
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. **668** Session of
1961

INTRODUCED BY MESSRS. DEVLIN AND STASEY,
MAY 23, 1961.

REFERRED TO COMMITTEE ON AGRICULTURE, MAY 23, 1961.

AN ACT

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 ice cream frozen custard french ice cream french custard ice cream sherbet fruit sherbet ice milk ice water ice quiescently frozen confections quiescently frozen dairy confections including coated ice cream and the coating thereof fixing standards for ice cream frozen custard french ice cream french custard ice

EXPLANATION—CAPITAL LETTERS indicate new matter added to bill. Matter stricken through is to be omitted from bill.
Underlining indicates new matter added to existing law. [Brackets] indicate matter stricken from existing law.

cream sherbet fruit sherbet ice milk ice water ice quiescently frozen confections and quiescently frozen dairy confections and to prevent sale of imitation ice cream providing for licensing authorizing and regulating the manufacture and sale of artificially sweetened ice cream and ice milk for diabetics conferring powers and imposing duties upon the Department of Agriculture prescribing penalties providing for the enforcement thereof and making repeals

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

- 1 Section 1 Definitions Essential Requisites of Products (a) Except
- 2 where otherwise indicated it is expressly declared to be the intent of
- 3 the Legislature in the passage of this act that Pennsylvania law sub-
- 4 stantially conform with the Federal regulations promulgated under the
- 5 authority of the United States Secretary of Health Education and Wel-
- 6 fare prescribing definitions and standards for frozen desserts published
- 7 pursuant to section 701 52 Stat 1055 21 USC 371 It is further in-
- 8 tended that provisions of this act be construed in a manner similar to
- 9 the corresponding Federal regulation aforesaid

1 (b) For the purpose of this act "ice cream" is defined as any frozen
2 sweetened milk product which is stirred during the process of freezing
3 and includes every such frozen milk product which contains no less
4 than twenty per cent (20%) by weight of milk fat milk solids not fat
5 or milk fat and milk solids not fat and which in any manner simulates
6 the texture or characteristic of ice cream no matter under what coined
7 or trade name it may be sold Ice cream shall be made from a combina-
8 tion of one or more of the following ingredients viz any clean whole-
9 some cream milk and all forms of milk fat and any clean and wholesome
10 form of milk solids not fat with one or more of the following ingredi-
11 ents sugars and flavoring with or without eggs coloring water fruit
12 juice fruit chocolate cocoa malted milk nuts maple syrup properly pre-
13 pared and cooked cereal cakes or confections each of which ingredients
14 shall be wholesome edible material The finished product may contain
15 not more than one-half of one per cent ($1/2$ of 1%) by weight of stabil-
16 izer and may contain not more than one-fifth of one per cent ($1/5$ of
17 1%) by weight of emulsifier provided however that the stabilizer and
18 emulsifier has been approved by the Department of Agriculture The
19 finished product shall contain not less than ten per cent (10%) of milk
20 fat by weight except when fruit nuts cocoa malted milk chocolate cakes

1 properly prepared and cooked cereal confections or maple syrup are
2 used for the purpose of flavoring the weight of milk fat and total milk
3 solids shall not be less than ten per cent (10%) and twenty per cent
4 (20%) respectively of the remainder obtained by subtracting the weight
5 of such ingredients from the weight of the finished ice cream but in no
6 case is the weight of the milk fat or total milk solids to be less than eight
7 per cent (8%) and sixteen per cent (16%) respectively of the weight of
8 the finished ice cream The finished ice cream shall contain not less than
9 one and six-tenths (1.6) pounds of total food solids to the gallon and
10 weigh not less than four and one-half (4.5) pounds to the gallon Ice
11 cream manufactured prepared or processed for consumption by diabetics
12 shall contain only those ingredients prescribed by this section but shall be
13 sweetened with an artificial sweetening agent and contain edible carbohy-
14 drates other than sugar The artificial sweetening agent and the edible
15 carbohydrates must be approved by the Department of Agriculture and
16 no sugars other than those naturally present in the milk solids or fruit
17 agent shall be added thereto

18 (e) For the purpose of this act "french ice cream" "french custard
19 ice cream" and "frozen custard" shall conform to the definition and
20 standards hereinbefore defined for "ice cream" no matter under what

1 trade or coined name it may be sold or offered for sale except that it shall
2 contain not less than one and four-tenths per cent (1.4%) by weight of
3 egg yolk solids provided however that when chocolate cocoa malted milk
4 fruit nuts maple syrup properly prepared and cooked cereal cakes or
5 confections are used the content of egg yolk solids may be reduced in
6 proportion to such ingredient or ingredients added under the conditions
7 prescribed in subsection (b) of this section for reduction in milk fat and
8 total milk solids but in no case is the content of egg yolk solids to be
9 less than one and twelve one-hundredths per cent (1.12%)

10 (d) For the purpose of this act "ice milk" shall conform to the
11 definition and standard hereinbefore set forth for "ice cream" except that

12 (1) Its content of milk fat shall not be less than three and one-
13 quarter per cent (3.25%) but not more than seven per cent (7%)

14 (2) Its content of total milk solids is not less than eleven per cent
15 (11%)

16 (3) When chocolate fruit nuts cocoa malted milk cakes properly
17 prepared and cooked cereal confections or maple syrup are used for the
18 purpose of flavoring the content of the milk fat may be reduced in pro-
19 portion to such ingredient or ingredients added under the conditions pre-

1 scribed in subsection (b) of this section for reduction in milk fat but in no
2 case is the content of milk fat to be less than two per cent (2%)

3 (4) The quantity of total food solids per gallon shall not be less than
4 one and three-tenths (1.3) pounds

5 Ice milk manufactured prepared or processed for consumption by
6 diabetics shall contain only those ingredients prescribed by this section
7 but shall be sweetened with an artificial sweetening agent and contain
8 edible carbohydrates other than sugar The artificial sweetening agent
9 and the edible carbohydrates must be approved by the Department of
10 Agriculture and no sugars other than those naturally present in the
11 milk solids or fruit agent shall be added thereto

12 (e) For the purpose of this act "sherbet" or "fruit sherbet" shall
13 conform to the definition and standard of identity prescribed for "ice
14 cream" in subsection (b) of this section except that

15 (1) The titratable acidity of the finished sherbet or fruit sherbet
16 calculated as lactic acid shall not be less than thirty-five one-hundredths
17 per cent (0.35%)

18 (2) The content of milk fat and non-fat milk solids therein shall
19 be such that the weight of milk fat is not less than one per cent (1%)
20 and not more than two per cent (2%) and the weight of total milk

1 solids is not less than two per cent (2%) and not more than five per
2 cent (5%) of the weight of the finished sherbet or fruit sherbet

3 (3) The quantity of the fruit ingredients used shall be such that
4 in relation to the weight of the finished sherbet the weight of fruit
5 or fruit juice as the case may be (including water necessary to re-
6 constitute partially or wholly dried fruits or fruit juices to their orig-
7 inal moisture content) shall not be less than two per cent (2%) in
8 the case of citrus sherbets six per cent (6%) in the case of berry
9 sherbets and ten per cent (10%) in the case of sherbets prepared with
10 other fruits For the purposes of this subsection tomatoes and rhubarb
11 are considered as kinds of fruit

12 (4) The provisions for the reduction in milk fat and total milk
13 solids from addition of chocolate cocoa malted milk fruit nuts maple
14 syrup properly prepared and cooked cereal cakes or confections in sub-
15 section (b) of this section shall not apply

16 (f) As used in this act "ice" or "water ice" means any frozen
17 sweetened product which is stirred during the process of freezing not
18 conforming to the definitions and standards set forth in subsections
19 (b) (c) (d) and (e) of this section no matter under what coined or trade
20 name it may be sold or offered for sale Ice or water ice shall be made

1 from a combination of one or more of the following ingredients viz
2 sugars flavoring with or without eggs coloring water fruit juices fruit
3 cocoa chocolate or nuts and with or without wholesome edible acid
4 in such quantity as seasons the finished food and with or without added
5 stabilizer composed of wholesome edible material approved by the
6 Department of Agriculture It shall contain not more than one-half
7 of one percent ($\frac{1}{2}$ of 1%) by weight of stabilizer The titratable
8 acidity of the finished ice or water ice calculated as lactic acid shall
9 not be less than thirty-five one-hundredths per cent (0.35%) The
10 quantity of fruit ingredients used shall be such that in relation to
11 the weight of the finished ice or water ice the weight of fruit or fruit
12 juice as the case may be (including water necessary to reconstitute
13 partially or wholly dried fruits or fruit juices to their original moisture
14 content is not less than two per cent (2%) in the case of citrus ices
15 six per cent (6%) in the case of berry ices and ten per cent (10%)
16 in the case of ices prepared with other fruits

17 (g) As used in this act "quiescently frozen confection" mean a
18 clean and wholesome frozen sweetened flavored product in the manu-
19 facture of which freezing has not been accompanied by stirring or
20 agitation (generally known as quiescent freezing) This confection may

1 be acidulated with harmless organic acid may contain milk solids may
2 be made with or without added harmless pure or imitation flavoring
3 with or without added harmless coloring The finished product may
4 contain not more than one-half of one per cent ($\frac{1}{2}$ of 1%) by weight
5 of stabilizer composed of wholesome edible material The finished prod-
6 uct shall contain not less than seventeen per cent (17%) by weight
7 of total food solids

8 This confection must be manufactured in the form of servings
9 individually packaged bagged or otherwise wrapped properly labeled
10 and purveyed to the consumer in its original factory-filled package

11 In the production of these quiescently frozen confections no pro-
12 cessing or mixing prior to quiescent freezing shall be used that develops
13 in the finished confection mix any physical expansion in excess of ten
14 per cent (10%)

15 (h) As used in this act "quiescently frozen dairy confections"
16 mean a clean and wholesome frozen product made from water milk
17 products and sugar with added harmless pure or imitation flavoring
18 with or without added harmless coloring with or without added stabi-
19 lizer and with or without added emulsifier and in the manufacture of
20 which freezing has not been accompanied by stirring or agitation (gen-

1 erally known as quiescent freezing) it contains not less than thirteen
2 per cent (13%) by weight of total milk solids not less than thirty-three
3 per cent (33%) by weight of total food solids not more than one-half of
4 one per cent ($\frac{1}{2}$ of 1%) by weight of stabilizer and not more than
5 one-fifth of one per cent ($\frac{1}{5}$ of 1%) of weight by emulsifier Stabilizer
6 and emulsifier must be composed of wholesome edible material

7 This confection must be manufactured in the form of servings
8 individually packaged bagged or otherwise wrapped properly labeled
9 and purveyed to the consumer in its original factory-filled package

10 In the production of these quiescently frozen confections no pro-
11 cessing or mixing prior to quiescent freezing shall be used that de-
12 velops in the finished confection mix any physical expansion in excess
13 of ten per cent (10%)

14 (i) For the purpose of this act an "ice cream plant" shall mean
15 any place premises or establishment where ice cream frozen custard
16 french ice cream french custard ice cream ice milk sherbet fruit sherbet
17 ice water ice a quiescently frozen confection or a quiescently frozen dairy
18 confection is manufactured prepared or processed for distribution or sale

19 Section 2 Sale Possession etc of Adulterated or Unregistered Prod-
20 ucts (a) It shall be uniafual for any person by himself or by his agents

1 servants or employes to sell offer for sale expose for sale or have in posses-
2 sion with intent to sell ice cream frozen custard french ice cream french
3 custard ice cream ice milk sherbet fruit sherbet ice water ice a quiesc-
4 ently frozen confection or a quiescently frozen dairy confection coated
5 or uncoated or the coating thereof

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

7 (2) Which is not registered with the Department of Agriculture
8 as required in this act The possession of any such nonregistered product
9 shall be deemed prima facie evidence of an intent to sell the same pro-
10 vided however that such establishments as hotels dining rooms and board-
11 ing houses where the above named products are produced and consumed
12 only on the premises need not register such products with the Depart-
18 ment of Agriculture

14 (b) It shall be unlawful to import into this Commonwealth for sale
15 any of the above named products coated or uncoated unless the same are
16 registered with and the manufacture thereof has been received by the
17 Department of Agriculture as provided in this act

18 (c) It shall be unlawful for any person by himself or by his agents
19 servants or employes to sell offer for sale expose for sale or have in
20 possession with intent to sell ice milk packaged in containers of greater

1 than one-half (1/2) gallons capacity if this ice milk or any of its in-
2 gredients contains added color or any ingredient added for the purpose
3 of imparting a characterizing flavor

4 Section 3 What Constitutes Adulterations Any frozen sweetened
5 product referred to in this act shall be deemed to be adulterated within
6 the meaning of this act if

7 (1) Except as provided in section 4 of this act it contains any added
8 preservative any artificial sweetener including saccharin dulcin or any
9 other substance or compound that is deleterious to health

10 (2) It contains any coloring substance deleterious to health provided
11 that this clause shall not be construed to prohibit the use of harmless
12 coloring matter from a list of permitted coloring material established by
13 the Department of Agriculture when such use does not conceal damage
14 or inferiority

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

17 (4) It contains any paraffin synthetic fats oils or fats other than milk
18 fats added to or blended or compounded with it Chocolate ice cream may
19 contain cocoa butter and the coating of coated ice cream may contain
20 cocoa butter or other clean and wholesome edible vegetable oils The

1 use of emulsifying products including lecithin of the nature of polyhydric
2 alcohol esters of fatty acids when approved by the Department of
3 Agriculture and used only to the extent herein provided shall not be
4 deemed in violation of the foregoing provisions

5 (5) It is any frozen sweetened product regardless of the name under
6 which it is manufactured sold or offered for sale which is made in imita-
7 tion or semblance of or is manufactured in a manner similar to the pro-
8 cess used in manufacturing but is not ice cream frozen custard french ice
9 cream french custard ice cream ice milk sherbet fruit sherbet ice water
10 ice a quiescently frozen confection or a quiescently frozen dairy confec-
11 tion

12 (6) It is offered for sale from any container compartment or cabinet
13 which contains any article other than ice cream frozen custard french
14 ice cream french custard ice cream ice milk sherbet fruit sherbet ice
15 water ice a quiescently frozen confection or a quiescently frozen dairy
16 confection except that ice cream frozen custard french ice cream french
17 custard ice cream ice milk sherbet fruit sherbet ice water ice a quies-
18 cently frozen confection or a quiescently frozen dairy confection when
19 properly wrapped or packaged by the manufacturer and in unbroken
20 packages or containers for delivery to the consumer may be offered for

1 sale from one or more separate compartments of a refrigerated container
2 or cabinet of which other separate compartments contain properly
3 wrapped unbroken and sealed packages of frozen foods ready for delivery
4 to the consumer Nothing contained in this clause shall be construed to
5 modify in any way section 5 of this act

6 (7) It falls below the standards or any of them fixed for the particu-
7 lar product by the definition thereof contained in this act or is falsely
8 labeled or labeled contrary to the provisions of this act

9 (8) It is manufactured under conditions not in conformity with the
10 provisions of section 6 of this act

11 Section 4 Artificially Sweetened Ice Cream Subject to the standards
12 provided by law or prescribed by the Department of Agriculture pursu-
13 ant thereto any person may manufacture or prepare ice cream or ice
14 milk containing an artificial sweetening agent approved by the Depart-
15 ment of Agriculture to make the ice cream or ice milk suitable diet for
16 diabetics The manufacturer shall place the ice cream or ice milk in pack-
17 ages or containers which shall be conspicuously labeled "artificially
18 sweetened" immediately preceding the words "ice cream" or "ice milk"
19 in similar type at least one-half ($\frac{1}{2}$) the size of the type used for the
20 words "ice cream" or "ice milk" and on the same contrasting background

1 and in addition shall label thereon any other warning statement which
2 the Department of Agriculture may prescribe The label shall also contain
3 a statement in terms of percentage by weight of protein fat and carbohy-
4 drates the total number of calories per ounce the number of calories
5 contributed by carbohydrates and any carbohydrate other than lactose
6 and the name of each ingredient entering into the composition other
7 than flavors The artificially sweetened ice cream or ice milk shall not
8 be sold in any quantity or in any manner other than in sealed or unbroken
9 packages or containers from one or more separate compartments of a
10 refrigerated container or cabinet

11 Section 5 Marking Misuse of Cabinets (a) Every manufacturer
12 shall plainly and distinctly mark every package or container of product
13 sold as ice cream frozen custard french ice cream french custard ice
14 cream ice milk sherbet fruit sherbet ice water ice a quiescently frozen
15 confection or a quiescently frozen dairy confection or as a combination
16 of these products The products so marked or labeled shall conform with
17 the definitions or standards for such product in this act

18 (b) It shall be unlawful to sell offer for sale expose for sale or have
19 in possession with intent to sell any ice cream frozen custard french ice
20 cream french custard ice cream ice milk sherbet fruit sherbet ice water

1 ice a quiescently frozen confection or a quiescently frozen dairy confec-
2 tion in any container or package which is not plainly and distinctly
3 marked with the name of the manufacturer and the address of the plant
4 of the manufacturer thereof or in lieu of such name and address the
5 name and address of the distributor preceded or followed by the words
6 "distributed by" or "distributor" Packages bearing a distributor's name
7 and address in lieu of the actual name and address of the manufacturer
8 must bear a code identifying the manufacturer and the plant where manu-
9 factured Such code record must be kept for five (5) years from the date
10 of sale of the product by both the manufacturer and the distributor and
11 such records shall be open to inspection by the department In addition
12 when products are sold under a distributor's name and address the
13 package or container must bear a code mark registered with the Penn-
14 sylvania Department of Agriculture

15 Section 6 Ice Cream Plants Sanitary Standards It shall be unlawful
16 to operate any ice cream plant unless it shall be maintained and operated
17 with strict regard for the purity and wholesomeness of the frozen sweet-
18 ened products produced therein The entire establishment and its apper-
19 taining premises including fixtures furnishings machinery apparatus

1 implements utensils receptacles and all equipment used in production
2 keeping storing handling or distributing shall be maintained and operated
3 in a clean sanitary manner The equipment container and piping shall be
4 constructed of a smooth nontoxic impervious corrosion resistant material
5 and fabricated in such a manner that there will be no contamination of
6 the products handled therein and they can be easily sanitized All equip-
7 ment shall be kept in good working order and condition and shall be
8 located so as to facilitate cleaning and practically eliminate the possibility
9 of contamination All equipment and utensils used in the production of
10 any sweetened frozen product whose surface come in contact with any
11 such product or any of the ingredients thereof shall be thoroughly
12 sterilized after using The clothing habits and conduct of the employes
13 shall be conducive to and promote cleanliness and sanitation There shall
14 be proper suitable and adequate toilets and lavatories and equipment
15 for cleansing constructed maintained and operated in a clean and sani-
16 tary manner

17 Section 7 Registration and Licensing of Plants (a) It shall be the
18 duty of every person whether resident or nonresident of this Common-
19 wealth operating an ice cream plant or plants to apply to the Department

1 of Agriculture for a license to do so and to register with the depart-
2 ment each plant and every brand of product produced or manufactured
3 in such plant on or before the first day of January of each year or be-
4 fore any operation is undertaken if after January first and to pay to the
5 department at the time such application for registration and license is
6 filed an annual license fee which shall expire on the following December
7 thirty-first as follows

8 For each ice cream plant producing annually not in excess of one
9 hundred thousand (100,000) gallons ten dollars (\$10) in excess of one
10 hundred thousand (100,000) gallons and not in excess of two hundred
11 and fifty thousand (250,000) gallons fifty dollars (\$50) and in excess of
12 two hundred and fifty thousand (250,000) gallons one hundred dollars
13 (\$100)

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

16 (c) Upon approval of application for registration and license and
17 payment of required license fee and also approval of sanitary conditions
18 in an ice cream plant the Department of Agriculture shall issue to each
19 applicant a license or certificate of registration which shall expire at
20 the end of each calendar year and which will authorize the operation

1 of said plant for the calendar year or portion thereof for which a license
2 or certificate of registration shall be issued

3 (d) Establishments such as hotels dining rooms and boarding houses
4 where the products defined herein are produced and consumed only on
5 the premises need not comply with the licensing and registration pro-
6 visions of this act but the other provisions of this law shall apply to such
7 establishments

8 Section 8 Revocation of Licenses The Department of Agriculture
9 is hereby authorized to revoke any license for cause and where it shall
10 be properly ascertained that the ice cream plant is not operated in a
11 proper and sanitary manner as hereinbefore provided

12 Section 9 Enforcement Rules and Regulations (a) The Depart-
13 ment of Agriculture is charged with the enforcement of the provisions
14 of this act provided however that the Department of Agriculture in
15 the usual manner or any person committee or association composed of
16 persons affected by this act or rules or regulations of the Department
17 of Agriculture may institute such action at law or in equity as may ap-
18 pear necessary to enforce compliance with any rule or regulation of the
19 Department of Agriculture made pursuant to the provisions of this act

1 (b) The Department of Agriculture shall after hearing adopt pro-
2 mulgate and enforce rules and regulations to carry out the purpose of this
3 act to prevent deception in the sale of ice cream and the other products
4 herein defined and to safeguard the health of consumers and to safeguard
5 the manufacture of ice cream and the other products herein defined
6 whether manufactured in a regular manufacturing plant or in a counter
7 freezer

8 Section 10 Violations Punishment Injunction (a) Any person violat-
9 ing any of the provisions of this act or definition and standard of the
10 Department of Agriculture made pursuant thereto shall for the first
11 or second offense upon conviction thereof in a summary proceeding be
12 sentenced to pay a fine of not less than twenty-five dollars (\$25) nor more
13 than one hundred dollars (\$100) and costs of prosecution or in default
14 of such fine and costs in the case of an individual or the officers and mem-
15 bers of an association partnership or corporation to undergo an imprison-
16 ment in the county jail of not less than thirty (30) days nor more than
17 sixty (60) days and for a third or subsequent offense shall be guilty of
18 a misdemeanor and sentenced to pay a fine not exceeding one thousand
19 dollars (\$1000) or in the case of an individual or the officers and members

1 of an association partnership or corporation to undergo an imprisonment
2 not exceeding one (1) year or both in the discretion of the court

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

6 (b) The Attorney General at the request of the department may
7 in the name of the Commonwealth institute proceedings in equity in
8 the Court of Common Pleas of Dauphin County for the purpose of en-
9 joining the conduct of business in this Commonwealth contrary to the
10 provisions of this act and for such purpose jurisdiction is hereby con-
11 ferred upon said court In such case the Attorney General shall not be
12 required to give bond

13 Section 11 Milk Law not Affected (a) The provisions of this act shall
14 not be construed to be impaired or in any way affected by the provisions
15 of the act of July 2 1935 (P L. 589) entitled as amended "An act to
16 safeguard human health and life by providing for the issuance of permits
17 to and regulation of persons and entities selling milk and milk products
18 conferring powers and imposing duties on the Secretary of Agriculture
19 and otherwise providing for the administration of the act and imposing
20 penalties"

1 Section 12 Repeal The act of May 20 1949 (P L 1594) entitled
2 "An act for the protection of the public health and to prevent fraud and
3 deception in the manufacture sale offering for sale exposing for sale and
4 possessing with intent to sell of adulterated or deleterious ice cream
5 french ice cream french custard frozen custard frozen ice confections
6 frozen sherbet confections sherbet ice and fruit ice including coated ice
7 cream and the coating thereof fixing standards for ice cream custard
8 ice cream french ice cream french custard including sherbet frozen ice
9 confections frozen sherbet confections frozen dairy confections ice and
10 fruit ice and to prevent the sale of imitation ice cream and defining said
11 imitation ice cream providing for licensing conferring powers and im-
12 posing duties upon the Department of Agriculture prescribing penalties
13 and providing for the enforcement thereof" is repealed

14 Section 13 Effective Date This act shall take effect July 1 1961

We certify that this bill has passed the Senate and the House of Representatives.

.....
Chief Clerk, Senate

.....
President pro tempore, Senate

.....
Speaker, House of Representatives

Approved The day of A. D. 1961.

.....
Governor