



# Agriculture & Rural Affairs Committee

*Senator Mike Brubaker, Chairman*

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January 5, 2010

SENATE BILL: 828

PRINTER'S NUMBER: 965

PRIME SPONSOR: VOGEL

## SUMMARY:

SB 828 amends the Public Eating and Drinking Place Law (Act 369 of 1945) to allow a licensed non-profit entity to sell food obtained from an unapproved source. The proposal exempts food and drink prepared in a private home and used or offered for human consumption from the provisions of the act, if it is used or offered by:

1. A 501(c)(3) organization;
2. A volunteer fire company or ambulance, religious, charitable, fraternal, veterans, civic, agricultural fair or agricultural association or any separately chartered auxiliary of any of these associations, on a not-for-profit basis, or;
3. An organization that is established to promote and encourage participation and support for extracurricular recreational activities for youth of primary and secondary public, private and parochial school systems on a not-for-profit basis.

This act shall take effect in 60 days.

## SUMMARY OF RELEVANT EXISTING LAW:

Food offered for sale in this Commonwealth must be from an approved source. There are several ways an individual may donate food items to a non-profit entity for sale in a manner compliant with the law. They may: purchase food from an approved source and donate the item (for example, buy cookies from the grocery store to donate); make the food items they wish to donate in an already licensed facility (for example, make the cookies in the licensed church kitchen), or; follow the guidelines of a "home processor," which requires inspection and an annual registration fee of \$35.

The Food Act (Act 70 of 1994) permits several types of food processing in the "home kitchen" with the intent of the producer to offer these products for sale to the public. The supporting regulations for Act 70 can be found in Title 21 of the Code of Federal Regulation (CFRs). In some cases, home business may be regulated under the PA Code Title 7, the Food Code.

Generally, the types of home production are limited to foods that are not "potentially hazardous foods" (PHFs). PHFs are foods that will support the growth of pathogenic microorganisms and require temperature controls. PHFs can only be produced in a commercially licensed/registered kitchen. This does not specifically prohibit home processing of PHFs, but the foods could only be produced in a second kitchen,

meeting all regulatory standards, separate from the private home kitchen. Bakery products, jams and jellies, acidified foods, and candy making are the most common types of home food processing. Each type of food processing, however, does have certain requirements and limitations. General rules for all products are as follows:

1. No animals/pets are permitted in the home at any time.
2. Children are not permitted in the kitchen area during commercial processing.
3. The water supply serving the home must be from an approved supply. Private sources must be tested annually for coliform bacteria.
4. Department approval may not be in conflict with any local zoning or ordinances. A written statement from the local municipality must be obtained stating such.
5. Registration and fee by the Department of Agriculture are required (\$35 annually, which is collected at the conclusion of a satisfactory inspection by a Sanitarian).
6. All ingredients must be separate from those for personal use and must be properly stored and protected.
7. There must be restricted use of the home kitchen during any commercial processing.
8. Products must be properly labeled as follows:
  - \*Name of product
  - \*Name and address of manufacturer
  - \*Ingredients listed in decreasing order by weight
  - \*Net weight or unit count
9. Nutritional labeling must be included on food products being shipped/sold in interstate commerce. Home businesses may qualify for a small business exemption from nutritional labeling requirements by applying with FDA.
10. Processors must comply with all applicable state and federal laws and regulations.

Home baking is the most common type of food processing conducted in the home kitchen. Traditional bakery items produced are cakes, breads, cookies, rolls, muffins, brownies, fruit pies and pastries. PHFs are not allowed to be prepared in the home kitchen and may include: cheesecakes, pumpkin pies, cream, custard and meringue pastries/desserts, or any food item that has sufficient moisture, high pH (low acidity >4.6) and/or ingredients that will support the growth of pathogenic microorganisms. PHFs also include any baked good containing meat or cheeses. Generally, any product requiring refrigeration after preparation would be considered "potentially hazardous."

Bakery items made and sold by the baker directly to a Commonwealth consumer do not require any labeling information on the products, or any form of display. Items sold at retail not owned or operated by the baker require one of the following forms of labeling:

- (1) If products are in packaged form, all required information must be on the package.
- (2) Products loose and bulk displayed must have all required label information posted by the display.
- (3) Bakery items sold at establishments for consumption on the premises, such as a restaurant, require that the label information be available to the consumer upon request.

Other types of in-home food processing such as jam and jelly making, canning and candy making also have their own specific requirements for in-home production, if the product is intended for sale.

The Public Eating and Drinking Place Law (Act 369 of 1945) is amended in this bill to allow the licensed entity to accept the food item from an unapproved source.

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 828 Session of 2009

INTRODUCED BY VOGEL, WARD, BAKER, ERICKSON, ORIE, WASHINGTON, FOLMER, PICCOLA, ALLOWAY, BROWNE, VANCE, PILEGGI, RAFFERTY, SCARNATI, PIPPY, WONDERLING, BOSCOLA, DINNIMAN, WAUGH AND EARLL, MAY 1, 2009

REFERRED TO AGRICULTURE AND RURAL AFFAIRS, MAY 1, 2009

AN ACT

1 Amending the act of May 23, 1945 (P.L.926, No.369), entitled, as  
 2 amended, "An act for the protection of the public health by  
 3 regulating the conduct and operation of public eating and  
 4 drinking places within this Commonwealth; requiring their  
 5 licensing; imposing certain duties on the Department of  
 6 Agriculture of this Commonwealth and on the local health  
 7 authorities; and providing penalties," providing for  
 8 applicability.

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

11 Section 1. The act of May 23, 1945 (P.L.926, No.369),  
 12 referred to as the Public Eating and Drinking Place Law, is  
 13 amended by adding a section to read:

14 Section 13.1. This act shall not apply to food or drink  
 15 prepared in a private home and used or offered for human  
 16 consumption by any of the following organizations:

17 (1) A tax-exempt organization under section 501(c)(3) of the  
 18 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
 19 501(c)(3)).

20 (2) A volunteer fire company or an ambulance, religious,

1 charitable, fraternal, veterans, civic, agricultural fair or  
2 agricultural association or any separately chartered auxiliary  
3 of any of these associations, on a not-for-profit basis.

4 (3) An organization that is established to promote and  
5 encourage participation and support for extracurricular  
6 recreational activities for youth of primary and secondary  
7 public, private and parochial school systems on a not-for-profit  
8 basis.

9 Section 2. This act shall take effect in 60 days.