

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

AS AMENDED ON SECOND CONSIDERATION, NOVEMBER 16, 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 issued as a temporary retail food facility <--
4 license under section 5703(g)(2) (relating to license
5 required).

6 * * *

7 "Pennsylvania operating base location."

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

13 (2) If a location described under paragraph (1) does not
14 exist within this Commonwealth, the location from which the
15 mobile retail food facility most frequently does business
16 within this Commonwealth.

17 * * *

18 Section 2. Section 5703(b), (c) and (j) of Title 3 are
19 amended and the section is amended by adding a subsection to
20 read:

21 § 5703. License required.

22 * * *

23 (b) Exempt retail food facilities.--

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

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

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

30 (iii) A retail food facility that operates on no

1 more than three days each calendar year.

2 (iv) A school cafeteria.

3 (v) A retail food facility that is owned by a
4 charitable nonprofit entity and that is one or more of
5 the following:

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

13 (B) Offers only foods that are nonpotentially
14 hazardous foods or beverages.

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

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

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

23 (B) Is not subject to unrelated business income
24 taxation under sections 511, 512 or 513 of the
25 Internal Revenue Code of 1986 for activities
26 undertaken under this chapter.

27 If the licensor is the department, the exemption shall be
28 accomplished by order of the secretary and published in the
29 Pennsylvania Bulletin. If the licensor is an entity other
30 than the department, the exemption shall be accomplished by

1 order of the local government unit or units having
2 jurisdiction over the licensor. A retail food facility that
3 is exempted from the license requirements under this section
4 shall remain subject to inspection and all other provisions
5 of this subchapter, including the penalties for violation of
6 this act authorized in section 5714 (relating to penalties).

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

21 A retail food facility that is exempted from the license
22 requirements under this section shall remain subject to
23 inspection and all other provisions of this subchapter, including the penalties for violation of this act authorized
24 in section 5714.

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

1 in the place thereby licensed[.] or, with regard to a mobile
2 retail food facility, at any location where the mobile retail
3 food facility is in operation. Licenses shall not be
4 transferable.

5 * * *

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

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

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

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

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

23 (5) For a temporary license under subsection (g)(2):
24 \$14.

25 (6) For conducting a follow-up inspection to review
26 whether changes have been made to correct violations which
27 resulted in noncompliant status determined by a prior
28 inspection:

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

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

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

6 (8) For any license described in paragraph (1), (2),
7 (3), (4) or (5) that is issued for a period of greater than
8 one year by regulation of the department in accordance with
9 subsection (g), the license fee otherwise prescribed under
10 those paragraphs shall be prorated for the license period.

11 (j.1) Fee exception.--An entity, except for the health
12 authority for a city of the first class, shall not charge a fee
13 for conducting an inspection of a mobile retail food facility
14 that has a Pennsylvania operating base location unless the
15 inspecting entity is also the licensor with respect to retail
16 food facilities at that Pennsylvania operating base location.

17 * * *

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