

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 960 Session of 2021

INTRODUCED BY J. WARD, PHILLIPS-HILL, MARTIN, GORDNER, STEFANO, MASTRIANO, SCAVELLO AND PITTMAN, NOVEMBER 29, 2021

AS REPORTED FROM COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 15, 2022

AN ACT

1 ~~Amending Title 3 (Agriculture) of the Pennsylvania Consolidated <--~~
2 ~~Statutes, in food protection, providing for frozen dessert~~
3 ~~safety; and making a related repeal.~~

4 REPEALING THE ACT OF SEPTEMBER 1, 1965 (P.L.420, NO.215), <--
5 ENTITLED "AN ACT FOR THE PROTECTION OF THE PUBLIC HEALTH, AND
6 TO PREVENT FRAUD AND DECEPTION IN THE MANUFACTURE, SALE,
7 OFFERING FOR SALE, EXPOSING FOR SALE, AND POSSESSION WITH
8 INTENT TO SELL, OF ADULTERATED OR DELETERIOUS FROZEN
9 DESSERTS, PROVIDING FOR LICENSING, AUTHORIZING AND REGULATING
10 THE MANUFACTURE AND SALE OF FROZEN DESSERTS, CONFERRING
11 POWERS AND IMPOSING DUTIES UPON THE DEPARTMENT OF
12 AGRICULTURE, PRESCRIBING PENALTIES, PROVIDING FOR THE
13 ENFORCEMENT THEREOF, AND MAKING REPEALS."

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

16 ~~Section 1. Chapter 57 of Title 3 of the Pennsylvania <--~~
17 ~~Consolidated Statutes is amended by adding a subchapter to read:~~

SUBCHAPTER D

FROZEN DESSERT SAFETY

20 Sec.

21 5751. Scope of subchapter.

22 5752. Definitions.

- 1 ~~5753. Prohibited acts.~~
2 ~~5754. Sanitation standards.~~
3 ~~5755. Penalties.~~
4 ~~5756. Rules and regulations.~~
5 ~~5757. Construction of subchapter.~~
6 ~~5758. Acts not affected.~~
7 ~~§ 5751. Scope of subchapter.~~

8 ~~This subchapter relates to frozen dessert safety.~~

- 9 ~~§ 5752. Definitions.~~

10 ~~The following words and phrases when used in this subchapter~~
11 ~~shall have the meanings given to them in this section unless the~~
12 ~~context clearly indicates otherwise:~~

13 ~~"Dispensing freezer." A piece of food equipment that~~
14 ~~processes and freezes a previously pasteurized product, such as~~
15 ~~soft ice cream, ice milk, frozen yogurt, custard and milkshake,~~
16 ~~and dispenses the product directly into the consumer's container~~
17 ~~or is a batch freezer that processes, freezes and dispenses into~~
18 ~~packaging for consumer sale or further distribution.~~

19 ~~"Federal acts." As defined in section 5722 (relating to~~
20 ~~definitions).~~

21 ~~"Food establishment." As defined in section 5722.~~

22 ~~"Food Safety Act." As defined in Subchapter B (relating to~~
23 ~~food safety).~~

24 ~~"Frozen dessert." Ice cream, frozen custard, French ice~~
25 ~~cream, French custard ice cream, frozen dietary dairy dessert,~~
26 ~~frozen yogurt, dietary frozen dessert or low fat frozen dairy~~
27 ~~dessert, ice milk, dispensing freezer made milkshake, fruit~~
28 ~~sherbet, water ice, quiescently frozen confection and~~
29 ~~quiescently frozen dairy confection, including, but not limited~~
30 ~~to, a popsicle, whipped cream confection, bisque tortoni and~~

~~1 mellorine frozen dessert. The term includes a mix used to
2 produce such product and a product that is similar in
3 appearance, odor or taste to such product or is prepared or
4 frozen as such product is customarily prepared or frozen,
5 whether made with dairy or nondairy product. The term does not
6 include:~~

~~7 (1) A bakery product, such as frozen cake, frozen
8 pastry, ice cream cake, cream pie, meringue pie and other pie
9 and pastry filling and topping, such as fruit and custard,
10 Boston cream, cream puff filling or custard, éclair and
11 napoleon filling and custard.~~

~~12 (2) Quiescently frozen confection that is prepared with
13 food that would be edible or recognizable in the food's
14 original state as a food, prior to freezing. This product
15 includes a food infused with nitrogen to create a final
16 frozen product, such as cereal and chocolate covered frozen
17 novelty such as fruit, cheesecake and candy.~~

~~18 (3) Nondispensing freezer made frozen beverage, such as
19 ice slushy, snow cone, frozen piña colada or margarita mix,
20 ice coffee, frozen cappuccino or blended smoothie.~~

~~21 "Licensor." As defined in section 5702 (relating to
22 definitions).~~

~~23 "Milk Sanitation Law." The act of July 2, 1935 (P.L.589,
24 No.210), referred to as the Milk Sanitation Law.~~

~~25 "Permitholder." A person that holds a permit issued by the
26 secretary under section 2 of the Milk Sanitation Law.~~

~~27 "Person." An individual, partnership, association, limited
28 liability company or corporation thereof.~~

~~29 "Retail food facility." As defined in section 5702.~~

~~30 "Retail Food Facility Safety Act." As defined in Subchapter~~

1 ~~A (relating to retail food facility safety).~~

2 ~~"Secretary." As defined in section 5722.~~

3 ~~§ 5753. Prohibited acts.~~

4 ~~The following acts are prohibited:~~

5 ~~(1) Manufacture, sale, delivery, consignment, bailment,~~
6 ~~holding or offering for sale of any frozen dessert that is~~
7 ~~adulterated or misbranded as defined under the provisions of~~
8 ~~sections 5728 (relating to adulteration of food) and 5729~~
9 ~~(relating to misbranding of food).~~

10 ~~(2) Adulteration or misbranding of a frozen dessert.~~

11 ~~(3) Failure to obtain a retail food facility license by~~
12 ~~a licensor under the provisions of section 5703 (relating to~~
13 ~~license required), as authorized or required under this~~
14 ~~chapter.~~

15 ~~(4) Failure to register with the secretary under the~~
16 ~~provisions of section 5734 (relating to registration of food~~
17 ~~establishments), as authorized or required under this~~
18 ~~chapter.~~

19 ~~(5) Failure to obtain a permit from the secretary under~~
20 ~~section 2 of the Milk Sanitation Law, as authorized or~~
21 ~~required under the provisions of that act.~~

22 ~~(6) Refusal to permit, during normal business hours,~~
23 ~~entry, inspection, taking of a sample or access to or copying~~
24 ~~of any record, as authorized under this subchapter, sections~~
25 ~~5704(a) and 5732(a) (relating to inspection, sampling and~~
26 ~~analysis) or section 6 of the Milk Sanitation Law.~~

27 ~~(7) Removal or disposal of a detained or embargoed~~
28 ~~frozen dessert in violation of section 5726 (relating to~~
29 ~~detention and condemnation).~~

30 ~~(8) Sale of a frozen dessert exceeding microbiological~~

1 ~~standards in violation of an applicable regulation~~
2 ~~promulgated under this subchapter.~~

3 ~~§ 5754. Sanitation standards.~~

4 ~~(a) Retail food facilities. A retail food facility that~~
5 ~~manufactures frozen desserts shall conform with all rules,~~
6 ~~regulations and standards adopted, or an order issued under~~
7 ~~Subchapter A (relating to retail food facility safety),~~
8 ~~including, but not limited to, a standard established for food~~
9 ~~equipment, temperature control, food preparation and cleaning~~
10 ~~and sanitation.~~

11 ~~(b) Food establishments and permit holders. A food~~
12 ~~establishment and permit holder that manufactures frozen desserts~~
13 ~~shall conform with all rules, regulations and standards adopted~~
14 ~~or an order issued under Subchapter B (relating to food safety)~~
15 ~~or the Milk Sanitation Law, including, but not limited to, a~~
16 ~~standard established for food equipment, temperature control,~~
17 ~~food processing and cleaning and sanitation.~~

18 ~~§ 5755. Penalties.~~

19 ~~(a) Criminal penalties.—~~

20 ~~(1) A person that violates this subchapter or a rule,~~
21 ~~regulation, standard or order made under this subchapter~~
22 ~~commits a summary offense for the first or second offense.~~

23 ~~(2) A person that violates this subchapter or any rule,~~
24 ~~regulation, standard or order made under this subchapter~~
25 ~~commits a misdemeanor of the third degree if the violation is~~
26 ~~a third or subsequent offense and occurs within two years of~~
27 ~~the date of the last previous offense.~~

28 ~~(b) Civil penalties.—~~

29 ~~(1) In addition to proceeding under any other remedy~~
30 ~~available at law or in equity for a violation of this~~

1 ~~subchapter, or a rule or regulation adopted or an order~~
2 ~~issued under this subchapter, the secretary may assess a~~
3 ~~civil penalty not to exceed \$10,000 upon an individual or~~
4 ~~business for each offense.~~

5 ~~(2) No civil penalty may be assessed unless the person~~
6 ~~charged has been given notice and opportunity for a hearing~~
7 ~~in accordance with law.~~

8 ~~(3) In determining the amount of the penalty, the~~
9 ~~secretary shall consider the gravity of the violation.~~

10 ~~(4) If the secretary finds a violation did not cause~~
11 ~~harm to human health, the secretary may issue a warning in~~
12 ~~lieu of assessing a penalty.~~

13 ~~(5) In case of inability to collect the civil penalty or~~
14 ~~failure of a person to pay all or a portion of the penalty as~~
15 ~~the secretary may determine, the secretary may refer the~~
16 ~~matter to the Attorney General who shall recover the amount~~
17 ~~by action in the appropriate court.~~

18 ~~(c) Minor violations. Nothing in this subchapter shall be~~
19 ~~construed as requiring prosecution or institution of a~~
20 ~~proceeding under this subchapter for minor violations of this~~
21 ~~subchapter if the secretary believes that the public interest~~
22 ~~will be adequately served in the circumstances by a suitable~~
23 ~~written notice or warning.~~

24 ~~(d) Retail food facilities under other jurisdiction. For~~
25 ~~retail food facilities licensed under Subchapter A (relating to~~
26 ~~retail food facility safety) by a licensor that is not the~~
27 ~~department, penalties under this subchapter shall be established~~
28 ~~by the licensor.~~

29 ~~§ 5756. Rules and regulations.~~

30 ~~(a) Nature of rules. The secretary shall be charged with~~

1 ~~the enforcement of this subchapter and shall promulgate rules,~~
2 ~~regulations and frozen dessert standards necessary for its~~
3 ~~proper enforcement. The rules, regulations and frozen dessert~~
4 ~~standards shall conform and shall be construed to conform with~~
5 ~~the purposes expressed in section 5757 (relating to construction~~
6 ~~of subchapter).~~

7 ~~(b) Testing requirements.~~

8 ~~(1) The secretary shall establish rules, regulations and~~
9 ~~frozen dessert standards that include annual microbiological~~
10 ~~testing standards for frozen desserts that are manufactured,~~
11 ~~prepared or processed at a retail food facility.~~

12 ~~(2) A food establishment that manufactures or processes~~
13 ~~frozen desserts shall conform with the testing standards~~
14 ~~established by regulation under Subchapter B (relating to~~
15 ~~food safety).~~

16 ~~(3) A permit holder that manufactures or processes frozen~~
17 ~~desserts shall conform with the testing standards established~~
18 ~~by regulation under the Milk Sanitation Law.~~

19 ~~§ 5757. Construction of subchapter.~~

20 ~~The provisions of this subchapter and the regulations~~
21 ~~promulgated under this subchapter shall be construed in a manner~~
22 ~~that is consistent with the Federal acts and regulations~~
23 ~~promulgated under those acts.~~

24 ~~§ 5758. Acts not affected.~~

25 ~~Nothing in this subchapter shall be construed to abrogate or~~
26 ~~supersede a provision or regulation adopted under:~~

27 ~~(1) The act of July 2, 1935 (P.L.589, No.210), referred~~
28 ~~to as the Milk Sanitation Law, or the act of August 8, 1961~~
29 ~~(P.L.975, No.436), referred to as the Milk Adulteration and~~
30 ~~Labeling Act.~~

1 THE PUBLIC INTEREST. IT IS FURTHER DECLARED TO BE IN THE
2 INTEREST OF THE DAIRY INDUSTRY AND OF THE CONSUMING PUBLIC THAT
3 THERE BE UNIFORMITY OF STANDARDS FOR FROZEN DESSERTS AS BETWEEN
4 THE VARIOUS STATES AND THE FEDERAL GOVERNMENT TO THE END THAT
5 THERE MAY BE FREE MOVEMENT OF FROZEN DESSERTS BETWEEN THE STATES
6 AND TO THE END THAT THE INEFFICIENCY, NEEDLESS EXPENSE, AND
7 CONFUSION CAUSED BY DIFFERENCES IN PRODUCTS SOLD UNDER THE SAME
8 NAME, AND DIFFERENCES IN LABELING OF IDENTICAL PRODUCTS MAY BE
9 ELIMINATED.

10 IT IS FURTHER DECLARED TO BE THE PURPOSE OF THIS ACT TO
11 PROMOTE HONESTY AND FAIR DEALING IN THE INTEREST OF CONSUMERS,
12 TO INSURE FAIR COMPETITION AS BETWEEN THE MANUFACTURERS AND
13 DISTRIBUTORS OF THE DIFFERENT PRODUCTS AND TO PREVENT CONFUSION
14 AND DECEPTION IN THE SALE OF ALL SUCH PRODUCTS BY ESTABLISHING
15 DEFINITIONS AND STANDARDS OF IDENTITY FOR SUCH PRODUCTS, AND BY
16 PROVIDING FOR RULES AND REGULATIONS WHICH WILL EFFECT THEIR
17 ORDERLY MARKETING AND INSURE UNIFORM AND PROPER SANITARY
18 STANDARDS.

19 (B) (1) FOR THE PURPOSE OF THIS ACT, AND FOR ANY RULES,
20 REGULATIONS, DEFINITIONS, STANDARDS OF IDENTITY, OR LABELING
21 REQUIREMENTS PROMULGATED PURSUANT THERETO, THE TERM "FROZEN
22 DESSERTS" SHALL BE DEEMED TO INCLUDE ICE CREAM, FROZEN CUSTARD,
23 FRENCH ICE CREAM, FRENCH CUSTARD ICE CREAM, ARTIFICIALLY
24 SWEETENED ICE CREAM, ARTIFICIALLY SWEETENED ICE MILK, ICE MILK,
25 FREEZER MADE MILK SHAKES, FRUIT SHERBET, WATER ICE, QUIESCENTLY
26 FROZEN CONFECTION, QUIESCENTLY FROZEN DAIRY CONFECTION, WHIPPED
27 CREAM CONFECTION, BISQUE TORTONI, MELLORINE FROZEN DESSERTS AS
28 ALL SUCH PRODUCTS ARE COMMONLY KNOWN, TOGETHER WITH ANY MIX USED
29 IN SUCH FROZEN DESSERTS AND ANY PRODUCTS WHICH ARE SIMILAR IN
30 APPEARANCE, ODOR, OR TASTE TO SUCH PRODUCTS OR ARE PREPARED OR

1 FROZEN AS SUCH PRODUCTS ARE CUSTOMARILY PREPARED OR FROZEN,
2 WHETHER MADE WITH DAIRY OR NON-DAIRY PRODUCTS BUT SHALL NOT
3 APPLY TO SUCH COMMONLY KNOWN OR DESIGNATED BAKERY PRODUCTS AS
4 FROZEN CAKES AND PASTRIES, CREAM PIES AND FILLINGS AND TOPPINGS,
5 MERINGUE PIE FILLINGS AND TOPPINGS, CREAM AND ICE BOX PIES,
6 FRUIT AND CUSTARD PIE FILLINGS, BOSTON CREAM PIE FILLINGS, CREAM
7 PUFF FILLINGS AND CUSTARDS, ECLAIR AND NAPOLEON FILLINGS AND
8 CUSTARDS, OR THE LIKE.

9 (2) FOR THE PURPOSE OF THIS ACT, A "FROZEN DESSERT PLANT"
10 SHALL MEAN ANY PLACE, PREMISES OR ESTABLISHMENT WHERE FROZEN
11 DESSERT IS MANUFACTURED, PREPARED OR PROCESSED FOR DISTRIBUTION
12 OR SALE.

13 SECTION 2. SALE, POSSESSION, ETC., OF ADULTERATED OR
14 UNREGISTERED PRODUCTS.--(A) IT SHALL BE UNLAWFUL FOR ANY PERSON
15 BY HIMSELF OR BY HIS AGENTS, SERVANTS OR EMPLOYES, TO SELL,
16 OFFER FOR SALE, EXPOSE FOR SALE OR HAVE IN POSSESSION WITH
17 INTENT TO SELL, ANY FROZEN DESSERT:

18 (1) WHICH IS ADULTERATED WITHIN THE MEANING OF THIS ACT;

19 (2) WHICH IS NOT REGISTERED WITH THE DEPARTMENT OF
20 AGRICULTURE AS REQUIRED IN THIS ACT. THE POSSESSION OF ANY SUCH
21 NON-REGISTERED PRODUCT SHALL BE DEEMED PRIMA FACIE EVIDENCE OF
22 AN INTENT TO SELL THE SAME: PROVIDED, HOWEVER, THAT SUCH
23 ESTABLISHMENTS AS HOTELS, DINING ROOMS AND BOARDING HOUSES WHERE
24 THE ABOVE NAMED PRODUCTS ARE PRODUCED AND CONSUMED ONLY ON THE
25 PREMISES NEED NOT REGISTER SUCH PRODUCTS WITH THE DEPARTMENT OF
26 AGRICULTURE.

27 (B) IT SHALL BE UNLAWFUL TO IMPORT INTO THIS COMMONWEALTH
28 FOR SALE ANY OF THE ABOVE NAMED PRODUCTS COATED OR UNCOATED,
29 UNLESS THE SAME ARE REGISTERED WITH AND THE MANUFACTURE THEREOF
30 HAS BEEN LICENSED BY THE DEPARTMENT OF AGRICULTURE WHERE

1 PROVIDED IN THIS ACT.

2 SECTION 3. WHAT CONSTITUTES ADULTERATION.--ANY FROZEN
3 DESSERT REFERRED TO IN THIS ACT SHALL BE DEEMED TO BE
4 ADULTERATED WITHIN THE MEANING OF THIS ACT IF--

5 (1) IT CONTAINS ANY SUBSTANCE OR COMPOUND THAT IS
6 DELETERIOUS TO HEALTH.

7 (2) IT CONTAINS ANY COLORING SUBSTANCE DELETERIOUS TO
8 HEALTH: PROVIDED, HOWEVER, THAT THIS CLAUSE SHALL NOT BE
9 CONSTRUED TO PROHIBIT THE USE OF HARMLESS COLORING MATTER FROM A
10 LIST OF PERMITTED COLORING MATERIAL ESTABLISHED BY THE
11 DEPARTMENT OF AGRICULTURE WHEN SUCH USE DOES NOT CONCEAL DAMAGE
12 OR INFERIORITY.

13 (3) IT CONTAINS ANY DELETERIOUS FLAVORING MATTER OR
14 FLAVORING MATTER NOT TRUE TO NAME.

15 (4) IT IS OFFERED FOR SALE FROM ANY CONTAINER, COMPARTMENT
16 OR CABINET WHICH CONTAINS ANY ARTICLE OTHER THAN FROZEN DESSERTS
17 EXCEPT THAT FROZEN DESSERTS WHEN PROPERLY WRAPPED OR PACKAGED BY
18 THE MANUFACTURER AND IN UNBROKEN PACKAGES OR CONTAINERS FOR
19 DELIVERY TO THE CONSUMER MAY BE OFFERED FOR SALE FROM ONE OR
20 MORE SEPARATE COMPARTMENTS OF A REFRIGERATED CONTAINER OR
21 CABINET OF WHICH OTHER SEPARATE COMPARTMENTS CONTAIN PROPERLY
22 WRAPPED, UNBROKEN AND SEALED PACKAGES OF FROZEN FOODS READY FOR
23 DELIVERY TO THE CONSUMER.

24 (5) IT FALLS BELOW THE STANDARDS OF ANY OF THEM FIXED FOR
25 THE PARTICULAR PRODUCT BY THE DEFINITION PROMULGATED PURSUANT TO
26 THE AUTHORITY GRANTED BY THIS ACT OR IS FALSELY LABELED OR
27 LABELED CONTRARY TO REGULATIONS PROMULGATED PURSUANT TO THIS
28 ACT.

29 (6) IT IS MANUFACTURED UNDER CONDITIONS NOT IN CONFORMITY
30 WITH THE PROVISIONS OF SECTION 6 OF, OR RULES AND REGULATIONS

1 PROMULGATED BY THE DEPARTMENT PURSUANT TO, THIS ACT.

2 SECTION 6. FROZEN DESSERT PLANTS SANITARY STANDARDS.--IT
3 SHALL BE UNLAWFUL TO OPERATE ANY FROZEN DESSERT PLANT UNLESS IT
4 SHALL BE MAINTAINED AND OPERATED WITH STRICT REGARD FOR THE
5 PURITY AND WHOLESOMENESS OF THE PRODUCTS PRODUCED THEREIN. THE
6 ENTIRE ESTABLISHMENT AND ITS APPERTAINING PREMISES, INCLUDING
7 FIXTURES, FURNISHINGS, MACHINERY, APPARATUS, IMPLEMENTS,
8 UTENSILS, RECEPTACLES AND ALL EQUIPMENT USED IN PRODUCTION,
9 KEEPING, STORING, HANDLING OR DISTRIBUTING SHALL BE MAINTAINED
10 AND OPERATED IN A CLEAN, SANITARY MANNER. THE EQUIPMENT,
11 CONTAINERS AND PIPING SHALL BE CONSTRUCTED OF A SMOOTH NONTOXIC
12 IMPERVIOUS CORROSION RESISTANT MATERIAL AND FABRICATED IN SUCH A
13 MANNER THAT THERE WILL BE NO CONTAMINATION OF THE PRODUCTS
14 HANDLED THEREIN AND THEY CAN BE EASILY SANITIZED. ALL EQUIPMENT
15 SHALL BE KEPT IN GOOD WORKING ORDER AND CONDITION AND SHALL BE
16 LOCATED SO AS TO FACILITATE CLEANING AND PRACTICALLY ELIMINATE
17 THE POSSIBILITY OF CONTAMINATION. ALL EQUIPMENT AND UTENSILS
18 USED IN THE PRODUCTION OF ANY PRODUCT WHOSE SURFACE COMES IN
19 CONTACT WITH ANY SUCH PRODUCT OR ANY OF THE INGREDIENTS THEREOF
20 SHALL BE THOROUGHLY CLEANED AFTER USING AND STERILIZED
21 IMMEDIATELY PRIOR TO USING. THE CLOTHING HABITS AND CONDUCT OF
22 THE EMPLOYES SHALL BE CONDUCIVE TO AND PROMOTE CLEANLINESS AND
23 SANITATION. THERE SHALL BE PROPER, SUITABLE AND ADEQUATE TOILETS
24 AND LAVATORIES AND EQUIPMENT FOR CLEANSING, CONSTRUCTED,
25 MAINTAINED AND OPERATED IN A CLEAN AND SANITARY MANNER.

26 SECTION 7. REGISTRATION AND LICENSING OF PLANTS.--(A) IT
27 SHALL BE THE DUTY OF EVERY PERSON, WHETHER RESIDENT OR
28 NONRESIDENT OF THIS COMMONWEALTH, OPERATING A FROZEN DESSERT
29 PLANT OR PLANTS, WHOSE PRODUCTS ARE SOLD OR OFFERED FOR SALE IN
30 PENNSYLVANIA, TO APPLY TO THE DEPARTMENT OF AGRICULTURE FOR A

1 LICENSE TO DO SO AND TO REGISTER WITH THE DEPARTMENT EACH PLANT
2 AND EVERY BRAND AND TYPE OF PRODUCT PRODUCED OR MANUFACTURED IN
3 SUCH PLANT ON OR BEFORE THE FIRST DAY OF JANUARY OF EACH YEAR,
4 OR BEFORE ANY OPERATION IS UNDERTAKEN, IF AFTER JANUARY FIRST,
5 AND TO PAY TO THE DEPARTMENT AT THE TIME SUCH APPLICATION FOR
6 REGISTRATION AND LICENSE IS FILED AN ANNUAL LICENSE FEE WHICH
7 SHALL EXPIRE ON THE FOLLOWING DECEMBER THIRTY-FIRST AS FOLLOWS:

8 FOR EACH FROZEN DESSERT PLANT PRODUCING ANNUALLY NOT IN
9 EXCESS OF ONE HUNDRED THOUSAND GALLONS, TEN DOLLARS (\$10); IN
10 EXCESS OF ONE HUNDRED THOUSAND GALLONS AND NOT IN EXCESS OF TWO
11 HUNDRED AND FIFTY THOUSAND GALLONS, FIFTY DOLLARS (\$50); AND IN
12 EXCESS OF TWO HUNDRED AND FIFTY THOUSAND GALLONS, ONE HUNDRED
13 DOLLARS (\$100).

14 (B) THE APPLICATION FOR A LICENSE AND REGISTRATION SHALL BE
15 MADE ON A FORM TO BE SUPPLIED BY THE DEPARTMENT OF AGRICULTURE.

16 (C) UPON APPROVAL OF APPLICATION FOR REGISTRATION AND
17 LICENSE AND PAYMENT OF REQUIRED LICENSE FEE AND ALSO APPROVAL OF
18 SANITARY CONDITIONS IN A FROZEN DESSERT PLANT, THE DEPARTMENT OF
19 AGRICULTURE SHALL ISSUE TO EACH APPLICANT A LICENSE OR
20 CERTIFICATE OF REGISTRATION WHICH SHALL EXPIRE AT THE END OF
21 EACH CALENDAR YEAR AND WHICH WILL AUTHORIZE THE OPERATION OF
22 SAID PLANT FOR THE CALENDAR YEAR OR PORTION THEREOF FOR WHICH A
23 LICENSE OR CERTIFICATE OF REGISTRATION SHALL BE ISSUED.

24 (D) ESTABLISHMENTS SUCH AS HOTELS, DINING ROOMS AND BOARDING
25 HOUSES WHERE THE PRODUCTS DEFINED HEREIN ARE PRODUCED AND
26 CONSUMED ONLY ON THE PREMISES NEED NOT COMPLY WITH THE LICENSING
27 AND REGISTRATION PROVISIONS OF THIS ACT, BUT THE OTHER
28 PROVISIONS OF THIS LAW AND REGULATIONS PASSED PURSUANT THERETO,
29 SHALL APPLY TO SUCH ESTABLISHMENTS.

30 SECTION 8. REVOCATION OF LICENSES.--THE DEPARTMENT OF

1 AGRICULTURE IS HEREBY AUTHORIZED TO REVOKE OR SUSPEND ANY
2 LICENSE FOR CAUSE AND WHERE IT SHALL BE PROPERLY ASCERTAINED
3 THAT THE FROZEN DESSERT PLANT IS NOT OPERATED IN A PROPER AND
4 SANITARY MANNER.

5 SECTION 9. ENFORCEMENT; RULES AND REGULATIONS.-- (A) THE
6 DEPARTMENT OF AGRICULTURE IS CHARGED WITH THE ENFORCEMENT OF THE
7 PROVISIONS OF THIS ACT: PROVIDED, HOWEVER, THAT THE DEPARTMENT
8 OF AGRICULTURE IN THE USUAL MANNER, OR ANY PERSON, COMMITTEE OR
9 ASSOCIATION COMPOSED OF PERSONS AFFECTED BY THIS ACT OR RULES OR
10 REGULATIONS OF THE DEPARTMENT OF AGRICULTURE MAY INSTITUTE SUCH
11 ACTION AT LAW OR IN EQUITY AS MAY APPEAR NECESSARY TO ENFORCE
12 COMPLIANCE WITH THIS ACT OR ANY RULE, REGULATION, DEFINITION OR
13 STANDARD OF IDENTITY OF THE DEPARTMENT MADE PURSUANT TO THE
14 PROVISIONS OF THIS ACT.

15 (B) THE DEPARTMENT OF AGRICULTURE SHALL, AFTER PUBLIC
16 HEARING, ADOPT, PROMULGATE AND ENFORCE DEFINITIONS AND STANDARDS
17 OF IDENTITY FOR FROZEN DESSERTS AND THE MIXES USED IN THE
18 MANUFACTURE THEREOF TOGETHER WITH RULES AND REGULATIONS
19 GOVERNING THE PACKAGING, LABELING, SANITARY REQUIREMENTS AND ALL
20 OTHER CONDITIONS RELATING TO THE MANUFACTURE, PROCESSING,
21 DISTRIBUTION AND SALE OF FROZEN DESSERTS, WHETHER MANUFACTURED
22 OR PROCESSED IN A REGULAR MANUFACTURING PLANT, IN A COUNTER
23 FREEZER OR OTHERWISE, TO CARRY OUT THE PURPOSES OF THIS ACT, TO
24 PREVENT DECEPTION IN THE SALE OF FROZEN DESSERTS AND TO
25 SAFEGUARD THE HEALTH OF CONSUMERS. ALL DEFINITIONS AND STANDARDS
26 OF IDENTITY AND RULES AND REGULATIONS PROMULGATED BY THE
27 DEPARTMENT SHALL BE BASED ON THE HEARING RECORD AND FOLLOWING
28 ANY HEARING TO CONSIDER DEFINITIONS AND STANDARDS OF IDENTITY,
29 RULES AND REGULATIONS AND LABELING REQUIREMENTS OR ANY OF THESE,
30 THE DEPARTMENT SHALL ISSUE A RECOMMENDED DECISION AND SHALL

1 AFFORD INTERESTED PARTIES AN OPPORTUNITY TO FILE EXCEPTIONS
2 BASED ON THE HEARING RECORD. THE DEPARTMENT IN ISSUING A FINAL
3 DECISION SHALL RULE ON ANY EXCEPTIONS FILED, SETTING FORTH ITS
4 REASONS THEREFOR. SUCH REGULATIONS, WHEN PROMULGATED SHALL HAVE
5 THE FORCE AND EFFECT OF LAW. THE DEPARTMENT IS HEREBY AUTHORIZED
6 TO ADOPT INSOFAR AS APPLICABLE, THE STANDARDS OF IDENTITY AND
7 DEFINITIONS FROM TIME TO TIME PROMULGATED BY THE SECRETARY OF
8 HEALTH, EDUCATION AND WELFARE OF THE UNITED STATES UNDER THE
9 FEDERAL ACT DEFINING AND STANDARDIZING FROZEN DESSERTS.

10 SECTION 10. VIOLATIONS; PUNISHMENT; INJUNCTION.--(A) ANY
11 PERSON VIOLATING ANY OF THE PROVISIONS OF THIS ACT OR
12 DEFINITIONS AND STANDARDS OF IDENTITY, RULES OR REGULATIONS MADE
13 PURSUANT THERETO SHALL, FOR THE FIRST OR SECOND OFFENSE UPON
14 CONVICTION THEREOF IN A SUMMARY PROCEEDING, BE SENTENCED TO PAY
15 A FINE OF NOT LESS THAN TWENTY-FIVE DOLLARS (\$25), NOR MORE THAN
16 ONE HUNDRED DOLLARS (\$100), AND COSTS OF PROSECUTION, OR IN
17 DEFAULT OF SUCH FINE AND COSTS IN THE CASE OF AN INDIVIDUAL, OR
18 THE OFFICERS AND MEMBERS OF AN ASSOCIATION, PARTNERSHIP OR
19 CORPORATION, TO UNDERGO AN IMPRISONMENT IN THE COUNTY JAIL OF
20 NOT LESS THAN THIRTY DAYS NOR MORE THAN SIXTY DAYS, AND FOR A
21 THIRD OR SUBSEQUENT OFFENSE WITHIN TWO YEARS SHALL BE GUILTY OF
22 A MISDEMEANOR AND SENTENCED TO PAY A FINE NOT EXCEEDING ONE
23 THOUSAND DOLLARS (\$1000), OR IN THE CASE OF AN INDIVIDUAL OR THE
24 OFFICERS AND MEMBERS OF AN ASSOCIATION, PARTNERSHIP OR
25 CORPORATION, TO UNDERGO AN IMPRISONMENT NOT EXCEEDING ONE YEAR,
26 OR BOTH, IN THE DISCRETION OF THE COURT.

27 ALL FINES AND PENALTIES IMPOSED AND RECOVERED FOR THE
28 VIOLATION OF THE PROVISIONS OF THIS ACT SHALL BE PAID INTO THE
29 STATE TREASURY THROUGH THE DEPARTMENT OF REVENUE AND CREDITED TO
30 THE GENERAL FUND.

1 (B) THE ATTORNEY GENERAL, AT THE REQUEST OF THE DEPARTMENT,
2 MAY IN THE NAME OF THE COMMONWEALTH INSTITUTE PROCEEDINGS FOR
3 THE PURPOSE OF ENJOINING THE CONDUCT OF BUSINESS IN THIS
4 COMMONWEALTH CONTRARY TO THE PROVISIONS OF THIS ACT.

5 SECTION 13. SHORT TITLE.--THIS ACT SHALL BE KNOWN AS AND MAY
6 BE CITED AS "THE FROZEN DESSERT LAW."

7 SECTION 13.1. SEVERABILITY.--IT IS HEREBY DECLARED TO BE THE
8 LEGISLATIVE INTENT THAT IF THIS ACT CANNOT TAKE EFFECT IN ITS
9 ENTIRETY BECAUSE OF THE DECISION OF ANY COURT HOLDING
10 UNCONSTITUTIONAL ANY PART, SENTENCE OR CLAUSE HEREOF, THE
11 REMAINING PROVISIONS OF THE ACT SHALL BE GIVEN FULL FORCE AND
12 EFFECT AS COMPLETELY AS IF THE PART HELD UNCONSTITUTIONAL HAD
13 NOT BEEN INCLUDED HEREIN.

14 IT IS HEREBY DECLARED AS THE INTENT OF THE LEGISLATURE THAT
15 EVERY OTHER PART, SENTENCE OR CLAUSE OF THIS ACT WOULD HAVE BEEN
16 ENACTED HAD SUCH UNCONSTITUTIONAL PROVISION NOT BEEN INCLUDED
17 HEREIN.

18 SECTION 14. EFFECTIVE DATE.--THIS ACT SHALL TAKE EFFECT
19 IMMEDIATELY.]

20 SECTION 2. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.