

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2212 Session of 2022

INTRODUCED BY WENTLING, MOUL, M. MACKENZIE, ROTHMAN, BERNSTINE, MILLARD, KEEFER, B. MILLER, ROAE, RYAN, RADER, COOK, MENTZER, BONNER, MAJOR, FEE, HERSHEY, HENNESSEY, KAUFFMAN, SCHEMEL, MASSER, FRITZ, SCHMITT, RAPP, GLEIM, DIAMOND, GREGORY, METZGAR, HAMM, KAIL, JAMES, PUSKARIC, ZIMMERMAN, METCALFE, LEWIS, SANKEY, ROWE, GROVE, LAWRENCE, ORTITAY, MIHALEK, IRVIN, WHEELAND, R. BROWN, TOPPER, MALONEY, PENNYCUICK AND STRUZZI, JANUARY 5, 2022

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS, JANUARY 5, 2022

AN ACT

1 Repealing the act of September 1, 1965 (P.L.420, No.215),
2 entitled "An act for the protection of the public health, and
3 to prevent fraud and deception in the manufacture, sale,
4 offering for sale, exposing for sale, and possession with
5 intent to sell, of adulterated or deleterious frozen
6 desserts, providing for licensing, authorizing and regulating
7 the manufacture and sale of frozen desserts, conferring
8 powers and imposing duties upon the Department of
9 Agriculture, prescribing penalties, providing for the
10 enforcement thereof, and making repeals."

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

13 Section 1. The act of September 1, 1965 (P.L.420, No.215),
14 known as The Frozen Dessert Law, is repealed:

15 [AN ACT

16 For the protection of the public health, and to prevent fraud
17 and deception in the manufacture, sale, offering for sale,
18 exposing for sale, and possession with intent to sell, of

1 adulterated or deleterious frozen desserts, providing for
2 licensing, authorizing and regulating the manufacture and
3 sale of frozen desserts, conferring powers and imposing
4 duties upon the Department of Agriculture, prescribing
5 penalties, providing for the enforcement thereof, and making
6 repeals.

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

9 Section 1. Declaration of Policy; Definitions.--(a) It is
10 hereby declared that the dairy industry is a paramount industry
11 of the Commonwealth and the production, processing, packaging,
12 distribution and sale of frozen desserts is an important segment
13 of the dairy industry and is of vast economic importance to the
14 Commonwealth and of vital importance to the consuming public of
15 the Commonwealth, and which should be encouraged and promoted in
16 the public interest. It is further declared to be in the
17 interest of the dairy industry and of the consuming public that
18 there be uniformity of standards for frozen desserts as between
19 the various states and the Federal Government to the end that
20 there may be free movement of frozen desserts between the states
21 and to the end that the inefficiency, needless expense, and
22 confusion caused by differences in products sold under the same
23 name, and differences in labeling of identical products may be
24 eliminated.

25 It is further declared to be the purpose of this act to
26 promote honesty and fair dealing in the interest of consumers,
27 to insure fair competition as between the manufacturers and
28 distributors of the different products and to prevent confusion
29 and deception in the sale of all such products by establishing
30 definitions and standards of identity for such products, and by

1 providing for rules and regulations which will effect their
2 orderly marketing and insure uniform and proper sanitary
3 standards.

4 (b) (1) For the purpose of this act, and for any rules,
5 regulations, definitions, standards of identity, or labeling
6 requirements promulgated pursuant thereto, the term "frozen
7 desserts" shall be deemed to include ice cream, frozen custard,
8 french ice cream, french custard ice cream, artificially
9 sweetened ice cream, artificially sweetened ice milk, ice milk,
10 freezer made milk shakes, fruit sherbet, water ice, quiescently
11 frozen confection, quiescently frozen dairy confection, whipped
12 cream confection, bisque tortoni, mellorine frozen desserts as
13 all such products are commonly known, together with any mix used
14 in such frozen desserts and any products which are similar in
15 appearance, odor, or taste to such products or are prepared or
16 frozen as such products are customarily prepared or frozen,
17 whether made with dairy or non-dairy products but shall not
18 apply to such commonly known or designated bakery products as
19 frozen cakes and pastries, cream pies and fillings and toppings,
20 meringue pie fillings and toppings, cream and ice box pies,
21 fruit and custard pie fillings, boston cream pie fillings, cream
22 puff fillings and custards, eclair and napoleon fillings and
23 custards, or the like.

24 (2) For the purpose of this act, a "frozen dessert plant"
25 shall mean any place, premises or establishment where frozen
26 dessert is manufactured, prepared or processed for distribution
27 or sale.

28 Section 2. Sale, Possession, etc., of Adulterated or
29 Unregistered Products.--(a) It shall be unlawful for any person
30 by himself or by his agents, servants or employes, to sell,

offer for sale, expose for sale or have in possession with intent to sell, any frozen dessert:

(1) Which is adulterated within the meaning of this act;

(2) Which is not registered with the Department of Agriculture as required in this act. The possession of any such non-registered product shall be deemed prima facie evidence of an intent to sell the same: Provided, however, That such establishments as hotels, dining rooms and boarding houses where the above named products are produced and consumed only on the premises need not register such products with the Department of Agriculture.

(b) It shall be unlawful to import into this Commonwealth for sale any of the above named products coated or uncoated, unless the same are registered with and the manufacture thereof has been licensed by the Department of Agriculture where provided in this act.

Section 3. What Constitutes Adulteration.--Any frozen dessert referred to in this act shall be deemed to be adulterated within the meaning of this act if--

(1) It contains any substance or compound that is deleterious to health.

(2) It contains any coloring substance deleterious to health: Provided, however, That this clause shall not be construed to prohibit the use of harmless coloring matter from a list of permitted coloring material established by the Department of Agriculture when such use does not conceal damage or inferiority.

(3) It contains any deleterious flavoring matter or flavoring matter not true to name.

(4) It is offered for sale from any container, compartment

1 or cabinet which contains any article other than frozen desserts
2 except that frozen desserts when properly wrapped or packaged by
3 the manufacturer and in unbroken packages or containers for
4 delivery to the consumer may be offered for sale from one or
5 more separate compartments of a refrigerated container or
6 cabinet of which other separate compartments contain properly
7 wrapped, unbroken and sealed packages of frozen foods ready for
8 delivery to the consumer.

9 (5) It falls below the standards of any of them fixed for
10 the particular product by the definition promulgated pursuant to
11 the authority granted by this act or is falsely labeled or
12 labeled contrary to regulations promulgated pursuant to this
13 act.

14 (6) It is manufactured under conditions not in conformity
15 with the provisions of section 6 of, or rules and regulations
16 promulgated by the department pursuant to, this act.

17 Section 6. Frozen Dessert Plants Sanitary Standards.--It
18 shall be unlawful to operate any frozen dessert plant unless it
19 shall be maintained and operated with strict regard for the
20 purity and wholesomeness of the products produced therein. The
21 entire establishment and its appertaining premises, including
22 fixtures, furnishings, machinery, apparatus, implements,
23 utensils, receptacles and all equipment used in production,
24 keeping, storing, handling or distributing shall be maintained
25 and operated in a clean, sanitary manner. The equipment,
26 containers and piping shall be constructed of a smooth nontoxic
27 impervious corrosion resistant material and fabricated in such a
28 manner that there will be no contamination of the products
29 handled therein and they can be easily sanitized. All equipment
30 shall be kept in good working order and condition and shall be

1 located so as to facilitate cleaning and practically eliminate
2 the possibility of contamination. All equipment and utensils
3 used in the production of any product whose surface comes in
4 contact with any such product or any of the ingredients thereof
5 shall be thoroughly cleaned after using and sterilized
6 immediately prior to using. The clothing habits and conduct of
7 the employees shall be conducive to and promote cleanliness and
8 sanitation. There shall be proper, suitable and adequate toilets
9 and lavatories and equipment for cleansing, constructed,
10 maintained and operated in a clean and sanitary manner.

11 Section 7. Registration and Licensing of Plants.--(a) It
12 shall be the duty of every person, whether resident or
13 nonresident of this Commonwealth, operating a frozen dessert
14 plant or plants, whose products are sold or offered for sale in
15 Pennsylvania, to apply to the Department of Agriculture for a
16 license to do so and to register with the department each plant
17 and every brand and type of product produced or manufactured in
18 such plant on or before the first day of January of each year,
19 or before any operation is undertaken, if after January first,
20 and to pay to the department at the time such application for
21 registration and license is filed an annual license fee which
22 shall expire on the following December thirty-first as follows:

23 For each frozen dessert plant producing annually not in
24 excess of one hundred thousand gallons, ten dollars (\$10); in
25 excess of one hundred thousand gallons and not in excess of two
26 hundred and fifty thousand gallons, fifty dollars (\$50); and in
27 excess of two hundred and fifty thousand gallons, one hundred
28 dollars (\$100).

29 (b) The application for a license and registration shall be
30 made on a form to be supplied by the Department of Agriculture.

1 (c) Upon approval of application for registration and
2 license and payment of required license fee and also approval of
3 sanitary conditions in a frozen dessert plant, the Department of
4 Agriculture shall issue to each applicant a license or
5 certificate of registration which shall expire at the end of
6 each calendar year and which will authorize the operation of
7 said plant for the calendar year or portion thereof for which a
8 license or certificate of registration shall be issued.

9 (d) Establishments such as hotels, dining rooms and boarding
10 houses where the products defined herein are produced and
11 consumed only on the premises need not comply with the licensing
12 and registration provisions of this act, but the other
13 provisions of this law and regulations passed pursuant thereto,
14 shall apply to such establishments.

15 Section 8. Revocation of Licenses.--The Department of
16 Agriculture is hereby authorized to revoke or suspend any
17 license for cause and where it shall be properly ascertained
18 that the frozen dessert plant is not operated in a proper and
19 sanitary manner.

20 Section 9. Enforcement; Rules and Regulations.--(a) The
21 Department of Agriculture is charged with the enforcement of the
22 provisions of this act: Provided, however, That the Department
23 of Agriculture in the usual manner, or any person, committee or
24 association composed of persons affected by this act or rules or
25 regulations of the Department of Agriculture may institute such
26 action at law or in equity as may appear necessary to enforce
27 compliance with this act or any rule, regulation, definition or
28 standard of identity of the Department made pursuant to the
29 provisions of this act.

30 (b) The Department of Agriculture shall, after public

1 hearing, adopt, promulgate and enforce definitions and standards
2 of identity for frozen desserts and the mixes used in the
3 manufacture thereof together with rules and regulations
4 governing the packaging, labeling, sanitary requirements and all
5 other conditions relating to the manufacture, processing,
6 distribution and sale of frozen desserts, whether manufactured
7 or processed in a regular manufacturing plant, in a counter
8 freezer or otherwise, to carry out the purposes of this act, to
9 prevent deception in the sale of frozen desserts and to
10 safeguard the health of consumers. All definitions and standards
11 of identity and rules and regulations promulgated by the
12 Department shall be based on the hearing record and following
13 any hearing to consider definitions and standards of identity,
14 rules and regulations and labeling requirements or any of these,
15 the Department shall issue a recommended decision and shall
16 afford interested parties an opportunity to file exceptions
17 based on the hearing record. The Department in issuing a final
18 decision shall rule on any exceptions filed, setting forth its
19 reasons therefor. Such regulations, when promulgated shall have
20 the force and effect of law. The Department is hereby authorized
21 to adopt insofar as applicable, the standards of identity and
22 definitions from time to time promulgated by the Secretary of
23 Health, Education and Welfare of the United States under the
24 Federal Act Defining and Standardizing Frozen Desserts.

25 Section 10. Violations; Punishment; Injunction.--(a) Any
26 person violating any of the provisions of this act or
27 definitions and standards of identity, rules or regulations made
28 pursuant thereto shall, for the first or second offense upon
29 conviction thereof in a summary proceeding, be sentenced to pay
30 a fine of not less than twenty-five dollars (\$25), nor more than

1 one hundred dollars (\$100), and costs of prosecution, or in
2 default of such fine and costs in the case of an individual, or
3 the officers and members of an association, partnership or
4 corporation, to undergo an imprisonment in the county jail of
5 not less than thirty days nor more than sixty days, and for a
6 third or subsequent offense within two years shall be guilty of
7 a misdemeanor and sentenced to pay a fine not exceeding one
8 thousand dollars (\$1000), or in the case of an individual or the
9 officers and members of an association, partnership or
10 corporation, to undergo an imprisonment not exceeding one year,
11 or both, in the discretion of the court.

12 All fines and penalties imposed and recovered for the
13 violation of the provisions of this act shall be paid into the
14 State Treasury through the Department of Revenue and credited to
15 the General Fund.

16 (b) The Attorney General, at the request of the department,
17 may in the name of the Commonwealth institute proceedings for
18 the purpose of enjoining the conduct of business in this
19 Commonwealth contrary to the provisions of this act.

20 Section 13. Short Title.--This act shall be known as and may
21 be cited as "The Frozen Dessert Law."

22 Section 13.1. Severability.--It is hereby declared to be the
23 legislative intent that if this act cannot take effect in its
24 entirety because of the decision of any court holding
25 unconstitutional any part, sentence or clause hereof, the
26 remaining provisions of the act shall be given full force and
27 effect as completely as if the part held unconstitutional had
28 not been included herein.

29 It is hereby declared as the intent of the Legislature that
30 every other part, sentence or clause of this act would have been

1 enacted had such unconstitutional provision not been included
2 herein.

3 Section 14. Effective Date.--This act shall take effect
4 immediately.]

5 Section 2. This act shall take effect immediately.