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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2518 Session of  
2018

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INTRODUCED BY HEFFLEY, THOMAS, COX, DRISCOLL, MILLARD, PICKETT,  
HILL-EVANS, GILLEN AND WARD, JUNE 19, 2018

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REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,  
JUNE 19, 2018

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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.