

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 735 Session of 2015

INTRODUCED BY VOGEL, WILEY, MENSCH, ALLOWAY, FOLMER, WHITE, BROOKS AND STEFANO, APRIL 21, 2015

SENATOR VOGEL, AGRICULTURE AND RURAL AFFAIRS, AS AMENDED, OCTOBER 27, 2015

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
2 Statutes, in food protection, further providing for
3 definitions and for license required.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. The definition of "licensor" in section 5702 of
7 Title 3 of the Pennsylvania Consolidated Statutes is amended and
8 the section is amended by adding definitions to read:

9 § 5702. 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 * * *

14 "Licensor." Any of the following:

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

1 health.

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

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

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

17 (5) Notwithstanding paragraphs (1), (2), (3) and (4),
18 AND EXCLUDING ANY OPERATIONS OF THE MOBILE RETAIL FOOD <--
19 FACILITY IN A CITY OF THE FIRST CLASS, where the retail food
20 facility is a mobile retail food facility that has a
21 Pennsylvania operating base location, that Pennsylvania
22 operating base location shall be the location of the mobile
23 retail food facility for purposes of licensure under
24 paragraphs (1), (2), (3) and (4).

25 "Mobile retail food facility." A movable retail food
26 facility, such as a stand, vehicle, cart, basket, box or similar
27 structure, from which food is stored, prepared, processed,
28 distributed or sold and the facility:

29 (1) physically locates at one site or location for no
30 more than 14 consecutive days, in one calendar year,

1 regardless of whether or not the facility operates
2 continuously during that time period; and
3 (2) is not ~~licensed~~ ISSUED as a temporary retail food <--
4 facility LICENSE under section 5703(g)(2) (relating to <--
5 license required).

6 * * *

7 "~~Pennsylvania operating base location.~~" A single location <--
8 "PENNSYLVANIA OPERATING BASE LOCATION." <--

9 (1) A SINGLE LOCATION within this Commonwealth where a
10 mobile RETAIL food facility or transportation vehicle returns <--
11 regularly for the purpose of vehicle, trailer or equipment
12 storage, discharging liquid or solid wastes, refilling water
13 tanks and ice bins and boarding food.

14 (2) IF A LOCATION DESCRIBED UNDER PARAGRAPH (1) DOES NOT <--
15 EXIST WITHIN THIS COMMONWEALTH, THE LOCATION FROM WHICH THE
16 MOBILE RETAIL FOOD FACILITY MOST FREQUENTLY DOES BUSINESS
17 WITHIN THIS COMMONWEALTH.

18 * * *

19 Section 2. Section ~~5703(e)~~ 5703(B), (C) and (j) of Title 3 <--
20 are amended and the section is amended by adding a subsection to
21 read:

22 § 5703. License required.

23 * * *

24 (B) EXEMPT RETAIL FOOD FACILITIES.-- <--

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

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

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

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

3 (IV) A SCHOOL CAFETERIA.

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

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

14 (B) OFFERS ONLY FOODS THAT ARE NONPOTENTIALLY
15 HAZARDOUS FOODS OR BEVERAGES.

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

18 (VII) A RETAIL FOOD FACILITY WHICH IS OWNED BY A
19 CHURCH, ASSOCIATION OF CHURCHES OR OTHER RELIGIOUS ORDER,
20 BODY OR INSTITUTION WHICH:

21 (A) QUALIFIES FOR EXEMPTION FROM TAXATION UNDER
22 SECTION 501(C)(3) OR (D) OF THE INTERNAL REVENUE CODE
23 OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. § 501).

24 (B) IS NOT SUBJECT TO UNRELATED BUSINESS INCOME
25 TAXATION UNDER SECTIONS 511, 512 OR 513 OF THE
26 INTERNAL REVENUE CODE OF 1986 FOR ACTIVITIES
27 UNDERTAKEN UNDER THIS CHAPTER.

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, INCLUDING THE PENALTIES FOR VIOLATION OF
7 THIS ACT AUTHORIZED IN SECTION 5714 (RELATING TO PENALTIES).

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

10 (I) A RETAIL FOOD FACILITY IN WHICH ONLY
11 PREPACKAGED, NONPOTENTIALLY HAZARDOUS FOOD OR BEVERAGES
12 ARE SOLD.

13 (II) A RETAIL FOOD FACILITY THAT SELLS ONLY RAW
14 AGRICULTURAL COMMODITIES.

15 (III) A RETAIL FOOD FACILITY THAT IS IN COMPLIANCE
16 WITH THE ACT OF JULY 20, 1974 (P.L.537, NO.184), REFERRED
17 TO AS THE HONEY SALE AND LABELING ACT, SELLS ONLY
18 PRODUCTS REGULATED BY THAT ACT AND IN WHICH 100% OF THE
19 REGULATED PRODUCTS OFFERED FOR HUMAN CONSUMPTION ARE
20 PRODUCED OR PROCESSED ON THE FARM ON WHICH THE RETAIL
21 FOOD FACILITY IS LOCATED.

22 A RETAIL FOOD FACILITY THAT IS EXEMPTED FROM THE LICENSE
23 REQUIREMENTS UNDER THIS SECTION SHALL REMAIN SUBJECT TO
24 INSPECTION AND ALL OTHER PROVISIONS OF THIS SUBCHAPTER, __
25 INCLUDING THE PENALTIES FOR VIOLATION OF THIS ACT AUTHORIZED
26 IN SECTION 5714.

27 (c) Issuance of license.--A retail food facility license
28 shall be issued by the licensor having jurisdiction. A license
29 shall specify the date of expiration, the period for which the
30 license is valid, the name of the licensee and the place

1 licensed. Licenses shall be conspicuously displayed at all times
2 in the place thereby licensed[.] ~~If the license applies to a~~ <--
3 ~~mobile retail food facility that has a Pennsylvania operating~~
4 ~~base location, the license shall be conspicuously displayed at~~
5 ~~any location where the mobile retail food facility is in~~
6 ~~operation.~~ OR, WITH REGARD TO A MOBILE RETAIL FOOD FACILITY, AT <--
7 ~~ANY LOCATION WHERE THE MOBILE RETAIL FOOD FACILITY IS IN~~
8 ~~OPERATION.~~ Licenses shall not be transferable.

9 * * *

10 (j) Fees.--[The] Except as provided for in subsection (j.1),
11 the fees that may be charged under this subchapter are as
12 established by the licensor, if the licensor is an entity other
13 than the department, and shall be paid into the city, borough,
14 incorporated town, township or county treasury. If the licensor
15 is the department, the fees shall be paid to the State Treasury
16 through the department and are as follows:

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

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

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

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

27 (5) For a temporary license under subsection (g) (2):
28 \$14.

29 (6) For conducting a follow-up inspection to review
30 whether changes have been made to correct violations which

1 resulted in noncompliant status determined by a prior
2 inspection:

3 (i) For the second follow-up inspection during the
4 licensure period: \$150.

5 (ii) For a third or subsequent follow-up inspection
6 during the licensure period: \$300.

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

10 (8) For any license described in paragraph (1), (2),
11 (3), (4) or (5) that is issued for a period of greater than
12 one year by regulation of the department in accordance with
13 subsection (g), the license fee otherwise prescribed under
14 those paragraphs shall be prorated for the license period.

15 (j.1) Fee exception.--An entity, EXCEPT FOR THE HEALTH <--
16 AUTHORITY FOR A CITY OF THE FIRST CLASS, shall not charge a fee
17 for conducting an inspection of a mobile retail food facility
18 that has a Pennsylvania operating base location unless the
19 inspecting entity is also the licensor with respect to retail
20 food facilities at that Pennsylvania operating base location.

21 * * *

22 Section 3. This act shall take effect in 60 days.