
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

REFERRED TO AGRICULTURE AND RURAL AFFAIRS, NOVEMBER 29, 2021

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

6 Section 1. Chapter 57 of Title 3 of the Pennsylvania
7 Consolidated Statutes is amended by adding a subchapter to read:

8 SUBCHAPTER D

9 FROZEN DESSERT SAFETY

10 Sec.

11 5751. Scope of subchapter.

12 5752. Definitions.

13 5753. Prohibited acts.

14 5754. Sanitation standards.

15 5755. Penalties.

16 5756. Rules and regulations.

17 5757. Construction of subchapter.

18 5758. Acts not affected.

1 § 5751. Scope of subchapter.

2 This subchapter relates to frozen dessert safety.

3 § 5752. Definitions.

4 The following words and phrases when used in this subchapter
5 shall have the meanings given to them in this section unless the
6 context clearly indicates otherwise:

7 "Dispensing freezer." A piece of food equipment that
8 processes and freezes a previously pasteurized product, such as
9 soft ice cream, ice milk, frozen yogurt, custard and milkshake,
10 and dispenses the product directly into the consumer's container
11 or is a batch freezer that processes, freezes and dispenses into
12 packaging for consumer sale or further distribution.

13 "Federal acts." As defined in section 5722 (relating to
14 definitions).

15 "Food establishment." As defined in section 5722.

16 "Food Safety Act." As defined in Subchapter B (relating to
17 food safety).

18 "Frozen dessert." Ice cream, frozen custard, French ice
19 cream, French custard ice cream, frozen dietary dairy dessert,
20 frozen yogurt, dietary frozen dessert or low-fat frozen dairy
21 dessert, ice milk, dispensing freezer-made milkshake, fruit
22 sherbet, water ice, quiescently frozen confection and
23 quiescently frozen dairy confection, including, but not limited
24 to, a popsicle, whipped cream confection, bisque tortoni and
25 mellorine frozen dessert. The term includes a mix used to
26 produce such product and a product that is similar in
27 appearance, odor or taste to such product or is prepared or
28 frozen as such product is customarily prepared or frozen,
29 whether made with dairy or nondairy product. The term does not
30 include:

1 (1) A bakery product, such as frozen cake, frozen
2 pastry, ice cream cake, cream pie, meringue pie and other pie
3 and pastry filling and topping, such as fruit and custard,
4 Boston cream, cream puff filling or custard, éclair and
5 napoleon filling and custard.

6 (2) Quiescently frozen confection that is prepared with
7 food that would be edible or recognizable in the food's
8 original state as a food, prior to freezing. This product
9 includes a food infused with nitrogen to create a final
10 frozen product, such as cereal and chocolate covered frozen
11 novelty such as fruit, cheesecake and candy.

12 (3) Nondispensing freezer-made frozen beverage, such as
13 ice slushy, snow cone, frozen piña colada or margarita mix,
14 ice coffee, frozen cappuccino or blended smoothie.

15 "Licensor." As defined in section 5702 (relating to
16 definitions).

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

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

21 "Person." An individual, partnership, association, limited
22 liability company or corporation thereof.

23 "Retail food facility." As defined in section 5702.

24 "Retail Food Facility Safety Act." As defined in Subchapter
25 A (relating to retail food facility safety).

26 "Secretary." As defined in section 5722.

27 § 5753. Prohibited acts.

28 The following acts are prohibited:

29 (1) Manufacture, sale, delivery, consignment, bailment,
30 holding or offering for sale of any frozen dessert that is

1 adulterated or misbranded as defined under the provisions of
2 sections 5728 (relating to adulteration of food) and 5729
3 (relating to misbranding of food).

4 (2) Adulteration or misbranding of a frozen dessert.

5 (3) Failure to obtain a retail food facility license by
6 a licensor under the provisions of section 5703 (relating to
7 license required), as authorized or required under this
8 chapter.

9 (4) Failure to register with the secretary under the
10 provisions of section 5734 (relating to registration of food
11 establishments), as authorized or required under this
12 chapter.

13 (5) Failure to obtain a permit from the secretary under
14 section 2 of the Milk Sanitation Law, as authorized or
15 required under the provisions of that act.

16 (6) Refusal to permit, during normal business hours,
17 entry, inspection, taking of a sample or access to or copying
18 of any record, as authorized under this subchapter, sections
19 5704(a) and 5732(a) (relating to inspection, sampling and
20 analysis) or section 6 of the Milk Sanitation Law.

21 (7) Removal or disposal of a detained or embargoed
22 frozen dessert in violation of section 5726 (relating to
23 detention and condemnation).

24 (8) Sale of a frozen dessert exceeding microbiological
25 standards in violation of an applicable regulation
26 promulgated under this subchapter.

27 § 5754. Sanitation standards.

28 (a) Retail food facilities.--A retail food facility that
29 manufactures frozen desserts shall conform with all rules,
30 regulations and standards adopted, or an order issued under

1 Subchapter A (relating to retail food facility safety),
2 including, but not limited to, a standard established for food
3 equipment, temperature control, food preparation and cleaning
4 and sanitation.

5 (b) Food establishments and permitholders.--A food
6 establishment and permitholder that manufactures frozen desserts
7 shall conform with all rules, regulations and standards adopted
8 or an order issued under Subchapter B (relating to food safety)
9 or the Milk Sanitation Law, including, but not limited to, a
10 standard established for food equipment, temperature control,
11 food processing and cleaning and sanitation.

12 § 5755. Penalties.

13 (a) Criminal penalties.--

14 (1) A person that violates this subchapter or a rule,
15 regulation, standard or order made under this subchapter
16 commits a summary offense for the first or second offense.

17 (2) A person that violates this subchapter or any rule,
18 regulation, standard or order made under this subchapter
19 commits a misdemeanor of the third degree if the violation is
20 a third or subsequent offense and occurs within two years of
21 the date of the last previous offense.

22 (b) Civil penalties.--

23 (1) In addition to proceeding under any other remedy
24 available at law or in equity for a violation of this
25 subchapter, or a rule or regulation adopted or an order
26 issued under this subchapter, the secretary may assess a
27 civil penalty not to exceed \$10,000 upon an individual or
28 business for each offense.

29 (2) No civil penalty may be assessed unless the person
30 charged has been given notice and opportunity for a hearing

1 in accordance with law.

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

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

7 (5) In case of inability to collect the civil penalty or
8 failure of a person to pay all or a portion of the penalty as
9 the secretary may determine, the secretary may refer the
10 matter to the Attorney General who shall recover the amount
11 by action in the appropriate court.

12 (c) Minor violations.--Nothing in this subchapter shall be
13 construed as requiring prosecution or institution of a
14 proceeding under this subchapter for minor violations of this
15 subchapter if the secretary believes that the public interest
16 will be adequately served in the circumstances by a suitable
17 written notice or warning.

18 (d) Retail food facilities under other jurisdiction.--For
19 retail food facilities licensed under Subchapter A (relating to
20 retail food facility safety) by a licensor that is not the
21 department, penalties under this subchapter shall be established
22 by the licensor.

23 § 5756. Rules and regulations.

24 (a) Nature of rules.--The secretary shall be charged with
25 the enforcement of this subchapter and shall promulgate rules,
26 regulations and frozen dessert standards necessary for its
27 proper enforcement. The rules, regulations and frozen dessert
28 standards shall conform and shall be construed to conform with
29 the purposes expressed in section 5757 (relating to construction
30 of subchapter).

1 (b) Testing requirements.--

2 (1) The secretary shall establish rules, regulations and
3 frozen dessert standards that include annual microbiological
4 testing standards for frozen desserts that are manufactured,
5 prepared or processed at a retail food facility.

6 (2) A food establishment that manufactures or processes
7 frozen desserts shall conform with the testing standards
8 established by regulation under Subchapter B (relating to
9 food safety).

10 (3) A permitholder that manufactures or processes frozen
11 desserts shall conform with the testing standards established
12 by regulation under the Milk Sanitation Law.

13 § 5757. Construction of subchapter.

14 The provisions of this subchapter and the regulations
15 promulgated under this subchapter shall be construed in a manner
16 that is consistent with the Federal acts and regulations
17 promulgated under those acts.

18 § 5758. Acts not affected.

19 Nothing in this subchapter shall be construed to abrogate or
20 supersede a provision or regulation adopted under:

21 (1) The act of July 2, 1935 (P.L.589, No.210), referred
22 to as the Milk Sanitation Law, or the act of August 8, 1961
23 (P.L.975, No.436), referred to as the Milk Adulteration and
24 Labeling Act.

25 (2) Subchapter A (relating to retail food facility
26 safety).

27 (3) Subchapter B (relating to food safety).

28 Section 2. Repeals are as follows:

29 (1) The General Assembly finds that the repeal under
30 paragraph (2) is necessary to effectuate this act.

1 (2) The act of September 1, 1965 (P.L.420, No.215),
2 known as The Frozen Dessert Law, is repealed.
3 Section 3. This act shall take effect in 60 days.