

FROZEN DESSERT LAW, THE
Act of Sep. 1, 1965, P.L. 420, No. 215
AN ACT

Cl. 31

For the protection of the public health, and to prevent fraud and deception in the manufacture, sale, offering for sale, exposing for sale, and possession with intent to sell, of adulterated or deleterious frozen desserts, providing for licensing, authorizing and regulating the manufacture and sale of frozen desserts, conferring powers and imposing duties upon the Department of Agriculture, prescribing penalties, providing for the enforcement thereof, and making repeals. (Title amended June 4, 1969, P.L.54, No.18)

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

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

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

(b) (1) For the purpose of this act, and for any rules, regulations, definitions, standards of identity, or labeling requirements promulgated pursuant thereto, the term "frozen desserts" shall be deemed to include ice cream, frozen custard, french ice cream, french custard ice cream, artificially sweetened ice cream, artificially sweetened ice milk, ice milk, freezer made milk shakes, fruit sherbet, water ice, quiescently frozen confection, quiescently frozen dairy confection, whipped cream confection, bisque tortoni, mellorine frozen desserts as all such products are commonly known, together with any mix used in such frozen desserts and any products which are similar in

appearance, odor, or taste to such products or are prepared or frozen as such products are customarily prepared or frozen, whether made with dairy or non-dairy products but shall not apply to such commonly known or designated bakery products as frozen cakes and pastries, cream pies and fillings and toppings, meringue pie fillings and toppings, cream and ice box pies, fruit and custard pie fillings, boston cream pie fillings, cream puff fillings and custards, eclair and napoleon fillings and custards, or the like.

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

(1 amended June 4, 1969, P.L.54, No.18)

Section 2. Sale, Possession, etc., of Adulterated or Unregistered Products.--(a) It shall be unlawful for any person 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.

(2 amended June 4, 1969, P.L.54, No.18)

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

delivery to the consumer.

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

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

(3 amended June 4, 1969, P.L.54, No.18)

Section 4. Artificially Sweetened Ice Cream.--(4 repealed June 4, 1969, P.L.54, No.18)

Section 5. Marking; Labeling.--(5 repealed June 4, 1969, P.L.54, No.18)

Section 6. Frozen Dessert Plants Sanitary Standards.--It shall be unlawful to operate any frozen dessert plant unless it shall be maintained and operated with strict regard for the purity and wholesomeness of the products produced therein. The entire establishment and its appertaining premises, including fixtures, furnishings, machinery, apparatus, implements, utensils, receptacles and all equipment used in production, keeping, storing, handling or distributing shall be maintained and operated in a clean, sanitary manner. The equipment, containers and piping shall be constructed of a smooth nontoxic impervious corrosion resistant material and fabricated in such a manner that there will be no contamination of the products handled therein and they can be easily sanitized. All equipment shall be kept in good working order and condition and shall be located so as to facilitate cleaning and practically eliminate the possibility of contamination. All equipment and utensils used in the production of any product whose surface comes in contact with any such product or any of the ingredients thereof shall be thoroughly cleaned after using and sterilized immediately prior to using. The clothing habits and conduct of the employes shall be conducive to and promote cleanliness and sanitation. There shall be proper, suitable and adequate toilets and lavatories and equipment for cleansing, constructed, maintained and operated in a clean and sanitary manner.

(6 amended June 4, 1969, P.L.54, No.18)

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

For each frozen dessert plant producing annually not in excess of one hundred thousand gallons, ten dollars (\$10); in excess of one hundred thousand gallons and not in excess of two hundred and fifty thousand gallons, fifty dollars (\$50); and in

excess of two hundred and fifty thousand gallons, one hundred dollars (\$100).

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

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

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

(7 amended June 4, 1969, P.L.54, No.18)

Compiler's Note: Section 15 of Act 67 of 1990 provided that section 7 is repealed insofar as it relates to fee payments.

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

(8 amended June 4, 1969, P.L.54, No.18)

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

(b) The Department of Agriculture shall, after public hearing, adopt, promulgate and enforce definitions and standards of identity for frozen desserts and the mixes used in the manufacture thereof together with rules and regulations governing the packaging, labeling, sanitary requirements and all other conditions relating to the manufacture, processing, distribution and sale of frozen desserts, whether manufactured or processed in a regular manufacturing plant, in a counter freezer or otherwise, to carry out the purposes of this act, to prevent deception in the sale of frozen desserts and to safeguard the health of consumers. All definitions and standards of identity and rules and regulations promulgated by the Department shall be based on the hearing record and following any hearing to consider definitions and standards of identity, rules and regulations and labeling requirements or any of these, the Department shall issue a recommended decision and shall afford interested parties an opportunity to file exceptions

based on the hearing record. The Department in issuing a final decision shall rule on any exceptions filed, setting forth its reasons therefor. Such regulations, when promulgated shall have the force and effect of law. The Department is hereby authorized to adopt insofar as applicable, the standards of identity and definitions from time to time promulgated by the Secretary of Health, Education and Welfare of the United States under the Federal Act Defining and Standardizing Frozen Desserts.

(9 amended June 4, 1969, P.L.54, No.18)

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

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

(b) The Attorney General, at the request of the department, may in the name of the Commonwealth institute proceedings for the purpose of enjoining the conduct of business in this Commonwealth contrary to the provisions of this act. ((b) repealed in part Apr. 28, 1978, P.L.202, No.53)

(10 amended June 4, 1969, P.L.54, No.18)

Section 11. Milk Law and Local Health Administration Law Not Affected.--(11 repealed June 4, 1969, P.L.54, No.18)

Section 12. Repeal.--(12 repealed June 4, 1969, P.L.54, No.18)

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

(13 amended June 4, 1969, P.L.54, No.18)

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

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

(13.1 added June 4, 1969, P.L.54, No.18)

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