
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, SIPTROTH AND CALTAGIRONE,
JUNE 1, 2007

SENATOR BRUBAKER, AGRICULTURE AND RURAL AFFAIRS, IN SENATE, AS
AMENDED, MAY 6, 2008

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

1 context clearly indicates otherwise:

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

6 "Employee." The license holder, person in charge, person
7 having supervisory or management duties, person on the payroll,
8 family member, volunteer, person performing work under
9 contractual agreement or other person working in a retail food
10 facility.

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

13 ~~"Fund." The Retail Food Facility Safety Fund established~~ <—
14 ~~under section 5715 (relating to Retail Food Facility Safety~~
15 ~~Fund).~~

16 "License." A grant to a licensee PROPRIETOR to operate a <—
17 retail food facility.

18 "Licensor." Any of the following:

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

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

30 (3) The health authorities of second class townships and

1 second class townships which have adopted a home rule charter
2 which elect to issue licenses under this subchapter whenever
3 a retail food facility is located in a second class township
4 or second class township which has adopted a home rule
5 charter not under the jurisdiction of a county department of
6 health or joint-county department of health.

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

9 "Organized camp." A combination of programs and facilities
10 established for the primary purpose of providing an outdoor
11 group living experience for children, youth and adults, with
12 social, recreational and educational objectives, and operated
13 and used for five or more consecutive days during one or more
14 seasons of the year.

15 "PERSON IN CHARGE." A PERSON DESIGNATED BY A RETAIL FOOD ←
16 FACILITY OPERATOR TO BE PRESENT AT A RETAIL FOOD FACILITY AND
17 RESPONSIBLE FOR THE OPERATION OF THE RETAIL FOOD FACILITY AT THE
18 TIME OF INSPECTION.

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

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

27 "Raw agricultural commodity." As defined under section 5722
28 (relating to definitions).

29 "Retail food establishment." An establishment which stores,
30 prepares, packages, vends, offers for sale or otherwise provides

1 food for human consumption and which relinquishes possession of
2 food to a consumer directly, or indirectly, through a delivery
3 service such as home delivery of grocery orders or delivery
4 service provided by common carriers. The term does not include
5 dining cars operated by a railroad company in interstate
6 commerce or a bed and breakfast homestead or inn.

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

9 § 5703. License required.

10 (a) Unlawful conduct.--It EXCEPT AS PROVIDED IN SUBSECTION <—
11 (B), IT shall be unlawful for any proprietor to conduct or
12 operate a retail food facility without first obtaining a license
13 for each retail food facility as provided in this subchapter.

14 (b) Farmers' markets. A building, structure or place owned, <—
15 leased or otherwise in possession of a person or municipal
16 corporation or public or private organization, used as a
17 farmers' market by two or more farmers or an association of
18 farmers for the purpose of selling agricultural commodities
19 directly to consumers shall be deemed to be a single retail food
20 facility. A public eating or drinking place within a farmers'
21 market shall be considered to be a retail food facility that is
22 separate and distinct from the farmers' market.

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

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

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

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

3 ~~(4) A school cafeteria.~~

4 ~~(5) A retail food facility that is owned by a charitable~~
5 ~~nonprofit entity and that is one or more of the following:~~

6 ~~(i) Managed by an organization which is established~~
7 ~~to promote and encourage participation or support for~~
8 ~~extracurricular recreational activities for youth of~~
9 ~~primary and secondary public, private and parochial~~
10 ~~school systems on a not for profit basis.~~

11 ~~(ii) Offers only foods that are nonpotentially~~
12 ~~hazardous foods or beverages.~~

13 ~~(6) A retail food facility in which food or beverages~~
14 ~~are sold only through a vending machine.~~

15 ~~(7) A retail food facility in which only prepackaged,~~
16 ~~nonpotentially hazardous food or beverages are sold.~~

17 ~~(8) A retail food facility that sells only raw~~
18 ~~agricultural commodities.~~

19 (B) EXEMPT RETAIL FOOD FACILITIES.-- ←

20 (1) A LICENSOR MAY EXEMPT THE FOLLOWING RETAIL FOOD
21 FACILITIES FROM THE LICENSE REQUIREMENTS OF THIS SECTION:

22 (I) A FOOD BANK OWNED BY A CHARITABLE NONPROFIT
23 ENTITY AND OPERATED FOR CHARITABLE OR RELIGIOUS PURPOSES.

24 (II) A SOUP KITCHEN OWNED BY A CHARITABLE NONPROFIT
25 ENTITY AND OPERATED FOR CHARITABLE OR RELIGIOUS PURPOSES.

26 (III) A RETAIL FOOD FACILITY THAT OPERATES ON NO
27 MORE THAN THREE DAYS EACH CALENDAR YEAR.

28 (IV) A SCHOOL CAFETERIA.

29 (V) A RETAIL FOOD FACILITY THAT IS OWNED BY A
30 CHARITABLE NONPROFIT ENTITY AND THAT IS ONE OR MORE OF

1 THE FOLLOWING:

2 (A) MANAGED BY AN ORGANIZATION WHICH IS
3 ESTABLISHED TO PROMOTE AND ENCOURAGE PARTICIPATION OR
4 SUPPORT FOR EXTRACURRICULAR RECREATIONAL ACTIVITIES
5 FOR YOUTH OF PRIMARY AND SECONDARY PUBLIC, PRIVATE
6 AND PAROCHIAL SCHOOL SYSTEMS ON A NOT-FOR-PROFIT
7 BASIS. THIS SUBPARAGRAPH DOES NOT APPLY TO ORGANIZED
8 CAMPS.

9 (B) OFFERS ONLY FOODS THAT ARE NONPOTENTIALLY
10 HAZARDOUS FOODS OR BEVERAGES.

11 (VI) A RETAIL FOOD FACILITY IN WHICH FOOD OR
12 BEVERAGES ARE SOLD ONLY THROUGH A VENDING MACHINE.
13 IF THE LICENSOR IS THE DEPARTMENT, THE EXEMPTION SHALL BE
14 ACCOMPLISHED BY ORDER OF THE SECRETARY AND PUBLISHED IN THE
15 PENNSYLVANIA BULLETIN. IF THE LICENSOR IS AN ENTITY OTHER
16 THAN THE DEPARTMENT, THE EXEMPTION SHALL BE ACCOMPLISHED BY
17 ORDER OF THE LOCAL GOVERNMENT UNIT OR UNITS HAVING
18 JURISDICTION OVER THE LICENSOR. A RETAIL FOOD FACILITY THAT
19 IS EXEMPTED FROM THE LICENSE REQUIREMENTS UNDER THIS SECTION
20 SHALL REMAIN SUBJECT TO INSPECTION AND ALL OTHER PROVISIONS
21 OF THIS SUBCHAPTER.

22 (2) A LICENSOR SHALL EXEMPT THE FOLLOWING RETAIL FOOD
23 FACILITIES FROM THE LICENSE REQUIREMENTS OF THIS SECTION:

24 (I) A RETAIL FOOD FACILITY IN WHICH ONLY
25 PREPACKAGED, NONPOTENTIALLY HAZARDOUS FOOD OR BEVERAGES
26 ARE SOLD.

27 (II) A RETAIL FOOD FACILITY THAT SELLS ONLY RAW
28 AGRICULTURAL COMMODITIES.

29 A RETAIL FOOD FACILITY THAT IS EXEMPTED FROM THE LICENSE
30 REQUIREMENTS UNDER THIS SECTION SHALL REMAIN SUBJECT TO

1 INSPECTION AND ALL OTHER PROVISIONS OF THIS SUBCHAPTER.

2 ~~(d) (C) Issuance of license.--A retail food facility license~~ <—
3 ~~shall be issued by the health authorities of cities, boroughs,~~ <—
4 ~~incorporated towns and first class townships, and, if electing~~
5 ~~to issue licenses under this subchapter, second class townships~~
6 ~~and second class townships which have adopted a home rule~~
7 ~~charter, whenever a retail food facility is located in a city,~~
8 ~~borough, incorporated town or township not under the~~
9 ~~jurisdiction of a county department of health or joint county~~
10 ~~department of health, or by the county department of health or~~
11 ~~joint county department of health whenever a retail food~~
12 ~~facility is located in a political subdivision which is under~~
13 ~~the jurisdiction of a county department of health or joint~~
14 ~~county department of health, or in those townships of the second~~
15 ~~class which are not under the jurisdiction of a county~~
16 ~~department of health or joint county department of health and~~
17 ~~which do not elect to issue licenses under this subchapter, by~~
18 ~~the department.~~ LICENSOR HAVING JURISDICTION. A LICENSE SHALL <—

19 SPECIFY THE DATE OF EXPIRATION, THE PERIOD FOR WHICH THE LICENSE
20 IS VALID, THE NAME OF THE LICENSEE AND THE PLACE LICENSED.
21 LICENSES SHALL BE CONSPICUOUSLY DISPLAYED AT ALL TIMES IN THE
22 PLACE THEREBY LICENSED. LICENSES SHALL NOT BE TRANSFERABLE.

23 (D) APPLICATION REQUIREMENT.--ANY PERSON OWNING OR OPERATING
24 OR DESIRING TO OPERATE A RETAIL FOOD FACILITY WITHIN THIS
25 COMMONWEALTH SHALL MAKE APPLICATION FOR A LICENSE TO THE
26 LICENSOR ON FORMS FURNISHED BY THE LICENSOR. THE FORMS SHALL, AT
27 A MINIMUM, SET FORTH SUCH INFORMATION AS THE DEPARTMENT MAY
28 REQUIRE AND ANY ADDITIONAL INFORMATION A LICENSOR THAT IS NOT
29 THE DEPARTMENT MAY REQUIRE UNDER THE AUTHORITY OF THE ACT OF
30 AUGUST 24, 1951 (P.L.1304, NO.315), KNOWN AS THE LOCAL HEALTH

1 ADMINISTRATION LAW. APPLICATION FORMS SHALL INCLUDE THE NAME AND
2 ADDRESS OF THE APPLICANT, TOGETHER WITH ALL THE OTHER
3 INFORMATION DEEMED NECESSARY TO IDENTIFY THE APPLICANT, PROVIDE
4 CONTACT INFORMATION FOR THE APPLICANT, IDENTIFY THE LOCATION OF
5 THE RETAIL FOOD FACILITY THAT IS THE SUBJECT TO THE APPLICATION
6 AND FACILITATE THE LICENSOR'S PROCESSING OF THE APPLICATION.

7 (e) Inspection.--No license shall be issued until inspection
8 of the retail food facility has been made by the licensor and
9 the retail food facility meets the requirements of this
10 subchapter and the rules and regulations of the department. <—
11 In the case of license renewals, inspections shall be in accordance
12 with section 5705 (relating to term of license). <—
13 OR THE RULES AND REGULATIONS ADOPTED UNDER THE AUTHORITY OF THE ACT OF AUGUST
14 24, 1951 (P.L.1304, NO.315), KNOWN AS THE LOCAL HEALTH
15 ADMINISTRATION LAW. RULES AND REGULATIONS ADOPTED BY A LICENSOR
16 WHO IS NOT THE DEPARTMENT SHALL, AT THE MINIMUM, MEET THE
17 REQUIREMENTS OF THIS SUBCHAPTER AND THE RULES AND REGULATIONS OF
18 THE DEPARTMENT.

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

27 (G) TERM OF LICENSE.-- <—

28 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2), LICENSES SHALL
29 EXPIRE ON THE DAY AFTER THE ORIGINAL LICENSE ANNIVERSARY DATE
30 AT INTERVALS OF ONE YEAR, OR FOR ANY OTHER LICENSE PERIOD

1 THAT IS ESTABLISHED BY THE DEPARTMENT THROUGH REGULATION AND
2 THAT USES RISK-BASED FACTORS IDENTIFIED IN THE CURRENT
3 EDITION OF THE FOOD CODE, PUBLISHED BY THE UNITED STATES
4 DEPARTMENT OF HEALTH, FOOD AND DRUG ADMINISTRATION, AS A
5 BASIS FOR DETERMINING THE APPROPRIATE LICENSE INTERVAL. AN
6 APPLICATION FOR RENEWAL SHALL BE MADE ONE MONTH BEFORE THE
7 EXPIRATION OF AN EXISTING LICENSE. A LICENSE GRANTED UNDER
8 THE PROVISIONS OF THIS SUBCHAPTER SHALL BE RENEWED IF THE
9 MOST RECENT INSPECTION BY THE LICENSOR WAS CONDUCTED WITHIN
10 THE PRECEDING LICENSE PERIOD AND DETERMINED THAT REQUIREMENTS
11 SPECIFIED IN THIS CHAPTER WITH RESPECT TO THE RETAIL FOOD
12 FACILITY WERE MET.

13 (2) A TEMPORARY LICENSE FOR A RETAIL FOOD FACILITY THAT
14 OPERATES ON NO MORE THAN 14 DAYS IN ONE CALENDAR YEAR OR FOR
15 A RETAIL FOOD FACILITY OPERATING AT A FAIR, FESTIVAL OR
16 SIMILAR TEMPORARY EVENT SHALL BE GRANTED WITH RESPECT TO THE
17 CALENDAR YEAR IN WHICH IT IS ISSUED IF THE RETAIL FOOD
18 FACILITY MEETS THE REQUIREMENTS OF THIS SUBCHAPTER.

19 ~~(g)~~ (H) Sales and use tax license.--No license shall be <—
20 issued until the proprietor exhibits proof that the proprietor
21 has applied for or received a sales and use tax license or
22 exemption certificate from the Department of Revenue.

23 (I) DENIAL OR REVOCATION OF LICENSE.-- <—

24 (1) A LICENSOR SHALL STATE IN WRITING TO THE PROPRIETOR
25 THE REASON FOR THE REFUSAL TO ISSUE A LICENSE.

26 (2) (I) IF A RETAIL FOOD FACILITY LICENSED BY THE
27 DEPARTMENT IS IN VIOLATION OF A PROVISION OF THIS
28 SUBCHAPTER, OR OF A REGULATION PROMULGATED UNDER
29 AUTHORITY OF THIS SUBCHAPTER, OR OF ANY OTHER ACT RELATED
30 TO PUBLIC HEALTH AND BEING APPLICABLE TO RETAIL FOOD

1 FACILITIES, THE DEPARTMENT MAY SUSPEND OR REVOKE THE
2 LICENSE. IF A RETAIL FOOD FACILITY LICENSED BY AN ENTITY
3 OTHER THAN THE DEPARTMENT IS IN VIOLATION OF A PROVISION
4 OF THIS SUBCHAPTER, OR OF A REGULATION PROMULGATED UNDER
5 AUTHORITY OF THIS SUBCHAPTER, OR OF ANY OTHER ACT RELATED
6 TO PUBLIC HEALTH AND BEING APPLICABLE TO RETAIL FOOD
7 FACILITIES, OR OF THE REGULATIONS OF THE LICENSOR
8 PERTAINING TO RETAIL FOOD FACILITIES, THE LICENSOR MAY
9 SUSPEND OR REVOKE THE LICENSE. THE SUSPENSION OF A
10 LICENSE SHALL BE TERMINATED WHEN THE VIOLATION FOR WHICH
11 IT WAS IMPOSED HAS BEEN FOUND, UPON INSPECTION BY THE
12 LICENSOR, TO HAVE BEEN CORRECTED. WHENEVER A LICENSE IS
13 SUSPENDED OR REVOKED, NO PART OF THE FEE PAID THEREFORE
14 SHALL BE RETURNED TO THE PROPRIETOR.

15 (II) A LICENSOR MAY, AS AN ALTERNATIVE TO SUSPENDING
16 OR REVOKING A LICENSE, PROVIDE A LICENSEE A REASONABLE
17 INTERVAL WITHIN WHICH TO CORRECT CONDITIONS THAT
18 CONSTITUTE A VIOLATION THAT WOULD RESULT IN THE
19 SUSPENSION OR REVOCATION OF THE LICENSE, PROVIDED THAT
20 THE HEALTH AND SAFETY OF THE EMPLOYEES, OCCUPANTS AND
21 PATRONS OF THE RETAIL FOOD FACILITY CAN BE REASONABLY
22 ASSURED DURING THAT INTERVAL.

23 ~~(h) Fees.~~ <—

24 ~~(1) The fees that may be charged under this subchapter~~

25 (J) FEES.--THE FEES THAT MAY BE CHARGED UNDER THIS <—

26 SUBCHAPTER are as follows for the department or as established <—

27 by ordinance of the governing body THE LICENSOR, IF THE LICENSOR <—

28 IS AN ENTITY OTHER THAN THE DEPARTMENT, and shall be paid into

29 the city, borough, incorporated town, township or county

30 treasury., or to the State Treasury through the department, <—

1 ~~depending upon the location of the retail food facility:~~ IF THE <—
2 LICENSOR IS THE DEPARTMENT, THE FEES SHALL BE PAID TO THE STATE
3 TREASURY THROUGH THE DEPARTMENT AND ARE AS FOLLOWS:

4 ~~(i) For licensure of a retail food facility that has~~ <—

5 (1) FOR LICENSURE OF A RETAIL FOOD FACILITY THAT HAS not <—
6 been previously licensed, and that is owner operated, and
7 that has a seating capacity of less than 50: \$103.

8 ~~(ii) For licensure of a retail food facility that~~ <—

9 (2) FOR LICENSURE OF A RETAIL FOOD FACILITY THAT has not <—
10 been previously licensed and that is not described in
11 subparagraph (i) PARAGRAPH (1): \$241. <—

12 ~~(iii) For a renewal of a license, or for issuing a~~ <—

13 (3) FOR A RENEWAL OF A LICENSE, OR FOR ISSUING A license <—
14 to reflect a change of ownership: \$82.

15 ~~(iv) For a duplicate license, for each retail food~~ <—

16 (4) 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 (5) FOR A TEMPORARY LICENSE UNDER SUBSECTION (G)(2): <—
25 \$14.

26 ~~(vi) For conducting a follow up inspection to review~~ <—

27 (6) FOR CONDUCTING A FOLLOW-UP INSPECTION TO REVIEW <—
28 whether changes have been made to correct violations which
29 resulted in noncompliant status determined by a prior
30 inspection:

1 ~~(A) For the second such follow up inspection~~ <—

2 (I) FOR THE FIRST FOLLOW-UP INSPECTION during the <—
3 licensure period: \$150.

4 ~~(B) For a third or subsequent follow up~~ <—

5 (II) FOR A SECOND OR SUBSEQUENT FOLLOW-UP inspection <—
6 during the licensure period: \$300.

7 ~~(vii) For conducting an inspection that is not~~ <—

8 (7) FOR CONDUCTING AN INSPECTION THAT IS NOT otherwise <—
9 required by the department, but that is conducted at the
10 behest of the proprietor of the retail food facility: \$150.

11 ~~(viii) For any license described in paragraphs (i)~~ <—
12 through (v)

13 (8) FOR ANY LICENSE DESCRIBED IN PARAGRAPH (1), (2), <—
14 (3), (4) OR (5) that is issued for a period of greater than
15 one year by regulation of the department in accordance with
16 ~~section 5705(a) SUBSECTION (G), the license fee otherwise~~ <—
17 prescribed under those paragraphs shall be prorated for the
18 license period.

19 ~~(2) All funds collected by the department under this~~ <—
20 subsection shall be deposited in the fund.

21 ~~(i) Renewal. The license shall be renewed in accordance~~
22 with section 5705.

23 ~~(j) (K) Multiple retail food facilities.--Whenever any~~ <—
24 proprietor maintains more than one retail food facility within
25 this Commonwealth, the proprietor shall be required to apply for
26 and procure a license for each retail food facility.

27 ~~§ 5704. Application for license.~~ <—

28 ~~Any person owning or operating or desiring to operate a~~
29 retail food facility within this Commonwealth shall make
30 application for license to the licensor on forms furnished by

1 ~~the licensor. The forms shall be uniform throughout this~~
2 ~~Commonwealth and shall set forth such information as the~~
3 ~~department may require, including the name and address of the~~
4 ~~applicant, together with all the other information deemed~~
5 ~~necessary to identify the applicant, provide contact information~~
6 ~~for the applicant, identify the location of the retail food~~
7 ~~facility that is the subject of the application and facilitate~~
8 ~~the licensor's processing of the application. Before granting~~
9 ~~any license, the licensor shall visit and inspect the retail~~
10 ~~food facility and may refuse to issue a license if the retail~~
11 ~~food facility does not meet the requirements of this subchapter~~
12 ~~or the rules and regulations of the department. The licensor~~
13 ~~shall state in writing to the proprietor the reason for the~~
14 ~~refusal.~~

15 ~~§ 5705. Term of license.~~

16 ~~(a) General rule. Except as provided in subsection (b),~~
17 ~~licenses shall be granted for a period of one year from date of~~
18 ~~issue, or for any other license period that is established by~~
19 ~~the department through regulation and that uses risk based~~
20 ~~factors identified in the current edition of the Model Retail~~
21 ~~Food Code, published by the Food and Drug Administration, as a~~
22 ~~basis for determining the appropriate license interval.~~

23 ~~Application for renewal shall be made one month before~~
24 ~~expiration of an existing license. A license granted under the~~
25 ~~provisions of this subchapter shall be renewed if the most~~
26 ~~recent inspection by the licensor was conducted within the~~
27 ~~preceding license period and determined that conditions~~
28 ~~specified in section 5704 (relating to application for license)~~
29 ~~with respect to the retail food facility are fulfilled.~~

30 ~~(b) Temporary license. A temporary license for a retail~~

~~1 food facility that operates on no less than four and no more
2 than 14 days in one calendar year or for a retail food facility
3 operating at a fair, festival or similar temporary event shall
4 be granted with respect to the calendar year in which it is
5 issued.~~

~~6 § 5706. Contents of license.~~

~~7 Licenses shall specify the date of issuance, the period which
8 is covered, the name of the licensee and the place licensed.~~

~~9 Licenses shall be conspicuously displayed at all times in the
10 place thereby licensed. Licenses shall not be transferable.~~

11 § 5704. INSPECTION, SAMPLING AND ANALYSIS. <—

12 (A) INSPECTION.--FOR PURPOSES OF ENFORCEMENT OF THIS
13 SUBCHAPTER, A LICENSOR IS AUTHORIZED, UPON PRESENTING
14 APPROPRIATE CREDENTIALS TO THE PERSON IN CHARGE:

15 (1) TO ENTER AT REASONABLE TIMES ANY RETAIL FOOD
16 FACILITY.

17 (2) TO INSPECT AT REASONABLE TIMES, WITHIN REASONABLE
18 LIMITS AND IN A REASONABLE MANNER THE RETAIL FOOD FACILITY.

19 (3) TO OBTAIN A SAMPLE OF ANY FOOD AT A RETAIL FOOD
20 FACILITY FOR ANALYSIS AS MAY BE NECESSARY TO DETERMINE
21 COMPLIANCE WITH THIS SUBCHAPTER IF THE LICENSOR, UPON
22 COMPLETION OF THE INSPECTION AND PRIOR TO LEAVING THE
23 FACILITY, PROVIDES THE PERSON IN CHARGE A RECEIPT DESCRIBING
24 THE SAMPLE OBTAINED.

25 (B) BILLING.--A RETAIL FOOD FACILITY FROM WHICH A SAMPLE WAS
26 COLLECTED MAY BILL THE LICENSOR FOR THE FAIR MARKET VALUE OF THE
27 SAMPLE.

28 (C) REPORT.--UPON COMPLETION OF AN INSPECTION OF A RETAIL
29 FOOD FACILITY AND PRIOR TO LEAVING THE PREMISES, A LICENSOR
30 SHALL GIVE TO THE PERSON IN CHARGE A WRITTEN REPORT OF THE

1 FINDINGS OF THE INSPECTION. RESULTS FROM THE ANALYSIS OF ANY
2 SAMPLES TAKEN SHALL BE PROVIDED TO THE PERSON IN CHARGE WITHIN
3 30 DAYS OF RECEIPT.

4 § 5705. (RESERVED).

5 § 5706. (RESERVED).

6 § 5707. Powers of department.

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

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

1 ~~terminated when the violation for which it was imposed has been~~
2 ~~found, upon inspection, to have been corrected. Whenever a~~
3 ~~license is suspended or revoked, no part of the fee paid~~
4 ~~therefore shall be returned to the holder.~~

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

9 ~~(d) (B) FOOD SERVICE AT SCHOOLS AND ORGANIZED CAMPS.--~~ ←

10 (1) THE DEPARTMENT SHALL PROVIDE FOR THE INSPECTION OF A
11 FOOD SERVICE AT A SCHOOL AND FOR THE TRAINING OF SCHOOL FOOD
12 SERVICE PERSONNEL IN ACCORDANCE WITH THE STANDARDS APPLIED TO
13 RETAIL FOOD FACILITIES FOR SCHOOLS LOCATED IN AREAS IN WHICH
14 THE DEPARTMENT IS THE LICENSOR. UPON REQUEST, THE DEPARTMENT
15 SHALL PROVIDE TRAINING TO SCHOOL FOOD SERVICE PERSONNEL OR
16 INSPECTIONS OF A FOOD SERVICE AT A SCHOOL LOCATED IN AREAS IN
17 WHICH THE DEPARTMENT IS NOT THE LICENSOR.

18 (2) THE DEPARTMENT SHALL PROVIDE FOR THE INSPECTION OF A
19 FOOD SERVICE AT ORGANIZED CAMPS AND FOR THE TRAINING OF FOOD
20 SERVICE PERSONNEL AT ORGANIZED CAMPS IN ACCORDANCE WITH THE
21 STANDARDS APPLIED TO RETAIL FOOD FACILITIES FOR ORGANIZED
22 CAMPS LOCATED IN AREAS IN WHICH THE DEPARTMENT IS THE
23 LICENSOR. UPON REQUEST, THE DEPARTMENT SHALL PROVIDE TRAINING
24 TO ORGANIZED CAMP FOOD SERVICE PERSONNEL OR INSPECTIONS OF A
25 FOOD SERVICE AT ORGANIZED CAMPS LOCATED IN AREAS IN WHICH THE
26 DEPARTMENT IS NOT THE LICENSOR.

27 (C) Inspection.--If a licensor is required to provide the
28 department a copy of an inspection report pursuant to section
29 5703(f) (relating to license required) and fails to comply with
30 that requirement, the department may inspect and license the

1 subject retail food facility, and the licensor that failed to
2 comply with the inspection requirement shall not charge or
3 collect any fee for licensing the subject retail food facility.
4 If the department conducts an inspection, it shall promptly, ←
5 WITHIN 30 DAYS, provide the licensor a copy of the inspection
6 report.

7 (D) INTERAGENCY COORDINATION.--THE DEPARTMENT SHALL PROVIDE ←
8 INSPECTION REPORTS OR TEST RESULTS THAT INDICATE HUMAN ILLNESS
9 RELATED TO FOOD CONSUMPTION OR FOOD HANDLING PRACTICES, OR TO
10 OTHER THREATS TO THE SAFETY OF THE FOOD SUPPLY, TO THE
11 DEPARTMENT OF HEALTH, THE DEPARTMENT OF ENVIRONMENTAL PROTECTION
12 OR ANY OTHER COMMONWEALTH AGENCY AS NECESSARY TO DEVELOP A
13 COMPREHENSIVE, COORDINATED INTERAGENCY APPROACH TO PROTECTING
14 PUBLIC HEALTH AND SAFEGUARDING THE FOOD SUPPLY.

15 § 5708. Infectious persons.

16 No proprietor shall allow any food employee to be in a retail
17 food facility if that person has an infectious or communicable
18 disease, as prohibited under the act of April 23, 1956 (1955
19 P.L.1510, No.500), known as the Disease Prevention and Control
20 Law of 1955, and its attendant regulations related to
21 restrictions on food handlers. The IN CONSULTATION WITH THE ←
22 DEPARTMENT OF HEALTH, THE department may promulgate regulations
23 with respect to specific illnesses as related to operations in a
24 retail food facility as it deems necessary for the protection of
25 public health.

26 § 5709. Linens, equipment and utensils.

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

1 § 5710. 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 ~~If a proprietor, after investigation made by the licensor,~~
22 ~~has failed or refused after a reasonable interval to correct~~
23 ~~conditions found to constitute a violation of this subchapter,~~
24 ~~or of the regulations of the department pertaining to retail~~
25 ~~food facilities, the license shall be revoked.~~

26 § 5712. (RESERVED).

27 § 5713. School cafeterias and organized camps.

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

1 training programs made available by the department IN AREAS <—
2 WHERE THE DEPARTMENT IS THE LICENSOR. UPON REQUEST, THE
3 DEPARTMENT SHALL PROVIDE TRAINING TO SCHOOL OR ORGANIZED CAMP
4 FOOD SERVICE PERSONNEL OR INSPECTIONS OF A FOOD SERVICE AT A
5 SCHOOL OR ORGANIZED CAMP LOCATED IN AREAS IN WHICH THE
6 DEPARTMENT IS NOT THE LICENSOR.

7 § 5714. Penalties.

8 ~~(a) Criminal penalty. A person who violates any provision~~ <—
9 ~~RETAIL FOOD FACILITIES UNDER JURISDICTION OF DEPARTMENT.--FOR~~ <—
10 ~~RETAIL FOOD FACILITIES UNDER THE JURISDICTION OF THE DEPARTMENT,~~
11 PENALTIES ARE AS FOLLOWS:

12 (1) A PERSON WHO VIOLATES ANY PROVISION of this
13 subchapter or any rule, regulation, standard or order made
14 under this subchapter commits a summary offense for the first
15 or second offense and shall be subject to a fine not less
16 than \$100 but not more than \$300. A person who violates any
17 provision of this subchapter or any rule, regulation,
18 standard or order made under this subchapter commits a
19 misdemeanor of the third degree if the violation is a third
20 or subsequent offense and if the violation occurs within two
21 years of the date of the last previous offense.

22 ~~(b) Civil penalty. In addition to proceeding under any~~ <—

23 (2) IN ADDITION TO PROCEEDING UNDER ANY other remedy <—
24 available at law or in equity for a violation of this
25 subchapter or a rule or regulation adopted or any order
26 issued under this subchapter, the secretary may assess a
27 civil penalty not to exceed \$10,000 upon an individual or
28 business for each offense. No civil penalty shall be assessed
29 unless the person charged has been given notice and
30 opportunity for a hearing in accordance with law. In

1 determining the amount of the penalty, the secretary shall
2 consider the gravity of the violation. Whenever the secretary
3 finds a violation which did not cause harm to human health,
4 the secretary may issue a warning in lieu of assessing a
5 penalty. In case of inability to collect the civil penalty or
6 failure of any person to pay all or any portion of the
7 penalty as the secretary may determine, the secretary may
8 refer the matter to the Attorney General, who shall recover
9 the amount by action in the appropriate court.

10 (B) RETAIL FOOD FACILITIES UNDER OTHER JURISDICTION.-- <—

11 PENALTIES SHALL BE ESTABLISHED BY THE LICENSOR FOR RETAIL FOOD
12 FACILITIES UNDER THE JURISDICTION OF A LICENSOR THAT IS NOT THE
13 DEPARTMENT.

14 § 5715. ~~Retail Food Facility Safety Fund.~~ <—

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

24 § 5715. (RESERVED). <—

25 § 5716. ACTS NOT AFFECTED.

26 NOTHING IN THIS SUBCHAPTER SHALL BE CONSTRUED TO ABROGATE OR
27 SUPERSEDE ANY PROVISION OR REGULATION ADOPTED UNDER THE ACT OF
28 AUGUST 24, 1951 (P.L.1304, NO.315), KNOWN AS THE LOCAL HEALTH
29 ADMINISTRATION LAW, WITH REGARD TO LICENSURE, REGULATION AND
30 INSPECTION OF A RETAIL FOOD FACILITY, AS DEFINED IN SECTION 5702

1 (RELATING TO DEFINITIONS).

2 SUBCHAPTER B

3 FOOD SAFETY

4 Sec.

5 5721. Short title of subchapter.

6 5722. Definitions.

7 5723. Prohibited acts.

8 5724. Temporary or permanent injunctions.

9 5725. Penalties.

10 5726. Detention and condemnation.

11 5727. Temporary permits.

12 5728. Adulteration of food.

13 5729. Misbranding of food.

14 5730. Regulations to exempt certain labeling requirements.

15 5731. Poisonous or deleterious substances and tolerances.

16 5732. Inspection, sampling and analysis.

17 5733. Rules and regulations.

18 5734. Registration of food establishments.

19 5735. Product registration.

20 5736. Construction of subchapter.

21 5737. Acts not affected.

22 § 5721. Short title of subchapter.

23 This subchapter shall be known and may be cited as the Food
24 Safety Act.

25 § 5722. Definitions.

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

29 "Color additive." A material which is a dye, pigment or
30 other substance made by a process of synthesis or similar

<—

1 artifice or extracted, isolated or otherwise derived, with or
2 without intermediate or final change of identity, from a
3 vegetable, animal, mineral or other source and when added or
4 applied to a food is capable, ~~along~~ ALONE or through reaction
5 with other substances, of imparting color thereto. The term
6 includes black, white and intermediate grays. The term does not
7 include:

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

11 (2) Any pesticide chemical, soil or plant nutrient or
12 other agricultural chemical solely because of its effect in
13 aiding, retarding or otherwise affecting, directly or
14 indirectly, the growth or other natural physiological process
15 of produce of the soil and thereby affecting its color,
16 whether before or after harvest.

17 "Federal acts." The Wholesome Meat Act (Public Law 90-201,
18 21 U.S.C. § 601 et seq.), the Federal Food, Drug, and Cosmetic
19 Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.), the Poultry
20 Products Inspection Act (Public Law 85-172, 21 U.S.C. § 451 et
21 seq.), the Fair Packaging and Labeling Act (Public Law 89-755,
22 15 U.S.C. § 1451 et seq.), the Federal Insecticide, Fungicide,
23 and Rodenticide Act (61 Stat. 163, 7 U.S.C. § 136 et seq.) and
24 the Nutritional Labeling and Education Act of 1990 (Public Law
25 101-535, 104 Stat. 2353).

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

29 "Food additive." A substance, the intended use of which
30 results or may reasonably be expected to result, directly or

1 indirectly, in its becoming a component or otherwise affecting
2 the characteristics of any food if the substance is not
3 generally recognized among experts qualified by scientific
4 training and expertise to evaluate its safety, as having been
5 adequately shown through scientific procedures or, in the case
6 of a substance used in food prior to January 1, 1958, through
7 either scientific procedures or experience based on common use
8 in food to be safe under the conditions of its intended use. The
9 term does not include the following:

10 (1) A pesticide chemical in or on a raw agricultural
11 commodity.

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

15 (3) A color additive.

16 (4) Any substance used in accordance with a sanction or
17 approval granted prior to the enactment of this paragraph
18 pursuant to a statute repealed by this act, pursuant to the
19 Poultry Products Inspection Act (Public Law 85-172, 21 U.S.C.
20 § 451 et seq.) or pursuant to the Wholesome Meat Inspection
21 Act (Public Law 90-201, 21 U.S.C. § 601 et seq.).

22 (5) A new animal drug.

23 As used in this definition, the term "substance" includes any
24 substance intended for use in producing, manufacturing,
25 packaging, processing, preparing, treating, transporting or
26 holding food and any source of radiation intended for any use.

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

1 otherwise preparing, transporting or handling food. The term
2 excludes retail food facilities, retail food establishments,
3 public eating and drinking places and those portions of
4 establishments operating exclusively under milk or milk products
5 permits.

6 "Imitation food." A food that is a substitute for and
7 resembles another food but is nutritionally inferior to that
8 food.

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

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

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

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

20 (2) Shipping containers or wrappings used by retailers
21 to ship or deliver food to retail customers, if the
22 containers or wrappings bear no printed matter pertaining to
23 food.

24 (3) Containers used for tray pack displays in retail
25 establishments.

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

29 "Pesticide chemical." A substance used in the production,
30 storage or transportation of raw agricultural commodities which,

1 alone or in chemical combination or formulation with one or more
2 other substances, is a pesticide within the meaning of the act
3 of March 1, 1974 (P.L.90, No.24), known as the Pennsylvania
4 Pesticide Control Act of 1973.

5 "POTENTIALLY HAZARDOUS FOOD." AS DEFINED IN THE 2005 FOOD ←
6 CODE PUBLISHED BY THE UNITED STATES DEPARTMENT OF HEALTH, FOOD
7 AND DRUG ADMINISTRATION, OR ITS SUCCESSOR DOCUMENT.

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

13 "Public eating and drinking place." As defined in section
14 5702 (relating to definitions).

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

19 "Retail food establishment." As defined in section 5702
20 (relating to definitions).

21 "Retail food facility." As defined in section 5702 (relating
22 to definitions).

23 "Secretary." Includes an authorized representative, employee
24 or agent of the Department of Agriculture.

25 § 5723. Prohibited acts.

26 The following acts are prohibited:

27 (1) Manufacture, sale, delivery, consignment, bailment,
28 holding or offering for sale of any food that is adulterated
29 or misbranded, except where a person in good faith delivers
30 or offers to deliver the food and furnishes shipping

1 documents to the secretary.

2 (2) Adulteration or misbranding of any food.

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

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

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

15 (6) Removal or disposal of a detained or embargoed food
16 article in violation of section 5726 (relating to detention
17 and condemnation).

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

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

27 (9) Use by any person to his own advantage or revealing,
28 other than to the secretary or the courts when relevant in
29 any judicial proceeding under this subchapter, of any
30 information acquired under authority of this subchapter

1 concerning any method or process which, as a trade secret or
2 confidential trade information, is entitled to protection.

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

8 (11) Failure to register with the department under the
9 provisions of section 5734 (relating to registration of food
10 establishments).

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

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

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

23 § 5724. Temporary or permanent injunctions.

24 In addition to any other remedies provided in this
25 subchapter, the secretary may apply to the Commonwealth Court or
26 to any other court having jurisdiction for a temporary or
27 permanent injunction restraining a person from violating this
28 subchapter or any regulation adopted under this subchapter.

29 § 5725. Penalties.

30 (a) Criminal penalties.--A person who violates any provision

1 of this subchapter or any rule, regulation, standard or order
2 made under this subchapter commits a summary offense for the
3 first or second offense. A person who violates this subchapter
4 or any rule, regulation, standard or order made under this
5 subchapter commits a misdemeanor of the third degree if the
6 violation is a third or subsequent offense and if the violation
7 occurs within two years of the date of the last previous
8 offense.

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

25 (c) Guaranty.--

26 (1) No prosecution shall be sustained under the
27 provisions of this subchapter for the manufacture, delivery,
28 consignment, bailment, holding or sale of or offering for
29 sale, exposing for sale or having in possession with intent
30 to sell any adulterated or misbranded article against a

1 person from whom the article of food, sample or portion was
2 obtained by the department if the person can establish a
3 guaranty to the effect that the article of food is not
4 adulterated or misbranded within the meaning of this
5 subchapter, was adulterated or misbranded prior to coming
6 into the possession of the person and the person did not know
7 or have reason to know of the adulteration or misbranding or
8 was adulterated or misbranded after it left the possession
9 and control of the person. The guaranty must be signed by the
10 supplier, manufacturer, wholesale dealer, jobber or
11 distributor from whom the articles of food were purchased or
12 procured.

13 (2) The guaranty to afford protection shall contain the
14 name and address of the supplier, manufacturer, wholesale
15 dealer, jobber or distributor making the sale of the article
16 of food to the person holding the guaranty. A supplier,
17 manufacturer, wholesale dealer, jobber or distributor giving
18 a guaranty under the provisions of this subchapter may be
19 held responsible and may be proceeded against for the
20 adulteration or misbranding of any article of food sold under
21 the guaranty and shall be subject to the penalties provided
22 for violation of this subchapter. A guaranty shall not
23 operate as a defense to prosecution for a violation of the
24 provisions of this subchapter if the person holding the
25 guaranty continues to sell the same food after written or
26 printed notice from the secretary that the article is
27 adulterated or misbranded within the meaning of this
28 subchapter. However, if the person violated the provisions of
29 this subchapter by having stored, transported, exposed or
30 kept the article in a way or manner to render it diseased,

1 contaminated or unwholesome, the person may be proceeded
2 against for a violation.

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

9 (E) FOOD ESTABLISHMENTS SUBJECT TO LOCAL INSPECTIONS.-- ←
10 PENALTIES SHALL BE ESTABLISHED BY THE COUNTY, BOROUGH,
11 INCORPORATED TOWN OR TOWNSHIP FOR FOOD ESTABLISHMENTS THAT ARE
12 SUBJECT TO LOCAL INSPECTION UNDER SECTION 5733(B) (RELATING TO
13 RULES AND REGULATIONS).

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

17 A food shall be deemed adulterated:

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

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

30 (3) If it is a raw agricultural commodity and bears or

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

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

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

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

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

29 (8) If its container is composed, in whole or in part,
30 of any poisonous or deleterious substance which may render

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

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

9 (10) If:

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

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

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

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

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

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

28 § 5729. Misbranding of food.

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

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

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

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

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

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

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

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

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

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

26 (7) Unless its label bears the following:

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

28 (ii) If made from two or more ingredients, the
29 common or usual name of each ingredient is listed in
30 descending order of predominance by weight, except that

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

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

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

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

29 (11) If it is a color additive, unless its packaging and
30 labeling are in conformity with the packaging and labeling

1 requirements applicable to color additives in department
2 regulations.

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

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

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

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

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

23 § 5730. Regulations to exempt certain labeling requirements.

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

1 § 5731. Poisonous or deleterious substances and tolerances.

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

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

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

27 § 5732. Inspection, sampling and analysis.

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

1 charge:

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

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

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

19 ~~(4) To obtain a sample of any food at a retail food~~ <—
20 ~~facility for such analysis as may be necessary to determine~~
21 ~~compliance with this subchapter if:~~

22 ~~(i) a sample is collected under authority of this~~
23 ~~paragraph, the secretary shall, upon completion of the~~
24 ~~inspection and prior to leaving the facility, provide the~~
25 ~~owner, operator or agent in charge a receipt describing~~
26 ~~the sample obtained; and~~

27 ~~(ii) a food sample is collected under authority of~~
28 ~~this paragraph, the retail food facility from which the~~
29 ~~sample was collected may bill the secretary for the fair~~
30 ~~market value of the sample.~~

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

6 (b.1) Interagency coordination.--The department shall share
7 inspection reports or tests results that indicate human illness
8 related to food consumption or food handling practices, or to
9 other threats to the safety of the food supply, with the
10 Department of Health, the Department of Environmental Protection
11 or any other Commonwealth agency as necessary to develop a
12 comprehensive, coordinated interagency approach to protecting
13 public health and safeguarding the food supply.

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

19 (d) Receipt for samples.--If the secretary has obtained any
20 sample in the course of the inspection, the secretary shall,
21 upon completion of the inspection and prior to leaving the
22 premises, give to the owner, operator or agent in charge a
23 receipt describing the sample obtained.

24 (e) Payment of samples.--The food establishment from which
25 samples are collected may bill the secretary for the fair market
26 value of the samples.

27 § 5733. Rules and regulations.

28 (a) Nature of rules.--The secretary shall be charged with
29 the enforcement of this subchapter and shall promulgate rules,
30 regulations and food standards necessary for its proper

1 enforcement. The rules, regulations and food standards shall
2 conform and shall be construed to conform with the purposes
3 expressed in section 5736 (relating to construction of
4 subchapter). ~~Except to the extent that they are inconsistent~~ <—
5 with the regulations adopted by subsection (f), the rules,
6 regulations and food standards in effect on September 2, 1994,
7 shall continue in effect unless subsequently modified by
8 regulations promulgated by the secretary.

9 (b) ~~Local inspection. The secretary shall enter into~~
10 agreements with any county, city, borough, incorporated town or
11 township of this Commonwealth for the enforcement of this
12 subchapter and the rules, regulations and food standards
13 promulgated under this subchapter in food establishments,
14 provided that the county, city, borough, incorporated town or
15 township satisfies the minimum standards established by the
16 secretary and the minimum standards required to be eligible for
17 State grants pursuant to the act of August 24, 1951 (P.L.1304,
18 No.315), known as the Local Health Administration Law. Nothing

19 (B) LOCAL INSPECTION.--NOTHING in this subchapter shall <—
20 prohibit any county, city, borough, incorporated town or
21 township which was licensing food establishments in accordance
22 with the Local Health Administration Law on September 2, 1994,
23 from continuing to license such food establishments in
24 accordance with the Local Health Administration Law. No county,
25 city, borough, incorporated town or township, shall ordain or
26 enforce requirements of any kind or description related to
27 sanitation, food safety, inspections, standards and labeling
28 other than those promulgated by the secretary in accordance with
29 this subchapter or adopted in accordance with subsection (f).

30 (c) Reciprocal inspection.--The secretary is authorized to

1 enter into reciprocal agreements with other jurisdictions to
2 insure inhabitants of this Commonwealth that food sold in this
3 Commonwealth complies with this subchapter and its regulations.
4 The agreements may be for reciprocal inspection and labeling
5 review. The secretary may approve or accept inspection and
6 labeling requirements of other jurisdiction with respect to
7 food.

8 (d) Uniform regulation.--In reaching agreements with <—
9 counties, cities, boroughs, incorporated towns or townships and
10 reciprocal agreements with other jurisdictions, the provisions
11 of this subchapter and its regulations shall be considered as
12 establishing uniform requirements and regulations for food
13 establishments throughout this Commonwealth as defined in
14 section 5722 (relating to definitions).

15 (e) Interagency agreements.--Nothing in this subchapter
16 shall prohibit a Commonwealth agency which was IS regulating and <—
17 inspecting food establishments RETAIL FOOD FACILITIES in <—
18 accordance with Subchapter A (relating to retail food facility
19 safety) on September 2, 1994, from continuing to regulate and <—
20 inspect food establishments RETAIL FOOD FACILITIES in accordance <—
21 with Subchapter A.

22 (f) Adoption of Federal regulations.--All regulations and
23 supplements thereto or revisions thereof adopted under the
24 Federal acts which relate to food on, before or after the
25 effective date of this subchapter are hereby adopted as
26 regulations in this Commonwealth and shall remain in effect
27 unless subsequently modified OR SUPERSEDED by regulations <—
28 promulgated by the secretary.

29 (g) Definitions.--As used in this section, the phrase "other
30 jurisdictions" shall mean MEAN the United States of America or <—

1 any state, territory or possession thereof or any other country.

2 § 5734. Registration of food establishments.

3 (a) General rule.--Subject to the rules and regulations
4 adopted by the secretary, it shall be the duty of every person
5 operating a food establishment within this Commonwealth to
6 register with the secretary as a food establishment. This
7 registration requirement shall not be construed to exempt food
8 establishments from licensing requirements of any county, city,
9 borough, incorporated town or township in accordance with the
10 act of August 24, 1951 (P.L.1304, No.315), known as the Local
11 Health Administration Law.

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

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

17 (d) Exception.--Vehicles used primarily for the
18 transportation of any consumer commodity in bulk or quantity to
19 manufacturers, packers, processors or wholesale or retail
20 distributors are exempt from the provisions of this section.

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

25 § 5735. Product registration.

26 The secretary may promulgate regulations allowing food
27 establishments to label their food products as having been
28 registered by the department. "Reg. Penna. Dept. Agr." shall be
29 the approved abbreviation. This registration label shall be
30 limited to food products prepared or packed in a food

1 establishment registered under section 5734 (relating to
2 registration of food establishments).

3 § 5736. Construction of subchapter.

4 (a) General rule.--The provisions of this subchapter and the
5 regulations promulgated under this subchapter shall be construed
6 in a manner that is consistent with the Federal acts and
7 regulations promulgated under those acts. The secretary shall
8 not ordain or enforce requirements relating to sanitation, food
9 safety, food standards and labeling requirements of any kind or
10 description other than those provided for in the Federal acts
11 unless the proposed regulation meets all of the following:

12 (1) is justified by compelling and unique local
13 conditions;

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

16 (3) relates to subject matter that is primarily local in
17 nature and the Federal agency with responsibility over the
18 subject matter is not exercising its jurisdiction with
19 respect to the subject matter;

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

22 (5) would not unduly burden interstate commerce.

23 (b) Secretary to participate in rulemaking.--The secretary
24 is encouraged to participate in rulemaking under the Federal
25 acts and, if necessary, to pursue Federal rulemaking as is
26 deemed necessary for the protection of the citizens of this
27 Commonwealth through the Federal petition and rulemaking
28 process.

29 § 5737. Acts not affected.

30 Nothing in this subchapter shall be construed to abrogate or

1 supersede any provision or regulation adopted under:

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

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

13 (3) Subchapter A (relating to retail food facility
14 safety).

15 Section 2. Sections 6502, 6503 and 6504 of Title 3 are
16 amended to read:

17 § 6502. Definitions.

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

21 ["Advisory board" or "board." The Food Employee
22 Certification Advisory Board.]

23 "Certificate." A certificate of completion issued by a
24 certification program that has been evaluated and listed by an
25 accrediting agency that has been recognized by the Conference
26 for Food Protection Standards for Accreditation of Food
27 Protection Manager Certification Program.

28 "Conference for Food Protection." An independent, national
29 voluntary nonprofit organization to promote food safety and
30 consumer protection. Participants in this organization include

1 Federal, State and local regulatory agencies, universities, test
2 providers, certifying organizations, consumer groups, food
3 service and retail store trade associations and retail food
4 facility operators. The objectives of the organization include
5 identifying and addressing food safety problems and promoting
6 uniformity of regulations in food protection.

7 "Employee." As defined under section 5702 (relating to
8 definitions).

9 "Food establishment." [A room, building, place or portion
10 thereof or vehicle maintained, used or operated for the purpose
11 of selling to the public, commercially storing, packaging,
12 making, cooking, mixing, processing, bottling, baking, canning,
13 freezing, packing or otherwise preparing, transporting or
14 handling food. The term includes retail food stores and public
15 eating and drinking licensees, except those portions of
16 establishments operating exclusively under milk or milk products
17 permits and those portions of establishments operating
18 exclusively under USDA inspection. The term does not include
19 dining cars operated by a railroad company in interstate
20 commerce or a bed and breakfast, homestead or inn as defined in
21 the act of May 23, 1945 (P.L.926, No.369), referred to as the
22 Public Eating and Drinking Place Law.] As defined in section
23 5722 (relating to definitions).

24 "ORGANIZED CAMP." AS DEFINED IN SECTION 5702 (RELATING TO <—
25 DEFINITIONS).

26 "Person in charge." A person designated by a retail food <—
27 facility operator to be present at a retail food facility and
28 responsible for the operation of the retail food facility at the
29 time of inspection. AS DEFINED IN SECTION 5702 (RELATING TO <—
30 DEFINITIONS).

1 their designees and the chairman and minority chairman of the
2 Agricultural and Rural Affairs Committee of the House of
3 Representatives or their designees.

4 (2) A consumer representative.

5 (3) The Secretary of Agriculture or the secretary's
6 designee.

7 (4) Two representatives of production agriculture.

8 (5) Representatives, including at least one person
9 recommended by each of the following: Pennsylvania
10 Association of Milk Dealers, Pennsylvania Restaurant
11 Association, Pennsylvania Food Merchants Association,
12 Pennsylvania Convenience Store Council, Pennsylvania Bakers
13 Association, Pennsylvania Food Processors Association,
14 National Federation of Independent Businesses, Pennsylvania
15 Petroleum Marketers & Convenience Store Association, Local
16 1776 UFCW, Pennsylvania Retailers Association, the Licensed
17 Beverage Association, Pennsylvania Tourism and Lodging
18 Association, Associated Petroleum Industries, Pennsylvania
19 Veterinary Medical Association, County Commissioners
20 Association of Pennsylvania, Pennsylvania League of Cities
21 and Municipalities, Pennsylvania State Association of
22 Boroughs, Pennsylvania State Association of Township
23 Commissioners, Pennsylvania State Association of Township
24 Supervisors and Pennsylvania School Food Service Association.

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

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

29 (Reserved).

30 (c) Certification programs.--[The advisory board shall

1 review and recommend certification programs submitted by
2 individuals or organizations to ensure adequate training of
3 supervisory employees of food establishments.] The department
4 shall recognize certification programs including examinations
5 developed under those programs that are evaluated and listed by
6 an accrediting agency that has been recognized by the Conference
7 for Food Protection as conforming to the Conference for Food
8 Protection Standards for Accreditation of Food Protection
9 Manager Certification Program.

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

14 (d) Certification of [supervisory] employees.--[The
15 supervisory employees] An employee shall be certified [by the
16 department] following [the completion of training programs
17 recommended by the advisory board and approved by the
18 department. The department shall adopt food safety protection
19 and training standards for the certification of supervisory
20 employees who are responsible for the storage, preparation,
21 display or serving of foods to the public in establishments
22 regulated by the department or local health organizations. These
23 standards shall be adopted by the department to ensure that,
24 upon successfully passing a test, the supervisory employee has
25 demonstrated adequate food protection knowledge. These standards
26 shall also provide for a certification program which authorizes
27 private or public agencies to conduct and approve tests and
28 certify the results of these tests to the department. At least
29 one supervisory employee of a food establishment shall have
30 passed the test and received a certificate attesting thereto.

1 Employees shall have a period of 90 days after employment to
2 pass the required test.] demonstration of food safety protection
3 knowledge by the successful completion of an examination
4 conducted by or pursuant to an accredited certification program
5 recognized by the department under subsection (c). A retail food
6 facility shall have a period of three months after licensing
7 under Ch. 57 Subch. A (relating to retail food facility safety)
8 within which to comply with this chapter.

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

13 (f) Local programs.--Any food employee certification program
14 established by a county, city, borough, incorporated town or
15 township prior to September 1, 1994, may remain in effect.
16 § 6504. Certification of employees.

17 (a) General rule.--[Food establishments] ~~A retail food~~ <—
18 ~~facility~~ shall maintain certification records on [respective <—
19 supervisory employees] ~~persons in charge.~~] Each [food <—
20 establishment shall employ a person having supervisory
21 authority] retail food facility shall have a person in charge
22 who holds a valid [department food employee] certificate[.]
23 present at the retail food facility at all hours of operation.

24 (a.1) Exemption.--Notwithstanding the provisions of
25 subsection (a), the department shall, by regulation, exempt
26 categories of retail food facilities from the requirement that a
27 certified person in charge be present at all hours of operation.
28 The regulation shall consider risk-based factors identified in
29 the current edition of the ~~Model Retail~~ Food Code, published by <—
30 the UNITED STATES DEPARTMENT OF HEALTH, Food and Drug <—

1 Administration, to identify these categories of retail food
2 facilities.

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

7 (c) Compliance.--

8 (1) (Reserved).

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

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

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

23 (e) Maintenance and inspection of records.--Names and
24 certificate numbers of certified [personnel] employees shall be
25 maintained at the place of business and shall be made available
26 [for inspection by the department.] TO AND SHALL BE INSPECTED ←
27 BY:

28 (1) THE DEPARTMENT FOR RETAIL FOOD FACILITIES THAT ARE
29 LICENSED UNDER SUBCHAPTER A OF CHAPTER 57 (RELATING TO RETAIL
30 FOOD FACILITY SAFETY) BY THE DEPARTMENT; OR

1 (2) THE LICENSOR FOR RETAIL FOOD FACILITIES THAT ARE
2 LICENSED UNDER SUBCHAPTER A OF CHAPTER 57 BY A LICENSOR THAT
3 IS NOT THE DEPARTMENT.

4 (f) Period of certification.--Certification shall be in
5 effect for [five years.] the certification interval prescribed
6 by the accredited certification program described in section
7 6503(c) (relating to certification programs). Renewal of
8 certification shall be based on the [completion of courses
9 recommended by the advisory board and approved by the
10 department. The courses shall not include a written
11 examination.] successful completion of the certification
12 requirements of an accredited certification program as described
13 in section 6503(c).

14 (g) [Training program.--

15 (1) Training programs to prepare candidates for
16 certification examinations and the administration of the
17 examination shall be made available throughout this
18 Commonwealth through cooperation with industry and others and
19 approved by the department. In order to meet the requirements
20 of this paragraph, the department shall promulgate
21 regulations with the approval of the board no later than July
22 1, 2004, which establish training programs providing for the
23 following considerations which include:

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

27 (ii) The limited handling of potentially hazardous
28 food.

29 (iii) The number of hours necessary to prepare
30 employees for safe food handling due to the food

1 establishment's scope of business.

2 (iv) The demonstration of satisfactory knowledge and
3 proficiency in the safe handling of food as approved by
4 the department.

5 (2) The department shall develop and administer a
6 training program for food establishments voluntarily seeking
7 certification under subsection (c)(2). The General Assembly
8 may appropriate funds to offset the cost of the program for
9 food establishments exempt under section 6510(d).]

10 (Reserved).

11 (h) [Mitigating factor.--

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

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

20 (Reserved).

21 ~~Section 2.1. Section 6506 of Title 3 is repealed:~~ <—

22 SECTION 3. SECTIONS 6506 AND 6507 OF TITLE 3 ARE REPEALED: <—

23 [§ 6506. Reciprocal agreements.

24 The department may accept certifications issued in other
25 states that have comparable requirements for certification
26 provided the department and the other state jurisdiction have
27 entered into a reciprocal agreement to accept each state's
28 certification program as meeting the provisions of this
29 chapter.] <—

30 ~~Section 2.2. Sections 6507 and 6508 of Title 3 are amended~~

1 ~~to read:~~

2 § 6507. Suspension of certification.

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

11 SECTION 4. SECTION 6508 OF TITLE 3 IS AMENDED TO READ: <—

12 § 6508. Civil penalties.

13 [In] (A) RETAIL FOOD FACILITIES LICENSED BY THE <—
14 DEPARTMENT.--FOR RETAIL FOOD FACILITIES LICENSED UNDER
15 SUBCHAPTER A OF CHAPTER 57 (RELATING TO RETAIL FOOD FACILITY
16 SAFETY) BY THE DEPARTMENT, AND IN addition to proceeding under
17 any other remedy available at law or in equity for a violation
18 of a provision of this chapter or a rule or regulation adopted
19 thereunder or any order issued pursuant thereto, the department
20 may assess a civil penalty not to exceed \$300 for the first
21 offense or not to exceed \$1,000 for subsequent offenses upon a
22 person or [food establishment] retail food facility for each
23 offense. No civil penalty shall be assessed unless the person
24 charged has been given notice and opportunity for a hearing on
25 the charge in accordance with law. ~~This subchapter does not~~ <—
26 ~~empower the local health department described in local~~
27 ~~authorities to assess the civil penalties described in this~~
28 ~~section.~~

29 (B) RETAIL FOOD FACILITIES LICENSED BY OTHER LICENSOR.--FOR <—
30 RETAIL FOOD FACILITIES LICENSED UNDER SUBCHAPTER A OF CHAPTER 57

1 BY A LICENSOR THAT IS NOT THE DEPARTMENT, PENALTIES UNDER THIS
2 CHAPTER SHALL BE ESTABLISHED BY THE LICENSOR.

3 Section ~~2-3~~ 5. Section 6509 of Title 3 is repealed: ←

4 [§ 6509. Fees.

5 (a) Change by regulation.--All fees imposed by this chapter
6 shall remain in effect until changed by the department by
7 regulation subject to the act of June 25, 1982 (P.L.633,
8 No.181), known as the Regulatory Review Act. The department
9 shall propose to change those fees by regulation following
10 consultation with the advisory board.

11 (b) Fee for certification.--The department shall issue or
12 approve the issuance of a certification document to the person
13 upon the successful completion of the approved training program.
14 A fee of \$20 shall be charged by the department for this service
15 unless changed by regulation.

16 (c) Payments to municipalities.--Local health departments
17 created in accordance with the act of August 24, 1951 (P.L.1304,
18 No.315), known as the Local Health Administration Law, may
19 enforce the provisions of this chapter as it pertains to public
20 eating and drinking licensees. Each local health department
21 shall be reimbursed by the department in an amount equal to 50%
22 of the civil penalties levied and collected by the department
23 pursuant to this chapter in each such jurisdiction.]

24 Section ~~2-4~~ 6. Sections 6510 and 8101 of Title 3 are amended ←
25 to read:

26 § 6510. Exemptions.

27 (a) Prepackaged food.--[Food establishments]

28 (1) Retail food facilities where only commercially
29 prepackaged food is handled and sold are exempt from this
30 chapter.

1 (2) Retail food facilities that handle and sell food
2 other than commercially prepackaged food are exempt from this
3 chapter during time periods or work shifts when only
4 commercially prepackaged food is sold.

5 (b) Nonpotentially hazardous food.--[Food establishments]

6 (1) Retail food facilities that handle only
7 nonpotentially hazardous food are exempt from this chapter.

8 (2) Retail food facilities that handle and sell
9 potentially hazardous food are exempt from this chapter
10 during time periods or work shifts when only nonpotentially
11 hazardous food is handled and sold.

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

16 (d) Exempt [organizations] retail food facilities--Except
17 as set forth in section 6504(c)(2) (relating to certification of
18 employees), the following [organizations] retail food facilities
19 are exempt from this chapter:

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

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

30 (3) A [food establishment] retail food facility managed

1 by an organization which is established to promote and
2 encourage participation and support for extracurricular
3 recreational activities for youth of primary and secondary
4 public, private and parochial school systems on a not-for-
5 profit basis. THIS PARAGRAPH DOES NOT APPLY TO ORGANIZED ←
6 CAMPS.

7 § 8101. [Farmers' market.

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

15 SECTION 7. EXCEPT TO THE EXTENT THEY ARE INCONSISTENT WITH ←
16 ANY PROVISION OF THIS ACT, THE RULES, REGULATIONS AND STANDARDS
17 ADOPTED BY THE DEPARTMENT PRIOR TO THE EFFECTIVE DATE OF THIS
18 ACT UNDER AUTHORITY OF THE STATUTES REPEALED IN SECTION 4 OF
19 THIS ACT, SHALL CONTINUE IN EFFECT UNLESS SUBSEQUENTLY MODIFIED
20 OR SUPERSEDED BY REGULATIONS PROMULGATED BY THE SECRETARY OF
21 AGRICULTURE OF THE COMMONWEALTH.

22 Section ~~3~~ 8. Repeals are as follows: ←

23 (1) The General Assembly declares as follows:

24 (i) The repeal under paragraph (2)(i) is necessary
25 because the fees described in that provision are supplied
26 by 3 Pa.C.S. Ch. 57 Subch. A.

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

30 (iii) The repeal under paragraph (2)(iii) is

1 necessary because the material is supplied by 3 Pa.C.S.
2 Ch. 57 Subch. B.

3 (2) Repeals are as follows:

4 (i) Section 602-A(16) of the act of April 9, 1929
5 (P.L.177, No.175), known as The Administrative Code of
6 1929, is repealed.

7 (ii) The act of May 23, 1945 (P.L.926, No.369),
8 referred to as the Public Eating and Drinking Place Law,
9 is repealed.

10 (iii) The act of July 7, 1994 (P.L.421, No.70),
11 known as the Food Act, is repealed.

12 Section 4 9. This act shall take effect as follows: <—

13 (1) The amendment of 3 Pa.C.S. § 6504(a) shall take
14 effect on the effective date of the regulations promulgated
15 under 3 Pa.C.S. § 6504(a.1), or two years from the effective
16 date of this section, whichever occurs first.

17 (2) The remainder of this act shall take effect in 60
18 days.