

No. 1994-131

AN ACT

SB 729

Amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, adding provisions relating to bees, commercial feed, organic foods, maple products and food handlers; transferring regulatory responsibilities relating to public eating and drinking places and egg refrigeration to the Department of Agriculture; and making repeals.

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

Section 1. Title 3 of the Pennsylvania Consolidated Statutes is amended by adding parts to read:

PART I GENERAL PROVISIONS

Chapter

- 1. Preliminary Provisions

CHAPTER 1 PRELIMINARY PROVISIONS

Sec.

- 101. Short title of title.
- 102. Definitions.

- § 101. Short title of title.

This title shall be known and may be cited as the Agriculture Code.

- § 102. Definitions.

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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

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

PART II

PRODUCTS IN GENERAL

(Reserved)

PART III

PLANTS AND PLANT PRODUCTS

(Reserved)

PART IV

ANIMALS AND ANIMAL PRODUCTS

Chapter

21. Bees

CHAPTER 21

BEEES

Sec.

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§ 2101. Short title of chapter.

This chapter shall be known and may be cited as the Bee Law.

§ 2102. Definitions.

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

“Apiary.” Any place where one or more colonies or nuclei of bees are kept.

“Apiary yard.” A fixed location or locations in this Commonwealth where an apiary is maintained on a continuing basis from which hives may be moved to temporary locations for crop pollination and returned.

“Appliance.” Any apparatus, tool, machine or other device used in the handling and manipulating of bees, honey, wax and hives and any container of honey and wax which may be used in any apiary or in transporting bees and their products and apiary supplies.

“Bee.” Any stage of the common hive or honeybee (*Apis mellifera*) or other species of the genus *Apis*.

“Bee disease.” Any American or European foul brood, sac brood, bee paralysis or other disease or abnormal condition of eggs, larval, pupal or adult stages of the honeybee.

“Bureau.” The Bureau of Plant Industry of the Department of Agriculture.

“Hive.” Any frame hive, box hive, box, barrel, log, gum, skep or other receptacle or container, natural or artificial, or any part thereof, which may be used or employed as a domicile for bees.

“Owner of an apiary.” Includes all colonies owned by an individual and located in any permanent location or locations within this Commonwealth.

“Queen apiary.” Any apiary or premises in which queen bees are reared or kept for sale or gift.

“Violation.” A violation of this chapter or any order or regulation promulgated under this chapter.

§ 2103. Chief apiary inspector.

The secretary shall appoint a chief apiary inspector to be in charge of all apiary inspections and shall appoint such additional apiary inspectors as may be necessary. The inspectors shall be attached to the bureau and shall be furnished with official badges or other insignia of authority. The secretary and the bureau are charged with the enforcement of the provisions of this chapter.

§ 2104. Quarantines.

The department may establish, modify and maintain such quarantines as may be necessary to control the shipment into or within this Commonwealth of any bees, queen bees, hives or appliances capable of transmitting any bee disease for such periods and under such conditions as may be necessary in order to control and eradicate any bee disease or to prevent its introduction, spread or dissemination in this Commonwealth and for such purposes may make and promulgate such rules, regulations and orders relating thereto and to the general enforcement of the provisions of this chapter as may be necessary.

§ 2105. Registration of apiaries.

(a) General rule.—The owner of an apiary located in this Commonwealth shall register the apiary with the department.

(b) Application.—The application for registration of an apiary shall be made on a form provided by the department and shall include all of the following:

(1) The name and complete mailing address of the owner of the apiary and the name and complete mailing address of the person primarily responsible for maintaining and caring for the apiary if different from the owner.

(2) The exact location or locations of each apiary.

(3) The number of colonies contained in the apiary.

(4) Such other information as the department may require.

(c) Fee.—The apiary registration fee shall be \$10 for each applicant. No fee shall be charged for temporary relocation of a hive or hives for crop pollination from an apiary yard properly registered as an apiary under this chapter.

(d) Registration term.—A registration under this section shall be valid for a period of not more than two calendar years and shall expire on December 31 of the year following the initial year of registration.

(e) Relocation.—The department may by regulation require apiary owners to report the relocation of an apiary from its original location as reported at the time of registration to another location in this Commonwealth. The owner of an apiary yard which is properly registered as an apiary under this chapter shall not be required to report the temporary relocation of a hive or hives for crop pollination as long as proper records of hive locations are maintained by the owner at a location available to the department for inspection.

§ 2106. Inspection.

The department through the inspectors shall at least twice during each summer season inspect all queen apiaries. If from the inspection it appears that any bee disease exists in the queen apiary, the apiary inspector making the inspection shall immediately notify in writing the owner or person in charge thereof, and thereafter it shall be unlawful for that person to ship, sell or give away any queen bees from the apiary until the disease has been destroyed and a certificate of that fact has been obtained from the chief inspector. If upon inspection it is found that no bee disease exists in the queen apiary, the chief inspector shall issue a certificate of that fact, and a copy of the certificate shall be attached to each package or shipment of queen bees transported from the apiary. The certificate shall be valid for one year from the date of its issue unless revoked for cause.

§ 2107. Diseases.

(a) General rule.—The department through the inspectors shall, as far as practicable, inspect all apiaries in this Commonwealth. If upon inspection it is found that any bee disease exists in the apiary, the inspector making the inspection shall immediately notify in writing the owner or person in charge of the apiary, stating the nature of the disease and whether the disease may or may not be successfully treated. If the disease may be successfully treated, the inspector shall specify and direct the necessary treatment, which shall be administered by the owner or person in charge within 14 days.

(b) Service of notices.—The written notice required by section 2106 (relating to inspection) and this section may be served by handing a copy

thereof to the owner or person in charge of the apiary or by leaving a copy thereof with an adult person residing upon the premises or by registered mail addressed to the owner or person in charge of the apiary at his last known or reputed address.

§ 2108. Infected shipments.

Infected shipments, apiaries where the existing disease cannot be successfully treated and apiaries which are affected by disease amenable to treatment but which have not been treated within a period of 14 days after the owner thereof has received notice of the necessary treatment are hereby declared to be a public nuisance and a menace to the community, and the director of the bureau or his authorized agent may destroy by burning or otherwise, without any remuneration to the owner, any infected bees, hives, honey or appliances found therein.

§ 2109. Prohibitions.

(a) Infected colonies, hives or appliances.—No person shall knowingly keep in his possession without proper treatment any colony of bees affected with any bee disease or expose any diseased colony or infected hive or appliance so that flying bees may have access to them.

(b) Infected bees.—No person shall sell, barter or give away, accept, receive or transport any bees affected with any bee disease.

(c) Hives.—No person shall keep or maintain honeybees in any hive other than a modern movable frame hive which permits thorough examination of every comb to determine the presence of bee disease. All other types of hives or receptacles for bees which are in use are hereby declared to be a public nuisance and a menace to the community, and the secretary, the chief apiary inspector or any apiary inspector may seize and destroy the hive or receptacle without remuneration to the owner.

§ 2110. Free access.

The department, the chief apiary inspector and any apiary inspector shall have free access, ingress and egress to and from any apiary, premises, building or other place, public or private, in which bees, queen bees, wax, honey, hives or appliances may be kept or stored. No person shall deny to such duly authorized officer or agent access to any such place or hinder or resist the inspection of the premises.

§ 2111. Transportation.

No person shall transport bees, hives or appliances into this Commonwealth unless they are accompanied with a certificate of inspection signed by the chief apiary inspector or corresponding inspection official of the state or county from which the bees are being transported. The certificate shall certify that actual inspection of the bees was made within 30 days preceding the date of shipment and that the bees, hives and appliances contained in the shipment are free from bee diseases. It is the duty of any officer, agent, servant or employee of any person, firm or corporation engaged in transportation, who shall receive a shipment of bees consigned to a point in this Commonwealth and not having attached thereto a certificate

as required, to immediately notify the department and to hold the shipment subject to its orders for a period of 15 days.

§ 2112. Imported bees.

No person shall import any living insects belonging to the genus *Apis* from any foreign country except Canada for any purpose without written permission from the department.

§ 2113. Penalties.

(a) First violation.—A first violation of this chapter or any order or regulation promulgated under this chapter constitutes a summary offense punishable by a fine of not less than \$100.

(b) Second violation.—A second violation of this chapter or any order or regulation promulgated under this chapter constitutes a summary offense punishable by a fine of not less than \$300.

(c) Subsequent violations.—A third and subsequent violation of this chapter or any order or regulation promulgated under this chapter constitutes a misdemeanor of the third degree punishable by a fine of not less than \$1,000.

§ 2114. Civil penalties.

(a) Assessment.—The department may assess a civil penalty of not more than \$1,000 upon a person for each violation.

(b) Contest.—If a civil penalty is assessed against a person under subsection (a), the department shall notify the person by certified mail of the nature of the violation and the amount of the civil penalty and that the person may notify the department in writing within ten calendar days that he wishes to contest the civil penalty. If within ten calendar days from the receipt of that notification the person does not notify the department of his intent to contest the assessed penalty, the civil penalty shall become final.

(c) Hearing and appeal.—If timely notification of the intent to contest the civil penalty is given, the person contesting the civil penalty shall be provided with a hearing in accordance with 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies). Appeals may be taken in accordance with 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

§ 2115. Injunctions.

The Attorney General at the request of the department may initiate in the Commonwealth Court or the court of common pleas of the county in which the defendant resides or has a place of business an action in equity for an injunction to restrain any violation of this chapter or any order or regulation promulgated under this chapter. The Commonwealth shall not be required to furnish a bond or other security in connection with this proceeding.

§ 2116. Concurrent remedies.

The penalties and remedies prescribed by this chapter are concurrent. The existence or exercise of any remedy shall not prevent the exercise of any other remedy under this chapter.

§ 2117. Disposition of funds.

Moneys received from registration fees, fines and civil penalties shall be paid into the State Treasury and shall be credited to the general government operations appropriation of the Department of Agriculture for administering the provisions of this chapter.

PART V
SOIL AND CONSERVATION
(Reserved)

PART VI
DEVELOPMENT, MARKETING AND PROMOTION
(Reserved)

PART VII
QUALITY AND LABELING

Chapter

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CHAPTER 51
COMMERCIAL FEED

Sec.

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§ 5101. Short title of chapter.

This chapter shall be known and may be cited as the Commercial Feed Act.

§ 5102. Definitions.

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

“Brand name.” Any word, name, symbol or device or any combination thereof identifying the commercial feed of a distributor and distinguishing it from that of others.

“Commercial feed.” All materials distributed or intended to be distributed for use as feed or for mixing in feed. The term does not include unmixed whole seeds and physically altered entire unmixed seeds when the seeds are not adulterated within the meaning of section 5106 (relating to adulteration). The department by regulation may exempt from this definition or specific provisions of this chapter specific commodities, individual chemical compounds or substances when the commodities, compounds or substances are not mixed with other materials and are not adulterated within the meaning of section 5106.

“Contract feed.” Commercial feed provided to a contract feeder.

“Contract feeder.” A person who as an independent contractor feeds commercial feed to animals pursuant to a contract whereby the commercial feed is supplied, furnished or otherwise provided to the person and whereby the person’s remuneration is determined all or in part by feed consumption, mortality, profits or amount or quality of product.

“Customer-formula feed.” Commercial feed consisting of a mixture of commercial feeds or feed ingredients or both, each batch of which is manufactured according to the specific instructions of the final purchaser.

“Distribute.” To offer for sale, sell or barter commercial feed or customer-formula feeds or to supply, furnish or otherwise provide commercial feed or customer-formula feed to a contract feeder.

“Distributor.” Any person who distributes commercial feed or customer-formula feed.

“Drug.” Any article intended for use in the prevention, diagnosis, cure, mitigation or treatment of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.

“Exempted material.” Any commodity, individual chemical compound or substance specifically exempted from the definition of commercial feed.

“Facility.” Each separate mill or plant, fixed or mobile, or distributor of commercial feed or customer-formula feed.

“Feed ingredient.” Each of the constituent materials making up a commercial feed.

“Guarantor.” The person, including a manufacturer or distributor, whose name appears on the label of commercial feed.

“Label.” A display of written, printed or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice

or delivery slip with which a commercial feed or customer-formula feed is distributed.

“Labeling.” All labels and other written, printed or graphic matter:

(1) appearing upon a commercial feed or any of its containers or wrappers; or

(2) used in promoting the distribution of commercial feed.

“Manufacture.” To grind, mix, blend, repackage or further process a commercial feed for distribution.

“Mineral feed.” A substance or mixture of substances designed or intended to supply primarily mineral elements or inorganic nutrients.

“Official sample.” Any sample of feed taken by the department in accordance with section 5108 (relating to inspection, sampling and analysis).

“Percentage.” Percentage by weight.

“Pet.” Any domesticated animal normally maintained in or near the household of the owner thereof.

“Pet food.” Any commercial feed prepared and distributed for consumption by pets.

“Portable grinding mill.” An apparatus or machine, so constructed as to be moved from place to place and not located in a permanent place, used and employed as a food or feed grinder or mill to manufacture commercial feed.

“Product name.” The name of the commercial feed which identifies it as to kind, class or specific use.

“Repackage.” To change the container, wrapper or labeling of any commercial feed package to further its distribution from the original place of manufacture.

“Sale.” Includes exchange.

“Ton.” A net weight of 2,000 pounds avoirdupois.

§ 5103. Licensing.

(a) General rule.—Every person engaged in the manufacture of commercial feed or customer-formula feed to be distributed in this Commonwealth and each guarantor of the feed shall, on January 1 of each year or prior to manufacture or distribution of the feed, obtain a license for each manufacturing facility located in this Commonwealth and for each guarantor by completing a form furnished by the department and paying a \$25 application fee. Upon approval by the department, a copy of the license shall be furnished to the applicant and, in the case of manufacturers, displayed in the facility. The department may require an applicant for a license or a current licensee to submit any labeling the applicant is using or intends to use for commercial feed.

(b) Denial of license.—The department may refuse the license of any person not in compliance with the provisions of this chapter or cancel the license of any person found not in compliance with any provision of this chapter. A license may not be refused or canceled until the applicant or licensee has been given an opportunity to be heard before the department.

§ 5104. Labeling.

(a) Commercial feed labeling.—Any commercial feed distributed in this Commonwealth shall be accompanied by a legible label bearing the following information:

(1) The net weight.

(2) The product name and brand name, if any, under which the commercial feed is distributed.

(3) The guaranteed analysis stated in such terms as the secretary by regulation determines is required to advise the user of the composition of the feed to support the claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods from generally recognized sources such as the methods published by the Association of Official Analytical Chemists.

(4) The common or usual name of each ingredient used in the manufacture of the commercial feed. The department may by regulation permit the use of a collective term for a group of ingredients which perform a similar function or it may exempt such commercial feeds or any group thereof from this requirement of an ingredient statement if it finds that such statement is not required in the interest of consumers.

(5) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.

(6) Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the department may require by regulation as necessary for their safe and effective use.

(7) Such warning or caution statements as the department by regulation determines are necessary for the safe and effective use of the commercial feed.

(b) Customer-formula feed labeling.—Customer-formula feed shall be accompanied by a label, invoice, delivery slip or other shipping document bearing the following information:

(1) The name and address of the manufacturer.

(2) The name and address of the purchaser.

(3) The date of delivery.

(4) The product name and brand name, if any, the net weight of each commercial feed used in the mixture and the net weight of each other ingredient used.

(5) Adequate directions for use of all customer-formula feeds containing drugs and for such other feeds as the department may require by regulation as necessary for their safe and effective use.

(6) Warning or caution statements as the department by regulation determines are necessary for the safe and effective use of the customer-formula feed.

§ 5105. Inspection fees.

(a) Imposition.—There shall be paid to the department for all commercial feeds distributed in this Commonwealth an inspection fee at the rate of 10¢

per ton annually. Customer-formula feeds and contract feeds are exempted if the inspection fee is paid on the commercial feeds which are used as ingredients therein. Commercial feeds which are distributed to manufacturers and used as ingredients in the manufacture of commercial feeds other than customer-formula feeds and contract feeds are exempted from the inspection fee, but in no case shall the inspection fee paid annually amount to less than \$25. The department, having determined after a public hearing following notice to the licensees that moneys derived from the license and inspection fees are either greater or less than that required to administer this chapter, may by regulation reduce or increase the inspection fee so as to maintain revenues sufficient to administer this chapter, but the inspection fee shall not be changed by more than 2¢ in one year, and the inspection fee shall not exceed 20¢ per ton.

(b) Annual statement and records.—Except as otherwise provided, every guarantor who distributes commercial feed in this Commonwealth shall:

(1) File not later than February 15 of each year an annual statement, under oath, setting forth the number of net tons of commercial feeds distributed in this Commonwealth during the preceding calendar year. Upon filing the statement, the guarantor shall pay the inspection fee at the rate stated in subsection (a) or at the rate established by the department by regulation promulgated under subsection (a). When more than one guarantor is involved in the distribution of commercial feed, the guarantor who distributed the feed last is responsible for reporting the tonnage and paying the inspection fee unless the report and payment have been made by a prior guarantor of the feed or feed ingredient. Inspection fees which are due and owing and have not been remitted to the Commonwealth by the due date shall have a penalty fee of 10% or a minimum of \$25 added to the amount due when payment is finally made. The assessment of this penalty fee shall not prevent the Commonwealth from taking other actions as provided in this chapter.

(2) Keep such records as may be necessary or required by the department to indicate accurately the tonnage of commercial feeds distributed in this Commonwealth. The department may examine these records to verify statements of tonnage.

(c) Cancellation of license.—Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this section shall constitute sufficient cause for the cancellation of the license.

§ 5106. Adulteration.

No person shall distribute adulterated feed. A commercial feed, customer-formula feed or exempted material shall be deemed to be adulterated if it meets any of the following criteria:

(1) It bears or contains any poisonous or deleterious substance which may render it injurious to the health of humans or animals. If the substance is not an added substance, the commercial feed shall not be

considered adulterated under this paragraph if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health.

(2) It bears or contains any added poisonous, added deleterious or added nonnutritive substance which is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.) other than a pesticide chemical in or on a raw agricultural commodity or a food additive.

(3) It is, bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act.

(4) It is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act. Where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating or milling, the residue of the pesticide chemical remaining in or on the processed feed shall not be deemed unsafe if the residue has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity. If the feeding of the processed feed will result or is likely to result in a pesticide residue in the edible product of the animal which is unsafe within the meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act, it shall be deemed adulterated.

(5) It is, bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act.

(6) It is, bears or contains any new animal drug which is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act.

(7) Any valuable constituent has been, in whole or in part, omitted or abstracted therefrom or any less valuable substance substituted therefor.

(8) Its composition or quality falls below or differs from that which it is purported or represented to possess by its labeling.

(9) It contains a drug and the methods used in or the facilities or controls used for its manufacture, processing or packaging do not conform to current good manufacturing practice regulations promulgated by the department to assure that the drug meets the requirements of this chapter as to safety, identity and strength, quality and purity characteristics which the drug purports or is represented to possess. In promulgating these regulations, the department shall adopt the current good manufacturing practice regulations for Type A medicated articles and Type B and Type C medicated feeds established under authority of the Federal Food, Drug, and Cosmetic Act unless it determines that they are not appropriate to the conditions which exist in this Commonwealth.

(10) It contains viable weed seeds in amounts exceeding the limits which the department establishes by regulation.

§ 5107. Misbranding.

No person shall distribute misbranded feed. A commercial feed or customer-formula feed shall be deemed to be misbranded if it meets any of the following criteria:

- (1) Its labeling is false or misleading in any particular.
- (2) It is distributed under the name of another feed.
- (3) It is not labeled as required in section 5104 (relating to labeling) and in regulations prescribed under this chapter.

(4) It purports to be or is represented as a feed ingredient or it purports to contain or is represented as containing a feed ingredient unless the feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the department. In adopting such regulation, the department shall give due regard to commonly accepted definitions such as those issued by the Association of American Feed Control Officials.

(5) Any word, statement or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

§ 5108. Inspection, sampling and analysis.

(a) Inspection.—For purposes of enforcement of this chapter, the department may inspect during business hours any facility, warehouse or establishment in which commercial feeds are manufactured, processed, packed or held for distribution. It may also enter and inspect any vehicle being used to transport or hold feeds. The inspector shall give written notice to the owner or person in charge of the facility, warehouse, establishment or vehicle prior to inspection. The inspection may include the verification of only those records and production and control procedures as may be necessary to determine compliance with this chapter. A separate notice shall be given for each inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified. If the employee making the inspection of a factory, warehouse or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises the employee shall give to the owner, operators or agent in charge a receipt describing the samples obtained.

(b) Warrant.—If the owner of any factory, warehouse or establishment described in subsection (a) or his agent refuses to permit the department to inspect in accordance with subsection (a), the department may obtain from

any court of competent jurisdiction a warrant directing the owner or his agent to submit the premises described in the warrant to inspection.

(c) Samples and records.—For the purpose of the enforcement of this chapter, the department may enter upon any public or private premises, including any vehicle of transport, during business hours to have access to and to obtain samples, including exempted materials and labeling for commercial feeds, and to examine and copy records relating to the manufacture and distribution of commercial feeds and exempted materials.

(d) Sampling and analysis methods.—Sampling and analysis shall be conducted in accordance with methods published by the Association of Official Analytical Chemists or in accordance with other generally recognized methods.

(e) Disposition of official samples.—In determining for administrative purposes whether a commercial feed is deficient in any component, the department shall be guided solely by the official sample obtained and analyzed as provided for in subsection (d). The result of analyses of official samples shall be forwarded by the department to the guarantor. Upon request, the department shall furnish to the guarantor a portion of the sample concerned. The request must be made within 30 days from the date of the official report.

§ 5109. Rules and regulations.

The department is charged with the enforcement of this chapter and after due publicity and due public hearing may promulgate and adopt such reasonable rules and regulations as may be necessary in order to secure the efficient administration of this chapter. Publicity concerning the public hearing shall be reasonably calculated to give interested parties adequate notice and adequate opportunity to be heard.

§ 5110. Detained commercial feeds.

(a) “Withdrawal from distribution” orders.—When the department has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this chapter or of any of the prescribed regulations under this chapter, it may issue and enforce a written or printed “withdrawal from distribution” order warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the department or a court of competent jurisdiction. The department shall release the lot of commercial feed so withdrawn when the provisions and regulations have been complied with. If compliance is not obtained within 30 days, the department may begin or upon request of the distributor shall begin proceedings for condemnation.

(b) Condemnation and confiscation.—Any lot of commercial feed not in compliance with the provisions and regulations shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which the commercial feed is located. In the event the court finds the commercial feed to be in violation of this chapter and orders the condemnation of the commercial feed, it shall be disposed of in any manner

consistent with the quality of the commercial feed and the laws of this Commonwealth. In no instance shall the disposition of the commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this chapter.

§ 5111. Criminal penalties.

(a) Conviction.—Any person who violates any of the provisions of this chapter or the rules and regulations issued thereunder or who impedes, obstructs, hinders or otherwise prevents or attempts to prevent the department in performance of its duty in connection with the provisions of this chapter commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$50 nor more than \$100 for the first violation and not less than \$500 nor more than \$1,000 for a subsequent violation in any one year. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the secretary shall be accepted as prima facie evidence of the composition.

(b) Minor violations.—Nothing in this chapter shall be construed as requiring the department to report a violation and to institute seizure proceedings as a result of minor violations of the chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(c) District attorney.—It is the duty of each district attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation for such prosecution, an opportunity shall be given the person to present his view to the department.

(d) Trade secrets.—Any person who uses to his own advantage or reveals to anyone other than the department or to the courts when relevant in any judicial proceeding any information acquired under the authority of this chapter concerning any method, records, formulations or processes which as a trade secret is entitled to protection commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than \$500 or to imprisonment for not less than one year, or both. This prohibition shall not be deemed as prohibiting the department from exchanging information of a regulatory nature with duly appointed officials of the Federal Government or of other states who are similarly prohibited by law from revealing this information.

§ 5112. Civil penalties.

In addition to any other remedy available at law or in equity for a violation of this chapter, the department may assess a civil penalty upon a person for a violation of this chapter. The department shall give notice to the person and shall provide an opportunity for a hearing. The hearing shall be conducted in accordance with Title 2 (relating to administrative law and procedure). The civil penalty assessed shall not exceed \$2,500. The civil

penalty shall be payable to the department and shall be collectible in any manner provided by law for the collection of debt. If any person liable to pay a civil penalty neglects or refuses to pay it after demand, the amount of the civil penalty, together with interest and any other costs that may accrue, shall be a lien in favor of the Commonwealth upon the real and personal property of the person after the lien has been entered and docketed of record by the prothonotary of the county where the property is situated. It is the duty of each prothonotary, upon receipt of the certified copy of the lien, to enter and docket the lien in the records of his office and to index the lien as judgments are indexed without requiring the payment of costs as a condition precedent to entry.

§ 5113. Civil remedy.

In addition to any other remedies provided for in this chapter, the Attorney General, at the request of the secretary, may initiate in the Commonwealth Court or the court of common pleas of the county in which the defendant resides or has his place of business an action in equity for an injunction to restrain any and all violations of this chapter or the regulations promulgated under this chapter or any order issued pursuant to this chapter from which no timely appeal has been taken or which has been sustained on appeal. In any such proceeding, the court shall upon motion of the Commonwealth issue a preliminary injunction if it finds that the defendant is engaging in conduct which is causing immediate or irreparable harm to the public. The Commonwealth shall not be required to furnish bond or other security in connection with these proceedings. In addition to an injunction, the court may levy civil penalties as provided by this chapter.

§ 5114. Publications.

The department shall publish at least annually, in such form as it deems proper, information concerning the sales of commercial feeds, together with such data on their production and use as it may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold in this Commonwealth as compared with the analyses guaranteed on the label. The information concerning production and use of commercial feeds shall not disclose the operations of any person.

§ 5115. Disposition of funds.

Moneys received from license fees, inspection fees, fines and civil penalties shall be paid into the State Treasury and shall be credited to the general government operations appropriation of the Department of Agriculture for administering the provisions of this chapter.

CHAPTER 57
FOOD PROTECTION
(Reserved)

CHAPTER 59
ORGANIC FOODS

Sec.

- 5901. Short title of chapter.
- 5902. Declaration of policy.
- 5903. Definitions.
- 5904. Organic certification.
- 5905. Crop production practices and materials.
- 5906. Animal production practices and materials.
- 5907. Producer statement.
- 5908. Rules and regulations.
- 5909. Violations.

§ 5901. Short title of chapter.

This chapter shall be known and may be cited as the Organic Food Products Standards Act.

§ 5902. Declaration of policy.

The General Assembly finds and declares as follows:

(1) A public benefit will be achieved by establishing standards for agricultural products marketed, labeled and advertised using the term “organic” or a derivative of the term “organic.” Standards facilitate the development of intrastate and interstate markets for organically produced agricultural products by providing a clear, uniform definition for farmers, food processors, food distributors and consumers alike.

(2) It is intended that private certifying agents be recognized by the department to determine whether food products marketed, labeled and advertised as organic conform to standards set forth in the Organic Foods Production Act of 1990 (Public Law 101-624, 104 Stat. 3935).

§ 5903. Definitions.

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

“Agricultural product.” Any agricultural commodity or product, whether in raw or prepared form, including any commodity or product derived from livestock that is intended for human or livestock consumption or seed.

“Distribute.” To offer for sale, sell, barter, process or otherwise supply agricultural products.

“Distributor.” Any person who sells agricultural products to consumers or other distributors. The term does not include final retailers of agricultural products that do not process agricultural products.

“Organic certification agent or agency.” Private individuals or organizations residing or doing business in this Commonwealth who are certified by the Secretary of the United States Department of Agriculture as capable of inspecting farms and food distributor operations to determine whether the farms and food distributor operations conform with standards set forth in the Organic Foods Production Act of 1990 (Public Law 101-624, 104 Stat. 3935).

“Organically produced.” Any agricultural product that is produced and distributed in accordance with this chapter.

“Producer.” Any person that grows, raises, processes or produces an agricultural product and distributes the agricultural product as organically produced.

“USDA.” The United States Department of Agriculture.

§ 5904. Organic certification.

(a) General rule.—The department shall designate one or more organic certification agents or agencies to certify organically produced agricultural products in accordance with this chapter.

(b) Eligibility for services or certification.—An organic certification agent or agency may not refuse services or certification to a person who meets all of the following requirements:

(1) The person has met certification requirements for agricultural products.

(2) The person has paid certification fees.

(c) USDA seal.—Producers and distributors certified by a recognized organic certification agent or agency may incorporate the USDA seal in the label design of their agricultural product.

(d) Records.—Each organic certification agent or agency designated by the department shall maintain detailed and verifiable records on each producer certified for a period of ten years.

(e) Proposed regulations.—Organic certification agents or agencies may submit proposed regulations to the department.

§ 5905. Crop production practices and materials.

(a) Seeds and seedlings.—To be certified under this chapter, producers shall not apply materials to or engage in practices on seeds or seedlings that are contrary to or inconsistent with USDA standards or this chapter.

(b) Soil additives.—To be certified under this chapter, producers shall not:

(1) Use any fertilizers containing synthetic ingredients or any commercially blended fertilizers containing materials prohibited under the Organic Foods Production Act of 1990 (Public Law 101-624, 104 Stat. 3935) or this chapter.

(2) Use phosphorus, lime or potash as a source of nitrogen.

(c) Crop management.—To be certified under this chapter, producers shall not:

(1) Use natural poisons such as arsenic or lead salts that have long-term effects and persist in the environment, as determined by the department.

(2) Use plastic mulches unless the mulches are removed at the end of each growing or harvest season.

(3) Use transplants that are treated with any synthetic or prohibited material.

§ 5906. Animal production practices and materials.

(a) **Livestock in general.**—Any livestock that is to be slaughtered and sold or labeled as organically produced shall be raised in accordance with this chapter.

(b) **Breeder stock.**—Breeder stock may be purchased from any source if the stock is not in the last third of gestation.

(c) **Practices.**—In order for livestock to be certified as organically produced under this chapter producers shall not:

(1) Feed the livestock feed other than organically produced feed that meets the requirements of this chapter.

(2) Use the following feed:

(i) Plastic pellets for roughage.

(ii) Manure refeeding.

(iii) Feed formulas containing urea.

(3) Use growth promoters and hormones on livestock, whether implanted, ingested or injected, including antibiotics and synthetic trace elements used to stimulate growth or production of the livestock.

(d) **Livestock health care.**—In order for livestock to be certified as organically produced under this chapter, producers shall not:

(1) Use subtherapeutic doses of antibiotics.

(2) Use synthetic internal parasiticides on a routine basis.

(3) Administer medication, other than vaccinations, in the absence of illness.

(e) **Additional standards.**—

(1) With the exception of day-old poultry, all poultry from which meat or eggs will be sold or labeled as organically produced shall be raised and handled in accordance with this chapter prior to and during the period in which the meat or eggs are sold.

(2) A dairy animal from which milk or milk products will be distributed as organically produced shall be raised in accordance with this chapter for a period of not less than the 12 months immediately prior to the sale of the milk or milk products.

(f) **Livestock identification.**—

(1) To be certified under this chapter, producers must keep adequate records and maintain a detailed, verifiable audit trail so that each animal or, in the case of poultry, each flock can be traced back to the producer.

(2) In order to carry out the requirements of paragraph (1), each producer must keep accurate records on each animal or, in the case of poultry, each flock, including amounts and sources of all medications administered and all feeds and feed supplements bought and fed.

§ 5907. Producer statement.

A producer shall not sell to a distributor any agricultural product which the producer represents as an organically produced agricultural product unless the producer received certification from an organic certification agency or agent prior to the sale.

§ 5908. Rules and regulations.

(a) Adoption.—The department shall adopt rules and regulations in conformity with the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, and the Organic Foods Production Act of 1990 (Public Law 101-624, 104 Stat. 3935) as the department believes are appropriate for the administration of this chapter.

(b) Prohibited substances.—Whenever the department believes it appropriate to protect the interests of consumers of organically produced agricultural products, the department may, by regulation and in accordance with the Regulatory Review Act, add to the list of prohibited substances under this chapter.

§ 5909. Violations.

The department shall issue orders to producers or distributors found violating any provision of this chapter or rules or regulations adopted under this chapter to cease their violations and desist from future violations. The organic certification agencies, the producers and the distributors shall report to the department any violations of this chapter of which they are aware. Whenever the department finds that a producer or distributor has committed a violation, the department shall impose upon and collect from the violator a civil fine not exceeding the total of the following amounts:

- (1) The Commonwealth's estimated costs of investigating and taking appropriate administrative and enforcement actions in respect to the violation.
- (2) \$1,000.

CHAPTER 61
MAPLE PRODUCTS

Sec.

6101. Short title of chapter.
6102. Declaration of policy.
6103. Definitions.
6104. License.
6105. Registration.
6106. Enforcement.
6107. Requirements and grades.
6108. Prohibited acts.
6109. Labeling of maple products.
6110. Detained food.
6111. Manufacturing and marketing practices.
6112. Penalties.

§ 6101. Short title of chapter.

This chapter shall be known and may be cited as the Maple Products Act.

§ 6102. Declaration of policy.

The maple industry constitutes an important part of the economy of this Commonwealth. Therefore, the purpose of this chapter is to preserve and foster growth in maple products for producers and ensure the quality of maple products of this Commonwealth for the consumer by establishing reasonable standards of identity and quality for maple products.

§ 6103. Definitions.

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

“Advertisement.” Any method used to call public attention to a product for the specific purpose of inducing a desire to purchase that product. The term includes, but is not limited to, signs, displays, radio and television broadcasts, newspapers and periodicals, direct mail and other printed forms.

“Brix.” A scale used to measure sugar solutions so graduated that its readings at a specified temperature represent percentages by weight of sugar in the solution.

“Bulk maple syrup.” Maple syrup packed in containers of more than five gallons.

“Damaged maple syrup.” A maple syrup which has color, appearance, flavor, aroma, edibility or shipping quality which has been adversely affected by contamination of sap or syrup with biological, chemical, buddy or particulate matter.

“Dealer,” “packer” or “reprocessor.” A person who annually purchases, produces or otherwise acquires from another person or persons at least 1,000 gallons of maple syrup for the purposes of packaging for resale or for the purposes of resale in bulk.

“Food establishment.” Shall have the meaning given to it in the act of July 7, 1994 (P.L.421, No.70), known as the Food Act.

“Grade.” The standards for maple syrup or maple sugar promulgated through regulations of the department as the official grades of maple syrup or maple sugar for this Commonwealth.

“Hydrometer.” A floating instrument which measures the specific gravities of liquid solutions and which contains a scale designed to determine the density of maple sap or maple syrup.

“Inspector.” A person with knowledge of the maple syrup industry designated by the Department of Agriculture to carry out the duties described in this chapter.

“Maple products.” Maple syrup, maple sugar, maple cream or any other product in which the sugar content is entirely derived from pure maple sap and to which nothing has been added unless allowed under section 6107 (relating to requirements and grades).

“Maple sap.” The unprocessed liquid derived from the maple tree.

“Maple sugar.” The solid, crystalline product of maple sap.

“Maple syrup.” The liquid derived by concentration and heat treatment of maple sap.

“Maple syrup confectionery.” A product consisting of maple syrup and other food products that does not contain artificial flavors or colors.

“Packaged maple syrup.” Maple syrup packed in containers of five gallons or less.

“Producer.” A person who collects maple sap for the production of maple syrup or maple products for sale in retail or wholesale markets.

§ 6104. License.

(a) General rule.—A person may not purchase, produce or otherwise acquire 1,000 gallons of maple syrup or more annually for the purposes of packaging for sale or resale or for the purposes of sale or resale in bulk without possessing a current valid dealer’s license issued by the department or a current valid registration as a food establishment issued by the department under the act of July 7, 1994 (P.L.421, No.70), known as the Food Act.

(b) Optional licensure.—A person who purchases, produces or otherwise acquires less than 1,000 gallons of maple syrup annually for the purposes of packaging for sale or resale or for the purposes of sale or resale in bulk may apply for and be issued a dealer’s license by the department. A person who is licensed pursuant to this subsection shall be subject to the same requirements applicable to a person licensed pursuant to subsection (a).

(c) Application for license.—A person seeking to be licensed pursuant to either subsection (a) or (b) shall apply on or before December 31 for a license for the succeeding year. The application shall be on a form prescribed by the department and, together with any other information which the department may require, shall include:

(1) The name and address of the applicant or, if the applicant is an association or partnership, the name and address of each member of the association or partnership or, if the applicant is a corporation, the name and address of each officer of the corporation.

(2) The name and address of the person, if other than the applicant, whose name will appear on the label of any maple product which the person intends to sell.

(3) The location of all places at which the applicant intends to do business.

(d) Issuance of license.—Except as provided in subsection (e), the department shall issue a dealer’s license to a person who submits a completed application pursuant to subsection (c) and pays the annual license fee of \$35. A person who pays the annual registration fee pursuant to section 14(c) of the Food Act shall not be subject to the license fee imposed by this subsection.

(e) Right to refuse, suspend or revoke license.—The department may refuse to issue a license or may suspend or revoke a previously issued license if the department determines that the applicant or licensee has done any of the following:

(1) Failed to provide any information which the department has reasonably requested.

(2) Made a false or misleading statement in the application for a license or the renewal of a license.

(3) Committed an act prohibited under section 6108 (relating to prohibited acts).

(f) Appeals.—Any person refused a license or a license renewal or any person whose license is suspended or revoked may appeal the refusal, suspension or revocation in accordance with Title 2 (relating to administrative law and procedure).

§ 6105. Registration.

Subject to regulations promulgated by the department, a licensee may label a maple product as having been registered by the department. “Reg. Penna. Dept. Agr.” shall be the approved abbreviation.

§ 6106. Enforcement.

(a) General rule.—A maple product shall be subject to the act of July 7, 1994 (P.L.421, No.70), known as the Food Act, and the regulations promulgated under that act, except to the extent that this chapter or the regulations promulgated under this chapter are inconsistent with those statutes and regulations.

(b) Inspectors.—Inspectors shall have the power and duty to:

(1) Administer and enforce the provisions of this chapter.

(2) Periodically inspect dealers, producers and other food establishments for compliance with this chapter. An inspector may enter upon any public or private premises during hours of their operation and other reasonable times without prior notice to inspect, conduct tests, collect samples and examine records as he considers necessary to determine compliance with this chapter.

(c) Regulations.—The department shall promulgate such regulations as are necessary to carry out this chapter.

§ 6107. Requirements and grades.

(a) General rule.—

(1) A food product shall not be described as “maple” or “maple flavored” unless it contains maple syrup as the sole source of maple flavor and color, provided that a food product which contains maple syrup as the sole source of maple flavor but which is artificially colored may be described as “maple flavored, artificially colored.”

(2) No person shall sell or offer for sale in this Commonwealth maple syrup which does not comply with the grades, density, flavor and other requirements of this section.

(b) Processing.—Maple syrup shall not be processed in any manner which adds or removes naturally occurring soluble materials. This limitation shall not preclude the use of approved filter aids used for the sole purpose of assisting the removal of suspended material or the use of defoaming agents approved by the department.

(c) **Ingredients.**—The only ingredients which may be added to maple sap in the production of maple syrup are:

(1) Salt.

(2) Chemical preservatives and defoaming agents approved under the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.).

(d) **Density.**—

(1) Unless otherwise established by regulations promulgated by the department, the minimum density of maple syrup shall be 66 degrees Brix at 60 degrees Fahrenheit.

(2) Except as provided in paragraph (3), no person shall place maple syrup in retail or wholesale containers if it does not comply with the density standards of this chapter or sell, exchange, offer for sale or expose for sale packaged maple syrup which does not meet the density requirements of this chapter.

(3) If the density of bulk maple syrup does not exceed the minimum density set forth in paragraph (1), the container shall be conspicuously marked:

NOTICE

The syrup in this container has a density of (number) degrees Brix at 60 degrees Fahrenheit.

(e) **Labeling.**—

(1) Packaged maple syrup shall be conspicuously labeled as to grade at the time of packaging.

(2) Packaged maple syrup shall be labeled in accordance with department requirements.

(3) Maple products labeled as “organic” shall comply with organic food labeling laws.

(4) A product or package containing a product made by combining maple sap, maple sugar or maple syrup with any other sugar or other substance shall be clearly and conspicuously marked as to indicate the accurate and descriptive name of the added substance and the amount of maple sugar, maple syrup or other substance contained in the product.

(5) A product or package containing a product made by using an artificial maple flavoring or artificial coloring shall be clearly and conspicuously marked “artificially flavored” or “artificially colored,” as the case may be.

(f) **Grade.**—Unless otherwise established by regulations promulgated by the department, the grades of maple syrup shall be as follows:

(1) “Grade A Light Amber” shall have a color no darker than the United States Department of Agriculture’s visual color standard of light amber and a delicately sweet, original maple flavor characteristic of a light amber maple syrup. Light amber maple syrup shall be free of sugar crystals and shall not be damaged in any way.

(2) "Grade A Medium Amber" shall have a color no darker than the United States Department of Agriculture's visual color standard of medium amber and a flavor which is more pronounced than that of light amber but which is not strong or unpleasant and is characteristic of medium amber maple syrup. Medium amber maple syrup shall be free of sugar crystals and shall not be damaged in any way.

(3) "Grade A Dark Amber" shall have a color no darker than the United States Department of Agriculture's visual color standard of dark amber and a flavor which is stronger than that of medium amber but which is not sharp, bitter, buddy or off-flavor and is characteristic of dark amber. Dark amber maple syrup shall be free of sugar crystals and shall not be damaged in any way.

(4) "Grade B" shall have a color darker than the United States Department of Agriculture's visual color standard of dark amber which nonetheless permits light transmission through standard comparator containers and a flavor which is stronger than that of medium amber but which is not sharp, bitter, buddy or off-flavor and is characteristic of dark amber. Grade B maple syrup shall be free of sugar crystals and shall not be damaged in any way.

(5) "Grade C" shall be any maple syrup which does not meet the grade standards for Grade A light, medium or dark or Grade B maple syrup. Grade C maple syrup shall not be packaged for retail or wholesale sales except for sale directly between the producer and the consumer.

(g) Hydrometers.—The department shall promulgate regulations to establish standards for hydrometers used to determine the density of maple sap or maple syrup. The regulations shall include a procedure for certifying the accuracy of hydrometers.

§ 6108. Prohibited acts.

The following acts are prohibited:

(1) Manufacture, sale, delivery, consignment, bailment, holding or offering for sale of any maple product 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 department.

(2) Knowing receipt or delivery or offer to receive or deliver in commerce any maple product which is adulterated or misbranded, for pay or otherwise.

(3) Sale, delivery for sale, holding for sale or offering for sale any maple product in violation of the provisions of this chapter.

(4) Refusal to permit entry to and inspection of a food establishment during normal business hours.

(5) Refusal to permit the taking of samples or copying of records related to the production, distribution or sale of maple products.

(6) Removal or disposal of a detained or embargoed maple product in violation of this chapter.

(7) Failure to acquire a license if required by this chapter.

(8) Alteration, mutilation, destruction, obliteration or removal, in whole or in part, of a maple product label while the product is held for sale if, as a result, the maple product is adulterated or misbranded.

(9) Forging, counterfeiting, simulating, falsely representing or using without proper authority any mark, stamp, tag, label or other identification device authorized or required by this chapter or by regulations promulgated pursuant to this chapter.

§ 6109. Labeling of maple products.

Any syrup, confection or product containing maple syrup and artificial ingredients shall have all artificial ingredients clearly identified on the label. Any syrup, confection or product not containing maple syrup or maple products shall not be labeled as a maple syrup or maple product or maple.

§ 6110. Detained food.

If the department has probable cause to believe that a maple product is adulterated or misbranded, the maple product shall be detained and subsequently disposed of in accordance with the act of July 7, 1994 (P.L.421, No.70), known as the Food Act, and the regulations promulgated under that act.

§ 6111. Manufacturing and marketing practices.

(a) Water supply.—The water supply used in the processing of maple products shall be potable, sufficient for the operations intended and derived from an adequate source. Private water supplies shall be tested annually no more than 30 days before the start of any operations.

(b) Physical structure of facilities.—Floors, walls and ceilings of food establishments in which maple products are processed or packaged shall be in good repair and properly cleaned. Drip and condensate from fixtures, ducts and pipes shall not contaminate food, food contact surfaces or food packaging materials.

(c) Lighting.—Adequate lighting shall be provided in food establishments in which maple products are processed or packaged. Food shall be protected against contamination in case of glass breakage.

(d) Ventilation.—Adequate ventilation shall be provided in food establishments in which maple products are processed or packaged to minimize vapors, including steam, in areas where they may contaminate food. Screens or other means shall be provided where necessary to prevent pests from entering the establishment.

(e) Pest control.—The use of insecticides, rodenticides and other pest control measures shall be permitted in food establishments in which maple products are processed or packaged only under such precautions and restrictions as will prevent contamination of food, food contact surfaces and food packaging materials.

(f) Personal sanitation.—Proper sanitary practices shall be followed in food establishments in which maple products are processed or packaged. Toilet facilities shall be available. No licensee, employee or other person shall use tobacco in the establishment or while in contact with food or equipment.

Licenseses, employees and other persons in such establishment shall be free of communicable diseases and shall wear clean outer garments which will not contribute to the contamination of the maple product.

(g) Cleaning equipment.—An effective cleaning schedule shall be maintained at all times for a food establishment in which maple products are processed or packaged. All equipment and utensils shall be maintained in good repair. At the end of the season, equipment and lines shall be thoroughly cleaned with an approved sanitizing agent. Filtering, bottling and canning operations shall be performed according to established maple industry standards.

(h) Storage.—Facilities for storage of maple products shall be maintained in a clean and dry condition. All maple products which are not bottled or canned shall be adequately protected and covered to prevent contamination and adulteration. Products shall be stored off the floor and away from walls. All packaged products shall be stored in an acceptable sanitary manner. All containers and equipment associated with the production of maple products shall be maintained and stored in an acceptable sanitary manner.

(i) Toxic items.—Toxic cleaning compounds, sanitizing agents and pesticide chemicals used in or in conjunction with a food establishment in which maple products are processed or packaged shall be identified, held and stored in a manner that protects against contamination of food, food contact surfaces or food packaging materials.

(j) Containers.—In addition to any other information required by the provisions of this chapter or by the regulations promulgated pursuant to this chapter, the label on a container of maple syrup shall convey information to the consumer to adequately protect the maple syrup from deterioration, if any, which could reasonably be expected to result from the container.

§ 6112. Penalties.

(a) Criminal penalties.—A person who violates any provision of this chapter or any rule, regulation, standard or order made under this chapter commits a summary offense for the first or second offense. A person who violates any provision of this chapter or any rule, regulation, standard or order made under this chapter 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 this chapter or a regulation promulgated under this chapter, the secretary may assess a civil penalty not to exceed \$10,000 upon a person who knowingly and intentionally violates section 6104 (relating to license), 6105 (relating to registration), 6107 (relating to requirements and grades), 6108 (relating to prohibited acts), 6109 (relating to labeling of maple products), 6110 (relating to detained food) or 6111 (relating to manufacturing and marketing practices) or any regulation or order promulgated pursuant to those sections.

CHAPTER 65
FOOD EMPLOYEE CERTIFICATION

Sec.

- 6501. Short title of chapter.
- 6502. Definitions.
- 6503. Certification advisory board and programs.
- 6504. Certification of employees.
- 6505. Rules and regulations.
- 6506. Reciprocal agreements.
- 6507. Suspension of certification.
- 6508. Civil penalties.
- 6509. Fees.
- 6510. Exemptions.

§ 6501. Short title of chapter.

This chapter shall be known and may be cited as the Food Employee Certification Act.

§ 6502. Definitions.

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

“Advisory board” or “board.” The Food Employee Certification Advisory Board.

“Food establishment.” A room, building, place or portion thereof or vehicle maintained, used or operated for the purpose of selling to the public, commercially storing, packaging, making, cooking, mixing, processing, bottling, baking, canning, freezing, packing or otherwise preparing, transporting or handling food. The term includes retail food stores and public eating and drinking licensees, except those portions of establishments operating exclusively under milk or milk products permits and those portions of establishments operating exclusively under USDA inspection. The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast, homestead or inn as defined in the act of May 23, 1945 (P.L.926, No.369), referred to as the Public Eating and Drinking Place Law.

“Potentially hazardous food.” A food which consists in whole or in part of milk or milk products, eggs, meats, poultry, fish, shellfish, edible crustaceans 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.

“Public eating and drinking place.” A public eating or drinking place as defined in the act of May 23, 1945 (P.L.926, No.369), referred to as the Public Eating and Drinking Place Law.

“Supervisory employee.” An owner or a person employed by or designated by the business owner to fulfill the requirements of this chapter. § 6503. Certification advisory board and programs.

(a) Members of board.—The secretary shall appoint persons to serve as members of the Food Employee Certification Advisory Board. Representatives shall be selected to represent the following groups for a term of two, three or four years to be determined by the secretary:

(1) The chairman and minority chairman of the Agricultural and Rural Affairs Committee of the Senate or their designees and the chairman and minority chairman of the Agricultural and Rural Affairs Committee of the House of Representatives or their designees.

(2) A consumer representative.

(3) The Secretary of Agriculture or the secretary’s designee.

(4) Two representatives of production agriculture.

(5) Representatives, including at least one person recommended by each of the following: Pennsylvania Association of Milk Dealers, Pennsylvania Restaurant Association, Pennsylvania Food Merchants Association, Pennsylvania Convenience Store Council, Pennsylvania Bakers Association, Pennsylvania Food Processors Association, Pennsylvania Veterinary Medical Association, County Commissioners Association of Pennsylvania, Pennsylvania League of Cities and Municipalities, Pennsylvania State Association of Boroughs, Pennsylvania State Association of Township Commissioners, Pennsylvania State Association of Township Supervisors and Pennsylvania School Food Service Association. At least one representative shall have experience in the field of public health.

(b) Chairman of board.—The secretary or the secretary’s designee shall serve as the chairman of the advisory board.

(c) Certification programs.—The advisory board shall review and recommend certification programs submitted by individuals or organizations to ensure adequate training of supervisory employees of food establishments.

(d) Certification of supervisory employees.—The supervisory employees shall be certified by the department following the completion of industry-specific training programs recommended by the advisory board and approved by the department. The department shall adopt food safety protection and training standards for the certification of supervisory employees who are responsible for the storage, preparation, display or serving of foods to the public in establishments regulated by the department or local health organizations. These standards shall be adopted by the department to ensure that, upon successfully passing a test, the supervisory employee has demonstrated adequate food protection knowledge. These standards shall also provide for a certification program which authorizes private or public

agencies to conduct and approve tests and certify the results of these tests to the department. At least one supervisory employee of a food establishment shall have passed the test and received a certificate attesting thereto. Employees shall have a period of 90 days after employment to pass the required test.

(e) Preemption.—Except as provided in subsection (f), the regulation of food safety protection and training standards for employees of food establishments is preempted by the Commonwealth.

(f) Local programs.—Any food employee certification program established by a county, city, borough, incorporated town or township prior to September 1, 1994, may remain in effect.

§ 6504. Certification of employees.

(a) General rule.—Food establishments shall maintain certification records on respective supervisory employees. Each food establishment shall employ a person having supervisory authority who holds a valid department food employee certificate.

(b) Examination.—No certificate shall be issued unless the applicant has successfully completed a training course and passed an examination recommended by the advisory board and approved by the department.

(c) Compliance.—Compliance with this chapter by a food establishment shall be optional until July 1, 2001. Section 6503(e) (relating to certification advisory board and programs) shall not apply to a food establishment prior to July 1, 2001, unless that food establishment complies with this chapter. On or after July 1, 2001, compliance with this chapter by a food establishment shall be mandatory unless a resolution to the contrary has been adopted in accordance with this subsection. The President pro tempore of the Senate and the Speaker of the House of Representatives shall cause to be placed on their respective calendars for the first legislative days after the date two months prior to July 1, 2001, the question, in the form of a resolution, of whether the food employee certification program shall remain optional for food employees of food establishments in this Commonwealth. If a majority of the members elected to each house approve such a resolution, the resolution shall be presented to the Governor for approval or disapproval in accordance with section 9 of Article III of the Constitution of Pennsylvania.

(d) Employee turnover.—Food establishments which are not in compliance because of employee turnover or other loss of certified personnel shall have three months from the date of loss of certified personnel to comply.

(e) Maintenance and inspection of records.—Names and certificate numbers of certified personnel shall be maintained at the place of business and shall be made available for inspection by the department.

(f) Period of certification.—Certification shall be in effect for five years. Renewal of certification shall be on the basis of attendance at courses

recommended by the advisory board and¹ approved by the department. The courses shall not include a written examination.

(g) Training program.—Training programs to prepare candidates for certification examinations and the administration of the examination shall be made available throughout this Commonwealth through cooperation with industry and others and approved by the department.

(h) Mitigating factor.—

(1) If a food establishment complies with this chapter, the compliance shall be given appropriate consideration as a mitigating factor in determining if a food establishment shall be assessed more than the minimum fine or civil penalty required by law in any action to recover fines or penalties for a violation of the act of July 7, 1994 (P.L.421, No.70), known as the Food Act.

(2) This subsection shall expire July 1, 2000.

§ 6505. Rules and regulations.

The department is charged with the administration of this chapter and shall promulgate rules, regulations and standards for its proper enforcement and administration.

§ 6506. Reciprocal agreements.

The department may accept certifications issued in other states that have comparable requirements for certification provided the department and the other state jurisdiction have entered into a reciprocal agreement to accept each state's certification program as meeting the provisions of this chapter.

§ 6507. Suspension of certification.

Certification may be suspended or revoked by the department if the holder or person fails to comply with this or other sanitation regulations or the act of May 23, 1945 (P.L.926, No.369), referred to as the Public Eating and Drinking Place Law, or the act of July 7, 1994 (P.L.421, No.70), known as the Food Act. Prior to suspension or revocation, the certificate holder shall be given the opportunity for a hearing before the department.

§ 6508. Civil penalties.

In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this chapter or a rule or regulation adopted thereunder or any order issued pursuant thereto, the department may assess a civil penalty not to exceed \$300 for the first offense or not to exceed \$1,000 for subsequent offenses upon a person or food establishment for each offense. No civil penalty shall be assessed unless the person charged has been given notice and opportunity for a hearing on the charge in accordance with law.

§ 6509. Fees.

(a) Change by regulation.—All fees imposed by this chapter shall remain in effect until changed by the department by regulation subject to the act of

¹"and" omitted in enrolled bill.

June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act. The department shall propose to change those fees by regulation following consultation with the advisory board.

(b) Fee for certification.—The department shall issue or approve the issuance of a certification document to the person upon the successful completion of the approved training program. A fee of \$20 shall be charged by the department for this service unless changed by regulation.

(c) Payments to municipalities.—Local health departments created in accordance with the act of August 24, 1951 (P.L.1304, No.315), known as the Local Health Administration Law, may enforce the provisions of this chapter as it pertains to public eating and drinking licensees. Each local health department shall be reimbursed by the department in an amount equal to 50% of the civil penalties levied and collected by the department pursuant to this chapter in each such jurisdiction.

§ 6510. Exemptions.

(a) Prepackaged food.—Food establishments where only commercially prepackaged food is handled and sold are exempt from this chapter.

(b) Nonpotentially hazardous food.—Food establishments that handle only nonpotentially hazardous food are exempt from this chapter.

(c) Food manufacturing facilities.—Food manufacturing facilities which are engaged in the manufacture of prepackaged foods and which do not manufacture potentially hazardous food are exempt from this chapter.

PART VIII MISCELLANEOUS PROVISIONS

CHAPTER 81 MISCELLANEOUS PROVISIONS

Sec.

8101. Farmers' market.

§ 8101. Farmers' market.

For the purpose of section 14(e) of the act of July 7, 1994 (P.L.421, No.70), known as the Food Act, any building, structure or place owned, leased or otherwise in possession of a person or municipal corporation or public or private organization, used or intended to be used by two or more farmers or an association of farmers for the purpose of selling food directly to consumers shall be deemed to be a single food establishment.

Section 2. Responsibility for certain regulations.

(a) Department of Environmental Resources.—The Department of Environmental Resources may not administer nor enforce 25 Pa. Code Chs. 151 (relating to food establishments), 153 (relating to shellfish), 155 (relating to food vending machines) and 157 (relating to public places) and § 191.4 (relating to food service).

(b) Department of Agriculture.—The provisions of 25 Pa. Code Chs. 151, 153, 155 and 157 and § 191.4 have the same force and effect as regulations

promulgated by the Department of Agriculture under the act of May 23, 1945 (P.L.926, No.369), referred to as the Public Eating and Drinking Place Law. The Department of Agriculture shall administer and enforce 25 Pa. Code Chs. 151, 153, 155 and 157 and § 191.4.

(c) Renumbering regulations.—The Department of Agriculture shall deposit a notice with the Legislative Reference Bureau renumbering the regulations transferred to the department by subsections (a) and (b) and making at that time needed editorial changes. Thereafter, the Department of Agriculture may amend the regulations from time to time in accordance with law.

Section 3. Transfers.

All personnel, allocations, appropriations, contracts, agreements, rights, obligations, equipment, files, records and other materials which are employed, expended or used in connection with the functions performed by the Department of Environmental Resources under sections 1917-A and 1920-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, insofar as such sections pertain to 25 Pa. Code Chs. 151 (relating to food establishments), 153 (relating to shellfish), 155 (relating to food vending machines) and 157 (relating to public places) and § 191.4 (relating to food service) under the provisions of the act of May 23, 1945 (P.L.926, No.369), referred to as the Public Eating and Drinking Place Law, and under the provisions of the act of August 6, 1991 (P.L.321, No.32), known as the Egg Refrigeration Law, are transferred to the Department of Agriculture. The transfer of personnel is made with the same force and effect as if the personnel had been originally assigned to the Department of Agriculture. The transfer of allocations and appropriations is made with the same force and effect as if the allocations and appropriations had been originally made to the Department of Agriculture. The transfer of contracts, agreements, rights and obligations is made with the same force and effect as if the contracts, agreements, rights and obligations had been originally those of the Department of Agriculture. The transfer of equipment, files, records and other materials is made with the same force and effect as if the items had been originally the property of the Department of Agriculture.

Section 4. Continued powers.

The Department of Agriculture shall continue to exercise the powers and perform the duties by law heretofore vested in and imposed upon the Department of Environmental Resources by the act of May 23, 1945 (P.L.926, No.369), known as the Public Eating and Drinking Place Law; by sections 1917-A and 1920-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, insofar as they relate to the regulation of food establishments, shellfish, public places and food service at organized camps and campgrounds; and by the act of August 6, 1991 (P.L.321, No.32), known as the Egg Refrigeration Law.

Section 5. Exemption from certain registration fee.

A food establishment which is licensed as a public eating and drinking place pursuant to the applicable provisions of the act of May 23, 1945 (P.L.926, No.369), referred to as the Public Eating and Drinking Place Law, shall not be subject to the registration fee imposed by section 14(c) of the act of July 7, 1994 (P.L.421, No.70), known as the Food Act.

Section 6. Repeals.

(a) Absolute.—The following acts and parts of acts are hereby repealed:

Act of April 6, 1921 (P.L.95, No.58), entitled, as amended, “An act relating to apiculture, and the sale, giving and transportation of bees, honey, hives and appliances; providing for the inspection of apiaries, and for the prevention, control and eradication of contagious and infectious diseases among bees, and the establishment of quarantines; prescribing the style of hive to be used; prohibiting the importation from any foreign country, except Canada, of the genus *Apis*; imposing certain duties on certain persons engaged in transportation; and providing penalties and appropriations therefor.”

Section 602-A(1)(ii) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

Act of September 1, 1965 (P.L.436, No.221), known as the Pennsylvania Commercial Feed Law of 1966.

(b) Inconsistent.—The following acts and parts of acts are repealed insofar as inconsistent with this act:

Sections 1917-A and 1920-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

Act of May 23, 1945 (P.L.926, No.369), entitled, as amended, “An act for the protection of the public health by regulating the conduct and operation of public eating and drinking places within this Commonwealth; requiring their licensing; imposing certain duties on the Department of Environmental Resources of this Commonwealth and on the local health authorities; and providing penalties.”

Act of August 6, 1991 (P.L.321, No.32), known as the Egg Refrigeration Law.

Section 7. Retroactivity.

The addition of 3 Pa.C.S. Ch. 81 shall be retroactive to September 6, 1994.

Section 8. Effective date.

This act shall take effect as follows:

- (1) The addition of 3 Pa.C.S. Ch. 61 shall take effect July 1, 1995.
- (2) The addition of 3 Pa.C.S. Ch. 65 shall take effect in 90 days. The Secretary of Agriculture shall appoint the members of the Food Employee Certification Advisory Board within 60 days.
- (3) The addition of 3 Pa.C.S. Ch. 81 shall take effect immediately.
- (4) Sections 2, 3, 4 and 6(b) of this act shall take effect July 1, 1995.
- (5) This section shall take effect immediately.

(6) The remainder of this act shall take effect in 60 days.

APPROVED—The 12th day of December, A.D. 1994.

ROBERT P. CASEY