

Effective date.

Section *4. This act shall take effect July one, one thousand nine hundred fifty-six.

APPROVED—The 8th day of May, A. D. 1956.

GEORGE M. LEADER

No. 512

AN ACT

Amending the act of May twenty, one thousand nine hundred forty-nine (Pamphlet Laws 1594), entitled "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 possessing with intent to sell, of adulterated or deleterious ice cream, french ice cream, french custard, frozen custard, frozen ice confections, frozen sherbet confections, sherbet, ice and fruit ice, including coated ice cream and the coating thereof; fixing standards for ice cream, custard ice cream, french ice cream, french custard, including sherbet, frozen ice confections, frozen sherbet confections, frozen dairy confections, ice and fruit ice, and to prevent the sale of imitation ice cream and defining said imitation ice cream; providing for licensing; conferring powers and imposing duties upon the Department of Agriculture; prescribing penalties; and providing for the enforcement thereof," extending its provisions to ice milk and ice milk confections, and conferring additional powers and duties on the Department of Agriculture, and regulating sales of packaged ice milk.

Ice cream and other similar frozen products.

Sections 1 to 10, act of May 20, 1949, P. L. 1594, reenacted and amended.

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

Section 1. Sections one to ten, act of May twenty, one thousand nine hundred forty-nine (Pamphlet Laws 1594), entitled "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 possessing with intent to sell, of adulterated or deleterious ice cream, french ice cream, french custard, frozen custard, frozen ice confections, frozen sherbet confections, sherbet, ice and fruit ice, including coated ice cream and the coating thereof; fixing standards for ice cream, custard ice cream, french ice cream, french custard, including sherbet, frozen ice confections, frozen sherbet confections, frozen dairy confections, ice and fruit ice, and to prevent the sale of imitation ice cream and defining said imitation ice cream; providing for licensing; conferring powers and imposing duties upon the Department of Agriculture; prescribing penalties; and providing for the enforcement thereof," are reenacted and amended to read:

"Ice cream" defined.

Section 1. For the purpose of this act, "ice cream" is defined as any frozen sweetened milk product which is

* "3" in original.

agitated during the process of freezing; and includes every such frozen milk product which contains more than five per centum (5%) by weight of milk fat, milk solids not fat, or milk fat and milk solids not fat, and which in any manner simulates the texture or characteristic of ice cream, no matter under what coined or trade name it may be sold, *but ice cream does not include "ice milk."* Ice cream shall be made from a combination of one or more of the following ingredients, viz., any clean and wholesome cream, milk and all forms of milk fat and any clean and wholesome form of milk solids not fat, with one or more of the following ingredients—sucrose, dextrose, corn syrup, invert sugar, any of which may be in dry or syrup form, water, flavor, stabilizer, emulsifier, egg or egg products, harmless color which does not conceal either damage or inferiority, each of which ingredients shall be wholesome edible material. The finished product may contain not more than one-half of one per centum ($\frac{1}{2}$ of 1%) by weight of stabilizer and may contain not more than one-fifth of one per centum ($\frac{1}{5}$ of 1%) by weight of emulsifier: Provided,

Proviso.

however, That the stabilizer and/or emulsifier has been approved by the Department of Agriculture. The finished product shall contain not less than ten per centum (10%) of milk fat by weight except when fruit, nuts, cocoa or chocolate, cakes or confections are added for the purpose of flavoring, then it shall contain not less than ten per centum (10%) by weight of milk fat except for such reduction in milk fat as is due to the addition of such flavoring, but in no case shall it contain less than eight per centum (8%) by weight of milk fat, and chocolate and cocoa flavored ice cream shall in no event contain less than ten per centum (10%) of total fat.

For the purpose of this act, "custard ice cream," "french ice cream," "french custard" and "frozen custard" shall conform to the definition and standards hereinbefore defined for "ice cream" no matter under what trade or coined name it may be sold or offered for sale and in addition shall contain not less than one and four-tenths per centum (1.4%) by weight of egg yolk solids, except when it contains fruit or nuts when it shall contain not less than one and one-tenth per centum (1.1%) by weight of egg yolk solids.

"Custard ice cream", "french ice cream", "french custard" and "frozen custard", defined.

For the purpose of this act, "ice milk" is defined as any frozen sweetened milk product which is made of the same ingredients as ice cream and in a manner similar to the process used in manufacturing ice cream, but which contains less than the minimum percentage of milk fat required for ice cream and not less than fourteen per centum (14%) by weight of total milk solids, no matter under what trade or coined name it may be

"Ice milk" defined.

sold or offered for sale. The finished product may contain not more than one-half of one percentum ($\frac{1}{2}$ of 1%) by weight of stabilizer and may contain not more than one-fifth of one percentum ($\frac{1}{5}$ of 1%) by weight of emulsifier: Provided, however, That the stabilizer and emulsifier have been approved by the Department of Agriculture.

"Ice milk confections" defined.

For the purpose of this act, "ice milk confections" are defined as "ice milk" manufactured into factory-formed individual servings, except they may be frozen without agitation.

"Sherbet", defined.

For the purpose of this act, "sherbet" is defined as any frozen sweetened fruit flavored product containing not less than three per centum (3%) nor more than five per centum (5%) by weight of total milk solids, the process of manufacture of which is similar to the process of manufacture of ice cream, no matter under what trade or coined name it may be sold or offered for sale. Sherbet shall be made from any clean and wholesome cream, milk and all forms of milk solids and one or more of the following—sucrose, dextrose, corn syrup, invert sugar, any of which may be in dry or syrup form, water, fruit or fruit flavoring material, stabilizer, harmless color which does not conceal either damage or inferiority, each of which ingredients shall be wholesome, edible material. The finished product may contain not more than one-half of one per centum ($\frac{1}{2}$ of 1%) by weight of stabilizer: Provided, however, That the stabilizer has been approved by the Department of Agriculture and shall contain not less than thirty-five one-hundredths per centum (0.35%) of harmless organic acid as determined by titration with standard alkali and calculated as lactic acid, and derived in whole or in part from fruit flavoring material, or by the addition of citric, tartaric or lactic acid.

Proviso.

"Ice" or "fruit ice", defined.

For the purpose of this act, "ice" or "fruit ice" is hereby defined as any frozen sweetened fruit flavored product, the process of manufacture of which is similar to the process of manufacture of ice cream, no matter under what trade or coined name it may be sold or offered for sale and shall contain no milk solids whatsoever. It shall be made from a combination of some or all of the following ingredients, viz., sucrose, dextrose, corn syrup, invert sugar, any of which may be in dry or syrup form, water, stabilizer, harmless coloring which does not conceal either damage or inferiority, fruit or fruit flavoring material. The finished product shall contain not less than thirty-five one-hundredths per centum (0.35%) of harmless organic acid as determined by titration with standard alkali and calculated as

lactic acid, and derived in whole or in part from the fruit or fruit flavoring material or by the addition of citric, tartaric or lactic acid, and the finished product may contain not more than one-half of one per centum ($\frac{1}{2}$ of 1%) by weight of stabilizer: Provided, however, That the stabilizer has been approved by the Department of Agriculture.

Proviso.

For the purpose of this act, "frozen ice confections" are defined as "ice" or "fruit ice," as herein defined, manufactured into factory-formed individual servings, except they may be frozen without agitation and the acid requirements provided for in the definition of "ice" or "fruit ice" need not be met and imitation flavoring may be used when declared and the product so labeled "imitation."

"Frozen ice confections", defined.

For the purpose of this act, "frozen sherbet confections" are defined as "sherbet," as herein defined, manufactured into factory-formed individual servings, except they may be frozen without agitation and the acid requirements provided for in the definition of "sherbet" need not be met and imitation flavoring may be used when declared and the product so labeled "imitation."

"Frozen sherbet confections", defined.

For the purpose of this act "imitation ice cream" or "ice cream substitute" are defined as (1) any frozen sweetened product regardless of the name under which it is manufactured, sold, or offered for sale, which is made in imitation or semblance of or is manufactured in a manner similar to the process used in manufacturing but is not ice cream, custard ice cream, french ice cream, frozen custard, *ice milk* sherbet, ice, fruit ice, *ice milk confections*, frozen ice confection or frozen sherbet confection, as defined in this act, (2) any frozen sweetened product labeled as a product herein defined which does not comply with such defined standards.

"Imitation ice cream" or "ice cream substitute", defined.

For the purpose of this act, an "ice cream plant" shall mean any place, premises or establishment where ice cream, custard ice cream, french ice cream, frozen custard, *ice milk*, sherbet, ice, fruit ice, *ice milk confections*, frozen ice confection or frozen sherbet confection are manufactured, prepared or processed for distribution or sale.

"Ice cream plant" defined.

Section 2. (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, ice cream, custard ice cream, french ice cream, french custard, *ice milk*, frozen ice confections or frozen sherbet confections, sherbet, ice or fruit ice, *ice milk confections*, coated or uncoated or the coating thereof which is adulterated, within the meaning

Unlawful acts.

of this act, or to sell, offer for sale, or expose for sale, or have in possession with intent to sell, any imitation ice cream or ice cream substitute, as defined in this act.

(b) 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 ice cream, *ice milk*, custard ice cream, french ice cream, french custard, frozen custard, *ice milk confections*, frozen ice confections, frozen sherbet confections, sherbets, ices or fruit ices, coated or uncoated, which are not registered with the Department of Agriculture, as required in this act. The possession of any such nonregistered 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.

(c) It shall be unlawful to import into this Commonwealth for sale, any ice cream, custard ice cream, french ice cream, french custard, *ice milk*, frozen custard, *ice milk confections*, frozen ice confections, frozen sherbet confections, sherbet, ice or fruit ice, coated or uncoated, unless the same are registered with, and the manufacture thereof has been licensed by, the Department of Agriculture, as provided in this act.

(d) It shall be unlawful for any person personally or by or through an agent, servant or employe to sell, offer for sale, expose for sale, or have in possession with intent to sell, ice milk packaged in containers of greater than one-half (1/2) gallon capacity if the ice milk or any of its ingredients contains added color or any ingredient added for the purpose of imparting a characterizing flavor.

Adulteration.

Section 3. Any frozen sweetened product referred to in this act shall be deemed to be adulterated within the meaning of this act—

First. If it contains any added preservative, any artificial sweetener, including saccharin, dulcin, or any other substance or compound that is deleterious to health.

Second. If it contains any coloring substance deleterious to health: Provided, That this paragraph 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.

Third. If it contains any deleterious flavoring matter or flavoring matter not true to name.

Fourth. If it contains any paraffin, synthetic fats, oils, or fats other than milk fats, added to or blended or compounded with it: Provided, however, That chocolate ice cream may contain cocoa butter and the coating of coated ice cream *may contain cocoa butter or other clean and wholesome edible vegetable oils: And provided, That the use of emulsifying products, including lecithin of the nature of polyhydric alcohol esters of fatty acids, when approved by the Department of Agriculture and used only to the extent herein provided, shall not be deemed in violation of the foregoing provisions.

Fifth. If it is imitation ice cream or ice cream substitute, as defined in this act.

Sixth. If it is offered for sale from any container, compartment or cabinet which contains any article other than ice cream, custard ice cream, french ice cream, french custard, *ice milk*, *ice milk confections*, frozen custard, frozen ice confections, frozen sherbet confections, sherbet, ice or fruit ice, except that ice cream, custard ice cream, french ice cream, french custard, *ice milk*, *ice milk confections*, frozen custard, frozen ice confections, frozen sherbet confections, sherbet, ice or fruit ice, 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. Nothing contained in this clause shall be construed to modify in any way section four of this act.

Seventh. If it falls below the standards, or any of them, fixed for the particular product by the definition thereof contained in this act, or is falsely labeled or labeled contrary to the provisions of this act.

Eighth. If it is manufactured under conditions not in conformity with the provisions of section five of this act.

Ninth. If it contains less than one and eight-tenths (1.8) pounds total food solids per gallon in the finished product, *except in the case of ice milk and ice milk confections if it contains less than one and five-tenths (1.5) pounds total food solids per gallon in the finished product*, or if it weighs less than four and seventy-five hundredths (4.75) pounds per gallon or if any package or container of a different unit contains less than a proportionate amount of total food solids or weighs proportionately less.

* "many" in original.

Products to be
marked or
labeled.

Section 4. (a) Every manufacturer shall plainly and distinctly mark every package or container of product sold as ice cream or custard ice cream, french ice cream, french custard, *ice milk* or *ice milk confections*, frozen custard, or sherbet, or ice, fruit ice, or frozen ice confections, or frozen sherbet confections, or as a combination of these products. The products so marked or labeled shall conform with the definitions or standards for such product in this act.

(b) It shall be unlawful to sell, offer for sale, expose for sale, or have in possession with intent to sell, any ice cream, custard ice cream, french ice cream, french custard, *ice milk*, *ice milk confections*, frozen custard, frozen ice confections, frozen sherbet confections, sherbets, ices or fruit ices, in any container or package which is not plainly and distinctly marked with the name of the manufacturer and the address of the plant of the manufacturer thereof, or, in lieu of such name and address, the name and address of the distributor, preceded or followed by the words "distributed by" or "distributor." Packages bearing a distributor's name and address in lieu of the actual name and address of the manufacturer must bear a code identifying the manufacturer and the plant where manufactured. Such code record must be kept for five years from the date of sale of the product by both the manufacturer and the distributor and such records shall be open to inspection by the department. In addition, when products are sold under a distributor's name and address, the package or container must bear the words "Registered with the Pennsylvania Department of Agriculture," the following abbreviation being acceptable "Reg. Penna. Dept. Agr.," and the code mark shall immediately follow these words.

(c) It shall be unlawful for any person to use, or cause or allow to be used, any equipment, cabinet, can, or other container or refrigerating device, belonging to one ice cream manufacturer, for the purpose of preserving or holding any ice cream, custard ice cream, french ice cream, french custard, *ice milk*, *ice milk confections*, frozen custard, frozen ice confections, frozen sherbet confections, sherbet, ice or fruit ice, or any type of frozen food, sold or furnished to him by any person not owning said equipment, or for any person knowingly to supply or place or deposit ice cream, custard ice cream, french ice cream, french custard, *ice milk*, *ice milk confections*, frozen custard, frozen ice confections, frozen sherbet confections, sherbet, ice or fruit ice, or any type of frozen food, of one ice cream manufacturer or distributor, in any equipment, cabinet, can, or other container, belonging to another ice cream

manufacturer or distributor. It is unlawful for any person other than the owner to remove, erase, obliterate, cover, or conceal, any manufacturer's or owner's name, insignia, device, or distinguishing mark, which may appear or be placed on any ice cream equipment, cabinet, can or other container.

Section 5. It shall be unlawful to operate any ice cream plant unless it shall be maintained and operated with strict regard for the purity and wholesomeness of the frozen sweetened 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. All equipment and utensils used in the production of any sweetened frozen product whose surfaces come in contact with any such product or any of the ingredients thereof shall be thoroughly sterilized after 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.

Sanitary requirements.

Section 6. (a) It shall be the duty of every person, whether resident or nonresident of this Commonwealth, operating an ice cream plant or plants, to apply to the Department of Agriculture for a license to do so and to register with the department each plant and every brand 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:

Application for license.

For each ice cream plant producing annually not in excess of one hundred thousand (100,000) gallons, ten dollars (\$10); in excess of one hundred thousand (100,000) gallons and not in excess of two hundred and fifty-thousand (250,000) gallons, fifty dollars (\$50); and in excess of two hundred and fifty thousand (250,000) gallons one hundred dollars (\$100).

Annual license fee.

(b) The application for a license and registration shall be made on a form to be supplied by the department. The application shall have attached thereto the affidavit of the person or of some member or officer of the association, co-partnership, or corporation applying therefor, stating that the facts set forth therein are true and correct.

Form of application.

Issuance of
license.

(c) Upon approval of application for registration and license and payment of required license fee and also approval of sanitary conditions in an ice cream 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.

Excepted
establishments.

(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 shall apply to such establishments.

Revocation of
license for cause.

Section 7. The Department of Agriculture is hereby authorized to revoke any license for cause and where it shall be properly ascertained that the ice cream plant is not operated in a proper and sanitary manner, as hereinbefore provided.

Enforcement.
Proviso.

Section 8. The Department of Agriculture is charged with the enforcement of the provisions of this act: Provided, however, That this provision shall not prevent any person from making complaint in the usual manner before any magistrate, alderman, or justice of the peace of any city, borough, incorporated town or township of this Commonwealth where the alleged violation took place, for a violation of the provisions of this act.

Rules and
regulations.

The Department of Agriculture shall adopt, promulgate and enforce, rules and regulations to carry out the purpose of this act, and especially to carry out the following purposes of this act (1) to prevent deception in the sale of ice cream and the other products herein defined, and (2) to safeguard the health of consumers and to safeguard the manufacture of ice cream and the other products herein defined, whether manufactured in a regular manufacturing plant or in a counter freezer.

Penalties.

Section 9. (a) Any person violating any of the provisions of this act, or definition and standard of the Department of Agriculture 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 (30) days nor more than sixty (60) days; and for a third or subsequent offense, 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 any 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 in equity in the Court of Common Pleas of Dauphin County for the purpose of enjoining the conduct of business in this Commonwealth contrary to the provisions of this act, and for such purpose, jurisdiction is hereby conferred upon said court. In such case, the Attorney General shall not be required to give bond.

Injunction
proceedings.

Section 10. (a) The provisions of this act shall not be construed to be impaired or in any way affected by the provisions of the act, approved the second day of July, one thousand nine hundred and thirty-five (Pamphlet Laws 589), entitled "An act to safeguard human health and life by providing for the issuance of permits to, and regulation of persons and entities selling milk and milk products; conferring powers, and imposing duties on the Secretary of Health, the Advisory Health Board; and otherwise providing for the administration of the act; and imposing penalties," or its amendments.

Construction of
act.

APPROVED—The 8th day of May, A. D. 1956.

GEORGE M. LEADER

No. 513

AN ACT

Amending the act of June seven, one thousand nine hundred one (Pamphlet Laws 491), entitled "An act authorizing municipalities to define and fix the terms for the use of public parks, or grounds of any kind, for railroad purposes," extending such authority.

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

Section 1. Section one, act of June seven, one thousand nine hundred one (Pamphlet Laws 491), entitled "An act authorizing municipalities to define and fix the

Section 1, act of
June 7, 1901,
P. L. 491,
amended.