

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1422 Session of
2007

INTRODUCED BY CARROLL, HANNA, BRENNAN, COHEN, COSTA, CURRY,
DERMODY, FABRIZIO, FREEMAN, GEIST, GEORGE, GRUCELA,
HENNESSEY, JOSEPHS, KORTZ, KOTIK, KULA, LEACH, LENTZ,
MAHONEY, M. O'BRIEN, PASHINSKI, READSHAW, SCAVELLO, SHIMKUS,
K. SMITH, SOLOBAY, YUDICHAK AND SIPTROTH, JUNE 1, 2007

AS REPORTED FROM COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 12, 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.
7 5706. Contents of license.
8 5707. Powers of department.
9 5708. Infectious persons.
10 5709. Linens, equipment and utensils.
11 5710. ~~Facility~~ RETAIL FOOD FACILITY and employee
12 cleanliness.
13 5711. Toilets, sinks and drains.
14 5712. Revocation of license.
15 5713. School cafeterias.
16 5714. Penalties.
17 5715. Retail Food Facility Safety Fund.

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18 § 5701. Short title of chapter.

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

21 § 5702. Definitions.

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

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

29 "Employee." The license holder, person in charge, person
30 having supervisory or management duties, person on the payroll,

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.

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

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

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

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

§ 5703. License required.

~~(a) Unlawful conduct.~~

~~(1) It shall be unlawful for any proprietor to conduct~~

(A) UNLAWFUL CONDUCT.--IT SHALL BE UNLAWFUL FOR ANY PROPRIETOR TO CONDUCT or operate a retail food facility without first obtaining a license for each establishment RETAIL FOOD FACILITY as provided in this subchapter.

~~(2) A building, structure or place owned, leased or~~

(B) FARMERS' MARKETS.--A BUILDING, STRUCTURE OR PLACE OWNED, LEASED OR otherwise in possession of a person or municipal corporation or public or private organization, used as a

farmers' market by two or more farmers or an association of farmers for the purpose of selling agricultural commodities directly to 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)~~ (C) Exempt RETAIL FOOD 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~~ A SCHOOL CAFETERIA.

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

(6) A RETAIL FOOD FACILITY IN WHICH FOOD OR BEVERAGES ARE SOLD ONLY THROUGH A VENDING MACHINE.

(7) A RETAIL FOOD FACILITY IN WHICH ONLY PREPACKAGED, NONPOTENTIALLY HAZARDOUS FOOD OR BEVERAGES ARE SOLD.

~~(e)~~ (D) 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,

1 borough, incorporated town or township not under the
2 jurisdiction of a county department of health or joint-county
3 department of health, or by the county department of health or
4 joint-county department of health whenever a retail food
5 facility is located in a political subdivision which is under
6 the jurisdiction of a county department of health or joint-
7 county department of health, or in those townships of the second
8 class which are not under the jurisdiction of a county
9 department of health or joint-county department of health and
10 which do not elect to issue licenses under this subchapter, by
11 the department.

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

18 ~~(e)~~ (F) Reports.--If the licensor is an entity other than <—
19 the department, the licensor shall provide the department a copy
20 of any inspection report resulting from any inspection conducted
21 under authority of this subchapter within 30 15 days of the <—
22 inspection date. This copy may be sent by electronic methods, as
23 approved by the department. The department may, by regulation,
24 require that inspection reports be submitted in a specific
25 electronic format.

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

30 ~~(g)~~ (H) Fees.-- <—

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

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

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

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

16 (iv) For a duplicate license, for each RETAIL FOOD <—
17 facility location: \$14.

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

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

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

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

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

4 (VIII) FOR ANY LICENSE DESCRIBED IN PARAGRAPHS (I) <—
5 THROUGH (V) THAT IS ISSUED FOR A PERIOD OF GREATER THAN
6 ONE YEAR BY REGULATION OF THE DEPARTMENT IN ACCORDANCE
7 WITH SECTION 5705(A), THE LICENSE FEE OTHERWISE
8 PRESCRIBED UNDER THOSE PARAGRAPHS SHALL BE PRORATED FOR
9 THE LICENSE PERIOD.

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

12 ~~(h)~~ (I) Renewal.--The license shall be renewed in accordance <—
13 with section 5705.

14 ~~(i)~~ (J) Multiple RETAIL FOOD facilities.--Whenever any <—
15 proprietor maintains more than one retail food facility within
16 this Commonwealth, the proprietor shall be required to apply for
17 and procure a license for each RETAIL FOOD facility. <—

18 § 5704. Application for license.

19 Any person owning or operating or desiring to operate a
20 retail food facility within this Commonwealth shall make
21 application for license to the licensor on forms furnished by
22 the licensor. The forms shall be uniform throughout this
23 Commonwealth and shall set forth such information as the
24 department may require, including the name and address of the
25 applicant, together with all the other information deemed
26 necessary to identify the applicant, provide contact information
27 for the applicant, identify the location of the retail food
28 facility that is the subject of the application and facilitate
29 the licensor's processing of the application. Before granting
30 any license, the licensor shall visit and inspect the restaurant

or premises on which the applicant conducts or proposes to conduct the applicant's business. The licensor may refuse to issue a license if the premises on which the applicant conducts or proposes to conduct the applicant's business or equipment do not meet the requirements of this subchapter or the rules and regulations of the department. The licensor shall state in writing to the applicant the reason for the refusal.

§ 5705. Term of license.

(a) General rule.--Except as provided in subsection (b), licenses shall be granted for a period of one year from date of issue, OR FOR ANY OTHER LICENSE PERIOD THAT IS ESTABLISHED BY THE DEPARTMENT THROUGH REGULATION AND THAT USES RISK-BASED FACTORS IDENTIFIED IN THE CURRENT EDITION OF THE MODEL RETAIL FOOD CODE, PUBLISHED BY THE FOOD AND DRUG ADMINISTRATION, AS A BASIS FOR DETERMINING THE APPROPRIATE LICENSE INTERVAL.

Application for renewal shall be made one month before expiration of existing license. A license granted under the provisions of this subchapter shall be renewed if the most recent inspection by the licensor WAS CONDUCTED WITHIN THE PRECEDING LICENSE PERIOD AND determined that conditions specified in section 5704 (relating to application for license) with respect to the premises and equipment are fulfilled.

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

§ 5706. Contents of license.

Licenses shall specify the date of issuance, the period which

1 is covered, the name of the licensee and the place licensed.

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

4 § 5707. Powers of department.

5 (a) Rules and regulations.--The department shall make such
6 reasonable rules and regulations as may be deemed necessary for
7 carrying out the provisions and intent of this subchapter. In
8 promulgating regulations, the department shall be guided by the
9 most current edition of the Model Retail Food Code, published by
10 the United States Department of Health, Food and Drug
11 Administration. The regulatory standards established by the
12 department under this section shall be the standards followed
13 and applied by any licensor with respect to retail food
14 facilities.

15 (b) Suspension or revocation of licenses.--The department
16 may on its own motion, or on complaint after investigation and
17 hearing at which the licensee shall be afforded an opportunity
18 to be heard, suspend or revoke any license for any violation by
19 the licensee or the licensee's partner, agent, servant or
20 employee of the provisions of this subchapter or of any other
21 act relating to the public health and being applicable to the
22 retail food facility or of the rules and regulations of the
23 department or of any of the terms, conditions or provisions of
24 the license by the licensee, or any of the agents, servants or
25 employees of the licensee. Notice of suspension or revocation,
26 and the reasons therefore, as well as any required notice of
27 hearing, shall be given in writing to the licensee at the
28 address contained in the license. Suspension of license shall be
29 terminated when the violation for which it was imposed has been
30 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) 5703(F) (relating to license required) and fails to

comply with that requirement, the department may inspect AND
LICENSE the subject retail food facility, AND THE LICENSOR THAT
FAILED TO COMPLY WITH THE INSPECTION REQUIREMENT SHALL NOT
CHARGE OR COLLECT ANY FEE FOR LICENSING 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
Law of 1955, and its attendant regulations. The department may
promulgate regulations with respect to specific illnesses as
related to operations in a retail food facility as it deems
necessary for the protection of public health.

§ 5709. Linens, equipment and utensils.

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

1 § 5710. Facility RETAIL FOOD FACILITY and employee cleanliness. <—

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

16 § 5711. Toilets, sinks and drains.

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

20 § 5712. Revocation of license.

21 ~~Any proprietor who~~ IF A PROPRIETOR, after investigation made <—
22 by the licensor, has failed or refused after a reasonable
23 interval to correct conditions found to constitute a violation
24 of this subchapter, or of the regulations of the department
25 pertaining to retail food facilities, shall have the <—
26 ~~proprietor's license~~ THE LICENSE SHALL BE revoked. <—

27 § 5713. School cafeterias.

28 Officials of schools shall cooperate with the department in
29 the conduct of school cafeteria health and safety inspections
30 and shall participate in inspection services and training

1 programs made available by the department.

2 § 5714. Penalties.

3 (a) Criminal penalty.--A person who violates any provision
4 of this subchapter or any rule, regulation, standard or order
5 made under this subchapter commits a summary offense for the
6 first or second offense AND SHALL BE SUBJECT TO A FINE NOT LESS <—
7 THAN \$100 BUT NOT MORE THAN \$300. A person who violates any
8 provision of this subchapter or any rule, regulation, standard
9 or order made under this subchapter commits a misdemeanor of the
10 third degree if the violation is a third or subsequent offense
11 and if the violation occurs within two years of the date of the
12 last previous offense.

13 (b) Civil penalty.--In addition to proceeding under any
14 other remedy available at law or in equity for a violation of
15 this subchapter or a rule or regulation adopted or any order
16 issued under this subchapter, the secretary may assess a civil
17 penalty not to exceed \$10,000 upon an individual or business for
18 each offense. No civil penalty shall be assessed unless the
19 person charged has been given notice and opportunity for a
20 hearing in accordance with law. In determining the amount of the
21 penalty, the secretary shall consider the gravity of the
22 violation. Whenever the secretary finds a violation which did
23 not cause harm to human health, the secretary may issue a
24 warning in lieu of assessing a penalty. In case of inability to
25 collect the civil penalty or failure of any person to pay all or
26 any portion of the penalty as the secretary may determine, the
27 secretary may refer the matter to the Attorney General, who
28 shall recover the amount by action in the appropriate court.

29 § 5715. Retail Food Facility Safety Fund.

30 There is hereby created a special fund in the State Treasury

1 to be known as the Retail Food Facility Safety Fund. All funds
2 received or collected by the department under this subchapter
3 shall be deposited in the fund. All moneys in the fund and the
4 accrued interest are appropriated to the department to use to
5 pay any direct or incidental expense incurred in carrying out
6 the responsibilities of the department under this subchapter.
7 These expenses include, but are not limited to, personnel and
8 operating expenses.

9 SUBCHAPTER B

10 FOOD SAFETY

11 Sec.

12 5721. Short title of subchapter.

13 5722. Definitions.

14 5723. Prohibited acts.

15 5724. Temporary or permanent injunctions.

16 5725. Penalties.

17 5726. Detention and condemnation.

18 5727. Temporary permits.

19 5728. Adulteration of food.

20 5729. Misbranding of food.

21 5730. Regulations to exempt certain labeling requirements.

22 5731. Poisonous or deleterious substances and tolerances.

23 5732. Inspection, sampling and analysis.

24 5733. Rules and regulations.

25 5734. Registration of food establishments.

26 5735. Product registration.

27 5736. Construction of subchapter.

28 5737. Acts not affected.

29 § 5721. Short title of subchapter.

30 This subchapter shall be known and may be cited as the Food

1 Safety Act.

2 § 5722. Definitions.

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

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

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

17 (2) Any pesticide chemical, soil or plant nutrient or
18 other agricultural chemical solely because of its effect in
19 aiding, retarding or otherwise affecting, directly or
20 indirectly, the growth or other natural physiological process
21 of produce of the soil and thereby affecting its color,
22 whether before or after harvest.

23 "Federal acts." The Wholesome Meat Act (Public Law 90-201,
24 21 U.S.C. § 601 et seq.), the Federal Food, Drug, and Cosmetic
25 Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.), the Poultry
26 Products Inspection Act (Public Law 85-172, 21 U.S.C. § 451 et
27 seq.), the Fair Packaging and Labeling Act (Public Law 89-755,
28 15 U.S.C. § 1451 et seq.), the Federal Insecticide, Fungicide,
29 and Rodenticide Act (61 Stat. 163, 7 U.S.C. § 136 et seq.) and
30 the Nutritional Labeling and Education Act of 1990 (Public Law

1 101-535, 104 Stat. 2353).

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

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

16 (1) A pesticide chemical in or on a raw agricultural
17 commodity.

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

21 (3) A color additive.

22 (4) Any substance used in accordance with a sanction or
23 approval granted prior to the enactment of this paragraph
24 pursuant to a statute repealed by this act, pursuant to the
25 Poultry Products Inspection Act (Public Law 85-172, 21 U.S.C.
26 § 451 et seq.) or pursuant to the Wholesome Meat Inspection
27 Act (Public Law 90-201, 21 U.S.C. § 601 et seq.).

28 (5) A new animal drug.

29 As used in this definition, the term "substance" includes any
30 substance intended for use in producing, manufacturing,

1 packaging, processing, preparing, treating, transporting or
2 holding food and any source of radiation intended for any use.

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

12 "Imitation food." A food that is a substitute for and
13 resembles another food but is nutritionally inferior to that
14 food.

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

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

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

23 (1) Shipping containers or wrappings for the
24 transportation of food in bulk or quantity to manufacturers,
25 packers or processors or to wholesale or retail distributors.

26 (2) Shipping containers or wrappings used by retailers
27 to ship or deliver food to retail customers, if the
28 containers or wrappings bear no printed matter pertaining to
29 food.

30 (3) Containers used for tray pack displays in retail

1 establishments.

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

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

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

16 "Public eating and drinking place." As defined in section
17 5702 (relating to definitions).

18 "Raw agricultural commodity." A food in its raw or natural
19 state, including all fruits which are washed, colored or
20 otherwise treated in their unpeeled, natural form prior to
21 marketing.

22 "Retail food establishment." As defined in section 5702
23 (relating to definitions).

24 "Retail food facility." As defined in section 5702 (relating
25 to definitions).

26 "Secretary." Includes an authorized representative, employee
27 or agent of the Department of Agriculture.

28 § 5723. Prohibited acts.

29 The following acts are prohibited:

30 (1) Manufacture, sale, delivery, consignment, bailment,

1 holding or offering for sale of any food that is adulterated
2 or misbranded, except where a person in good faith delivers
3 or offers to deliver the food and furnishes shipping
4 documents to the secretary.

5 (2) Adulteration or misbranding of any food.

6 (3) Knowingly receiving in commerce any food which is
7 adulterated or misbranded and the delivery or proffered
8 delivery thereof for pay or otherwise.

9 (4) Sale, delivery for sale, holding for sale or
10 offering for sale any article in violation of section 5731
11 (relating to poisonous or deleterious substances and
12 tolerances).

13 (5) Refusal to permit during normal business hours entry
14 to, inspection of or taking of a sample or access to or
15 copying of any record at a food establishment as authorized
16 under section 5732(a)(2) and (3) (relating to inspection,
17 sampling and analysis).

18 (6) Removal or disposal of a detained or embargoed food
19 article in violation of section 5726 (relating to detention
20 and condemnation).

21 (7) Alteration, mutilation, destruction, obliteration or
22 removal of the whole or any part of the labeling of a food or
23 the doing of any other act with respect to a food, if the act
24 is done while the food is held for sale and results in the
25 food being adulterated or misbranded.

26 (8) Forging, counterfeiting, simulating, falsely
27 representing or using without proper authority any mark,
28 stamp, tag, label or other identification device authorized
29 or required by regulation promulgated under this subchapter.

30 (9) Use by any person to his own advantage or revealing,

1 other than to the secretary or the courts when relevant in
2 any judicial proceeding under this subchapter, of any
3 information acquired under authority of this subchapter
4 concerning any method or process which, as a trade secret or
5 confidential trade information, is entitled to protection.

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

11 (11) Failure to register with the department under the
12 provisions of section 5734 (relating to registration of food
13 establishments).

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

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

21 (14) Failure by a carrier to make records showing the
22 movement in commerce of any food or the holding thereof
23 during or after the movement and the quantity, shipper and
24 consignee thereof available for one year after the initial
25 date of movement of the food in commerce.

26 § 5724. Temporary or permanent injunctions.

27 In addition to any other remedies provided in this
28 subchapter, the secretary may apply to the Commonwealth Court or
29 to any other court having jurisdiction for a temporary or
30 permanent injunction restraining a person from violating this

1 ~~subchapter or any regulation adopted under this subchapter,~~ <—
2 ~~regardless of whether there exists an adequate remedy at law.~~
3 SUBCHAPTER. <—

4 § 5725. Penalties.

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

14 (b) Civil penalties.--In addition to proceeding under any
15 other remedy available at law or in equity for a violation of
16 this subchapter, or a rule or regulation adopted or any order
17 issued under this subchapter, the secretary may assess a civil
18 penalty not to exceed \$10,000 upon an individual or business for
19 each offense. No civil penalty shall be assessed unless the
20 person charged has been given notice and opportunity for a
21 hearing in accordance with law. In determining the amount of the
22 penalty, the secretary shall consider the gravity of the
23 violation. Whenever the secretary finds a violation which did
24 not cause harm to human health, the secretary may issue a
25 warning in lieu of assessing a penalty. In case of inability to
26 collect the civil penalty or failure of any person to pay all or
27 any portion of the penalty as the secretary may determine, the
28 secretary may refer the matter to the Attorney General, who
29 shall recover the amount by action in the appropriate court.

30 (c) Guaranty.--

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

18 (2) The guaranty to afford protection shall contain the
19 name and address of the supplier, manufacturer, wholesale
20 dealer, jobber or distributor making the sale of the article
21 of food to the person holding the guaranty. A supplier,
22 manufacturer, wholesale dealer, jobber or distributor giving
23 a guaranty under the provisions of this subchapter may be
24 held responsible and may be proceeded against for the
25 adulteration or misbranding of any article of food sold under
26 the guaranty and shall be subject to the penalties provided
27 for violation of this subchapter. A guaranty shall not
28 operate as a defense to prosecution for a violation of the
29 provisions of this subchapter if the person holding the
30 guaranty continues to sell the same food after written or

1 printed notice from the secretary that the article is
2 adulterated or misbranded within the meaning of this
3 subchapter. However, if the person violated the provisions of
4 this subchapter by having stored, transported, exposed or
5 kept the article in a way or manner to render it diseased,
6 contaminated or unwholesome, the person may be proceeded
7 against for a violation.

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

14 § 5726. Detention and condemnation.

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

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

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

25 (b) Determination and appeal.--The secretary shall determine
26 whether a food detained under this subchapter may be sold,
27 delivered, consigned, held or offered for sale as is or whether
28 it shall be relabeled, reprocessed or destroyed within 40 days
29 of issuance of the detention order. Any determination by the
30 secretary that the food shall be relabeled, reprocessed or

1 destroyed shall be subject, within 30 days of the determination,
2 to appeal by the owner or operator of the food establishment or
3 the manufacturer or owner of the food to the court of common
4 pleas of the county in which the food was located. The detention
5 order shall expire after five working days from the issuance of
6 the order, unless the secretary confirms the order. The order
7 shall clearly and concisely state the facts on which it is
8 based.

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

18 (d) Order for destruction.--Food detained under this
19 subchapter shall be destroyed by the owner under the supervision
20 of the secretary, if the secretary determines that the food is
21 unfit for human consumption and the food cannot be reconditioned
22 so as to be made fit for human consumption and the determination
23 is not appealed within the time permitted. Food detained under
24 this subchapter may be used as animal feed or for other
25 beneficial use, provided that such use is in compliance with
26 other applicable statutes, rules, regulations, standards and
27 orders. The owner shall pay all costs of destruction.

28 § 5727. Temporary permits.

29 Temporary permits granted by Federal agencies for interstate
30 shipment of experimental packs of food varying from the

1 requirements of definitions and standards of identity in Federal
2 acts shall be effective in this Commonwealth under the
3 conditions provided in the permits unless disapproved by the <—
4 secretary. The secretary may issue intrastate permits where they
5 are necessary to the completion of an investigation and where
6 the interests of consumers are safeguarded for foods not
7 complying with definitions, standards of identity and State laws
8 and regulations. The permits shall be for a period not to exceed
9 one year, although the permit may be extended for a period of up
10 to one additional year if a new standard of identity has been
11 applied for under section 5733 (relating to rules and
12 regulations). The secretary may revoke a permit after notice to
13 the affected party if the application contains misleading
14 statements or if the secretary determines that unfair
15 competitive advantage is gained through the issuance of the
16 permit or that the need no longer exists for the permit.
17 § 5728. Adulteration of food.

18 A food shall be deemed adulterated:

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

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

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

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

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

23 (6) It is has been produced, prepared, packed or held
24 under unsanitary conditions so that it may have become
25 contaminated with filth or may have been rendered diseased,
26 unwholesome or injurious to health.

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

30 (8) If its container is composed, in whole or in part,

1 of any poisonous or deleterious substance which may render
2 the contents injurious to health, unless the container is
3 fabricated or manufactured with good manufacturing practice
4 as that standard is defined and delineated by any of the
5 Federal acts and their regulations.

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

10 (10) If:

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

13 (ii) any substance has been substituted wholly or in
14 part;

15 (iii) damage or inferiority has been concealed in
16 any manner; or

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

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

24 (12) If it bears or contains eggs processed by or egg
25 products derived from a manufacturing, processing or
26 preparing method wherein whole eggs are broken using a
27 centrifuge-type egg breaking machine that separates the egg's
28 liquid interior from the shell.

29 § 5729. Misbranding of food.

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

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

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

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

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

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

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

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

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

19 (6) If it is represented as a food for which a
20 definition and standard of identity has been prescribed by
21 regulation under this subchapter or under any of the Federal
22 acts, unless it conforms to the definition and standard and
23 its label bears the name of the food specified in the
24 definition and standard and the common names of optional
25 ingredients, other than spices, flavoring and coloring,
26 present in the food.

27 (7) Unless its label bears the following:

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

29 (ii) If made from two or more ingredients, the
30 common or usual name of each ingredient is listed in

1 descending order of predominance by weight, except that
2 spices, flavorings and colorings not required to be
3 certified under any of the Federal acts, other than those
4 sold as such, may be designated as spices, flavorings and
5 colorings without naming each.

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

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

22 (10) If it is a raw agricultural commodity bearing or
23 containing a pesticide chemical applied after harvest, unless
24 the shipping container of the commodity bears labeling which
25 declares the presence of the chemical and the common or usual
26 name and function of the chemical. A declaration shall not be
27 required when the commodity is removed from the shipping
28 container and is held or displayed for sale at retail in
29 accordance with the custom of the trade.

30 (11) If it is a color additive, unless its packaging and

1 labeling are in conformity with the packaging and labeling
2 requirements applicable to color additives in department
3 regulations.

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

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

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

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

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

24 § 5730. Regulations to exempt certain labeling requirements.

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

1 processing, labeling or repacking establishments.

2 § 5731. Poisonous or deleterious substances and tolerances.

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

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

15 (c) Unsafe food additives.--A food additive shall, with
16 respect to any particular use or intended use, be deemed to be
17 unsafe for the purposes of the application of section 5728(4)
18 (relating to adulteration of food) unless it and its intended
19 use conform to the terms of an exemption which is in effect
20 under this section or unless there is in effect, and it and its
21 intended use are in conformity with, a regulation issued under
22 this section prescribing the conditions under which the additive
23 may be safely used. A food which is in compliance with a
24 regulation relating to a food additive shall not, by reason of
25 bearing or containing an additive in accordance with the
26 regulations, be considered adulterated within the meaning of
27 section 5728(4).

28 § 5732. Inspection, sampling and analysis.

29 (a) Inspection.--For purposes of enforcement of this
30 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.

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

(d) Receipt for samples.--If the secretary has obtained any

1 sample in the course of the inspection, the secretary shall,
2 upon completion of the inspection and prior to leaving the
3 premises, give to the owner, operator or agent in charge a
4 receipt describing the sample obtained.

5 (e) Payment of samples.--The food establishment from which
6 samples are collected may bill the secretary for the fair market
7 value of the samples.

8 § 5733. Rules and regulations.

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

20 (b) Local inspection.--The secretary shall enter into
21 agreements with any county, city, borough, incorporated town or
22 township of this Commonwealth for the enforcement of this
23 subchapter and the rules, regulations and food standards
24 promulgated under this subchapter in food establishments,
25 provided that the county, city, borough, incorporated town or
26 township satisfies the minimum standards established by the
27 secretary and the minimum standards required to be eligible for
28 State grants pursuant to the act of August 24, 1951 (P.L.1304,
29 No.315), known as the Local Health Administration Law. Nothing
30 in this subchapter shall prohibit any county, city, borough,

1 incorporated town or township which was licensing food
2 establishments in accordance with the Local Health
3 Administration Law on September 2, 1994, from continuing to
4 license such food establishments in accordance with the Local
5 Health Administration Law. No county, city, borough,
6 incorporated town or township, shall ordain or enforce
7 requirements of any kind or description related to sanitation,
8 food safety, inspections, standards and labeling other than
9 those promulgated by the secretary in accordance with this
10 subchapter or adopted in accordance with subsection (f).

11 (c) Reciprocal inspection.--The secretary is authorized to
12 enter into reciprocal agreements with other jurisdictions to
13 insure inhabitants of this Commonwealth that food sold in this
14 Commonwealth complies with this subchapter and its regulations.
15 The agreements may be for reciprocal inspection and labeling
16 review. The secretary may approve or accept inspection and
17 labeling requirements of other jurisdiction with respect to
18 food.

19 (d) Uniform regulation.--In reaching agreements with
20 counties, cities, boroughs, incorporated towns or townships and
21 reciprocal agreements with other jurisdictions, the provisions
22 of this subchapter and its regulations shall be considered as
23 establishing uniform requirements and regulations for food
24 establishments throughout this Commonwealth as defined in
25 section 5722 (relating to definitions).

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

1 accordance with Subchapter A.

2 (f) Adoption of Federal regulations.--All regulations and
3 supplements thereto or revisions thereof adopted under the
4 Federal acts which relate to food on, before or after the
5 effective date of this subchapter are hereby adopted as
6 regulations in this Commonwealth and shall remain in effect
7 unless subsequently modified by regulations promulgated by the
8 secretary.

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

12 § 5734. Registration of food establishments.

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

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

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

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

29 (1) Vehicles used primarily for the transportation of
30 any consumer commodity in bulk or quantity to manufacturers,

1 packers, processors or wholesale or retail distributors.

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

5 ~~(3) Any food establishment in which food or beverages~~ <—
6 ~~are sold only through a vending machine.~~

7 ~~(4) Any food establishment in which only prepackaged,~~
8 ~~nonpotentially hazardous food or beverages are sold.~~

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

13 § 5735. Product registration.

14 The secretary may promulgate regulations allowing food
15 establishments to label their food products as having been
16 registered by the department. "Reg. Penna. Dept. Agr." shall be
17 the approved abbreviation. This registration label shall be
18 limited to food products prepared or packed in a food
19 establishment registered under section 5734 (relating to
20 registration of food establishments).

21 § 5736. Construction of subchapter.

22 (a) General rule.--The provisions of this subchapter and the
23 regulations promulgated under this subchapter shall be construed
24 in a manner that is consistent with the Federal acts and
25 regulations promulgated under those acts. The secretary shall
26 not ordain or enforce requirements relating to sanitation, food
27 safety, food standards and labeling requirements of any kind or
28 description other than those provided for in the Federal acts
29 unless the proposed regulation meets all of the following:

30 (1) is justified by compelling and unique local

1 conditions;

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

4 (3) relates to subject matter that is primarily local in
5 nature and the Federal agency with responsibility over the
6 subject matter is not exercising its jurisdiction with
7 respect to the subject matter;

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

10 (5) would not unduly burden interstate commerce.

11 (b) Secretary to participate in rulemaking.--The secretary
12 is encouraged to participate in rulemaking under the Federal
13 acts and, if necessary, to pursue Federal rulemaking as is
14 deemed necessary for the protection of the citizens of this
15 Commonwealth through the Federal petition and rulemaking
16 process.

17 § 5737. Acts not affected.

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

20 (1) The act of July 2, 1935 (P.L.589, No.210), referred
21 to as the Milk Sanitation Law, the act of August 8, 1961
22 (P.L.975, No.436), referred to as the Milk Adulteration and
23 Labeling Act, and the act of September 1, 1965 (P.L.420,
24 No.215), known as The Frozen Dessert Law.

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

1 (3) Subchapter A (relating to retail food facility
2 safety).

3 Section 2. Sections 6502, 6503, 6504, 6506, 6507, 6508,
4 6509, 6510 and 8101 of Title 3 are amended to read:

5 § 6502. Definitions.

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

9 ["Advisory board" or "board." The Food Employee
10 Certification Advisory Board.]

11 "Conference for Food Protection." An independent, national
12 voluntary nonprofit organization to promote food safety and
13 consumer protection. Participants in this organization include
14 Federal, State and local regulatory agencies, universities, test
15 providers, certifying organizations, consumer groups, food
16 service and retail store trade associations and RETAIL food <—
17 facility operators. The objectives of the organization include
18 identifying and addressing food safety problems and promoting
19 uniformity of regulations in food protection.

20 "Food establishment." [A room, building, place or portion
21 thereof or vehicle maintained, used or operated for the purpose
22 of selling to the public, commercially storing, packaging,
23 making, cooking, mixing, processing, bottling, baking, canning,
24 freezing, packing or otherwise preparing, transporting or
25 handling food. The term includes retail food stores and public
26 eating and drinking licensees, except those portions of
27 establishments operating exclusively under milk or milk products
28 permits and those portions of establishments operating
29 exclusively under USDA inspection. The term does not include
30 dining cars operated by a railroad company in interstate

1 commerce or a bed and breakfast, homestead or inn as defined in
2 the act of May 23, 1945 (P.L.926, No.369), referred to as the
3 Public Eating and Drinking Place Law.] As defined in section
4 5722 (relating to definitions).

5 "Person in charge." A person designated by a RETAIL food <—
6 facility operator to be present at a RETAIL food facility and <—
7 responsible for the operation of the RETAIL food facility at the <—
8 time of inspection.

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

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

22 "Retail food establishment." As defined in section 5702
23 (relating to definitions).

24 "Retail food facility." A public eating or drinking place or
25 a retail food establishment.

26 "Supervisory employee." [An owner or a person employed by or
27 designated by the business owner to fulfill the requirements of
28 this chapter.] The person in charge of a retail food facility. A
29 person designated by a retail food facility operator to be
30 present at a RETAIL food facility and responsible for the <—

1 operation of the RETAIL food facility at the time of inspection. <—

2 § 6503. Certification [advisory board and] programs.

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

8 (1) The chairman and minority chairman of the
9 Agricultural and Rural Affairs Committee of the Senate or
10 their designees and the chairman and minority chairman of the
11 Agricultural and Rural Affairs Committee of the House of
12 Representatives or their designees.

13 (2) A consumer representative.

14 (3) The Secretary of Agriculture or the secretary's
15 designee.

16 (4) Two representatives of production agriculture.

17 (5) Representatives, including at least one person
18 recommended by each of the following: Pennsylvania
19 Association of Milk Dealers, Pennsylvania Restaurant
20 Association, Pennsylvania Food Merchants Association,
21 Pennsylvania Convenience Store Council, Pennsylvania Bakers
22 Association, Pennsylvania Food Processors Association,
23 National Federation of Independent Businesses, Pennsylvania
24 Petroleum Marketers & Convenience Store Association, Local
25 1776 UFCW, Pennsylvania Retailers Association, the Licensed
26 Beverage Association, Pennsylvania Tourism and Lodging
27 Association, Associated Petroleum Industries, Pennsylvania
28 Veterinary Medical Association, County Commissioners
29 Association of Pennsylvania, Pennsylvania League of Cities
30 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 INCLUDING EXAMINATIONS
DEVELOPED UNDER THOSE 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
department. The department shall adopt food safety protection
and training standards for the certification of supervisory
employees who are responsible for the storage, preparation,
display or serving of foods to the public in establishments

1 regulated by the department or local health organizations. These
2 standards shall be adopted by the department to ensure that,
3 upon successfully passing a test, the supervisory employee has
4 demonstrated adequate food protection knowledge. These standards
5 shall also provide for a certification program which authorizes
6 private or public agencies to conduct and approve tests and
7 certify the results of these tests to the department. At least
8 one supervisory employee of a food establishment shall have
9 passed the test and received a certificate attesting thereto.
10 Employees shall have a period of 90 days after employment to
11 pass the required test.] demonstration of food safety protection
12 knowledge by the successful completion of an ~~accredited~~ <—
13 ~~certification program.~~ EXAMINATION CONDUCTED BY OR PURSUANT TO <—
14 AN ACCREDITED CERTIFICATION PROGRAM RECOGNIZED BY THE DEPARTMENT
15 UNDER SUBSECTION (C). A retail food facility shall have a period
16 of three months after licensing under Ch. 57 Subch. A (relating
17 to retail food facility safety) within which to comply with this
18 chapter.

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

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

26 § 6504. Certification of employees.

27 (a) General rule.--[Food establishments] A retail food
28 facility shall maintain certification records on respective
29 supervisory employees. Each [food establishment shall employ a
30 person having supervisory authority] retail food facility shall

1 have a supervisory employee who holds a valid department food
2 employee certificate present at the retail food facility at all
3 hours of operation.

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

8 (c) Compliance.--

9 (1) (Reserved).

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

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

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

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

27 (f) Period of certification.--Certification shall be in
28 effect for [five years.] the certification interval prescribed
29 by the accredited certification program described in section
30 6503(c) (relating to certification programs). Renewal of

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

7 (g) [Training program.--

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

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

20 (ii) The limited handling of potentially hazardous
21 food.

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

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

28 (2) The department shall develop and administer a
29 training program for food establishments voluntarily seeking
30 certification under subsection (c)(2). The General Assembly

may appropriate funds to offset the cost of the program for food establishments exempt under section 6510(d).]

(Reserved).

[(h) Mitigating factor.--

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

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

§ 6506. Reciprocal agreements.

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

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

§ 6507. Suspension of certification.

Certification may be suspended or revoked by the department

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

8 § 6508. Civil penalties.

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

21 § 6509. Fees.

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

28 (b) Fee for certification.--The department shall issue or
29 approve the issuance of a certification document to the person
30 upon the successful completion of the [approved training]

1 accredited certification program. A fee of \$20 shall be charged
2 by the department for this service unless changed by regulation.

3 (c) [Payments to municipalities.--Local health departments
4 created in accordance with the act of August 24, 1951 (P.L.1304,
5 No.315), known as the Local Health Administration Law, may
6 enforce the provisions of this chapter as it pertains to public
7 eating and drinking licensees. Each local health department
8 shall be reimbursed by the department in an amount equal to 50%
9 of the civil penalties levied and collected by the department
10 pursuant to this chapter in each such jurisdiction.] (Reserved).
11 § 6510. Exemptions.

12 ~~(a) Prepackaged food. [Food establishments] Retail food~~ <—
13 facilities

14 (A) PREPACKAGED FOOD.--[FOOD ESTABLISHMENTS] <—

15 (1) RETAIL FOOD FACILITIES where only commercially
16 prepackaged food is handled and sold are exempt from this
17 chapter.

18 (2) RETAIL FOOD FACILITIES THAT HANDLE AND SELL FOOD <—
19 OTHER THAN COMMERCIALLY PREPACKAGED FOOD ARE EXEMPT FROM THIS
20 CHAPTER DURING TIME PERIODS OR WORK SHIFTS WHEN ONLY
21 COMMERCIALLY PREPACKAGED FOOD IS SOLD.

22 ~~(B) NONPOTENTIALLY HAZARDOUS FOOD. [FOOD ESTABLISHMENTS]~~ <—
23 ~~RETAIL FOOD FACILITIES THAT HANDLE ONLY NONPOTENTIALLY HAZARDOUS~~

24 (B) NONPOTENTIALLY HAZARDOUS FOOD.--[FOOD ESTABLISHMENTS] <—
25 (1) RETAIL FOOD FACILITIES THAT HANDLE ONLY
26 NONPOTENTIALLY HAZARDOUS food are exempt from this chapter.

27 (2) RETAIL FOOD FACILITIES THAT HANDLE AND SELL <—
28 POTENTIALLY HAZARDOUS FOOD ARE EXEMPT FROM THIS CHAPTER
29 DURING TIME PERIODS OR WORK SHIFTS WHEN ONLY NONPOTENTIALLY
30 HAZARDOUS FOOD IS HANDLED AND SOLD.

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

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

(1) A [food establishment] retail food facility managed by an organization which is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 (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

1 shall be deemed to be a single food establishment.] (Reserved).

2 Section 3. Repeals are as follows:

3 (1) The General Assembly declares as follows:

4 (I) THE REPEAL UNDER PARAGRAPH (2)(I) IS NECESSARY <—
5 BECAUSE THE FEES DESCRIBED IN THAT PROVISION ARE SUPPLIED
6 BY 3 PA.C.S. CH. 57 SUBCH. A.

7 ~~(i)~~ (II) The repeal under paragraph ~~(2)(i)~~ (2)(II) <—
8 is necessary because the material is supplied by 3
9 Pa.C.S. Ch. 57 Subch. A.

10 ~~(ii)~~ (III) The repeal under paragraph ~~(2)(ii)~~ <—
11 (2)(III) is necessary because the material is supplied by <—
12 3 Pa.C.S. Ch. 57 Subch. B.

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

15 (2) REPEALS ARE AS FOLLOWS: <—

16 (I) SECTION 602-A(16) OF THE ACT OF APRIL 9, 1929
17 (P.L.177, NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF
18 1929, IS REPEALED.

19 (II) THE ACT OF MAY 23, 1945 (P.L.926, NO.369),
20 REFERRED TO AS THE PUBLIC EATING AND DRINKING PLACE LAW,
21 is repealed.

22 ~~(ii)~~ (III) The act of July 7, 1994 (P.L.421, No.70), <—
23 known as the Food Act, is repealed.

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