
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 671 Session of
2019

INTRODUCED BY HEFFLEY, MILLARD, PICKETT, PASHINSKI, NEILSON,
WARREN, DIAMOND AND TOOHL, MARCH 1, 2019

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
MARCH 1, 2019

AN ACT

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

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

7 Section 1. The definitions of "licensor" and "potentially
8 hazardous food" in section 5702 of Title 3 of the Pennsylvania
9 Consolidated Statutes are amended and the section is amended by
10 adding definitions to read:

11 § 5702. Definitions.

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

15 * * *

16 "Licensor." (1) Any of the following:

17 [(1)] (i) The county department of health or joint-
18 county department of health whenever a retail food

1 facility is located in a political subdivision under the
2 jurisdiction of a county department of health or joint-
3 county department of health.

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

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

18 [(4)] (iv) The Department of Agriculture whenever a
19 retail food facility is located in any other area of this
20 Commonwealth.

21 (2) For purposes of this definition and for purposes of
22 determining the appropriate licensor, a mobile retail food
23 facility is located at its operating base location, and
24 multiple mobile retail food facilities may be licensed from a
25 single operating base location.

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

30 "Operating base location." A single location within this

1 Commonwealth where a mobile retail food facility returns
2 regularly for the purpose of vehicle, trailer or equipment
3 storage, discharging liquid or solid wastes, refilling water
4 tanks and ice bins and boarding food.

5 * * *

6 "Potentially hazardous food." The term shall [have the same
7 meaning as defined in the 2009] be synonymous with the term
8 "Time/temperature control for safety food" as defined in the
9 2017 edition of the Food Code published by the Department of
10 Health and Human Services, Food and Drug Administration, or any
11 successor document approved by regulation of the department.

12 * * *

13 Section 2. Section 5703(b), (c), (g) and (j) of Title 3 are
14 amended and the section is amended by adding a subsection to
15 read:

16 § 5703. License required.

17 * * *

18 (b) Exempt retail food facilities.--

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

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

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

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

27 (iv) A school cafeteria.

28 (v) A retail food facility that is owned by a
29 charitable nonprofit entity and that is one or more of
30 the following:

1 (A) Managed by an organization which is
2 established to promote and encourage participation or
3 support for extracurricular recreational activities
4 for youth of primary and secondary public, private
5 and parochial school systems on a not-for-profit
6 basis. This subparagraph does not apply to organized
7 camps.

8 (B) Offers only foods that are nonpotentially
9 hazardous foods or beverages.

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

12 (vii) A retail food facility which is owned by a
13 church, association of churches or other religious order,
14 body or institution which:

15 (A) Qualifies for exemption from taxation under
16 section 501(c)(3) or (d) of the Internal Revenue Code
17 of 1986 (Public Law 99-514, 26 U.S.C. § 501).

18 (B) Is not subject to unrelated business income
19 taxation under sections 511, 512 or 513 of the
20 Internal Revenue Code of 1986 for activities
21 undertaken under this chapter.

22 If the licensor is the department, the exemption shall be
23 accomplished by order of the secretary and published in the
24 Pennsylvania Bulletin. If the licensor is an entity other
25 than the department, the exemption shall be accomplished by
26 order of the local government unit or units having
27 jurisdiction over the licensor. A retail food facility that
28 is exempted from the license requirements under this section
29 shall remain subject to inspection and all other provisions
30 of this subchapter[.], including the criminal and civil

1 penalties for violations of this act authorized in section
2 5714 (relating to penalties).

3 (2) A licenser shall exempt the following retail food
4 facilities from the license requirements of this section:

5 (i) A retail food facility in which only
6 prepackaged, nonpotentially hazardous food or beverages
7 are sold.

8 (ii) A retail food facility that sells only raw
9 agricultural commodities.

10 (iii) A retail food facility that is in compliance
11 with the act of July 20, 1974 (P.L.537, No.184), referred
12 to as the Honey Sale and Labeling Act, sells only
13 products regulated by that act and in which 100% of the
14 regulated products offered for human consumption are
15 produced or processed on the farm on which the retail
16 food facility is located.

17 A retail food facility that is exempted from the license
18 requirements under this section shall remain subject to
19 inspection and all other provisions of this subchapter[.],
20 including the criminal and civil penalties for violations of
21 this act authorized in section 5714.

22 (c) Issuance of license.--A retail food facility license
23 shall be issued by the licenser having jurisdiction. A license
24 shall specify the date of expiration, the period for which the
25 license is valid, the name of the licensee and the place
26 licensed. Licenses shall be conspicuously displayed at all times
27 in the place thereby licensed[.] or, with regard to a mobile
28 retail food facility, at any location where the mobile retail
29 food facility is in operation. Licenses shall not be
30 transferable.

1 * * *

2 (g) Term of license.--

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

18 * * *

19 (j) Fees.--~~[The]~~ Except as provided under subsection (j.1),
20 the fees that may be charged under this subchapter are as
21 established by the licensor, if the licensor is an entity other
22 than the department, and shall be paid into the city, borough,
23 incorporated town, township or county treasury. If the licensor
24 is the department, the fees shall be paid to the State Treasury
25 through the department and are as follows:

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

29 (2) For licensure of a retail food facility that has not
30 been previously licensed and that is not described in

1 paragraph (1): \$241.

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

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

6 (5) For a temporary license under subsection (g) (2):
7 \$14.

8 (6) For conducting a follow-up inspection to review
9 whether changes have been made to correct violations which
10 resulted in noncompliant status determined by a prior
11 inspection:

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

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

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

19 (8) For any license described in paragraph (1), (2),
20 (3), (4) or (5) that is issued for a period of greater than
21 one year by regulation of the department in accordance with
22 subsection (g), the license fee otherwise prescribed under
23 those paragraphs shall be prorated for the license period.

24 (j.1) Fee exception.--An entity, except for a health
25 authority for a city of the first class, shall not charge a fee
26 for conducting an inspection of a mobile retail food facility
27 unless the inspecting entity is also the licensor with respect
28 to that mobile retail food facility.

29 * * *

30 Section 3. Section 5707(a) and (c) of Title 3 are amended to

1 read:

2 § 5707. Powers of department.

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

13 * * *

14 (c) Inspection and enforcement.--

15 (1) If a licensor fails to inspect a retail food
16 facility as required under section 5703(e) (relating to
17 license required), the department shall have the authority to
18 license and inspect all retail food facilities under that
19 licensor's jurisdiction, and the licensor that failed to
20 comply with the inspection requirement shall not charge or
21 collect any fee for licensing subject retail food facilities.
22 If the department conducts an inspection, it shall, within 30
23 days, provide the licensor a copy of the inspection report.

24 (2) Subject to section 5703(j.1), a licensor or health
25 authority may enforce the provisions of this subchapter on
26 any mobile retail food facility that operates within its
27 jurisdiction.

28 * * *

29 Section 4. This act shall take effect in 60 days.