

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1089 Session of
2020

INTRODUCED BY J. WARD, VOGEL, ARGALL, PHILLIPS-HILL, MENSCH,
MARTIN, BLAKE AND PITTMAN, MARCH 11, 2020

REFERRED TO AGRICULTURE AND RURAL AFFAIRS, MARCH 11, 2020

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14 known as The Frozen Dessert Law, is repealed: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 [Section 1. Declaration of Policy; Definitions.--(a) It is
16 hereby declared that the dairy industry is a paramount industry
17 of the Commonwealth and the production, processing, packaging,
18 distribution and sale of frozen desserts is an important segment
19 of the dairy industry and is of vast economic importance to the
20 Commonwealth and of vital importance to the consuming public of
21 the Commonwealth, and which should be encouraged and promoted in
22 the public interest. It is further declared to be in the

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

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

18 (b) (1) For the purpose of this act, and for any rules,
19 regulations, definitions, standards of identity, or labeling
20 requirements promulgated pursuant thereto, the term "frozen
21 desserts" shall be deemed to include ice cream, frozen custard,
22 french ice cream, french custard ice cream, artificially
23 sweetened ice cream, artificially sweetened ice milk, ice milk,
24 freezer made milk shakes, fruit sherbet, water ice, quiescently
25 frozen confection, quiescently frozen dairy confection, whipped
26 cream confection, bisque tortoni, mellorine frozen desserts as
27 all such products are commonly known, together with any mix used
28 in such frozen desserts and any products which are similar in
29 appearance, odor, or taste to such products or are prepared or
30 frozen as such products are customarily prepared or frozen,

1 whether made with dairy or non-dairy products but shall not
2 apply to such commonly known or designated bakery products as
3 frozen cakes and pastries, cream pies and fillings and toppings,
4 meringue pie fillings and toppings, cream and ice box pies,
5 fruit and custard pie fillings, boston cream pie fillings, cream
6 puff fillings and custards, eclair and napoleon fillings and
7 custards, or the like.

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

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

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

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

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

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

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

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

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

14 (4) It is offered for sale from any container, compartment
15 or cabinet which contains any article other than frozen desserts
16 except that frozen desserts when properly wrapped or packaged by
17 the manufacturer and in unbroken packages or containers for
18 delivery to the consumer may be offered for sale from one or
19 more separate compartments of a refrigerated container or
20 cabinet of which other separate compartments contain properly
21 wrapped, unbroken and sealed packages of frozen foods ready for
22 delivery to the consumer.

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

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

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

25 Section 7. Registration and Licensing of Plants.--(a) It
26 shall be the duty of every person, whether resident or
27 nonresident of this Commonwealth, operating a frozen dessert
28 plant or plants, whose products are sold or offered for sale in
29 Pennsylvania, to apply to the Department of Agriculture for a
30 license to do so and to register with the department each plant

1 and every brand and type of product produced or manufactured in
2 such plant on or before the first day of January of each year,
3 or before any operation is undertaken, if after January first,
4 and to pay to the department at the time such application for
5 registration and license is filed an annual license fee which
6 shall expire on the following December thirty-first as follows:

7 For each frozen dessert plant producing annually not in
8 excess of one hundred thousand gallons, ten dollars (\$10); in
9 excess of one hundred thousand gallons and not in excess of two
10 hundred and fifty thousand gallons, fifty dollars (\$50); and in
11 excess of two hundred and fifty thousand gallons, one hundred
12 dollars (\$100).

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

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

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

29 Section 8. Revocation of Licenses.--The Department of
30 Agriculture is hereby authorized to revoke or suspend any

1 license for cause and where it shall be properly ascertained
2 that the frozen dessert plant is not operated in a proper and
3 sanitary manner.

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

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

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

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

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

30 (b) The Attorney General, at the request of the department,

1 may in the name of the Commonwealth institute proceedings for
2 the purpose of enjoining the conduct of business in this
3 Commonwealth contrary to the provisions of this act.

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

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

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

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

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