

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 174 Session of 2009

INTRODUCED BY CARROLL, HANNA, BEYER, BRENNAN, CALTAGIRONE,
DALEY, DeLUCA, FABRIZIO, FREEMAN, GEIST, GEORGE, GRUCELA,
HENNESSEY, JOSEPHS, KULA, MELIO, M. O'BRIEN, PASHINSKI,
READSHAW, SIPTROTH, K. SMITH AND YUDICHAK, FEBRUARY 2, 2009

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS, FEBRUARY
2, 2009

AN ACT

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

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

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

11 CHAPTER 57

12 FOOD PROTECTION

13 [(Reserved)]

14 Subchapter

15 A. Retail Food Facility Safety

16 B. Food Safety

17 SUBCHAPTER A

18 RETAIL FOOD FACILITY SAFETY

1 Sec.
2 5701. Short title of chapter.
3 5702. Definitions.
4 5703. License required.
5 5704. Inspection, sampling and analysis.
6 5705. (Reserved).
7 5706. (Reserved).
8 5707. Powers of department.
9 5708. Infectious persons.
10 5709. Linens, equipment and utensils.
11 5710. Retail food facility and employee cleanliness.
12 5711. Toilets, sinks and drains.
13 5712. (Reserved).
14 5713. School cafeterias and organized camps.
15 5714. Penalties.
16 5715. (Reserved).
17 5716. Acts not affected.
18 § 5701. Short title of chapter.

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

21 § 5702. Definitions.

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

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

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

family member, volunteer, person performing work under contractual agreement or other person working in a retail food facility.

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

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

"Licensor." Any of the following:

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

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

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

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

"Organized camp." A combination of programs and facilities established for the primary purpose of providing an outdoor

1 group living experience for children, youth and adults, with
2 social, recreational and educational objectives, and operated
3 and used for five or more consecutive days during one or more
4 seasons of the year.

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

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

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

17 "Raw agricultural commodity." As defined under section 5722
18 (relating to definitions).

19 "Retail food establishment." An establishment which stores,
20 prepares, packages, vends, offers for sale or otherwise provides
21 food for human consumption and which relinquishes possession of
22 food to a consumer directly, or indirectly, through a delivery
23 service such as home delivery of grocery orders or delivery
24 service provided by common carriers. 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 "Retail food facility." A public eating or drinking place or
28 a retail food establishment.

29 § 5703. License required.

30 (a) Unlawful conduct.-- Except as provided in subsection

1 (b), it shall be unlawful for any proprietor to conduct or
2 operate a retail food facility without first obtaining a license
3 for each retail food facility as provided in this subchapter.

4 (b) Exempt retail food facilities.--

5 (1) A licensor may exempt the following retail food
6 facilities from the license requirements of this section:

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

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

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

13 (iv) A school cafeteria.

14 (v) A retail food facility that is owned by a
15 charitable nonprofit entity and that is one or more of
16 the following:

17 (A) Managed by an organization which is
18 established to promote and encourage participation or
19 support for extracurricular recreational activities
20 for youth of primary and secondary public, private
21 and parochial school systems on a not-for-profit
22 basis. This subparagraph does not apply to organized
23 camps.

24 (B) Offers only foods that are nonpotentially
25 hazardous foods or beverages.

26 (vi) A retail food facility in which food or
27 beverages are sold only through a vending machine.

28 If the licensor is the department, the exemption shall be
29 accomplished by order of the secretary and published in the
30 Pennsylvania Bulletin. If the licensor is an entity other

1 than the department, the exemption shall be accomplished by
2 order of the local government unit or units having
3 jurisdiction over the licensor. A retail food facility that
4 is exempted from the license requirements under this section
5 shall remain subject to inspection and all other provisions
6 of this subchapter.

7 (2) A licensor shall exempt the following retail food
8 facilities from the license requirements of this section:

9 (i) A retail food facility in which only
10 prepackaged, nonpotentially hazardous food or beverages
11 are sold.

12 (ii) A retail food facility that sells only raw
13 agricultural commodities.

14 A retail food facility that is exempted from the license
15 requirements under this section shall remain subject to
16 inspection and all other provisions of this subchapter.

17 (c) Issuance of license.--A retail food facility license
18 shall be issued by the licensor having jurisdiction. A license
19 shall specify the date of expiration, the period for which the
20 license is valid, the name of the licensee and the place
21 licensed. Licenses shall be conspicuously displayed at all times
22 in the place thereby licensed. Licenses shall not be
23 transferable.

24 (d) Application requirement.--Any person owning or operating
25 or desiring to operate a retail food facility within this
26 Commonwealth shall make application for a license to the
27 licensor on forms furnished by the licensor. The forms shall, at
28 a minimum, set forth such information as the department may
29 require and any additional information a licensor that is not
30 the department may require under the authority of the act of

August 24, 1951 (P.L.1304, No.315), known as the Local Health Administration Law. Application forms shall include the name and address of the applicant, together with all the other information deemed necessary to identify the applicant, provide contact information for the applicant, identify the location of the retail food facility that is the subject to the application and facilitate the licensor's processing of the application.

(e) Inspection.--

(1) No license shall be issued until inspection of the retail food facility has been made by the licensor and the retail food facility meets the requirements of both this subchapter and one of the following:

(i) The rules and regulations of the department.

(ii) The rules and regulations adopted under the authority of the Local Health Administration Law.

(2) Rules and regulations adopted by a licensor who is not the department shall, at the minimum, meet the requirements of this subchapter and the rules and regulations of the department.

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

(g) Term of license.--

(1) Except as provided in paragraph (2), licenses shall expire on the day after the original license anniversary date

1 at intervals of one year, or for any other license period
2 that is established by the department through regulation and
3 that uses risk-based factors identified in the current
4 edition of the Food Code, published by the United States
5 Department of Health, Food and Drug Administration, as a
6 basis for determining the appropriate license interval. An
7 application for renewal shall be made one month before the
8 expiration of an existing license. A license granted under
9 the provisions of this subchapter shall be renewed if the
10 most recent inspection by the licensor was conducted within
11 the preceding license period and determined that requirements
12 specified in this chapter with respect to the retail food
13 facility were met.

14 (2) A temporary license for a retail food facility that
15 operates on no more than 14 days in one calendar year or for
16 a retail food facility operating at a fair, festival or
17 similar temporary event shall be granted with respect to the
18 calendar year in which it is issued if the retail food
19 facility meets the requirements of this subchapter.

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

24 (i) Denial or revocation of license.--

25 (1) A licensor shall state in writing to the proprietor
26 the reason for the refusal to issue a license.

27 (2) (i) If a retail food facility licensed by the
28 department is in violation of a provision of this
29 subchapter, or of a regulation promulgated under
30 authority of this subchapter, or of any other act related

1 to public health and being applicable to retail food
2 facilities, the department may suspend or revoke the
3 license. If a retail food facility licensed by an entity
4 other than the department is in violation of a provision
5 of this subchapter, or of a regulation promulgated under
6 authority of this subchapter, or of any other act related
7 to public health and being applicable to retail food
8 facilities, or of the regulations of the licensor
9 pertaining to retail food facilities, the licensor may
10 suspend or revoke the license. The suspension of a
11 license shall be terminated when the violation for which
12 it was imposed has been found, upon inspection by the
13 licensor, to have been corrected. Whenever a license is
14 suspended or revoked, no part of the fee paid therefore
15 shall be returned to the proprietor.

16 (ii) A licensor may, as an alternative to suspending
17 or revoking a license, provide a licensee a reasonable
18 interval within which to correct conditions that
19 constitute a violation that would result in the
20 suspension or revocation of the license, provided that
21 the health and safety of the employees, occupants and
22 patrons of the retail food facility can be reasonably
23 assured during that interval.

24 (j) Fees.--The fees that may be charged under this
25 subchapter are as established by the licensor, if the licensor
26 is an entity other than the department, and shall be paid into
27 the city, borough, incorporated town, township or county
28 treasury. If the licensor is the department, the fees shall be
29 paid to the State Treasury through the department and are as
30 follows:

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

4 (2) For licensure of a retail food facility that has not
5 been previously licensed and that is not described in
6 paragraph (1): \$241.

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

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

11 (5) For a temporary license under subsection (g) (2):
12 \$14.

13 (6) For conducting a follow-up inspection to review
14 whether changes have been made to correct violations which
15 resulted in noncompliant status determined by a prior
16 inspection:

17 (i) For the first follow-up inspection during the
18 licensure period: \$150.

19 (ii) For a second or subsequent follow-up inspection
20 during the licensure period: \$300.

21 (7) For conducting an inspection that is not otherwise
22 required by the department, but that is conducted at the
23 behest of the proprietor of the retail food facility: \$150.

24 (8) For any license described in paragraph (1), (2),
25 (3), (4) or (5) that is issued for a period of greater than
26 one year by regulation of the department in accordance with
27 subsection (g), the license fee otherwise prescribed under
28 those paragraphs shall be prorated for the license period.

29 (k) Multiple retail food facilities.--Whenever any
30 proprietor maintains more than one retail food facility within

1 this Commonwealth, the proprietor shall be required to apply for
2 and procure a license for each retail food facility.

3 § 5704. Inspection, sampling and analysis.

4 (a) Inspection.--For purposes of enforcement of this
5 subchapter, a licensor is authorized, upon presenting
6 appropriate credentials to the person in charge:

7 (1) To enter at reasonable times any retail food
8 facility.

9 (2) To inspect at reasonable times, within reasonable
10 limits and in a reasonable manner, the retail food facility.

11 (3) To obtain a sample of any food at a retail food
12 facility for analysis as may be necessary to determine
13 compliance with this subchapter if the licensor, upon
14 completion of the inspection and prior to leaving the
15 facility, provides the person in charge a receipt describing
16 the sample obtained.

17 (b) Billing.--A retail food facility from which a sample was
18 collected may bill the licensor for the fair market value of the
19 sample.

20 (c) Report.--Upon completion of an inspection of a retail
21 food facility and prior to leaving the premises, a licensor
22 shall give to the person in charge a written report of the
23 findings of the inspection. Results from the analysis of any
24 samples taken shall be provided to the person in charge within
25 30 days of receipt.

26 § 5705. (Reserved).

27 § 5706. (Reserved).

28 § 5707. Powers of department.

29 (a) Rules and regulations.--The department shall make such
30 reasonable rules and regulations as may be deemed necessary for

1 carrying out the provisions and intent of this subchapter. In
2 promulgating regulations, the department shall be guided by the
3 most current edition of the Food Code, published by the United
4 States Department of Health, Food and Drug Administration. The
5 regulatory standards established by the department under this
6 section shall be the minimum standards followed and applied by
7 any licensor with respect to retail food facilities.

8 (b) Food service at schools and organized camps.--

9 (1) The department shall provide for the inspection of a
10 food service at a school and for the training of school food
11 service personnel in accordance with the standards applied to
12 retail food facilities for schools located in areas in which
13 the department is the licensor. Upon request, the department
14 shall provide training to school food service personnel or
15 inspections of a food service at a school located in areas in
16 which the department is not the licensor.

17 (2) The department shall provide for the inspection of a
18 food service at organized camps and for the training of food
19 service personnel at organized camps in accordance with the
20 standards applied to retail food facilities for organized
21 camps located in areas in which the department is the
22 licensor. Upon request, the department shall provide training
23 to organized camp food service personnel or inspections of a
24 food service at organized camps located in areas in which the
25 department is not the licensor.

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

comply with the inspection requirement shall not charge or collect any fee for licensing the subject retail food facility. If the department conducts an inspection, it shall, within 30 days, provide the licensor a copy of the inspection report.

(d) Interagency coordination.--The department shall provide inspection reports or test results that indicate human illness related to food consumption or food handling practices, or to other threats to the safety of the food supply, to the Department of Health, the Department of Environmental Protection or any other Commonwealth agency as necessary to develop a comprehensive, coordinated interagency approach to protecting public health and safeguarding the food supply.

§ 5708. Infectious persons.

No proprietor shall allow any food employee to be in a retail food facility if that person has an infectious or communicable disease, as prohibited under the act of April 23, 1956 (1955 P.L.1510, No.500), known as the Disease Prevention and Control Law of 1955, and its attendant regulations related to restrictions on food handlers. In consultation with the Department of Health, the department may promulgate regulations with respect to specific illnesses as related to operations in a retail food facility as it deems necessary for the protection of public health.

§ 5709. Linens, equipment and utensils.

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

§ 5710. Retail food facility and employee cleanliness.

All retail food facilities, kitchens, dining rooms and all

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

§ 5711. Toilets, sinks and drains.

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

§ 5712. (Reserved).

§ 5713. School cafeterias and organized camps.

Officials of schools and organized camps shall cooperate with
the department in the conduct of cafeteria health and safety
inspections and shall participate in inspection services and
training programs made available by the department in areas
where the department is the licensor. Upon request, the
department shall provide training to school or organized camp
food service personnel or inspections of a food service at a
school or organized camp located in areas in which the
department is not the licensor.

§ 5714. Penalties.

(a) Retail food facilities under jurisdiction of

1 department.--For retail food facilities under the jurisdiction
2 of the department, penalties are as follows:

3 (1) A person who violates any provision of this
4 subchapter or any rule, regulation, standard or order made
5 under this subchapter commits a summary offense for the first
6 or second offense and shall be subject to a fine not less
7 than \$100 but not more than \$300. A person who violates any
8 provision of this subchapter or any rule, regulation,
9 standard or order made under this subchapter commits a
10 misdemeanor of the third degree if the violation is a third
11 or subsequent offense and if the violation occurs within two
12 years of the date of the last previous offense.

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

30 (b) Retail food facilities under other jurisdiction.--

Penalties shall be established by the licensor for retail food facilities under the jurisdiction of a licensor that is not the department.

§ 5715. (Reserved).

§ 5716. Acts not affected.

Nothing in this subchapter shall be construed to abrogate or supersede any provision or regulation adopted under the act of August 24, 1951 (P.L.1304, No.315), known as the Local Health Administration Law, with regard to licensure, regulation and inspection of a retail food facility, as defined in section 5702 (relating to definitions).

SUBCHAPTER B

FOOD SAFETY

Sec.

5721. Short title of subchapter.

5722. Definitions.

5723. Prohibited acts.

5724. Temporary or permanent injunctions.

5725. Penalties.

5726. Detention and condemnation.

5727. Temporary permits.

5728. Adulteration of food.

5729. Misbranding of food.

5730. Regulations to exempt certain labeling requirements.

5731. Poisonous or deleterious substances and tolerances.

5732. Inspection, sampling and analysis.

5733. Rules and regulations.

5734. Registration of food establishments.

5735. Product registration.

5736. Construction of subchapter.

1 5737. Acts not affected.

2 § 5721. Short title of subchapter.

3 This subchapter shall be known and may be cited as the Food
4 Safety Act.

5 § 5722. Definitions.

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

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

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

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

26 "Federal acts." The Wholesome Meat Act (Public Law 90-201,
27 21 U.S.C. § 601 et seq.), the Federal Food, Drug, and Cosmetic
28 Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.), the Poultry
29 Products Inspection Act (Public Law 85-172, 21 U.S.C. § 451 et
30 seq.), the Fair Packaging and Labeling Act (Public Law 89-755,

1 15 U.S.C. § 1451 et seq.), the Federal Insecticide, Fungicide,
2 and Rodenticide Act (61 Stat. 163, 7 U.S.C. § 136 et seq.) and
3 the Nutrition Labeling and Education Act of 1990 (Public Law
4 101-535, 104 Stat. 2353).

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

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

19 (1) A pesticide chemical in or on a raw agricultural
20 commodity.

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

24 (3) A color additive.

25 (4) Any substance used in accordance with a sanction or
26 approval granted prior to the enactment of this paragraph
27 pursuant to a statute repealed by this act, pursuant to the
28 Poultry Products Inspection Act (Public Law 85-172, 21 U.S.C.
29 § 451 et seq.) or pursuant to the Wholesome Meat Act (Public
30 Law 90-201, 21 U.S.C. § 601 et seq.).

1 (5) A new animal drug.

2 As used in this definition, the term "substance" includes any
3 substance intended for use in producing, manufacturing,
4 packaging, processing, preparing, treating, transporting or
5 holding food and any source of radiation intended for any use.

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

15 "Imitation food." A food that is a substitute for and
16 resembles another food but is nutritionally inferior to that
17 food.

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

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

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

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

29 (2) Shipping containers or wrappings used by retailers
30 to ship or deliver food to retail customers, if the

1 containers or wrappings bear no printed matter pertaining to
2 food.

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

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

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

14 "Potentially hazardous food." As defined in the 2005 Food
15 Code published by the United States Department of Health, Food
16 and Drug Administration, or its successor document.

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

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

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

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

30 "Retail food facility." As defined in section 5702 (relating

1 to definitions).

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

4 § 5723. Prohibited acts.

5 The following acts are prohibited:

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

11 (2) Adulteration or misbranding of any food.

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

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

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

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

27 (7) Alteration, mutilation, destruction, obliteration or
28 removal of the whole or any part of the labeling of a food or
29 the doing of any other act with respect to a food, if the act
30 is done while the food is held for sale and results in the

1 food being adulterated or misbranded.

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

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

12 (10) Holding of any potentially hazardous food at unsafe
13 temperatures in violation of an applicable regulation issued
14 under this chapter.

15 (11) Failure to register with the department under the
16 provisions of section 5734 (relating to registration of food
17 establishments).

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

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

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

30 § 5724. Temporary or permanent injunctions.

1 In addition to any other remedies provided in this
2 subchapter, the secretary may apply to the Commonwealth Court or
3 to any other court having jurisdiction for a temporary or
4 permanent injunction restraining a person from violating this
5 subchapter or any regulation adopted under this subchapter.
6 § 5725. Penalties.

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

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

1 shall recover the amount by action in the appropriate court.

2 (c) Guaranty.--

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

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

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

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

16 (e) Food establishments subject to local inspections.--
17 Penalties shall be established by the county, borough,
18 incorporated town or township for food establishments that are
19 subject to local inspection under section 5733(b) (relating to
20 rules and regulations).

21 § 5726. Detention and condemnation.

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

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

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

1 secretary.

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

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

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

this subchapter may be used as animal feed or for other
beneficial use, provided that such use is in compliance with
other applicable statutes, rules, regulations, standards and
orders. The owner shall pay all costs of destruction.

§ 5727. Temporary permits.

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

§ 5728. Adulteration of food.

A food shall be deemed adulterated:

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

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

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

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

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

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

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

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

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

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

16 (10) If:

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

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

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

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

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

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

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

5 § 5729. Misbranding of food.

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

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

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

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

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

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

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

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

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

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

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

3 (7) Unless its label bears the following:

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

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

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

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

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

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

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

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

13 (b) Exceptions.--The provisions of subsection (a)(1), (2),
14 (3), (4), (5), (6), (7), (8), (9), (10) and (11) shall not apply
15 to the following:

16 (1) Bakery goods sold at retail by the bakery directly
17 to the consumer in a store or market stand operated by the
18 bakery. The bakery goods must be made by the bakery, the
19 bakery must guarantee that they are in compliance with this
20 act in all other respects and the required information in
21 subsection (a)(1), (2), (3), (4), (5), (6), (7), (8) and (9)
22 must be available to the public at the point-of-sale.

23 (2) Bakery goods sold to the operators of retail food
24 facilities when the required information in subsection (a)(1)
25 (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11) is
26 available to the public on the premises of the retail food
27 facility.

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

1 predominance by weight.

2 § 5730. Regulations to exempt certain labeling requirements.

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

10 § 5731. Poisonous or deleterious substances and tolerances.

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

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

23 (c) Unsafe food additives.--A food additive shall, with
24 respect to any particular use or intended use, be deemed to be
25 unsafe for the purposes of the application of section 5728(4)
26 (relating to adulteration of food) unless it and its intended
27 use conform to the terms of an exemption which is in effect
28 under this section or unless there is in effect, and it and its
29 intended use are in conformity with, a regulation issued under
30 this section prescribing the conditions under which the additive

1 may be safely used. A food which is in compliance with a
2 regulation relating to a food additive shall not, by reason of
3 bearing or containing an additive in accordance with the
4 regulations, be considered adulterated within the meaning of
5 section 5728(4).

6 § 5732. Inspection, sampling and analysis.

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

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

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

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

28 (b) Report of inspection.--Upon completion of an inspection
29 of a factory, warehouse or other food establishment and prior to
30 leaving the premises, the secretary shall give to the owner,

1 operator or agent in charge a written report of the findings of
2 the inspection.

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

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

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

21 (e) Payment of samples.--The food establishment from which
22 samples are collected may bill the secretary for the fair market
23 value of the samples.

24 § 5733. Rules and regulations.

25 (a) Nature of rules.--The secretary shall be charged with
26 the enforcement of this subchapter and shall promulgate rules,
27 regulations and food standards necessary for its proper
28 enforcement. The rules, regulations and food standards shall
29 conform and shall be construed to conform with the purposes
30 expressed in section 5736 (relating to construction of

1 subchapter).

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

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

22 (d) Uniform regulation.--In reaching reciprocal agreements
23 with other jurisdictions, the provisions of this subchapter and
24 its regulations shall be considered as establishing uniform
25 requirements and regulations for food establishments throughout
26 this Commonwealth as defined in section 5722 (relating to
27 definitions).

28 (e) Interagency agreements.--Nothing in this subchapter
29 shall prohibit a Commonwealth agency which is regulating and
30 inspecting retail food facilities in accordance with Subchapter

A (relating to retail food facility safety) from continuing to regulate and inspect retail food facilities in accordance with Subchapter A.

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

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

§ 5734. Registration of food establishments.

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

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

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

(d) Exception.--Vehicles used primarily for the transportation of any consumer commodity in bulk or quantity to

manufacturers, packers, processors or wholesale or retail distributors are exempt from the provisions of this section.

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

§ 5735. Product registration.

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

§ 5736. Construction of subchapter.

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

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

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

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

1 respect to the subject matter;

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

4 (5) would not unduly burden interstate commerce.

5 (b) Secretary to participate in rulemaking.--The secretary
6 is encouraged to participate in rulemaking under the Federal
7 acts and, if necessary, to pursue Federal rulemaking as is
8 deemed necessary for the protection of the citizens of this
9 Commonwealth through the Federal petition and rulemaking
10 process.

11 § 5737. Acts not affected.

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

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

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

25 (3) Subchapter A (relating to retail food facility
26 safety).

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

29 § 6502. Definitions.

30 The following words and phrases when used in this chapter

shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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

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

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

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

"Food establishment." [A room, building, place or portion thereof or vehicle maintained, used or operated for the purpose of selling to the public, commercially storing, packaging, making, cooking, mixing, processing, bottling, baking, canning, freezing, packing or otherwise preparing, transporting or handling food. The term includes retail food stores and public eating and drinking licensees, except those portions of establishments operating exclusively under milk or milk products permits and those portions of establishments operating exclusively under USDA inspection. The term does not include

dining cars operated by a railroad company in interstate commerce or a bed and breakfast, homestead or inn as defined in the act of May 23, 1945 (P.L.926, No.369), referred to as the Public Eating and Drinking Place Law.] As defined in section 5722 (relating to definitions).

"Organized camp." As defined in section 5702 (relating to definitions).

"Person in charge." As defined in section 5702 (relating to definitions).

"Potentially hazardous food." As defined in section 5722 (relating to definitions). [A food which consists in whole or in part of milk or milk products, eggs, meats, poultry, fish, shellfish, edible crustaceans or other ingredients, including synthetic ingredients, and which is in a form capable of supporting rapid and progressive growth of infectious or toxicogenic microorganisms. The term does not include foods that have a pH level of 4.6 or below or a water activity of 0.85 or less under standard conditions or food products in hermetically sealed containers processed to maintain commercial sterility.]

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

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

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

["Supervisory employee." An owner or a person employed by or designated by the business owner to fulfill the requirements of this chapter.]

1 § 6503. Certification [advisory board and] programs.

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

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

12 (2) A consumer representative.

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

15 (4) Two representatives of production agriculture.

16 (5) Representatives, including at least one person
17 recommended by each of the following: Pennsylvania
18 Association of Milk Dealers, Pennsylvania Restaurant
19 Association, Pennsylvania Food Merchants Association,
20 Pennsylvania Convenience Store Council, Pennsylvania Bakers
21 Association, Pennsylvania Food Processors Association,
22 National Federation of Independent Businesses, Pennsylvania
23 Petroleum Marketers & Convenience Store Association, Local
24 1776 UFCW, Pennsylvania Retailers Association, the Licensed
25 Beverage Association, Pennsylvania Tourism and Lodging
26 Association, Associated Petroleum Industries, Pennsylvania
27 Veterinary Medical Association, County Commissioners
28 Association of Pennsylvania, Pennsylvania League of Cities
29 and Municipalities, Pennsylvania State Association of
30 Boroughs, Pennsylvania State Association of Township

Commissioners, Pennsylvania State Association of Township Supervisors and Pennsylvania School Food Service Association. At least one representative shall have experience in the field of public health.] (Reserved).

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

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

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

(d) Certification of [supervisory] employees.--[The supervisory employees] An employee shall be certified [by the department] following [the completion of training programs recommended by the advisory board and approved by the department. The department shall adopt food safety protection and training standards for the certification of supervisory employees who are responsible for the storage, preparation, display or serving of foods to the public in establishments regulated by the department or local health organizations. These

1 standards shall be adopted by the department to ensure that,
2 upon successfully passing a test, the supervisory employee has
3 demonstrated adequate food protection knowledge. These standards
4 shall also provide for a certification program which authorizes
5 private or public agencies to conduct and approve tests and
6 certify the results of these tests to the department. At least
7 one supervisory employee of a food establishment shall have
8 passed the test and received a certificate attesting thereto.
9 Employees shall have a period of 90 days after employment to
10 pass the required test.] demonstration of food safety protection
11 knowledge by the successful completion of an examination
12 conducted by or pursuant to an accredited certification program
13 recognized by the department under subsection (c). A retail food
14 facility shall have a period of three months after licensing
15 under Ch. 57 Subch. A (relating to retail food facility safety)
16 within which to comply with this chapter.

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

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

24 § 6504. Certification of employees.

25 (a) General rule.--[Food establishments shall maintain
26 certification records on respective supervisory employees.] Each
27 [food establishment shall employ a person having supervisory
28 authority] retail food facility shall have a person in charge
29 who holds a valid [department food employee] certificate[.]
30 present at the retail food facility at all hours of operation.

1 (a.1) Exemption.--Notwithstanding the provisions of
2 subsection (a), the department shall, by regulation, exempt
3 categories of retail food facilities from the requirement that a
4 certified person in charge be present at all hours of operation.
5 The regulation shall consider risk-based factors identified in
6 the current edition of the Food Code, published by the United
7 States Department of Health, Food and Drug Administration, to
8 identify these categories of retail food facilities.

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

13 (c) Compliance.--

14 (1) (Reserved).

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

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

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

29 (e) Maintenance and inspection of records.--Names and
30 certificate numbers of certified [personnel] employees shall be

maintained at the place of business and shall be made available
[for inspection by the department.] to and shall be inspected
by:

(1) the department for retail food facilities that are
licensed under Subchapter A of Chapter 57 (relating to retail
food facility safety) by the department; or

(2) the licensor for retail food facilities that are
licensed under Subchapter A of Chapter 57 by a licensor that
is not the department.

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

(g) [Training program.--

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

(i) The existence and operation of a department-

1 approved employee training program on safe food handling
2 conducted by the food establishment.

3 (ii) The limited handling of potentially hazardous
4 food.

5 (iii) The number of hours necessary to prepare
6 employees for safe food handling due to the food
7 establishment's scope of business.

8 (iv) The demonstration of satisfactory knowledge and
9 proficiency in the safe handling of food as approved by
10 the department.

11 (2) The department shall develop and administer a
12 training program for food establishments voluntarily seeking
13 certification under subsection (c)(2). The General Assembly
14 may appropriate funds to offset the cost of the program for
15 food establishments exempt under section 6510(d).]

16 (Reserved).

17 (h) [Mitigating factor.--

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

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

26 (Reserved).

27 Section 3. Sections 6506 and 6507 of Title 3 are repealed:

28 [§ 6506. Reciprocal agreements.

29 The department may accept certifications issued in other
30 states that have comparable requirements for certification

1 provided the department and the other state jurisdiction have
2 entered into a reciprocal agreement to accept each state's
3 certification program as meeting the provisions of this chapter.
4 § 6507. Suspension of certification.

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

13 Section 4. Section 6508 of Title 3 is amended to read:

14 § 6508. Civil penalties.

15 [In] (a) Retail food facilities licensed by the
16 department.--For retail food facilities licensed under
17 Subchapter A of Chapter 57 (relating to retail food facility
18 safety) by the department, and in addition to proceeding under
19 any other remedy available at law or in equity for a violation
20 of a provision of this chapter or a rule or regulation adopted
21 thereunder or any order issued pursuant thereto, the department
22 may assess a civil penalty not to exceed \$300 for the first
23 offense or not to exceed \$1,000 for subsequent offenses upon a
24 person or [food establishment] retail food facility for each
25 offense. No civil penalty shall be assessed unless the person
26 charged has been given notice and opportunity for a hearing on
27 the charge in accordance with law.

28 (b) Retail food facilities licensed by other licenser.--For
29 retail food facilities licensed under Subchapter A of Chapter 57
30 by a licenser that is not the department, penalties under this

1 chapter shall be established by the licensor.

2 Section 5. Section 6509 of Title 3 is repealed:

3 [§ 6509. Fees.

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

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

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

23 Section 6. Sections 6510 and 8101 of Title 3 are amended to
24 read:

25 § 6510. Exemptions.

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

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

30 (2) Retail food facilities that handle and sell food

other than commercially prepackaged food are exempt from this chapter during time periods or work shifts when only commercially prepackaged food is sold.

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

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

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

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

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

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

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

(3) A [food establishment] retail food facility managed by an organization which is established to promote and

1 encourage participation and support for extracurricular
2 recreational activities for youth of primary and secondary
3 public, private and parochial school systems on a not-for-
4 profit basis. This paragraph does not apply to organized
5 camps.

6 § 8101. [Farmers' market.

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

14 Section 7. Except to the extent they are inconsistent with
15 any provision of this act, the rules, regulations and standards
16 adopted by the department prior to the effective date of this
17 act under authority of the statutes repealed in section 4 of
18 this act, shall continue in effect unless subsequently modified
19 or superseded by regulations promulgated by the Secretary of
20 Agriculture of the Commonwealth.

21 Section 8. Repeals are as follows:

22 (1) The General Assembly declares as follows:

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

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

29 (iii) The repeal under paragraph (2)(iii) is
30 necessary because the material is supplied by 3 Pa.C.S.

Ch. 57 Subch. B.

(2) Repeals are as follows:

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

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

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

Section 9. This act shall take effect as follows:

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

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