

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, YUDICHAK, GOODMAN AND
W. KELLER, FEBRUARY 2, 2009

AS REPORTED FROM COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 9, 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

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18 § 5701. Short title of chapter.

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

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

8 (e) Inspection.--

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

13 (i) The rules and regulations of the department.

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

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

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

28 (g) Term of license.--

29 (1) Except as provided in paragraph (2), licenses shall
30 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~~SECOND follow-up inspection during ←
18 the licensure period: \$150.

19 (ii) For a ~~second~~THIRD or subsequent follow-up ←
20 inspection 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. EXCEPT WHEN WASHING FRUITS AND VEGETABLES OR WHEN APPROVED BY THE DEPARTMENT, FOOD EMPLOYEES MAY NOT CONTACT EXPOSED, READY-TO-EAT FOOD WITH THEIR BARE HANDS, AND SHALL USE SUITABLE UTENSILS SUCH AS DELI TISSUE, SPATULAS, TONGS, SINGLE-USE GLOVES OR DISPENSING EQUIPMENT. 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

1 school or organized camp located in areas in which the
2 department is not the licensor.

3 § 5714. Penalties.

4 (a) Retail food facilities under jurisdiction of
5 department.--For retail food facilities under the jurisdiction
6 of the department, penalties are as follows:

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

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

penalty as the secretary may determine, the secretary may
refer the matter to the Attorney General, who shall recover
the amount by action in the appropriate court.

(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.

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1 5733. Rules and regulations.

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3 5735. Product registration.

4 5736. Construction of subchapter.

5 5737. Acts not affected.

6 § 5721. Short title of subchapter.

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

9 § 5722. Definitions.

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

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

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

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

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

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

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

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

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

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

28 (3) A color additive.

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

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

5 (5) A new animal drug.

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

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

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

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

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

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

30 (1) Shipping containers or wrappings for the

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

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

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

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

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

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

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

26 "Public eating and drinking place." As defined in section
27 5702 (relating to definitions).

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

1 marketing.

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

4 "Retail food facility." As defined in section 5702 (relating
5 to definitions).

6 "Secretary." Includes an authorized representative, employee
7 or agent of the Department of Agriculture.

8 § 5723. Prohibited acts.

9 The following acts are prohibited:

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

15 (2) Adulteration or misbranding of any food.

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

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

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

28 (6) Removal or disposal of a detained or embargoed food
29 article in violation of section 5726 (relating to detention
30 and condemnation).

1 (7) Alteration, mutilation, destruction, obliteration or
2 removal of the whole or any part of the labeling of a food or
3 the doing of any other act with respect to a food, if the act
4 is done while the food is held for sale and results in the
5 food being adulterated or misbranded.

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

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

16 (10) Holding of any potentially hazardous food at unsafe
17 temperatures in violation of an applicable regulation issued
18 under this chapter.

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

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

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

29 (14) Failure by a carrier to make records showing the
30 movement in commerce of any food or the holding thereof

during or after the movement and the quantity, shipper and
consignee thereof available for one year after the initial
date of movement of the food in commerce.

§ 5724. Temporary or permanent injunctions.

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

§ 5725. Penalties.

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

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

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

6 (c) Guaranty.--

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

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

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

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

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

25 § 5726. Detention and condemnation.

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

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

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

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

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

29 (d) Order for destruction.--Food detained under this
30 subchapter shall be destroyed by the owner under the supervision

of the secretary, if the secretary determines that the food is
unfit for human consumption and the food cannot be reconditioned
so as to be made fit for human consumption and the determination
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,

1 if the substance is not an added substance, the food shall
2 not be considered adulterated under this section if the
3 quantity of the substance in the food does not ordinarily
4 render it injurious to health.

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

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

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

30 (5) If it consists, in whole or in part, of any

1 diseased, contaminated, filthy, putrid or decomposed
2 substance or is otherwise unfit for food.

3 (6) If it has been produced, prepared, packed or held
4 under unsanitary conditions so that it may have become
5 contaminated with filth or may have been rendered diseased,
6 unwholesome or injurious to health.

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

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

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

20 (10) If:

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

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

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

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

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

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

9 § 5729. Misbranding of food.

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

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

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

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

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

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

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

24 (ii) An accurate statement of the quantity of the
25 contents in terms of weight, measure or numerical count.
26 Reasonable variations are permitted and exemptions as to
27 small packages shall be established in regulations
28 promulgated by the secretary.

29 (6) If it is represented as a food for which a
30 definition and standard of identity has been prescribed by

1 regulation under this subchapter or under any of the Federal
2 acts, unless it conforms to the definition and standard and
3 its label bears the name of the food specified in the
4 definition and standard and the common names of optional
5 ingredients, other than spices, flavoring and coloring,
6 present in the food.

7 (7) Unless its label bears the following:

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

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

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

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

1 commodity which is the produce of the soil.

2 (10) If it is a raw agricultural commodity bearing or
3 containing a pesticide chemical applied after harvest, unless
4 the shipping container of the commodity bears labeling which
5 declares the presence of the chemical and the common or usual
6 name and function of the chemical. A declaration shall not be
7 required when the commodity is removed from the shipping
8 container and is held or displayed for sale at retail in
9 accordance with the custom of the trade.

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

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

17 (b) Exceptions.--The provisions of subsection (a)(1), (2),
18 (3), (4), (5), (6), (7), (8), (9), (10) and (11) shall not apply
19 to the following:

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

27 (2) Bakery goods sold to the operators of retail food
28 facilities when the required information in subsection (a)(1)
29 (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11) is
30 available to the public on the premises of the retail food

1 facility.

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

6 § 5730. Regulations to exempt certain labeling requirements.

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

14 § 5731. Poisonous or deleterious substances and tolerances.

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

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

27 (c) Unsafe food additives.--A food additive shall, with
28 respect to any particular use or intended use, be deemed to be
29 unsafe for the purposes of the application of section 5728(4)
30 (relating to adulteration of food) unless it and its intended

use conform to the terms of an exemption which is in effect
under this section or unless there is in effect, and it and its
intended use are in conformity with, a regulation issued under
this section prescribing the conditions under which the additive
may be safely used. A food which is in compliance with a
regulation relating to a food additive shall not, by reason of
bearing or containing an additive in accordance with the
regulations, be considered adulterated within the meaning of
section 5728(4).

§ 5732. Inspection, sampling and analysis.

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

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

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

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

1 regulations.

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

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

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

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

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

28 § 5733. Rules and regulations.

29 (a) Nature of rules.--The secretary shall be charged with
30 the enforcement of this subchapter and shall promulgate rules,

1 regulations and food standards necessary for its proper
2 enforcement. The rules, regulations and food standards shall
3 conform and shall be construed to conform with the purposes
4 expressed in section 5736 (relating to construction of
5 subchapter).

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

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

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

1 definitions).

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

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

15 (G) WATER STANDARDS.--IF A FOOD ESTABLISHMENT USES OR ←
16 SUPPLIES WATER FOR HUMAN CONSUMPTION, THE WATER SHALL BE IN
17 COMPLIANCE WITH THE PRIMARY AND SECONDARY MAXIMUM CONTAMINANT
18 LEVELS (MCL), TREATMENT TECHNIQUES AND MAXIMUM RESIDUAL
19 DISINFECTANT LEVELS (MRDL) REQUIRED BY THE ACT OF MAY 1, 1984
20 (P.L.206, NO.43), KNOWN AS THE PENNSYLVANIA SAFE DRINKING WATER
21 ACT, AND ITS ATTENDANT REGULATIONS.

22 ~~(g)~~ (H) Definitions.--As used in this section, the phrase ←
23 "other jurisdictions" shall mean the United States of America or
24 any 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) 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

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

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

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

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

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

15 (5) would not unduly burden interstate commerce.

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

22 § 5737. Acts not affected.

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

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

30 (2) The act of August 24, 1951 (P.L.1304, No.315), known

1 as the Local Health Administration Law, with regard to
2 licensure, regulation and inspection of a public eating or
3 drinking place, as defined in section 5702 (relating to
4 definitions), which is not a food establishment under this
5 subchapter.

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

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

10 § 6502. Definitions.

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

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

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

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

30 "Employee." As defined under section 5702 (relating to

1 definitions).

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

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

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

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

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

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

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

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

12 § 6503. Certification [advisory board and] programs.

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

18 (1) The chairman and minority chairman of the
19 Agricultural and Rural Affairs Committee of the Senate or
20 their designees and the chairman and minority chairman of the
21 Agricultural and Rural Affairs Committee of the House of
22 Representatives or their designees.

23 (2) A consumer representative.

24 (3) The Secretary of Agriculture or the secretary's
25 designee.

26 (4) Two representatives of production agriculture.

27 (5) Representatives, including at least one person
28 recommended by each of the following: Pennsylvania
29 Association of Milk Dealers, Pennsylvania Restaurant
30 Association, Pennsylvania Food Merchants Association,

1 Pennsylvania Convenience Store Council, Pennsylvania Bakers
2 Association, Pennsylvania Food Processors Association,
3 National Federation of Independent Businesses, Pennsylvania
4 Petroleum Marketers & Convenience Store Association, Local
5 1776 UFCW, Pennsylvania Retailers Association, the Licensed
6 Beverage Association, Pennsylvania Tourism and Lodging
7 Association, Associated Petroleum Industries, Pennsylvania
8 Veterinary Medical Association, County Commissioners
9 Association of Pennsylvania, Pennsylvania League of Cities
10 and Municipalities, Pennsylvania State Association of
11 Boroughs, Pennsylvania State Association of Township
12 Commissioners, Pennsylvania State Association of Township
13 Supervisors and Pennsylvania School Food Service Association.
14 At least one representative shall have experience in the
15 field of public health.] (Reserved).

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

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

29 (c.1) [Other duties.--For the purpose of complying with the
30 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 standards shall be adopted by the department to ensure that, upon successfully passing a test, the supervisory employee has demonstrated adequate food protection knowledge. These standards shall also provide for a certification program which authorizes private or public agencies to conduct and approve tests and certify the results of these tests to the department. At least one supervisory employee of a food establishment shall have passed the test and received a certificate attesting thereto. Employees shall have a period of 90 days after employment to pass the required test.] demonstration of food safety protection knowledge by the successful completion of an examination conducted by or pursuant to an accredited certification program recognized by the department under subsection (c). A retail food facility shall have a period of three months after licensing under Ch. 57 Subch. A (relating to retail food facility safety) within which to comply with this chapter.

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

1 preempted by the Commonwealth.

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

5 § 6504. Certification of employees.

6 (a) General rule.--[Food establishments shall maintain
7 certification records on respective supervisory employees.] Each
8 [food establishment shall employ a person having supervisory
9 authority] retail food facility shall have a person in charge
10 who holds a valid [department food employee] certificate[.]
11 present at the retail food facility at all hours of operation.

12 (a.1) Exemption.--Notwithstanding the provisions of
13 subsection (a), the department shall, by regulation, exempt
14 categories of retail food facilities from the requirement that a
15 certified person in charge be present at all hours of operation.
16 The regulation shall consider risk-based factors identified in
17 the current edition of the Food Code, published by the United
18 States Department of Health, Food and Drug Administration, to
19 identify these categories of retail food facilities.

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

24 (c) Compliance.--

25 (1) (Reserved).

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

29 (3) Except as provided in section 6510, compliance with
30 this chapter by a [food establishment] retail food facility

shall be mandatory. [by July 1, 2004. Section 6503(e)
(relating to certification advisory board and programs) shall
not apply to any food establishment prior to July 1, 2004,
unless that food establishment complies with this chapter.]

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

(e) Maintenance and inspection of records.--Names and 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).

1 (g) [Training program.--

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

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

14 (ii) The limited handling of potentially hazardous
15 food.

16 (iii) The number of hours necessary to prepare
17 employees for safe food handling due to the food
18 establishment's scope of business.

19 (iv) The demonstration of satisfactory knowledge and
20 proficiency in the safe handling of food as approved by
21 the department.

22 (2) The department shall develop and administer a
23 training program for food establishments voluntarily seeking
24 certification under subsection (c)(2). The General Assembly
25 may appropriate funds to offset the cost of the program for
26 food establishments exempt under section 6510(d).]

27 (Reserved).

28 (h) [Mitigating factor.--

29 (1) If a food establishment complies with this chapter,
30 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 3. Sections 6506 and 6507 of Title 3 are repealed:

[§ 6506. Reciprocal agreements.

The department may accept certifications issued in other states that have comparable requirements for certification provided 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.

§ 6507. Suspension of certification.

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

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

§ 6508. Civil penalties.

[In] (a) Retail food facilities licensed by the department.--For retail food facilities licensed under Subchapter A of Chapter 57 (relating to retail food facility safety) by the department, and in addition to proceeding under any other remedy available at law or in equity for a violation

1 of a provision of this chapter or a rule or regulation adopted
2 thereunder or any order issued pursuant thereto, the department
3 may assess a civil penalty not to exceed \$300 for the first
4 offense or not to exceed \$1,000 for subsequent offenses upon a
5 person or [food establishment] retail food facility for each
6 offense. No civil penalty shall be assessed unless the person
7 charged has been given notice and opportunity for a hearing on
8 the charge in accordance with law.

9 (b) Retail food facilities licensed by other licensor.--For
10 retail food facilities licensed under Subchapter A of Chapter 57
11 by a licensor that is not the department, penalties under this
12 chapter shall be established by the licensor.

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

14 [§ 6509. Fees.

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

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

26 (c) Payments to municipalities.--Local health departments
27 created in accordance with the act of August 24, 1951 (P.L.1304,
28 No.315), known as the Local Health Administration Law, may
29 enforce the provisions of this chapter as it pertains to public
30 eating and drinking licensees. Each local health department

shall be reimbursed by the department in an amount equal to 50% of the civil penalties levied and collected by the department pursuant to this chapter in each such jurisdiction.]

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

§ 6510. Exemptions.

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

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

(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

1 by an organization which is a tax-exempt organization under
2 section 501(c) (3) of the Internal Revenue Code of 1986
3 (Public Law 99-514, 26 U.S.C. § 501(c) (3)).

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

10 (3) A [food establishment] retail food facility managed
11 by an organization which is established to promote and
12 encourage participation and support for extracurricular
13 recreational activities for youth of primary and secondary
14 public, private and parochial school systems on a not-for-
15 profit basis. This paragraph does not apply to organized
16 camps.

17 § 8101. [Farmers' market.

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

25 Section 7. Except to the extent they are inconsistent with
26 any provision of this act, the rules, regulations and standards
27 adopted by the department prior to the effective date of this
28 act under authority of the statutes repealed in section 4 of
29 this act, shall continue in effect unless subsequently modified
30 or superseded by regulations promulgated by the Secretary of

1 Agriculture of the Commonwealth.

2 Section 8. Repeals are as follows:

3 (1) The General Assembly declares as follows:

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

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

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

13 (2) Repeals are as follows:

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

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

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

22 Section 9. This act shall take effect as follows:

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

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