

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1422 Session of
2007

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JUNE 1, 2007

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
JULY 12, 2007

AN ACT

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

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

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

11 CHAPTER 57

12 FOOD PROTECTION

13 [(Reserved)]

14 Subchapter

15 A. Retail Food Facility Safety

16 B. Food Safety

17 SUBCHAPTER A

1 RETAIL FOOD FACILITY SAFETY

2 Sec.

3 5701. Short title of chapter.

4 5702. Definitions.

5 5703. License required.

6 5704. Application for license.

7 5705. Term of license.

8 5706. Contents of license.

9 5707. Powers of department.

10 5708. Infectious persons.

11 5709. Linens, equipment and utensils.

12 5710. Retail food facility and employee

13 cleanliness.

14 5711. Toilets, sinks and drains.

15 5712. Revocation of license.

16 5713. School cafeterias AND ORGANIZED CAMPS.

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17 5714. Penalties.

18 5715. Retail Food Facility Safety Fund.

19 § 5701. Short title of chapter.

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

22 § 5702. Definitions.

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

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

30 "Employee." The license holder, person in charge, person

having supervisory or management duties, person on the payroll,
family member, volunteer, person performing work under
contractual agreement or other person working in a retail food
facility.

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

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

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

"Licensor." Any of the following:

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

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

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

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

3 "ORGANIZED CAMP." A COMBINATION OF PROGRAMS AND FACILITIES <—
4 ESTABLISHED FOR THE PRIMARY PURPOSE OF PROVIDING AN OUTDOOR
5 GROUP LIVING EXPERIENCE FOR CHILDREN, YOUTH AND ADULTS, WITH
6 SOCIAL, RECREATIONAL AND EDUCATIONAL OBJECTIVES, AND OPERATED
7 AND USED FOR FIVE OR MORE CONSECUTIVE DAYS DURING ONE OR MORE
8 SEASONS OF THE YEAR.

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.--It shall be unlawful for any

proprietor to conduct or operate a retail food facility without first obtaining a license for each retail food facility as provided in this subchapter.

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

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

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

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

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

(4) A school cafeteria.

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

(5) A RETAIL FOOD FACILITY THAT IS OWNED BY A CHARITABLE NONPROFIT ENTITY AND THAT IS ONE OR MORE OF THE FOLLOWING:

(I) MANAGED BY AN ORGANIZATION WHICH IS ESTABLISHED TO PROMOTE AND ENCOURAGE PARTICIPATION OR SUPPORT FOR

1 EXTRACURRICULAR RECREATIONAL ACTIVITIES FOR YOUTH OF
2 PRIMARY AND SECONDARY PUBLIC, PRIVATE AND PAROCHIAL
3 SCHOOL SYSTEMS ON A NOT-FOR-PROFIT BASIS.

4 (II) OFFERS ONLY FOODS THAT ARE NONPOTENTIALLY
5 HAZARDOUS FOODS OR BEVERAGES.

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

8 (7) A retail food facility in which only prepackaged,
9 nonpotentially hazardous food or beverages are sold.

10 (8) A RETAIL FOOD FACILITY THAT SELLS ONLY RAW
11 AGRICULTURAL COMMODITIES.

12 (d) Issuance of license.--A retail food facility license
13 shall be issued by the health authorities of cities, boroughs,
14 incorporated towns and first-class townships, and, if electing
15 to issue licenses under this subchapter, second class townships
16 and second class townships which have adopted a home rule
17 charter, whenever a retail food facility is located in a city,
18 borough, incorporated town or township not under the
19 jurisdiction of a county department of health or joint-county
20 department of health, or by the county department of health or
21 joint-county department of health whenever a retail food
22 facility is located in a political subdivision which is under
23 the jurisdiction of a county department of health or joint-
24 county department of health, or in those townships of the second
25 class which are not under the jurisdiction of a county
26 department of health or joint-county department of health and
27 which do not elect to issue licenses under this subchapter, by
28 the department.

29 (e) Inspection.--No license shall be issued until inspection
30 of the premises, facilities and equipment RETAIL FOOD FACILITY

1 ~~has been made by the licensor and they are found adequate to the~~ <—
2 ~~protection of the public health.~~ THE RETAIL FOOD FACILITY MEETS <—
3 ~~THE REQUIREMENTS OF THIS SUBCHAPTER AND THE RULES AND~~
4 ~~REGULATIONS OF THE DEPARTMENT.~~ In the case of license renewals,
5 ~~inspections shall be in accordance with section 5705 (relating~~
6 ~~to term of license).~~

7 (f) Reports.--If the licensor is an entity other than the
8 department, the licensor shall provide the department a copy of
9 any inspection report resulting from any inspection conducted
10 under authority of this subchapter within 15 days of the
11 inspection date. This copy may be sent by electronic methods, as
12 approved by the department. The department may, by regulation,
13 require that inspection reports be submitted in a specific
14 electronic format.

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

19 (h) Fees.--

20 (1) The fees that may be charged under this subchapter
21 are as follows FOR THE DEPARTMENT or as established by <—
22 ordinance of the governing body ~~or by State law~~ and shall be <—
23 paid into the city, borough, incorporated town, township or
24 county treasury, or to the State Treasury through the
25 ~~Department of Revenue~~ DEPARTMENT, depending upon the location <—
26 of the retail food facility:

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

30 (ii) For licensure of a retail food facility that

1 has not been previously licensed and that is not
2 described in subparagraph (i): \$241.

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

5 (iv) For a duplicate license, for each retail food
6 facility location: \$14.

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

13 (vi) For conducting a follow-up inspection to
14 determine whether a noncompliant condition that was <—
15 discovered on a prior inspection has been corrected:
16 REVIEW WHETHER CHANGES HAVE BEEN MADE TO CORRECT <—
17 VIOLATIONS WHICH RESULTED IN NONCOMPLIANT STATUS
18 DETERMINED BY A PRIOR INSPECTION:

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

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

23 (vii) For conducting an inspection that is not
24 otherwise required by the department, but that is
25 conducted at the behest of a licensee THE PROPRIETOR OF <—
26 THE RETAIL FOOD FACILITY: \$150.

27 (viii) For any license described in paragraphs (i)
28 through (v) that is issued for a period of greater than
29 one year by regulation of the department in accordance
30 with section 5705(a), the license fee otherwise

1 prescribed under those paragraphs shall be prorated for
2 the license period.

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

5 (i) Renewal.--The license shall be renewed in accordance
6 with section 5705.

7 (j) Multiple retail food facilities.--Whenever any
8 proprietor maintains more than one retail food facility within
9 this Commonwealth, the proprietor shall be required to apply for
10 and procure a license for each retail food facility.

11 § 5704. Application for license.

12 Any person owning or operating or desiring to operate a
13 retail food facility within this Commonwealth shall make
14 application for license to the licensor on forms furnished by
15 the licensor. The forms shall be uniform throughout this
16 Commonwealth and shall set forth such information as the
17 department may require, including the name and address of the
18 applicant, together with all the other information deemed
19 necessary to identify the applicant, provide contact information
20 for the applicant, identify the location of the retail food
21 facility that is the subject of the application and facilitate
22 the licensor's processing of the application. Before granting
23 any license, the licensor shall visit and inspect the restaurant <—
24 or premises on which the applicant conducts or proposes to
25 conduct the applicant's business. The licensor may refuse to
26 issue a license if the premises on which the applicant conducts
27 or proposes to conduct the applicant's business or equipment do

28 RETAIL FOOD FACILITY AND MAY REFUSE TO ISSUE A LICENSE IF THE <—
29 RETAIL FOOD FACILITY DOES not meet the requirements of this
30 subchapter or the rules and regulations of the department. The

1 licensor shall state in writing to the ~~applicant~~ PROPRIETOR the <—
2 reason for the refusal.

3 § 5705. Term of license.

4 (a) General rule.--Except as provided in subsection (b),
5 licenses shall be granted for a period of one year from date of
6 issue, or for any other license period that is established by
7 the department through regulation and that uses risk-based
8 factors identified in the current edition of the Model Retail
9 Food Code, published by the Food and Drug Administration, as a
10 basis for determining the appropriate license interval.

11 Application for renewal shall be made one month before
12 expiration of AN existing license. A license granted under the <—
13 provisions of this subchapter shall be renewed if the most
14 recent inspection by the licensor was conducted within the
15 preceding license period and determined that conditions
16 specified in section 5704 (relating to application for license)
17 with respect to the ~~premises and equipment~~ RETAIL FOOD FACILITY <—
18 are fulfilled.

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

25 § 5706. Contents of license.

26 Licenses shall specify the date of issuance, the period which
27 is covered, the name of the licensee and the place licensed.
28 Licenses shall be conspicuously displayed at all times in the
29 place thereby licensed. Licenses shall not be transferable.

30 § 5707. Powers of department.

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

11 (b) Suspension or revocation of licenses.--The department
12 may on its own motion, or on complaint after investigation and
13 hearing at which the licensee shall be afforded an opportunity
14 to be heard, suspend or revoke any license for any violation by
15 the licensee or the licensee's partner, agent, servant or
16 employee of the provisions of this subchapter or of any other
17 act relating to the public health and being applicable to the
18 retail food facility or of the rules and regulations of the
19 department or of any of the terms, conditions or provisions of
20 the license by the licensee, or any of the agents, servants or
21 employees of the licensee. Notice of suspension or revocation,
22 and the reasons therefore, as well as any required notice of
23 hearing, shall be given in writing to the licensee at the
24 address contained in the license. Suspension of license shall be
25 terminated when the violation for which it was imposed has been
26 found, upon inspection, to have been corrected. Whenever a
27 license is suspended or revoked, no part of the fee paid
28 therefore shall be returned to the holder.

29 (c) School cafeterias.--The department shall provide for the
30 inspection of school cafeterias and for training of school

cafeteria personnel in accordance with the standards applied to retail food facilities.

(d) Inspection.--If a licensor is required to provide the department a copy of an inspection report pursuant to section 5703(f) (relating to license required) and fails to comply with that requirement, the department may inspect and license the subject retail food facility, and the licensor that failed to comply with the inspection requirement shall not charge or collect any fee for licensing the subject retail food facility. If the department conducts an inspection, it shall promptly provide the licensor a copy of the inspection report.

§ 5708. Infectious persons.

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

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

13 § 5711. Toilets, sinks and drains.

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

17 § 5712. Revocation of license.

18 If a proprietor, after investigation made by the licensor,
19 has failed or refused after a reasonable interval to correct
20 conditions found to constitute a violation of this subchapter,
21 or of the regulations of the department pertaining to retail
22 food facilities, the license shall be revoked.

23 § 5713. School cafeterias AND ORGANIZED CAMPS.

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24 Officials of schools AND ORGANIZED CAMPS shall cooperate with
25 the department in the conduct of ~~school~~ cafeteria health and
26 safety inspections and shall participate in inspection services
27 and training programs made available by the department.

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28 § 5714. Penalties.

29 (a) Criminal penalty.--A person who violates any provision
30 of this subchapter or any rule, regulation, standard or order

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

9 (b) Civil penalty.--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 § 5715. Retail Food Facility Safety Fund.

26 There is hereby created a special fund in the State Treasury
27 to be known as the Retail Food Facility Safety Fund. All funds
28 received or collected by the department under this subchapter
29 shall be deposited in the fund. All moneys in the fund and the
30 accrued interest are appropriated to the department to use to

pay any direct or incidental expense incurred in carrying out the responsibilities of the department under this subchapter. These expenses include, but are not limited to, personnel and operating expenses.

SUBCHAPTER B

FOOD SAFETY

Sec.

5721. Short title of subchapter.

5722. Definitions.

5723. Prohibited acts.

5724. Temporary or permanent injunctions.

5725. Penalties.

5726. Detention and condemnation.

5727. Temporary permits.

5728. Adulteration of food.

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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.

5737. Acts not affected.

§ 5721. Short title of subchapter.

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

§ 5722. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

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

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

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

19 "Federal acts." The Wholesome Meat Act (Public Law 90-201,
20 21 U.S.C. § 601 et seq.), the Federal Food, Drug, and Cosmetic
21 Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.), the Poultry
22 Products Inspection Act (Public Law 85-172, 21 U.S.C. § 451 et
23 seq.), the Fair Packaging and Labeling Act (Public Law 89-755,
24 15 U.S.C. § 1451 et seq.), the Federal Insecticide, Fungicide,
25 and Rodenticide Act (61 Stat. 163, 7 U.S.C. § 136 et seq.) and
26 the Nutritional Labeling and Education Act of 1990 (Public Law
27 101-535, 104 Stat. 2353).

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

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

12 (1) A pesticide chemical in or on a raw agricultural
13 commodity.

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

17 (3) A color additive.

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

24 (5) A new animal drug.

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

29 "Food establishment." A room, building or place or portion
30 thereof or vehicle maintained, used or operated for the purpose

1 of commercially storing, packaging, making, cooking, mixing,
2 processing, bottling, baking, canning, freezing, packing or
3 otherwise preparing, transporting or handling food. The term
4 excludes retail food facilities, retail food establishments,
5 public eating and drinking places and those portions of
6 establishments operating exclusively under milk or milk products
7 permits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 § 5723. Prohibited acts.

25 The following acts are prohibited:

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

1 (2) Adulteration or misbranding of any food.

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

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

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

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

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

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

26 (9) Use by any person to his own advantage or revealing,
27 other than to the secretary or the courts when relevant in
28 any judicial proceeding under this subchapter, of any
29 information acquired under authority of this subchapter
30 concerning any method or process which, as a trade secret or

1 confidential trade information, is entitled to protection.

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

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

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

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

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

22 § 5724. Temporary or permanent injunctions.

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

28 § 5725. Penalties.

29 (a) Criminal penalties.--A person who violates any provision
30 of this subchapter or any rule, regulation, standard or order

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

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

24 (c) Guaranty.--

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

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

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

1 against for a violation.

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

8 § 5726. Detention and condemnation.

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

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

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

19 (b) Determination and appeal.--The secretary shall determine
20 whether a food detained under this subchapter may be sold,
21 delivered, consigned, held or offered for sale as is or whether
22 it shall be relabeled, reprocessed or destroyed within 40 days
23 of issuance of the detention order. Any determination by the
24 secretary that the food shall be relabeled, reprocessed or
25 destroyed shall be subject, within 30 days of the determination,
26 to appeal by the owner or operator of the food establishment or
27 the manufacturer or owner of the food to the court of common
28 pleas of the county in which the food was located. The detention
29 order shall expire after five working days from the issuance of
30 the order, unless the secretary confirms the order. The order

1 shall clearly and concisely state the facts on which it is
2 based.

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

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

22 § 5727. Temporary permits.

23 Temporary permits granted by Federal agencies for interstate
24 shipment of experimental packs of food varying from the
25 requirements of definitions and standards of identity in Federal
26 acts shall be effective in this Commonwealth under the
27 conditions provided in the permits. The secretary may issue
28 intrastate permits where they are necessary to the completion of
29 an investigation and where the interests of consumers are
30 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.

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

(3) If it is a raw agricultural commodity and bears or contains a pesticide chemical which is unsafe within the meaning of section 5731, except that where a pesticide chemical has been used in or on a raw agricultural commodity with an exemption granted or tolerance prescribed under section 5731 or under any of the Federal acts and the raw agricultural commodity has been subjected to processing such

1 as canning, cooking, freezing, dehydrating or milling, the
2 residue of the pesticide remaining in or on the processed
3 food shall, notwithstanding the provisions of section 5731
4 and this paragraph, not be deemed unsafe if the residue in or
5 on the raw agricultural commodity has been removed to the
6 extent possible in good manufacturing practice and the
7 concentration of the residue in the processed food when ready
8 to eat is not greater than the tolerance prescribed for the
9 raw agricultural commodity.

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

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

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

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

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

29 (9) If it has been intentionally subjected to radiation,
30 unless the use of the radiation was in conformity with a

regulation or exemption in effect under section 5731 or under one of the Federal acts.

(10) If:

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

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

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

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

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

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

§ 5729. Misbranding of food.

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

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

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

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

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

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

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

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

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

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

20 (7) Unless its label bears the following:

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

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

29 (8) If it is represented for special dietary uses,
30 unless its label bears such information concerning its

1 vitamin, mineral and other dietary properties as determined
2 by regulation to be necessary and in order to inform
3 purchasers as to its value for such use.

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

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

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

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

30 (b) Exceptions.--The provisions of subsection (a)(1) through

1 (11) shall not apply to the following:

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

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

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

17 § 5730. Regulations to exempt certain labeling requirements.

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

25 § 5731. Poisonous or deleterious substances and tolerances.

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

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

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

21 § 5732. Inspection, sampling and analysis.

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

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

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

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

13 (4) TO OBTAIN A SAMPLE OF ANY FOOD AT A RETAIL FOOD <—
14 FACILITY FOR SUCH ANALYSIS AS MAY BE NECESSARY TO DETERMINE
15 COMPLIANCE WITH THIS SUBCHAPTER IF:

16 (I) A SAMPLE IS COLLECTED UNDER AUTHORITY OF THIS
17 PARAGRAPH, THE SECRETARY SHALL, UPON COMPLETION OF THE
18 INSPECTION AND PRIOR TO LEAVING THE FACILITY, PROVIDE THE
19 OWNER, OPERATOR OR AGENT IN CHARGE A RECEIPT DESCRIBING
20 THE SAMPLE OBTAINED; AND

21 (II) A FOOD SAMPLE IS COLLECTED UNDER AUTHORITY OF
22 THIS PARAGRAPH, THE RETAIL FOOD FACILITY FROM WHICH THE
23 SAMPLE WAS COLLECTED MAY BILL THE SECRETARY FOR THE FAIR
24 MARKET VALUE OF THE SAMPLE.

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

30 (B.1) INTERAGENCY COORDINATION.--THE DEPARTMENT SHALL SHARE <—

1 INSPECTION REPORTS OR TESTS RESULTS THAT INDICATE HUMAN ILLNESS
2 RELATED TO FOOD CONSUMPTION OR FOOD HANDLING PRACTICES, OR TO
3 OTHER THREATS TO THE SAFETY OF THE FOOD SUPPLY, WITH THE
4 DEPARTMENT OF HEALTH, THE DEPARTMENT OF ENVIRONMENTAL PROTECTION
5 OR ANY OTHER COMMONWEALTH AGENCY AS NECESSARY TO DEVELOP A
6 COMPREHENSIVE, COORDINATED INTERAGENCY APPROACH TO PROTECTING
7 PUBLIC HEALTH AND SAFEGUARDING THE FOOD SUPPLY.

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

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

18 (e) Payment of samples.--The food establishment from which
19 samples are collected may bill the secretary for the fair market
20 value of the samples.

21 § 5733. Rules and regulations.

22 (a) Nature of rules.--The secretary shall be charged with
23 the enforcement of this subchapter and shall promulgate rules,
24 regulations and food standards necessary for its proper
25 enforcement. The rules, regulations and food standards shall
26 conform and shall be construed to conform with the purposes
27 expressed in section 5736 (relating to construction of
28 subchapter). Except to the extent that they are inconsistent
29 with the regulations adopted by subsection (f), the rules,
30 regulations and food standards in effect on September 2, 1994,

shall continue in effect unless subsequently modified by regulations promulgated by the secretary.

(b) Local inspection.--The secretary shall enter into agreements with any county, city, borough, incorporated town or township of this Commonwealth for the enforcement of this subchapter and the rules, regulations and food standards promulgated under this subchapter in food establishments, provided that the county, city, borough, incorporated town or township satisfies the minimum standards established by the secretary and the minimum standards required to be eligible for State grants pursuant to the act of August 24, 1951 (P.L.1304, No.315), known as the Local Health Administration Law. Nothing in this subchapter shall prohibit any county, city, borough, incorporated town or township which was licensing food establishments in accordance with the Local Health Administration Law on September 2, 1994, from continuing to license such food establishments in accordance with the Local Health Administration Law. No county, city, borough, incorporated town or township, shall ordain or enforce requirements of any kind or description related to sanitation, food safety, inspections, standards and labeling other than those promulgated by the secretary in accordance with this subchapter or adopted in accordance with subsection (f).

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

1 food.

2 (d) Uniform regulation.--In reaching agreements with
3 counties, cities, boroughs, incorporated towns or townships and
4 reciprocal agreements with other jurisdictions, the provisions
5 of this subchapter and its regulations shall be considered as
6 establishing uniform requirements and regulations for food
7 establishments throughout this Commonwealth as defined in
8 section 5722 (relating to definitions).

9 (e) Interagency agreements.--Nothing in this subchapter
10 shall prohibit a Commonwealth agency which was regulating and
11 inspecting food establishments in accordance with Subchapter A
12 (relating to retail food facility safety) on September 2, 1994,
13 from continuing to regulate and inspect food establishments in
14 accordance with Subchapter A.

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

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

25 § 5734. Registration of food establishments.

26 (a) General rule.--Subject to the rules and regulations
27 adopted by the secretary, it shall be the duty of every person
28 operating a food establishment within this Commonwealth to
29 register with the secretary as a food establishment. This
30 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) Exceptions. The following are exempt from the provisions of this section:~~

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

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

(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

1 limited to food products prepared or packed in a food
2 establishment registered under section 5734 (relating to
3 registration of food establishments).

4 § 5736. Construction of subchapter.

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

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

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

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

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

23 (5) would not unduly burden interstate commerce.

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

30 § 5737. Acts not affected.

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

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

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

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

16 Section 2. Sections 6502, 6503, ~~6504, 6506, 6507, 6508,~~ <—
17 ~~6509, 6510 and 8101~~ AND 6504 of Title 3 are amended to read: <—
18 § 6502. Definitions.

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

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

24 "CERTIFICATE." A CERTIFICATE OF COMPLETION ISSUED BY A <—
25 CERTIFICATION PROGRAM THAT HAS BEEN EVALUATED AND LISTED BY AN
26 ACCREDITING AGENCY THAT HAS BEEN RECOGNIZED BY THE CONFERENCE
27 FOR FOOD PROTECTION STANDARDS FOR ACCREDITATION OF FOOD
28 PROTECTION MANAGER CERTIFICATION PROGRAM.

29 "Conference for Food Protection." An independent, national
30 voluntary nonprofit organization to promote food safety and

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

8 "EMPLOYEE." AS DEFINED UNDER SECTION 5702 (RELATING TO <—
9 DEFINITIONS).

10 "Food establishment." [A room, building, place or portion
11 thereof or vehicle maintained, used or operated for the purpose
12 of selling to the public, commercially storing, packaging,
13 making, cooking, mixing, processing, bottling, baking, canning,
14 freezing, packing or otherwise preparing, transporting or
15 handling food. The term includes retail food stores and public
16 eating and drinking licensees, except those portions of
17 establishments operating exclusively under milk or milk products
18 permits and those portions of establishments operating
19 exclusively under USDA inspection. The term does not include
20 dining cars operated by a railroad company in interstate
21 commerce or a bed and breakfast, homestead or inn as defined in
22 the act of May 23, 1945 (P.L.926, No.369), referred to as the
23 Public Eating and Drinking Place Law.] As defined in section
24 5722 (relating to definitions).

25 "Person in charge." A person designated by a retail food
26 facility operator to be present at a retail food facility and
27 responsible for the operation of the retail food facility at the
28 time of inspection.

29 ["Potentially hazardous food." A food which consists in
30 whole or in part of milk or milk products, eggs, meats, poultry,

1 fish, shellfish, edible crustaceans or other ingredients,
2 including synthetic ingredients, and which is in a form capable
3 of supporting rapid and progressive growth of infectious or
4 toxicogenic microorganisms. The term does not include foods that
5 have a pH level of 4.6 or below or a water activity of 0.85 or
6 less under standard conditions or food products in hermetically
7 sealed containers processed to maintain commercial sterility.]

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

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

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

16 ["Supervisory employee." {An owner or a person employed by <—
17 or designated by the business owner to fulfill the requirements
18 of this chapter.] ~~The person in charge of a retail food~~ <—
19 ~~facility. A person designated by a retail food facility operator~~
20 ~~to be present at a retail food facility and responsible for the~~
21 ~~operation of the retail food facility at the time of inspection.~~

22 § 6503. Certification [advisory board and] programs.

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

28 (1) The chairman and minority chairman of the
29 Agricultural and Rural Affairs Committee of the Senate or
30 their designees and the chairman and minority chairman of the

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

3 (2) A consumer representative.

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

6 (4) Two representatives of production agriculture.

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

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

29 (c) Certification programs.--[The advisory board shall
30 review and recommend certification programs submitted by

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

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

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

1 of 90 days after employment to pass the required test.]
2 demonstration of food safety protection knowledge by the
3 successful completion of an examination conducted by or pursuant
4 to an accredited certification program recognized by the
5 department under subsection (c). A retail food facility shall
6 have a period of three months after licensing under Ch. 57
7 Subch. A (relating to retail food facility safety) within which
8 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 ~~supervisory~~ <—
22 ~~employee~~ PERSON IN CHARGE who holds a valid [department food <—
23 employee] certificate[.] present at the retail food facility at <—
24 all hours of operation. <—

25 (A.1) EXEMPTION.--NOTWITHSTANDING THE PROVISIONS OF
26 SUBSECTION (A), THE DEPARTMENT SHALL, BY REGULATION, EXEMPT
27 CATEGORIES OF RETAIL FOOD FACILITIES FROM THE REQUIREMENT THAT A
28 CERTIFIED SUPERVISORY EMPLOYEE BE PRESENT AT ALL HOURS OF
29 OPERATION. THE REGULATION SHALL CONSIDER RISK-BASED FACTORS
30 IDENTIFIED IN THE CURRENT EDITION OF THE MODEL RETAIL FOOD CODE,

1 PUBLISHED BY THE FOOD AND DRUG ADMINISTRATION, TO IDENTIFY THESE
2 CATEGORIES OF RETAIL FOOD FACILITIES.

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

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

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

7 (g) [Training program.--

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

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

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

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

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

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

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

(Reserved).

f(h) [Mitigating factor.--

<—

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

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

(RESERVED).

<—

SECTION 2.1. SECTION 6506 OF TITLE 3 IS REPEALED:

<—

[§ 6506. Reciprocal agreements.

<—

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

<—

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

<—

1 SECTION 2.2. SECTIONS 6507 AND 6508 OF TITLE 3 ARE AMENDED <—
2 TO READ:

3 § 6507. Suspension of certification.

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

12 § 6508. Civil penalties.

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

25 SECTION 2.3. SECTION 6509 OF TITLE 3 IS REPEALED: <—

26 [§ 6509. Fees. <—

27 (a) Change by regulation.--All fees imposed by this chapter
28 shall remain in effect until changed by the department by
29 regulation subject to the act of June 25, 1982 (P.L.633,
30 No.181), known as the Regulatory Review Act. The department

1 shall propose to change those fees by regulation {following <—
2 consultation with the advisory board}. <—

3 (b) Fee for certification.--The department shall issue or
4 approve the issuance of a certification document to the person
5 upon the successful completion of the {approved training} <—
6 ~~accredited certification~~ program. A fee of \$20 shall be charged
7 by the department for this service unless changed by regulation.

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

16 SECTION 2.4. SECTIONS 6510 AND 8101 OF TITLE 3 ARE AMENDED <—
17 TO READ:

18 § 6510. Exemptions.

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

20 (1) Retail food facilities where only commercially
21 prepackaged food is handled and sold are exempt from this
22 chapter.

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

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

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

30 (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
encourage participation and support for extracurricular
recreational activities for youth of primary and secondary
public, private and parochial school systems on a not-for-
profit basis.

§ 8101. [Farmers' market.

For the purpose of section 14(e) of the act of July 7, 1994
(P.L.421, No.70), known as the Food Act, any building, structure

1 or place owned, leased or otherwise in possession of a person or
2 municipal corporation or public or private organization, used or
3 intended to be used by two or more farmers or an association of
4 farmers for the purpose of selling food directly to consumers
5 shall be deemed to be a single food establishment.] (Reserved).

6 Section 3. Repeals are as follows:

7 (1) The General Assembly declares as follows:

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

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

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

17 (2) Repeals are as follows:

18 (i) Section 602-A(16) of the act of April 9, 1929
19 (P.L.177, No.175), known as The Administrative Code of
20 1929, is repealed.

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

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

26 ~~Section 4. This act shall take effect in 60 days.~~ <—

27 SECTION 4. THIS ACT SHALL TAKE EFFECT AS FOLLOWS: <—

28 (1) THE AMENDMENT OF 3 PA.C.S. § 6504(A) SHALL TAKE
29 EFFECT ON THE EFFECTIVE DATE OF THE REGULATIONS PROMULGATED
30 UNDER 3 PA.C.S. § 6504(A.1), OR TWO YEARS FROM THE EFFECTIVE

1 DATE OF THIS SECTION, WHICHEVER OCCURS FIRST.

2 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
3 DAYS.