

## Act 106 of 2010

C.S. Chapter 57 Subchapter A (Retail Food Safety Act)  
C.S. Chapter 57 Subchapter B (Food Safety Act)

1/10/2011

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## Introduction

- Act 106 was enacted by the passage of House Bill 174
- During this session Act 106 will be explained in laymen terms reflecting changes made from previous laws
- This session is targeted for the Local Health Officials, but anyone interested in food safety laws will benefit

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## Agenda

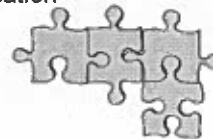
- The Bill Approval process
- Description and Purpose of the Bill
- Retail Food Facility Act – C.S. Ch 57 Subch. A
- Frozen Dessert
- Retail Food Safety Act – C.S. Ch 57 Subch. B
- C.S. Chapter 65 - Food Employee Certification
- Repeals
- Questions
- Retail Food Facility distribution list

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## Overview

- Act No. 106 of 2010 codifies and modifies the current Public Eating and Drinking Place Law and the Food Act (in Consolidated Statutes), and makes changes to the existing Chapter on Food Employee Certification



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## The History of the Bill

- First introduced as HB1422 on June 1, 2007
- Passed the House on July 17, 2007
- 1<sup>st</sup> Vote in Senate on May 6, 2008
- Languished with the end of the Legislative Session
- Reintroduced on Feb 2, 2009 as HB174.
- Amended and passed the House on June 10, 2009
- Amended and passed Senate on Oct 14, 2010
- House concurrence vote and Signed Nov 15, 2010
- Signed in the Senate, Nov. 17, 2010
- Signed by the Governor, Nov. 23, 2010 as Act 106
- Act effective 60 days after signing, Jan 22, 2011

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## Act Description

- Act 106 of 2010, Amended Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, codifying the Public Eating and Drinking Places Act (Act 369) and the Food Act (Act 70) and is known as Chapter 57 Food Protection with Subchapter A - Retail Food Safety Act and the Subchapter B - Food Safety Act

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## Definition Clarification

- Removed the definition of Farmers Market as a single food establishment
- Follow-up inspection will be the uniform terminology and is the same as a re-inspection
- Potentially Hazardous Food, is defined as the most current definition in the FDA Model Food Code and thus updated to conform to current scientific knowledge and national standards.
- Codified the definition of a Person in Charge
- Retail Food Facility will include both Eating and Drinking Places from (Act 369) and Retail Food Establishments from (Act 70)
- Food Establishments is limited to 'wholesale' operations (food processors, home FP, warehouses)

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## Retail Food Facility Safety Act – C.S. Chapter 57 Subchapter A

- Provides for the licensure, inspection, and regulation of Retail Food Facilities (public eating and drinking places and retail food establishments) in the Commonwealth

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## Retail Food Facilities

- Eating and drinking places and retail food establishments will now be called Retail Food Facilities
- A Retail Food Facility encompasses all retail food in Pennsylvania. Retail includes facilities that relinquish possession of food directly or indirectly to a consumer.
- Local and county health authorities will be responsible for inspecting ALL Retail Food Facilities within their jurisdiction
- Regulatory Standards for Retail Food Facilities will be uniform and established by the state Food Code. The state code will be the current Chapter 46.
- Future regulation updates will model the most current FDA Food Code and will be the standard regardless of Licensor

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## Licensing Retail Food Facilities

- Local and County health authorities will be responsible for licensing Retail Food Facilities within their jurisdiction
- Application forms shall be uniform providing for standardized information collection for emergency response purposes (plan review procedures used for new facilities)
- No license shall be issued to a Retail Food Facility until an inspection has been conducted and the requirements of the code are met
- The law allow licensing periods to be established using risk based Criteria, therefore allowing for inspection frequencies less than or greater than one year. Risk criteria will be established by regulation and is planned to be finalized by year end

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## Licensing Retail Food Facilities

- Temporary license shall be issued to Retail Food Facilities that operates no more than 14 calendar days within one calendar year
- Temporary license shall be issued to Retail Food Facilities that operate in conjunction with a celebration, fair, or other organized event

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## Licensing Fees

- Fees that may be charged are established by the licensor and shall be paid into the city, borough, incorporated town, township or county treasury in areas not licensed by the department
- Duplicate license fees may be assessed by the licensor
- In addition to license fees, other fees, such as application fees, inspection fees, zoning fees, etc, must be established by the licensor through local ordinances or other legal means

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## Frozen Dessert

- The Frozen Dessert Law is not affected by Act 106, therefore;
- Local and county health authorities will need to contact the department when a Retail Food Facility with a frozen dessert machine is operating the machine without a frozen dessert license

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## Inspections

- Local and county health authorities will be responsible for inspecting all Retail Food Facilities within their jurisdiction
- PDA Food Code will be the standard for all inspections regardless of jurisdiction
- Local/County Licensors must provide a copy of each Retail Food Facility inspection report within 30 days of the inspection
- The department may, require by regulation, that the inspections be submitted in a specific electronic format

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## Inspection Fees

- Follow-up inspection fees may be assessed by the licensor for the second and subsequent follow-up inspection during the licensing period
- Fees may be assessed for requested inspection services that are not required by the licensor
- All such fees must be established by the licensor through local ordinances or other legal means

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## Schools and Organized Camps

- Local and county authorities will continue to inspect schools and organized camps within their jurisdiction
- Locals and county authorities must license organized camps as a Retail Food Facility, but MAY exempt schools from licensing
- School and organized camps will be inspected using the same inspection criteria as a Retail Food Facility
- PDA will assist with schools and camps in local health areas upon request
- PDA will provide training when request are made from any jurisdiction

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## Farmers Markets

- Farmers markets are no longer defined as a single Retail Food Establishment for licensing
- Instead, each stand within the market is considered a Retail Food Facility
- Each stand is subject to a licensing fee if the exemption criteria are not met
- Farmers market stands shall meet Food Code standards, similar to a retail mall setting – common restrooms, shared handwash or warewash facilities COULD BE utilized if 'easily accessible'

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## Exemptions from Licensing

- Retail Food Facility selling only pre-packaged, Non Potentially Hazardous Foods or Drink
- Retail Food Facilities selling only raw agriculture commodities
- These facilities must be exempted from licensing regardless of jurisdiction
- These facilities are not exempt from inspection

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## Exemptions Possible by Order

- Retail Food Facilities that operate no more than 3 calendar days within a calendar year
- Charitable non-profits managed by an organization that supports extra-curricular activities for school-aged youth – boosters, boy/girl scouts, little league, softball, other recreational sports clubs
- Retail Food Facilities in which food and drinks are sold only through vending machines
- School Cafeteria
- Food Banks owned by charitable non-profits
- Soup Kitchens owned by charitable non-profits
- Churches or other religious entities if exempt as an IRS section 501(c)(3) and they aren't subject to business income taxation under sections 511, 512, or 513
- Exemption is from licensing NOT inspection or compliance with standards

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## Exemptions by the Department

- Will be published in the PA Bulletin on Jan 22, 2011
- Exemption will be for all categorized EXCEPT for churches or religious organizations
- Churches and religious organizations are not licensed if activities are not open to the public. If activities are public, more than 3 days per year, department will license
- Locals may exempt or not exempt entities, and must publish an order or use other legal notification in their jurisdiction

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## Current Non-Profit Exemption Allowing Use of Donated Foods

- Act 106 maintained the non-profit exemption allowing licensed non-profits, as defined, to accept donated, home-prepared, non-potentially hazardous foods to serve with their licensed meals/events
- The organization that uses or offers the food for human consumption must inform consumers that the organization uses or offers food that has been prepared in a private home that is not licensed or inspected

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## Food Safety Act – C.S. Chapter 57, Subchapter B

- Subchapter B provides for registration, inspection and regulation of food establishments conducting manufacturing, packaging, storage, and distribution of Food within the Commonwealth

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## Registration

- PDA has the primary authority over registration and inspection of Food Processors, Home Food Processors, Warehouses, and Distributors
- The registration requirement shall not be construed to exempt food establishments from licensing requirement of any county or local health authority
- Registered food establishments engaged in retail food sale in a local or county jurisdiction:
  - Local and Counties should license only the retail food area
  - Counties acting in accordance with the First Class City Home Rule Act or the Public Health Administration Law may continue to inspect and register food establishments, if doing so prior to Sep 1, 1994
- The department will also register food establishments that conduct both retail and 'wholesale' operations within the same establishment if the wholesale operations are 20% or more of the business.

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## Inspection Standards

- The Food Drug and Cosmetic Act and federal regulations relating to food will be Pennsylvania's regulation
- Water Standards are established to conform with PA Safe Drinking Act and regulations instead of the Federal Drinking Water Standards

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## Interagency Coordination

- Interagency coordination will be enhanced by mandating interagency communication with the appropriate departments regarding sampling and foodborne illness, and reporting findings for a coordinated interagency approach to protecting public health and the food supply

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## Food Employee Certification

- Act 106 amended C.S. Chapter 65 (Food Employee Certification) which provides for the training and certification of food handlers and requiring a certified food employee in retail food facilities

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## Food Employee Certification

- Eliminates the Food Employee Certification Advisory Board which approved training programs leading to food handler certification
- Defines approved certification programs as those programs ANSI / Conference for Food Protection accredited
- Current programs include ServSafe, Prometrics Inc, National Registry of Food Safety Professionals
- Eliminates the department issued food handler certification which carried a \$20 fee

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## Food Employee Certification

- Exempts non-retail food facilities from the provision of Chapter 65
- Requires each retail food facility to have at least one employee who holds a valid food handler certificate to be present or immediately accessible at all hours of operation and who is the Person in Charge when physically present at the facility
- Department is defining 'accessible' as able to be reached by a food employee by phone or other electronic means

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## Food Employee Certification

- Allows a single proprietor with more than one retail food facility at a fair, festival, or other temporary event, to have a single employee serving as the certified employee for all those retail food facilities
- Original Certificates must be posted in the Retail Food Facility
- If the Federal Food Code standards are revised to require certified food handlers to be present at a retail food facility the Commonwealth will adopt the Federal standards

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## Food Employee Certification

- Local and county authorities that had Food Employee Certification programs prior to September 1, 1994 can continue these programs (Bucks, Chester, Montgomery, Philadelphia, Allegheny, State College & Lansdale)
- Local and County Health Departments must enforce Food Employee Certification requirements in the Retail Food Facilities within their jurisdictions
- Fines/Penalties shall be established at the local level

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## Food Employee Certification Exemptions

- Unchanged by Act 106
- Exemptions for:
  - Retail Food Facilities handling and selling only commercially prepackaged foods
  - Retail Food Facilities handling only non-potentially hazardous foods
  - Non-profits under IRS code section 501(c)(3)
  - Non-profits such as volunteer fire company, ambulance, religious, charitable, fraternal, veterans, civic, etc
  - Non-profit supporting extracurricular youth activities

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## Act 106 Repeals

- Organic Food Products Standards Act (Title 3, Chapter 59)
- Maples Products Act (Title 3 Chapter 61)
- Public Eating and Drinking Place Law (Act 369 of 1945)
- Food Act (Act 70 of 1994)
- Section 602-A(16) of the Administrative Code related to eating and drinking place fees

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## Summary

- The law updates current food safety laws to reflect modern food science
- Provide for a more efficient regulatory work force
- Provide for more uniform inspections within the state

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If you need more information on  
Act No. 106 Please visit

[www.EatSafePA.com](http://www.EatSafePA.com)

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Thank You

Questions ???

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