

No. 1994-70

## AN ACT

HB 24

Providing for protection of public health and prevention of fraud and deception by prohibiting the manufacture or sale of, the offering for sale or exposing for sale of or the having in possession with intent to sell adulterated, misbranded or deleterious foods; and making repeals.

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

## Section 1. Short title.

This act shall be known and may be cited as the Food Act.

## Section 2. Definitions.

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

“Color additive.” A material which is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral or other source and when added or applied

to a food is capable, alone or through reaction with other substances, of imparting color thereto. The term includes black, white and intermediate grays. The term does not include any material which the Secretary of Agriculture, by regulation, determines is used or intended to be used solely for a purpose or purposes other than coloring. This term shall not include any pesticide chemical, soil or plant nutrient or other agricultural chemical solely because of its effect in aiding, retarding or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

“Department.” The Department of Agriculture of the Commonwealth.

“Federal acts.” The Wholesome Meat Act (Public Law 90-201, 21 U.S.C. § 601 et seq.), the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.), the Poultry Products Inspection Act (Public Law 85-172, 21 U.S.C. § 451 et seq.), the Fair Packaging and Labeling Act (Public Law 89-755, 15 U.S.C. § 1451 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, 7 U.S.C. § 136 et seq.) and the Nutritional Labeling and Education Act of 1990 (Public Law 101-535, 104 Stat. 2353).

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

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

- (1) A pesticide chemical in or on a raw agricultural commodity.
- (2) A pesticide chemical to the extent that it is intended for use or is used in the production, storage or transportation of any raw agricultural commodity.
- (3) A color additive.
- (4) Any substance used in accordance with a sanction or approval granted prior to the enactment of this paragraph pursuant to a statute repealed by this act, pursuant to the Poultry Products Inspection Act (Public Law 85-172, 21 U.S.C. § 451 et seq.) or pursuant to the Wholesome Meat Inspection Act (Public Law 90-201, 21 U.S.C. § 601 et seq.).
- (5) A new animal drug.

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

“Food establishment.” A retail food store and a room, building or place or portion thereof or vehicle maintained, used or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, baking, canning, freezing, packing or otherwise preparing or transporting or handling food. The term includes those portions of public eating and drinking licensees which offer food for sale for off-premises consumption, except those portions of establishments operating exclusively under milk or milk products permits.

“Imitation food.” A food that is a substitute for and resembles another food but is nutritionally inferior to that food.

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

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

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

- (1) Shipping containers or wrappings for the transportation of food in bulk or quantity to manufacturers, packers or processors or to wholesale or retail distributors.

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

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

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

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

“Potentially hazardous food.” A food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea or other ingredients, including synthetic ingredients, and which is in a form capable of supporting rapid and progressive growth of infectious or toxicogenic microorganisms. The term does not include foods that have a pH level of 4.6 or below or a water activity of 0.85 or less under standard conditions or food products in hermetically sealed containers processed to maintain commercial sterility.

“Principal display panel.” A part of a label that is most likely to be displayed, presented, shown or examined under normal and customary conditions of display for retail sale and is large enough to accommodate all the mandatory information required to be placed thereon.

“Raw agricultural commodity.” A food in its raw or natural state, including all fruits which are washed, colored or otherwise treated in their unpeeled, natural form prior to marketing.

“Retail food store.” Any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption.

“Secretary.” The Secretary of Agriculture of the Commonwealth or an authorized representative, employee or agent of the Department of Agriculture.

### Section 3. Prohibited acts.

The following acts are prohibited:

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

(2) Adulteration or misbranding of any food.

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

(4) Sale, delivery for sale, holding for sale or offering for sale any article in violation of section 11.

(5) Refusal to permit during normal business hours entry to, inspection of or taking of a sample or access to or copying of any record at a food establishment as authorized under section 12(a)(2) and (3).

(6) Removal or disposal of a detained or embargoed food article in violation of section 6.

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

(8) Forging, counterfeiting, simulating, falsely representing or using without proper authority any mark, stamp, tag, label or other identification device authorized or required by regulation promulgated under the provisions of this act.

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

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

(11) Failure to register with the department under the provisions of section 14.

(12) Use of wording which incorrectly indicates or implies that a label or product has received approval of the department. A food establishment

may not claim registration either upon its label or package or otherwise, except as provided in section 15.

(13) Sale of confectionery containing alcohol at a level above one-half of one percent by volume.

(14) Failure by a carrier to make records showing the 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.

#### Section 4. Temporary or permanent injunctions.

In addition to any other remedies provided in this act, 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 any provisions of this act or any regulation adopted under this act, regardless of whether there exists an adequate remedy at law.

#### Section 5. Penalties.

(a) Criminal penalties.—A person who violates any provision of this act or any rule, regulation, standard or order made under this act commits a summary offense for the first or second offense. A person who violates any provision of this act or any rule, regulation, standard or order made under this act 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 a provision of this act or a rule or regulation adopted or any order issued under this act, 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 warning in lieu of assessing a penalty. In case of inability to collect the civil penalty or 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.

(c) Guaranty.—

(1) No prosecution shall be sustained under the provisions of this act for the manufacture, delivery, consignment, bailment, holding or sale of or offering for sale, exposing for sale or having in possession with intent to sell any adulterated or misbranded article against a person from whom the article of food, sample or portion was obtained by the department, if the person can establish a guaranty to the effect that the article of food is not adulterated or misbranded within the meaning of this act, was adulterated or misbranded prior to coming into the possession of the person and the person did not know or have reason to know of the

adulteration or misbranding or was adulterated or misbranded after it left the possession and control of the person. The guaranty must be signed by the supplier, manufacturer, wholesale dealer, jobber or distributor from whom the articles of food were purchased or procured.

(2) The guaranty to afford protection shall contain the name and address of the supplier, manufacturer, wholesale dealer, jobber or distributor making the sale of the article of food to the person holding the guaranty. A supplier, manufacturer, wholesale dealer, jobber or distributor giving a guaranty under the provisions of this act may be held responsible and may be proceeded against for the adulteration or misbranding of any article of food sold under the guaranty and shall be subject to the penalties provided for violation of the provisions of this act. A guaranty shall not operate as a defense to prosecution for a violation of the provisions of this act if the person holding the guaranty continues to sell the same food after written or printed notice from the secretary that the article is adulterated or misbranded within the meaning of this act. However, if the person violated the provisions of this act by having stored, transported, exposed or kept the article in a way or manner to render it diseased, contaminated or unwholesome, the person may be proceeded against for a violation.

(d) Minor violations.—Nothing in this act shall be construed as requiring prosecution or institution of a proceeding under this act for minor violations of this act if the secretary believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

#### Section 6. Detention and condemnation.

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

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

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

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

(c) Relabeling.—If the secretary determines that the adulteration or misbranding can be corrected by a proper label or reprocessing and the determination is not appealed within the time permitted, the secretary may

direct that the food be released to the claimant to label or process under the supervision of the secretary. The relabeled or reprocessed food shall not be released into the market until the secretary has executed an order indicating that the food is no longer in violation of this act.

(d) Order for destruction.—Food detained under this act 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 act 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.

#### Section 7. 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 unless disapproved by the secretary. 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 13. 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.

#### Section 8. 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, if the substance is not an added substance, the food shall not be considered adulterated under this section if the quantity of the substance in the food does not ordinarily render it injurious to health.

(2) If it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of section 11. This paragraph does not apply to a pesticide chemical in or on a raw agricultural commodity, a food additive or a color additive.

(3) If it is a raw agricultural commodity and bears or contains a pesticide chemical which is unsafe within the meaning of section 11, except that, where a pesticide chemical has been used in or on a raw agricultural commodity with an exemption granted or tolerance prescribed under section 11 or under any of the Federal acts and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating or milling, the residue of the pesticide remaining in

or on the processed food shall, notwithstanding the provisions of section 11 and this paragraph, not be deemed unsafe if the residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

(4) If it bears or contains any food additive which is unsafe within the meaning of section 11 or under any of the Federal acts.

(5) If it consists in whole or in part of any diseased, contaminated, filthy, putrid or decomposed substance or is otherwise unfit for food.

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

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

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

(9) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect under section 11 or under one of the Federal acts.

(10) If:

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

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

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

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

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

#### Section 9. Misbranding of food.

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

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

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

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

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

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

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



(ii) An accurate statement of the quantity of the contents in terms of weight, measure or numerical count.

Reasonable variations are permitted and exemptions as to small packages shall be established in regulations promulgated by the secretary.

(6) If it is represented as a food for which a definition and standard of identity has been prescribed by regulation under this act or under any of the Federal acts, unless it conforms to the definition and standard and its label bears the name of the food specified in the definition and standard and the common names of optional ingredients, other than spices, flavoring and coloring, present in the food.

(7) Unless its label bears the following:

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

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

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

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

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

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

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

(b) Exceptions.—The provisions of subsection (a)(1) through (11) shall not apply to the following:

(1) Bakery goods sold at retail by the bakery directly to the consumer in a store or market stand operated by the bakery. The bakery goods must be made by the bakery, the bakery must guarantee that they are in compliance with this act in all other respects and the required information in subsection (a)(1) through (9) must be available to the public at the point of sale.

(2) Bakery goods sold to the operators of public eating places, when the required information in subsection (a)(1) through (11) is available to the public on the premises of the public eating place.

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

#### Section 10. Regulations to exempt certain labeling requirements.

The secretary shall promulgate regulations exempting from any labeling requirement food which is, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed if the food is not adulterated or misbranded under the provisions of this act upon removal from the processing, labeling or repacking establishments.

#### Section 11. Poisonous or deleterious substances and tolerances.

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

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

(c) Unsafe food additives.—A food additive shall, with respect to any particular use or intended use, be deemed to be unsafe for the purposes of the application of section 8(4) 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 8(4).

**Section 12. Inspection, sampling and analysis.**

(a) **Inspection.**—For purposes of enforcement of this act, 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 act.

(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 act or department regulations.

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

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

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

(e) **Payment for samples.**—The food establishment from which samples are collected may bill the secretary for the fair market value of the samples.

**Section 13. Rules and regulations.**

(a) **Nature of rules.**—The secretary shall be charged with the enforcement of this act and shall promulgate rules, regulations and food standards necessary for its proper enforcement. The rules, regulations and food standards shall conform and shall be construed to conform with the purposes expressed in section 16. Except to the extent that they are inconsistent with the regulations adopted by subsection (f), the rules, regulations and food standards in effect on the day prior to the effective date of this act shall continue in effect unless subsequently modified by regulations promulgated by the secretary.

(b) **Local inspection.**—The secretary shall enter into agreements with any county, city, borough, incorporated town or township of this Commonwealth for the enforcement of this act and the rules, regulations and food standards promulgated under this act in food establishments, provided that such county,

city, borough, incorporated town or township satisfies the minimum standards established by the secretary and the minimum standards required to be eligible for State grants pursuant to the act of August 24, 1951 (P.L.1304, No.315), known as the Local Health Administration Law. Nothing herein shall prohibit any county, city, borough, incorporated town or township which was licensing food establishments in accordance with the Local Health Administration Law on the day prior to the effective date of this act from continuing to license such food establishments in accordance with that act. No county, city, borough, incorporated town or township shall ordain or enforce requirements of any kind or description related to sanitation, food safety, inspections, standards and labeling other than those promulgated by the secretary in accordance with this act or adopted in accordance with subsection (f), except that, prior to promulgation of regulations applicable to retail food stores, any such county, city, borough, incorporated town or township may utilize the Model Retail Food Store Sanitation Code as the basis for enforcement.

(c) Reciprocal inspection.—The secretary is authorized to enter into reciprocal agreements with other jurisdictions to insure inhabitants of this Commonwealth that food sold in this Commonwealth complies with the provisions of this act and its regulations. The agreements may be for reciprocal inspection and labeling review. The secretary may approve or accept inspection and labeling requirements of other jurisdictions with respect to food.

(d) Uniform regulation.—In reaching agreements with counties, cities, boroughs, incorporated towns or townships and reciprocal agreements with other jurisdictions, the provisions of this act and its regulations shall be considered as establishing uniform requirements and regulations for food establishments throughout this Commonwealth as defined in section 2.

(e) Interagency agreements.—Nothing herein shall prohibit a Commonwealth agency, which was regulating and inspecting food establishments in accordance with the act of May 23, 1945 (P.L.926, No.369), referred to as the Public Eating and Drinking Place Law, on the day prior to the effective date of this act from continuing to regulate and inspect such food establishments in accordance with the Public Eating and Drinking Place Law.

(f) Adoption of Federal regulations.—All regulations and supplements thereto or revisions thereof adopted under the Federal acts which relate to food on, before or after the effective date of this act are hereby adopted as regulations in this Commonwealth and shall remain in effect unless subsequently modified by regulations promulgated by the secretary. In promulgating regulations, the department shall be guided by the Model Retail Food Store Sanitation Code, published by the Association for Food and Drug Officials.

(g) Definition.—As used in this section, the phrase “other jurisdictions” shall mean the United States of America or any state, territory or possession thereof or any other country.

#### Section 14. Registration of food establishments.

(a) General rule.—Subject to the rules and regulations adopted by the secretary, it shall be the duty of every person operating a food establishment within this Commonwealth to register with the secretary as a food establishment. This 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) Exceptions.—The following are exempt from the provisions of this section:

(1) Vehicles used primarily for the transportation of any consumer commodity in bulk or quantity to manufacturers, packers, processors or wholesale or retail distributors.

(2) Any food establishment in which at least 50% of the commodities sold were produced on the farm on which the food establishment is located.

(3) Any food establishment in which food or beverages are sold only through a vending machine.

(4) Any food establishment in which only prepackaged, nonpotentially hazardous food or beverages are sold.

(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.

#### Section 15. 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 14(a) of this act.

#### Section 16. Construction of act.

(a) General rule.—The provisions of this act and the regulations promulgated under this act shall be construed in a manner that is consistent with the Federal acts and regulations promulgated under those acts. The secretary shall not ordain or enforce requirements relating to sanitation, food safety, food standards and labeling requirements of any kind or description other than those provided for in the Federal acts unless the proposed regulation meets all of the following:

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

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

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

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

(5) would not unduly burden interstate commerce.

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

#### Section 17. Acts not affected.

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

(1) The act of July 2, 1935 (P.L.589, No.210), referred to as the Milk Sanitation Law, the act of May 23, 1945 (P.L.926, No.369), referred to as the Public Eating and Drinking Place Law, the act of August 8, 1961 (P.L.975, No.436), referred to as the Milk Adulteration and Labeling Act, and the act of September 1, 1965 (P.L.420, No.215), known as The Frozen Dessert Law.

(2) 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 public eating or drinking place, as defined in the Public Eating and Drinking Place Law, which is not a food establishment under this act.

#### Section 18. Severability.

The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

#### Section 19. Repeals.

The following acts and parts of acts are repealed:

Act of May 21, 1885 (P.L.22, No.25), entitled "An act for the protection of the public health, and to prevent adulteration of dairy products and fraud in the sale thereof."

Act of May 23, 1887 (P.L.157, No.88), referred to as the Candy and Confectionery Adulteration Law.

Act of June 11, 1891 (P.L.297, No.225), entitled "An act to prevent the adulteration of cider vinegar, regulating the sale of vinegar made wholly from apples, grapes and other fruits, prohibiting the manufacture and sale of vinegar from certain ingredients injurious to health, and providing penalties therefor."

Act of July 10, 1901 (P.L.643, No.327), referred to as the Renovated Butter Law.

Act of March 28, 1905 (P.L.64, No.46), entitled "An act to prohibit the selling, shipping, consigning, offering for sale, exposing for sale, or having in possession with intent to sell, as fresh, any meat, poultry, game, fish, or shell fish which contains any substance or article possessing a preservative or coloring character or action; making the same a misdemeanor; and to prescribe penalties and punishment for violations, and the means and the methods of procedure for the enforcement thereof."

Act of March 11, 1909 (P.L.17, No.11), referred to as the Lard Law.

Act of May 13, 1909 (P.L.520, No.292), referred to as the Pure Food Law.

Act of April 6, 1911 (P.L.51, No.45), referred to as the Sausage Adulteration Law.

Act of May 5, 1915 (P.L.247, No.143), referred to as the Coffee and Chicory Law.

Act of April 13, 1921 (P.L.129, No.78), referred to as the Butter Adulteration Law.

Act of March 3, 1925 (P.L.10, No.8), referred to as the Fruit Syrup Law.

Act of March 17, 1925 (P.L.34, No.20), entitled "An act regulating the sale of oysters at retail."

Act of May 22, 1933 (P.L.912, No.168), referred to as the Bakery Law.

Act of May 21, 1937 (P.L.788, No.214), entitled "An act for the protection of the public health, and the prevention of fraud and deception, requiring clean, sanitary establishments for the manufacture, preparation or bottling of nonalcoholic drinks and liquid foods, including clean, sanitary ingredients and containers; regulating the maintenance and operation of such establishments, and the use of containers; prescribing penalties; and providing for injunctions in certain cases."

Act of May 20, 1949 (P.L.1511, No.455), referred to as the Cold Storage Warehouse Food Law.

Act of July 5, 1957 (P.L.485, No.276), entitled "An act for the protection of the public health and welfare, and the prevention of fraud and deception in the manufacture or sale of packaged non-alcoholic drinks; prohibiting the sale, offering or exposing for sale, exchange or giving away thereof unless registered; providing for licensing of places of manufacture; regulating the manufacture, compounding, labeling, sanitation and ingredients of non-alcoholic drinks, and the display of presses of fruit; prohibiting misbranding and adulteration of registered and non-registered non-alcoholic drinks; authorizing promulgation of rules, regulations and standards, and providing for penalties and for injunctions in certain cases, and the disposition of fees and fines."

Act of December 15, 1965 (P.L.1077, No.412), entitled "An act relating to and regulating the manufacture, sale, transportation, possession, use, serving and advertising of oleomargarine, margarine, butterine and similar substances; prohibiting the sale, possession or use thereof in certain cases;

preventing and punishing fraud and deception in the manufacture, sale, use, serving and advertising thereof; imposing powers and duties on the Department of Agriculture and defining enforcement procedure; requiring notice to patrons of certain eating places which sell or serve any such products; and prescribing penalties.”

Section 20. Effective date.

This act shall take effect in 60 days.

APPROVED—The 7th day of July, A.D. 1994.

ROBERT P. CASEY