

AMENDMENTS TO SENATE BILL NO. 960

Sponsor: REPRESENTATIVE MOUL

Printer's No. 1249

1 Amend Bill, page 1, lines 1 through 3, by striking out all of
2 said lines and inserting

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

13 Amend Bill, page 1, lines 6 through 18; pages 2 through 7,
14 lines 1 through 30; page 8, lines 1 through 3; by striking out
15 all of said lines on said pages and inserting

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17 known as The Frozen Dessert Law, is repealed:

18 [AN ACT

19 For the protection of the public health, and to prevent fraud
20 and deception in the manufacture, sale, offering for sale,
21 exposing for sale, and possession with intent to sell, of
22 adulterated or deleterious frozen desserts, providing for
23 licensing, authorizing and regulating the manufacture and
24 sale of frozen desserts, conferring powers and imposing
25 duties upon the Department of Agriculture, prescribing
26 penalties, providing for the enforcement thereof, and making
27 repeals.

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

30 Section 1. Declaration of Policy; Definitions.--(a) It is
31 hereby declared that the dairy industry is a paramount industry
32 of the Commonwealth and the production, processing, packaging,
33 distribution and sale of frozen desserts is an important segment
34 of the dairy industry and is of vast economic importance to the
35 Commonwealth and of vital importance to the consuming public of

1 the Commonwealth, and which should be encouraged and promoted in
2 the public interest. It is further declared to be in the
3 interest of the dairy industry and of the consuming public that
4 there be uniformity of standards for frozen desserts as between
5 the various states and the Federal Government to the end that
6 there may be free movement of frozen desserts between the states
7 and to the end that the inefficiency, needless expense, and
8 confusion caused by differences in products sold under the same
9 name, and differences in labeling of identical products may be
10 eliminated.

11 It is further declared to be the purpose of this act to
12 promote honesty and fair dealing in the interest of consumers,
13 to insure fair competition as between the manufacturers and
14 distributors of the different products and to prevent confusion
15 and deception in the sale of all such products by establishing
16 definitions and standards of identity for such products, and by
17 providing for rules and regulations which will effect their
18 orderly marketing and insure uniform and proper sanitary
19 standards.

20 (b) (1) For the purpose of this act, and for any rules,
21 regulations, definitions, standards of identity, or labeling
22 requirements promulgated pursuant thereto, the term "frozen
23 desserts" shall be deemed to include ice cream, frozen custard,
24 french ice cream, french custard ice cream, artificially
25 sweetened ice cream, artificially sweetened ice milk, ice milk,
26 freezer made milk shakes, fruit sherbet, water ice, quiescently
27 frozen confection, quiescently frozen dairy confection, whipped
28 cream confection, bisque tortoni, mellorine frozen desserts as
29 all such products are commonly known, together with any mix used
30 in such frozen desserts and any products which are similar in
31 appearance, odor, or taste to such products or are prepared or
32 frozen as such products are customarily prepared or frozen,
33 whether made with dairy or non-dairy products but shall not
34 apply to such commonly known or designated bakery products as
35 frozen cakes and pastries, cream pies and fillings and toppings,
36 meringue pie fillings and toppings, cream and ice box pies,
37 fruit and custard pie fillings, boston cream pie fillings, cream
38 puff fillings and custards, eclair and napoleon fillings and
39 custards, or the like.

40 (2) For the purpose of this act, a "frozen dessert plant"
41 shall mean any place, premises or establishment where frozen
42 dessert is manufactured, prepared or processed for distribution
43 or sale.

44 Section 2. Sale, Possession, etc., of Adulterated or
45 Unregistered Products.--(a) It shall be unlawful for any person
46 by himself or by his agents, servants or employes, to sell,
47 offer for sale, expose for sale or have in possession with
48 intent to sell, any frozen dessert:

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

50 (2) Which is not registered with the Department of
51 Agriculture as required in this act. The possession of any such

1 non-registered product shall be deemed prima facie evidence of
2 an intent to sell the same: Provided, however, That such
3 establishments as hotels, dining rooms and boarding houses where
4 the above named products are produced and consumed only on the
5 premises need not register such products with the Department of
6 Agriculture.

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

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

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

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

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

25 (4) It is offered for sale from any container, compartment
26 or cabinet which contains any article other than frozen desserts
27 except that frozen desserts when properly wrapped or packaged by
28 the manufacturer and in unbroken packages or containers for
29 delivery to the consumer may be offered for sale from one or
30 more separate compartments of a refrigerated container or
31 cabinet of which other separate compartments contain properly
32 wrapped, unbroken and sealed packages of frozen foods ready for
33 delivery to the consumer.

34 (5) It falls below the standards of any of them fixed for
35 the particular product by the definition promulgated pursuant to
36 the authority granted by this act or is falsely labeled or
37 labeled contrary to regulations promulgated pursuant to this
38 act.

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

42 Section 6. Frozen Dessert Plants Sanitary Standards.--It
43 shall be unlawful to operate any frozen dessert plant unless it
44 shall be maintained and operated with strict regard for the
45 purity and wholesomeness of the products produced therein. The
46 entire establishment and its appertaining premises, including
47 fixtures, furnishings, machinery, apparatus, implements,
48 utensils, receptacles and all equipment used in production,
49 keeping, storing, handling or distributing shall be maintained
50 and operated in a clean, sanitary manner. The equipment,
51 containers and piping shall be constructed of a smooth nontoxic

1 impervious corrosion resistant material and fabricated in such a
2 manner that there will be no contamination of the products
3 handled therein and they can be easily sanitized. All equipment
4 shall be kept in good working order and condition and shall be
5 located so as to facilitate cleaning and practically eliminate
6 the possibility of contamination. All equipment and utensils
7 used in the production of any product whose surface comes in
8 contact with any such product or any of the ingredients thereof
9 shall be thoroughly cleaned after using and sterilized
10 immediately prior to using. The clothing habits and conduct of
11 the employees shall be conducive to and promote cleanliness and
12 sanitation. There shall be proper, suitable and adequate toilets
13 and lavatories and equipment for cleansing, constructed,
14 maintained and operated in a clean and sanitary manner.

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

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

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

35 (c) Upon approval of application for registration and
36 license and payment of required license fee and also approval of
37 sanitary conditions in a frozen dessert plant, the Department of
38 Agriculture shall issue to each applicant a license or
39 certificate of registration which shall expire at the end of
40 each calendar year and which will authorize the operation of
41 said plant for the calendar year or portion thereof for which a
42 license or certificate of registration shall be issued.

43 (d) Establishments such as hotels, dining rooms and boarding
44 houses where the products defined herein are produced and
45 consumed only on the premises need not comply with the licensing
46 and registration provisions of this act, but the other
47 provisions of this law and regulations passed pursuant thereto,
48 shall apply to such establishments.

49 Section 8. Revocation of Licenses.--The Department of
50 Agriculture is hereby authorized to revoke or suspend any
51 license for cause and where it shall be properly ascertained

1 that the frozen dessert plant is not operated in a proper and
2 sanitary manner.

3 Section 9. Enforcement; Rules and Regulations.--(a) The
4 Department of Agriculture is charged with the enforcement of the
5 provisions of this act: Provided, however, That the Department
6 of Agriculture in the usual manner, or any person, committee or
7 association composed of persons affected by this act or rules or
8 regulations of the Department of Agriculture may institute such
9 action at law or in equity as may appear necessary to enforce
10 compliance with this act or any rule, regulation, definition or
11 standard of identity of the Department made pursuant to the
12 provisions of this act.

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

38 Section 10. Violations; Punishment; Injunction.--(a) Any
39 person violating any of the provisions of this act or
40 definitions and standards of identity, rules or regulations made
41 pursuant thereto shall, for the first or second offense upon
42 conviction thereof in a summary proceeding, be sentenced to pay
43 a fine of not less than twenty-five dollars (\$25), nor more than
44 one hundred dollars (\$100), and costs of prosecution, or in
45 default of such fine and costs in the case of an individual, or
46 the officers and members of an association, partnership or
47 corporation, to undergo an imprisonment in the county jail of
48 not less than thirty days nor more than sixty days, and for a
49 third or subsequent offense within two years shall be guilty of
50 a misdemeanor and sentenced to pay a fine not exceeding one
51 thousand dollars (\$1000), or in the case of an individual or the

1 officers and members of an association, partnership or
2 corporation, to undergo an imprisonment not exceeding one year,
3 or both, in the discretion of the court.

4 All fines and penalties imposed and recovered for the
5 violation of the provisions of this act shall be paid into the
6 State Treasury through the Department of Revenue and credited to
7 the General Fund.

8 (b) The Attorney General, at the request of the department,
9 may in the name of the Commonwealth institute proceedings for
10 the purpose of enjoining the conduct of business in this
11 Commonwealth contrary to the provisions of this act.

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

14 Section 13.1. Severability.--It is hereby declared to be the
15 legislative intent that if this act cannot take effect in its
16 entirety because of the decision of any court holding
17 unconstitutional any part, sentence or clause hereof, the
18 remaining provisions of the act shall be given full force and
19 effect as completely as if the part held unconstitutional had
20 not been included herein.

21 It is hereby declared as the intent of the Legislature that
22 every other part, sentence or clause of this act would have been
23 enacted had such unconstitutional provision not been included
24 herein.

25 Section 14. Effective Date.--This act shall take effect
26 immediately.]

27 Section 2. This act shall take effect immediately.