavorings and  
colorings without naming each.

(8) If it is represented for special dietary uses,  
unless its label bears such information concerning its  
vitamin, mineral and other dietary properties as determined  
by regulation to be necessary and in order to inform  
purchasers as to its value for such use.

(9) If it bears or contains any artificial flavoring,  
artificial coloring or chemical preservative, unless it bears  
labeling stating that fact. Exemptions shall be established  
by regulations to the extent that compliance with  
requirements of this paragraph is impracticable. The  
provisions of this paragraph or paragraphs (6) and (7) with  
respect to artificial coloring shall not apply in the case of  
butter, cheese or ice cream. The provisions of this paragraph  
with respect to chemical preservatives shall not apply to a  
pesticide chemical when used in or on a raw agricultural  
commodity which is the produce of the soil.

(10) If it is a raw agricultural commodity bearing or  
containing a pesticide chemical applied after harvest, unless  
the shipping container of the commodity bears labeling which

declares the presence of the chemical and the common or usual name and function of the chemical. A declaration shall not be required when the commodity is removed from the shipping container and is held or displayed for sale at retail in accordance with the custom of the trade.

(11) If it is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to color additives in department regulations.

(12) If, at the site of purchase of the particular food, a sign, placard or other graphic matter relating to the food is false or misleading in any particular.

(b) Exceptions.--The provisions of subsection (a)(1) through (11) shall not apply to the following:

(1) Bakery goods sold at retail by the bakery directly to the consumer in a store or market stand operated by the bakery. The bakery goods must be made by the bakery, the bakery must guarantee that they are in compliance with this act in all other respects and the required information in subsection (a)(1) through (9) must be available to the public at the point-of-sale.

(2) Bakery goods sold to the operators of retail food facilities when the required information in subsection (a)(1) through (11) is available to the public on the premises of the retail food facility.

(c) Nonpackaged food.--Food offered for retail sale in other than package form shall be accompanied by a sign, placard or notice listing the ingredients in descending order of predominance by weight.

§ 5730. Regulations to exempt certain labeling requirements.

The department shall promulgate regulations exempting from any labeling requirement food which is, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed if the food is not adulterated or misbranded under this subchapter upon removal from the processing, labeling or repacking establishments.

§ 5731. Poisonous or deleterious substances and tolerances.

(a) Additions to food.--A poisonous or deleterious substance added to a food, except where the substance is required in its production and cannot be avoided by good manufacturing practice, shall be deemed to be unsafe unless added in compliance with the Federal acts.

(b) Pesticide chemicals in or on raw agricultural commodities.--A poisonous or deleterious pesticide chemical, or any chemical which is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as safe for use, added to a raw agricultural commodity shall be deemed unsafe unless added in compliance with the Federal acts.

(c) Unsafe food additives.--A food additive shall, with respect to any particular use or intended use, be deemed to be unsafe for the purposes of the application of section 5728(4) (relating to adulteration of food) unless it and its intended use conform to the terms of an exemption which is in effect under this section or unless there is in effect, and it and its intended use are in conformity with, a regulation issued under this section prescribing the conditions under which the additive may be safely used. A food which is in compliance with a regulation relating to a food additive shall not, by reason of

bearing or containing an additive in accordance with the regulations, be considered adulterated within the meaning of section 5728(4).

§ 5732. Inspection, sampling and analysis.

(a) Inspection.--For purposes of enforcement of this subchapter, the secretary is authorized, upon presenting appropriate credentials to the owner, operator or agent in charge:

(1) To enter at reasonable times any factory, warehouse or food establishment in which food is or was manufactured, processed, packed or held for introduction into commerce or to enter any vehicle used to transport or hold the food in commerce.

(2) To inspect at reasonable times, within reasonable limits and in a reasonable manner the factory, warehouse, food establishment or vehicle and all pertinent materials, containers and labeling and to obtain samples necessary to administer this subchapter.

(3) To have access to and to copy all records of carriers showing the movement in commerce of any food or the holding thereof during or after the movement, and the quantity, shipper and consignee thereof if the secretary has probable cause to believe that the movement or holding of food is in violation of this subchapter or department regulations.

(b) Report of inspection.--Upon completion of an inspection of a factory, warehouse or other food establishment and prior to leaving the premises, the secretary shall give to the owner, operator or agent in charge a written report of the findings of the inspection.

1     (c) Collection of samples.--During an inspection of a  
2     factory or other food establishment where food is manufactured,  
3     processed, packed, stored or offered for sale, the secretary may  
4     obtain a sample of any food for such analysis as is necessary to  
5     determine compliance with this subchapter.

6     (d) Receipt for samples.--If the secretary has obtained any  
7     sample in the course of the inspection, the secretary shall,  
8     upon completion of the inspection and prior to leaving the  
9     premises, give to the owner, operator or agent in charge a  
10    receipt describing the sample obtained.

11    (e) Payment of samples.--The food establishment from which  
12    samples are collected may bill the secretary for the fair market  
13    value of the samples.

14    § 5733. Rules and regulations.

15    (a) Nature of rules.--The secretary shall be charged with  
16    the enforcement of this subchapter and shall promulgate rules,  
17    regulations and food standards necessary for its proper  
18    enforcement. The rules, regulations and food standards shall  
19    conform and shall be construed to conform with the purposes  
20    expressed in section 5736 (relating to construction of  
21    subchapter). Except to the extent that they are inconsistent  
22    with the regulations adopted by subsection (f), the rules,  
23    regulations and food standards in effect on September 2, 1994,  
24    shall continue in effect unless subsequently modified by  
25    regulations promulgated by the secretary.

26    (b) Local inspection.--The secretary shall enter into  
27    agreements with any county, city, borough, incorporated town or  
28    township of this Commonwealth for the enforcement of this  
29    subchapter and the rules, regulations and food standards  
30    promulgated under this subchapter in food establishments.



1 provided that the county, city, borough, incorporated town or  
2 township satisfies the minimum standards established by the  
3 secretary and the minimum standards required to be eligible for  
4 State grants pursuant to the act of August 24, 1951 (P.L.1304,  
5 No.315), known as the Local Health Administration Law. Nothing  
6 in this subchapter shall prohibit any county, city, borough,  
7 incorporated town or township which was licensing food  
8 establishments in accordance with the Local Health  
9 Administration Law on September 2, 1994, from continuing to  
10 license such food establishments in accordance with the Local  
11 Health Administration Law. No county, city, borough,  
12 incorporated town or township, shall ordain or enforce  
13 requirements of any kind or description related to sanitation,  
14 food safety, inspections, standards and labeling other than  
15 those promulgated by the secretary in accordance with this  
16 subchapter or adopted in accordance with subsection (f).

17 (c) Reciprocal inspection.--The secretary is authorized to  
18 enter into reciprocal agreements with other jurisdictions to  
19 insure inhabitants of this Commonwealth that food sold in this  
20 Commonwealth complies with this subchapter and its regulations.  
21 The agreements may be for reciprocal inspection and labeling  
22 review. The secretary may approve or accept inspection and  
23 labeling requirements of other jurisdiction with respect to  
24 food.

25 (d) Uniform regulation.--In reaching agreements with  
26 counties, cities, boroughs, incorporated towns or townships and  
27 reciprocal agreements with other jurisdictions, the provisions  
28 of this subchapter and its regulations shall be considered as  
29 establishing uniform requirements and regulations for food  
30 establishments throughout this Commonwealth as defined in

1 section 5722 (relating to definitions).

2 (e) Interagency agreements.--Nothing in this subchapter  
3 shall prohibit a Commonwealth agency which was regulating and  
4 inspecting food establishments in accordance with Subchapter A  
5 (relating to retail food facility safety) on September 2, 1994,  
6 from continuing to regulate and inspect food establishments in  
7 accordance with Subchapter A.

8 (f) Adoption of Federal regulations.--All regulations and  
9 supplements thereto or revisions thereof adopted under the  
10 Federal acts which relate to food on, before or after the  
11 effective date of this subchapter are hereby adopted as  
12 regulations in this Commonwealth and shall remain in effect  
13 unless subsequently modified by regulations promulgated by the  
14 secretary.

15 (g) Definitions.--As used in this section, the phrase "other  
16 jurisdictions" shall means the United States of America or any  
17 state, territory or possession thereof or any other country.

18 § 5734. Registration of food establishments.

19 (a) General rule.--Subject to the rules and regulations  
20 adopted by the secretary, it shall be the duty of every person  
21 operating a food establishment within this Commonwealth to  
22 register with the secretary as a food establishment. This  
23 registration requirement shall not be construed to exempt food  
24 establishments from licensing requirements of any county, city,  
25 borough, incorporated town or township in accordance with the  
26 act of August 24, 1951 (P.L.1304, No.315), known as the Local  
27 Health Administration Law.

28 (b) Application.--The application for registration shall be  
29 made on a form to be supplied by the secretary upon request of  
30 the applicant.

1     (c) Fee.--The registration fee shall be \$35 per food  
2     establishment per year.

3     (d) Exceptions.--The following are exempt from the  
4     provisions of this section:

5         (1) Vehicles used primarily for the transportation of  
6         any consumer commodity in bulk or quantity to manufacturers,  
7         packers, processors or wholesale or retail distributors.

8         (2) Any food establishment is which at least 50% of the  
9         commodities sold were produced on the farm on which the food  
10        establishment is located.

11        (3) Any food establishment in which food or beverages  
12        are sold only through a vending machine.

13        (4) Any food establishment in which only prepackaged,  
14        nonpotentially hazardous food or beverages are sold.

15     (e) Single food establishment.--For purposes of this  
16     section, food establishments which are located at the same  
17     address and operated by the same person shall be deemed to be a  
18     single food establishment.

19     § 5735. Product registration.

20     The secretary may promulgate regulations allowing food  
21     establishments to label their food products as having been  
22     registered by the department. "Reg. Penna. Dept. Agr." shall be  
23     the approved abbreviation. This registration label shall be  
24     limited to food products prepared or packed in a food  
25     establishment registered under section 5734 (relating to  
26     registration of food establishments).

27     § 5736. Construction of subchapter.

28     (a) General rule.--The provisions of this subchapter and the  
29     regulations promulgated under this subchapter shall be construed  
30     in a manner that is consistent with the Federal acts and

1 regulations promulgated under those acts. The secretary shall  
2 not ordain or enforce requirements relating to sanitation, food  
3 safety, food standards and labeling requirements of any kind or  
4 description other than those provided for in the Federal acts  
5 unless the proposed regulation meets all of the following:

6 (1) is justified by compelling and unique local  
7 conditions;

8 (2) protects an important public interest that would  
9 otherwise be unprotected;

10 (3) relates to subject matter that is primarily local in  
11 nature and the Federal agency with responsibility over the  
12 subject matter is not exercising its jurisdiction with  
13 respect to the subject matter;

14 (4) would not cause a food to be in violation of any  
15 applicable requirements under the Federal acts; and

16 (5) would not unduly burden interstate commerce.

17 (b) Secretary to participate in rulemaking.--The secretary  
18 is encouraged to participate in rulemaking under the Federal  
19 acts and, if necessary, to pursue Federal rulemaking as is  
20 deemed necessary for the protection of the citizens of this  
21 Commonwealth through the Federal petition and rulemaking  
22 process.

23 § 5737. Acts not affected.

24 Nothing in this subchapter shall be construed to abrogate or  
25 supersede any provision or regulation adopted under:

26 (1) The act of July 2, 1935 (P.L.589, No.210), referred  
27 to as the Milk Sanitation Law, the act of August 8, 1961  
28 (P.L.975, No.436), referred to as the Milk Adulteration and  
29 Labeling Act, and the act of September 1, 1965 (P.L.420,  
30 No.215), known as The Frozen Dessert Law.

1           (2) The act of August 24, 1951 (P.L.1304, No.315), known  
2           as the Local Health Administration Law, with regard to  
3           licensure, regulation and inspection of a public eating or  
4           drinking place, as defined in section 5702 (relating to  
5           definitions), which is not a food establishment under this  
6           subchapter.

7           (3) Subchapter A (relating to retail food facility  
8           safety).

9           Section 2. Sections 6502, 6503, 6504, 6506, 6507, 6508,  
10          6509, 6510 and 8101 of Title 3 are amended to read:

11          § 6502. Definitions.

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

15          ["Advisory board" or "board." The Food Employee  
16          Certification Advisory Board.]

17          "Conference for Food Protection." An independent, national  
18          voluntary nonprofit organization to promote food safety and  
19          consumer protection. Participants in this organization include  
20          Federal, State and local regulatory agencies, universities, test  
21          providers, certifying organizations, consumer groups, food  
22          service and retail store trade associations and food facility  
23          operators. The objectives of the organization include  
24          identifying and addressing food safety problems and promoting  
25          uniformity of regulations in food protection.

26          "Food establishment." [A room, building, place or portion  
27          thereof or vehicle maintained, used or operated for the purpose  
28          of selling to the public, commercially storing, packaging,  
29          making, cooking, mixing, processing, bottling, baking, canning,  
30          freezing, packing or otherwise preparing, transporting or

1 handling food. The term includes retail food stores and public  
2 eating and drinking licensees, except those portions of  
3 establishments operating exclusively under milk or milk products  
4 permits and those portions of establishments operating  
5 exclusively under USDA inspection. The term does not include  
6 dining cars operated by a railroad company in interstate  
7 commerce or a bed and breakfast, homestead or inn as defined in  
8 the act of May 23, 1945 (P.L.926, No.369), referred to as the  
9 Public Eating and Drinking Place Law.] As defined in section  
10 5722 (relating to definitions).

11 "Person in charge." A person designated by a food facility  
12 operator to be present at a food facility and responsible for  
13 the operation of the food facility at the time of inspection.

14 ["Potentially hazardous food." A food which consists in  
15 whole or in part of milk or milk products, eggs, meats, poultry,  
16 fish, shellfish, edible crustaceans or other ingredients,  
17 including synthetic ingredients, and which is in a form capable  
18 of supporting rapid and progressive growth of infectious or  
19 toxicogenic microorganisms. The term does not include foods that  
20 have a pH level of 4.6 or below or a water activity of 0.85 or  
21 less under standard conditions or food products in hermetically  
22 sealed containers processed to maintain commercial sterility.]

23 "Public eating [and] or drinking place." A public eating or  
24 drinking place as defined in [the act of May 23, 1945 (P.L.926,  
25 No.369), referred to as the Public Eating and Drinking Place  
26 Law.] section 5702 (relating to definitions).

27 "Retail food establishment." As defined in section 5702  
28 (relating to definitions).

29 "Retail food facility." A public eating or drinking place or  
30 a retail food establishment.

1 "Supervisory employee." [An owner or a person employed by or  
2 designated by the business owner to fulfill the requirements of  
3 this chapter.] The person in charge of a retail food facility. A  
4 person designated by a retail food facility operator to be  
5 present at a food facility and responsible for the operation of  
6 the food facility at the time of inspection.

7 § 6503. Certification [advisory board and] programs.

8 (a) [Members of board.--The secretary shall appoint persons  
9 to serve as members of the Food Employee Certification Advisory  
10 Board. Representatives shall be selected to represent the  
11 following groups for a term of two, three or four years to be  
12 determined by the secretary:

13 (1) The chairman and minority chairman of the  
14 Agricultural and Rural Affairs Committee of the Senate or  
15 their designees and the chairman and minority chairman of the  
16 Agricultural and Rural Affairs Committee of the House of  
17 Representatives or their designees.

18 (2) A consumer representative.

19 (3) The Secretary of Agriculture or the secretary's  
20 designee.

21 (4) Two representatives of production agriculture.

22 (5) Representatives, including at least one person  
23 recommended by each of the following: Pennsylvania  
24 Association of Milk Dealers, Pennsylvania Restaurant  
25 Association, Pennsylvania Food Merchants Association,  
26 Pennsylvania Convenience Store Council, Pennsylvania Bakers  
27 Association, Pennsylvania Food Processors Association,  
28 National Federation of Independent Businesses, Pennsylvania  
29 Petroleum Marketers & Convenience Store Association, Local  
30 1776 UFCW, Pennsylvania Retailers Association, the Licensed

Beverage Association, Pennsylvania Tourism and Lodging Association, Associated Petroleum Industries, Pennsylvania Veterinary Medical Association, County Commissioners Association of Pennsylvania, Pennsylvania League of Cities and Municipalities, Pennsylvania State Association of Boroughs, Pennsylvania State Association of Township Commissioners, Pennsylvania State Association of Township Supervisors and Pennsylvania School Food Service Association.

At least one representative shall have experience in the field of public health.] (Reserved).

(b) [Chairman of board.--The secretary or the secretary's designee shall serve as the chairman of the advisory board.] (Reserved).

(c) Certification programs.--[The advisory board shall review and recommend certification programs submitted by individuals or organizations to ensure adequate training of supervisory employees of food establishments.] The department shall recognize certification programs that are evaluated and listed by an accrediting agency that has been recognized by the Conference for Food Protection as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Program.

(c.1) [Other duties.--For the purpose of complying with the requirements of section 6504(g)(1) (relating to certification of employees), the secretary shall convene a meeting of the advisory board no later than March 1, 2003.] (Reserved).

(d) Certification of supervisory employees.--[The supervisory] Supervisory employees shall be certified by the department following [the completion of training programs recommended by the advisory board and approved by the



1 department. The department shall adopt food safety protection  
2 and training standards for the certification of supervisory  
3 employees who are responsible for the storage, preparation,  
4 display or serving of foods to the public in establishments  
5 regulated by the department or local health organizations. These  
6 standards shall be adopted by the department to ensure that,  
7 upon successfully passing a test, the supervisory employee has  
8 demonstrated adequate food protection knowledge. These standards  
9 shall also provide for a certification program which authorizes  
10 private or public agencies to conduct and approve tests and  
11 certify the results of these tests to the department. At least  
12 one supervisory employee of a food establishment shall have  
13 passed the test and received a certificate attesting thereto.  
14 Employees shall have a period of 90 days after employment to  
15 pass the required test.] demonstration of food safety protection  
16 knowledge by the successful completion of an accredited  
17 certification program. A retail food facility shall have a  
18 period of three months after licensing under Ch. 57 Subch. A  
19 (relating to retail food facility safety) within which to comply  
20 with this chapter.

21 (e) Preemption.--Except as provided in subsection (f), the  
22 regulation of food safety protection and training standards for  
23 employees of [food establishments] retail food facilities is  
24 preempted by the Commonwealth.

25 (f) Local programs.--Any food employee certification program  
26 established by a county, city, borough, incorporated town or  
27 township prior to September 1, 1994, may remain in effect.

28 § 6504. Certification of employees.

29 (a) General rule.--[Food establishments] A retail food  
30 facility shall maintain certification records on respective

1 supervisory employees. Each [food establishment shall employ a  
2 person having supervisory authority] retail food facility shall  
3 have a supervisory employee who holds a valid department food  
4 employee certificate present at the retail food facility at all  
5 hours of operation.

6 (b) Examination.--[No certificate shall be issued unless the  
7 applicant has successfully completed a training course and  
8 passed an examination recommended by the advisory board and  
9 approved by the department.] (Reserved).

10 (c) Compliance.--

11 (1) (Reserved).

12 (2) A [food establishment] retail food facility exempt  
13 under section 6510(d) (relating to exemptions) may  
14 voluntarily seek certification under this section.

15 (3) Except as provided in section 6510, compliance with  
16 this chapter by a [food establishment] retail food facility  
17 shall be mandatory. [by July 1, 2004. Section 6503(e)  
18 (relating to certification advisory board and programs) shall  
19 not apply to any food establishment prior to July 1, 2004,  
20 unless that food establishment complies with this chapter.]

21 (d) Employee turnover.--[Food establishments] Retail food  
22 facilities which are not in compliance because of employee  
23 turnover or other loss of certified personnel shall have three  
24 months from the date of loss of certified personnel to comply.

25 (e) Maintenance and inspection of records.--Names and  
26 certificate numbers of certified personnel shall be maintained  
27 at the place of business and shall be made available for  
28 inspection by the department.

29 (f) Period of certification.--Certification shall be in  
30 effect for [five years.] the certification interval prescribed

1 by the accredited certification program described in section  
2 6503(c) (relating to certification programs). Renewal of  
3 certification shall be based on the [completion of courses  
4 recommended by the advisory board and approved by the  
5 department. The courses shall not include a written  
6 examination.] successful completion of the certification  
7 requirements of an accredited certification program as described  
8 in section 6503(c).

9 (g) [Training program.--

10 (1) Training programs to prepare candidates for  
11 certification examinations and the administration of the  
12 examination shall be made available throughout this  
13 Commonwealth through cooperation with industry and others and  
14 approved by the department. In order to meet the requirements  
15 of this paragraph, the department shall promulgate  
16 regulations with the approval of the board no later than July  
17 1, 2004, which establish training programs providing for the  
18 following considerations which include:

19 (i) The existence and operation of a department-  
20 approved employee training program on safe food handling  
21 conducted by the food establishment.

22 (ii) The limited handling of potentially hazardous  
23 food.

24 (iii) The number of hours necessary to prepare  
25 employees for safe food handling due to the food  
26 establishment's scope of business.

27 (iv) The demonstration of satisfactory knowledge and  
28 proficiency in the safe handling of food as approved by  
29 the department.

30 (2) The department shall develop and administer a

1 training program for food establishments voluntarily seeking  
2 certification under subsection (c)(2). The General Assembly  
3 may appropriate funds to offset the cost of the program for  
4 food establishments exempt under section 6510(d).]

5 (Reserved).

6 [(h) Mitigating factor.--

7 (1) If a food establishment complies with this chapter,  
8 the compliance shall be given appropriate consideration as a  
9 mitigating factor in determining if a food establishment  
10 shall be assessed more than the minimum fine or civil penalty  
11 required by law in any action to recover fines or penalties  
12 for a violation of the act of July 7, 1994 (P.L.421, No.70),  
13 known as the Food Act.

14 (2) This subsection shall expire July 1, 2000.]

15 § 6506. Reciprocal agreements.

16 (a) States.--The department may accept certifications issued  
17 in other states that have comparable requirements for  
18 certification [provided] and the department and the other state  
19 jurisdiction have entered into a reciprocal agreement to accept  
20 each state's certification program as meeting the provisions of  
21 this chapter.

22 (b) Local jurisdictions.--The department may accept  
23 certificates issued by a county, city, borough, incorporated  
24 town or township under a local food employee certificate program  
25 authorized under section 6503(f) (relating to certification  
26 programs) if the local government jurisdiction has comparable  
27 requirements for certification and the department and local  
28 government jurisdiction has entered into a reciprocal agreement  
29 to accept each other's certification programs as meeting the  
30 provisions of this chapter.

1 § 6507. Suspension of certification.

2 Certification may be suspended or revoked by the department  
3 if the holder or person fails to comply with this or other  
4 sanitation regulations or [the act of May 23, 1945 (P.L.926,  
5 No.369), referred to as the Public Eating and Drinking Place  
6 Law, or the act of July 7, 1994 (P.L.421, No.70), known as the  
7 Food Act] Chapter 57 (relating to food protection). Prior to  
8 suspension or revocation, the certificate holder shall be given  
9 the opportunity for a hearing before the department.

10 § 6508. Civil penalties.

11 In addition to proceeding under any other remedy available at  
12 law or in equity for a violation of a provision of this chapter  
13 or a rule or regulation adopted thereunder or any order issued  
14 pursuant thereto, the department may assess a civil penalty not  
15 to exceed \$300 for the first offense or not to exceed \$1,000 for  
16 subsequent offenses upon a person or [food establishment] retail  
17 food facility for each offense. No civil penalty shall be  
18 assessed unless the person charged has been given notice and  
19 opportunity for a hearing on the charge in accordance with law.  
20 This subchapter does not empower the local health department  
21 described in local authorities to assess the civil penalties  
22 described in this section.

23 § 6509. Fees.

24 (a) Change by regulation.--All fees imposed by this chapter  
25 shall remain in effect until changed by the department by  
26 regulation subject to the act of June 25, 1982 (P.L.633,  
27 No.181), known as the Regulatory Review Act. The department  
28 shall propose to change those fees by regulation [following  
29 consultation with the advisory board].

30 (b) Fee for certification.--The department shall issue or

1 approve the issuance of a certification document to the person  
2 upon the successful completion of the [approved training]  
3 accredited certification program. A fee of \$20 shall be charged  
4 by the department for this service unless changed by regulation.

5 (c) [Payments to municipalities.--Local health departments  
6 created in accordance with the act of August 24, 1951 (P.L.1304,  
7 No.315), known as the Local Health Administration Law, may  
8 enforce the provisions of this chapter as it pertains to public  
9 eating and drinking licensees. Each local health department  
10 shall be reimbursed by the department in an amount equal to 50%  
11 of the civil penalties levied and collected by the department  
12 pursuant to this chapter in each such jurisdiction.] (Reserved).

13 § 6510. Exemptions.

14 (a) Prepackaged food.--[Food establishments] Retail food  
15 facilities where only commercially prepackaged food is handled  
16 and sold are exempt from this chapter.

17 (b) Nonpotentially hazardous food.--[Food establishments]  
18 Retail food facilities that handle only nonpotentially hazardous  
19 food are exempt from this chapter.

20 (c) Food [manufacturing facilities] establishments.--Food  
21 [manufacturing facilities which are engaged in the manufacture  
22 of prepackaged foods and which do not manufacture potentially  
23 hazardous food] establishments are exempt from this chapter.

24 (d) Exempt organizations.--Except as set forth in section  
25 6504(c)(2) (relating to certification of employees), the  
26 following organizations are exempt from this chapter:

27 (1) A [food establishment] retail food facility managed  
28 by an organization which is a tax-exempt organization under  
29 section 501(c)(3) of the Internal Revenue Code of 1986  
30 (Public Law 99-514, 26 U.S.C. § 501(c)(3)).

(2) A [food establishment] retail food facility managed on a not-for-profit basis by an organization which is a volunteer fire company or an ambulance, religious, charitable, fraternal, veterans, civic, agricultural fair or agricultural association or any separately chartered auxiliary of any of the above associations.

(3) A [food establishment] retail food facility managed by an organization which is established to promote and encourage participation and support for extracurricular recreational activities for youth of primary and secondary public, private and parochial school systems on a not-for-profit basis.

§ 8101. [Farmers' market.

For the purpose of section 14(e) of the act of July 7, 1994 (P.L.421, No.70), known as the Food Act, any building, structure or place owned, leased or otherwise in possession of a person or municipal corporation or public or private organization, used or intended to be used by two or more farmers or an association of farmers for the purpose of selling food directly to consumers shall be deemed to be a single food establishment.] (Reserved).

Section 3. Repeals are as follows:

(1) The General Assembly declares as follows:

(i) The repeal under paragraph (2)(i) is necessary because the material is supplied by 3 Pa.C.S. Ch. 57 Subch. A.

(ii) The repeal under paragraph (2)(ii) is necessary because the material is supplied by 3 Pa.C.S. Ch. 57 Subch. B.

(2) (i) The act of May 23, 1945 (P.L.926, No.369), referred to as the Public Eating and Drinking Place Law,

1           is repealed.

2           (ii) The act of July 7, 1994 (P.L.421, No.70), known  
3           as the Food Act, is repealed.

4   Section 4. This act shall take effect in 60 days.