

MAINE STATE LEGISLATURE

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E I G H T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 544

S. P. 297

In Senate, Feb. 8, 1933.

Referred to Committee on Agriculture and 500 copies ordered printed.
Sent down for concurrence.

ROYDEN V. BROWN, Secretary.

Presented by Senator Robie of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED THIRTY-
THREE

AN ACT Regulating the Manufacture and Sale of Ice Cream and other
Frozen Desserts.

Emergency Preamble. Whereas, there is no existing provision of law regulating the quality of ice cream manufactured in this state and requiring and providing for special inspection of plants where ice cream is manufactured, and

Whereas, the season for manufacturing ice cream in large quantities begins about the 1st day of May which is prior to the period when an act of the legislature not bearing an "emergency" clause would take effect, and

Whereas, in the judgment of this legislature it is necessary that immediate provision should be made for regulating the quality of ice cream manufactured in this state and providing for the inspection of plants and manufacturing establishments where ice cream is manufactured, and

Whereas, in the judgment of this legislature these facts constitute an emergency within the meaning of the constitution of the state of Maine and therefore require the following legislation as immediately necessary for the preservation of the public peace, health and safety.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. Manufacturers of frozen desserts to be licensed. No person,

firm, corporation, association or society within this state, either by themselves as principals, or by their servants or agents shall manufacture frozen desserts for sale at wholesale or retail without having first filed with the commissioner of agriculture an application for license. Application for license shall be made on forms furnished by the commissioner of agriculture. A license fee of \$50.00 for each manufacturing plant doing a wholesale business in manufacturing and selling frozen desserts, and a license fee of \$10.00 for each manufacturing plant doing a retail business in manufacturing and selling frozen desserts in any manner in stores, hotels, restaurants, or boarding houses shall be required and shall accompany the application. The application must show the location of the plant, location and condition of each plant at which frozen desserts are to be manufactured, and the name of the brand or brands under which the frozen desserts are to be sold, describe the quality of the material used, and the sanitary conditions under which frozen desserts are to be produced; upon receipt of such application the commissioner of agriculture shall issue to the person, firm, corporation, association or society making such application a license to manufacture frozen desserts at whole sale and at retail as hereinafter provided.

Said licenses for each manufacturing plant or frozen dessert manufacturer doing a wholesale business, and for each manufacturing plant shown in the application as retail manufacturers, shall run for the fiscal year until the 1st day of March following date of application, on which date it shall terminate unless sooner revoked as herein provided, and shall be renewed annually thereafter.

Sec. 2. Revocation of licenses. The commissioner of agriculture shall have the power to revoke or suspend any license issued under the provisions of this act, whenever it is determined by himself or his deputies, or other properly qualified officials that any of the provisions of said sections have been violated. Any person, firm, corporation whose license has been so revoked or suspended shall discontinue the manufacture and sale of frozen desserts until the provisions have been complied with and a new license issued, or the suspension removed. The commissioner of agriculture may revoke or suspend such license temporarily until there is a compliance with the provisions of said sections as hereinafter provided or permanently for the unexpired period of such license. The commissioner of agriculture is given the right to make such rules and regulations as he may deem necessary for the enforcement of the provisions of said sections. Before revoking or suspending any license the commissioner of agriculture shall give written notice to the licensee affected stating that he contemplates the revocation or suspension of the same and giving his

reasons therefor. Such notice shall appoint a time of hearing before said commissioner and shall be mailed by registered mail to the licensee. On the day of the hearing the licensee may by himself or counsel present such evidence to the said commissioner as he deems fit and after hearing all the testimony the said commissioner shall decide the question in such manner as to him appears just and right. Any licensee who feels aggrieved or dissatisfied with the decision of the said commissioner may appeal from said decision within 10 days to the superior court in the county where the licensee resides or to the superior court in the county of Kennebec.

Sec. 3. Adulteration or misbranding forbidden. No person, firm, corporation, association or society shall manufacture, sell, distribute, transport, offer, or expose for sale any article known as frozen dessert, which is adulterated or misbranded within the meaning of this act, and no person, firm, corporation, association or society shall sell, offer or expose for sale frozen desserts in any container, which is falsely labeled as to to the name or the manufacturer, or in any other respect, or misrepresent in any manner the name of the manufacturer, or use or cause or permit to be used for the purpose of preserving or holding frozen dessert any cabinet, can, container, or other equipment owned by any other person without the written consent of such owner, and no person, firm, corporation, association, or society shall place any frozen desserts of one manufacturer in the cabinet, container, can or other equipment belonging to another manufacturer, or remove, erase, obliterate, cover, or conceal the owner's name or any distinguishing mark or device, which may appear or be placed on any cabinet, can, container, or other equipment of another manufacturer.

Sec. 4. "Adulteration" defined. For the purpose of this chapter an article known as frozen dessert shall be deemed to be adulterated:

First. If its purity and quality falls below the requirements and the specifications of the definitions as set forth in this chapter.

Second. If it does not conform to the standards of quality and purity established by statute or fixed by the commissioner of agriculture.

Third. If it contains any fat, oils, or paraffin, or any other fats or oils other than milk fats, except such fats or oils as are naturally contained in the flavors used.

Fourth. If it contains any poisonous or other added deleterious ingredient, which may render it injurious to health.

Fifth. If it contains any saccharine, or similar synthetic sweetening agent.

Sec. 5. "Misbranded" defined. The term "misbranded" as used herein, shall apply to all frozen desserts. The package or label of which shall

bear any statement, design, or device regarding such frozen desserts, or the ingredients or substances contained therein which shall be false or misleading in any particular.

First. For the purpose of this chapter a frozen dessert shall also be deemed to be misbranded: If advertised for sale, or offered or exposed for sale, or sold bearing a false brand name or label, or if any advertising accompanying it shall give any false indication of origin, character, composition, or false name of manufacturer, or is otherwise false or misleading in any particular.

Second. If a frozen product is advertised, offered, or exposed for sale or sold, the manufacturer of which has not obtained a license as herein provided for.

Third. If "ice milk" is not contained in a package or enclosed in a wrapper, which package or wrapper is plainly and conspicuously marked with the words "ice milk".

Fourth. If frozen desserts are sold, offered, or exposed for sale in any container which is falsely labeled as to the name of the manufacturer, or in any other respect.

Fifth. If the name of the manufacturer of frozen desserts has been misrepresented in any manner.

Sec. 6. Further definitions. For the purpose and within the meaning of this act the following definitions shall obtain:

Definitions

1. "Frozen desserts" means ice cream, frozen custard, ice milk, milk sherbet, ice or ice sherbet and imitation ice cream as defined in this act.

2. "Milk products" means pure, clean and wholesome cream, pure milk fat, butter, milk, evaporated milk, skimmed milk, condensed milk, sweetened condensed milk, condensed skimmed milk, sweetened condensed skimmed milk, dried milk, and dried skim milk.

3. "Ice cream" means the pure, clean, frozen product made from a combination of two or more of the following ingredients: milk products, eggs, water and sugar with harmless flavoring and with or without harmless coloring, and with or without added stabilizer composed of wholesome edible material. It contains not more than $\frac{1}{2}$ of 1% by weight of stabilizer, no less than 14% by weight of milk fat, and not less than 22% by weight of total milk solids (except when eggs, fruits, nuts, cocoa, or chocolate, maple syrup, cakes or confections are used for the purpose of flavoring, then it shall contain not less than 14% by weight of milk fat and not less than 22% by weight of total milk solids, except for such reduction in milk fat and in total milk solids, as is due to the addition of such flavor-

ing, but in no such case shall it contain less than 12% by weight of milk fat nor less than 18% by weight of total milk solids). In no case shall any ice cream contain less than 1 5-10ths pounds of total food solids per gallon.

4. "Frozen custard, french ice cream, french custard ice cream, ice custard and parfaits" means the clean, wholesome product made from a combination of two or more of the following ingredients: milk products, water and sugar with harmless flavoring and with or without harmless coloring and with or without added stabilizer composed of wholesome, edible material. It contains not more than $\frac{1}{2}$ of 1% by weight of stabilizer, not less than 14% by weight of milk fat, not less than 22% by weight of total milk solids, except when eggs, fruits, nuts, cocoa or chocolate, maple syrup, cakes or confections are used for the purpose of flavoring, then it shall contain not less than 14% by weight of milk fat and not less than 22% by weight of total milk solids, except for such reduction in milk fat and in total milk solids as is due to the addition of such flavoring, but in no such case shall it contain less than 12% by weight of milk fat nor less than 18% by weight of total milk solids. (Frozen custard, french ice cream, french custard ice cream, ice custard and parfaits shall contain not less than 5 dozen of clean, wholesome egg yolks, or 1 5-10ths pounds of wholesome, dry egg yolk containing not to exceed 7% of moisture, or 3 pounds of wholesome frozen egg yolk containing not to exceed 55% of moisture, or the equivalent of egg yolk in any other form, for each 90 pounds of frozen custard, french ice cream, french custard ice cream, ice custard and parfaits.) In no case shall any frozen custard, french ice cream, french custard ice cream, ice custard and parfaits contain less than 1 5-10ths pounds of total food solids per gallon.

5. "Ice milk" means the pure, clean frozen product made from a combination of two or more of the following ingredients: Milk products, eggs, water and sugar with harmless flavoring and with or without harmless coloring, and with or without added stabilizer composed of wholesome edible material. It contains not more than $\frac{1}{2}$ of 1% by weight of stabilizer, less than 14% but not less than 3% by weight of milk fat, and not less than 14% by weight of total milk solids. In no case shall any ice milk contain less than 1 3-10ths pounds of total food solids per gallon.

6. "Milk sherbet" means the pure, clean, frozen product made from milk products, water and sugar, with harmless fruit or fruit juice flavoring and with or without harmless coloring, with not less than 0.35 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It contains not less than 4% by weight of milk solids.

7. "Ice or ice sherbet" means the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring and with or without harmless coloring, with not less than 0.35 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It contains no milk solids.

8. "Imitation ice cream" means any frozen substance, mixture or compound, regardless of the name under which it is represented, which is made in imitation or semblance of ice cream, or is prepared or frozen as ice cream is customarily prepared or frozen, and which is not ice cream, frozen custard, ice milk, sherbet or ice as defined in this act.

Sec. 7. Enforcement. The commissioner of agriculture is charged with the administration of this chapter and he shall by adequate inspection see that all the provisions of this chapter are diligently enforced. He shall after hearing, promulgate and adopt uniform rules and regulations to supplement the provisions of this act. He shall establish sanitary regulations pertaining to the pasteurization of all milk and milk products and frozen desserts intended for sale, and to the premises, buildings, surroundings and equipment and the grounds about the buildings where frozen desserts are manufactured and sold, and also the sanitary conditions of all containers in which frozen desserts are held and shipped, also pertaining to the health and condition of persons in direct physical contact with frozen desserts during their sale and manufacture. Such rules and regulations shall be on file and open for public inspection in the department of agriculture. All license fees, and all money and fines received by the commissioner of agriculture under the provisions of this chapter shall be paid by him to the treasurer of state, and the same are hereby appropriated to his use for carrying out the provisions of this act.

Sec. 8. Any person, firm, corporation, association or society who adulterates or misbrands within the meaning of this chapter any frozen desserts, or who sells, offers for sale, distribution, or transportation any frozen desserts which are adulterated or misbranded, or any person, firm, corporation association or society who shall violate any of the provisions of this act or who neglects or refuses to comply with any of the provisions of this act shall be punished by a fine of not more than \$100 for the first offense, and by a fine of not more than \$200 for each subsequent offense. Municipal courts and trial justices shall have original jurisdiction concurrent with the superior court, of actions brought for the recovery of penalties imposed by this chapter, and of prosecutions for violations hereof.