

No. 350

AN ACT

To amend the act, approved the thirty-first day of May, one thousand nine hundred and thirty-three (Pamphlet Law, one thousand one hundred sixteen), 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 having in possession with intent to sell, of adulterated or deleterious ice cream, custard ice cream, french ice cream, french custard, frozen custard, 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, frozen custard, sherbet, ice and fruit ice, and to prevent the sale of imitation ice cream and defining said imitation ice cream; providing penalties for the violation thereof; and providing for the enforcement thereof," further regulating the manufacture, importation and sale of such products; providing for injunctions; and changing the penalties prescribed.

Sections 2, 3, 4,
9 and 10, act of
May 31, 1933
(P. L. 1116),
amended.

Section 1. Be it enacted, &c., That sections two, three, four, nine and ten of the act, approved the thirty-first day of May, one thousand nine hundred and thirty-three (Pamphlet Laws, one thousand one hundred sixteen), 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 having in possession with intent to sell, of adulterated or deleterious ice cream, custard ice cream, french ice cream, french custard, frozen custard, 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, frozen custard, sherbet, ice and fruit ice, and to prevent the sale of imitation ice cream and defining said imitation ice cream; providing penalties for the violation thereof; and providing for the enforcement thereof," are hereby amended to read as follows:

Sales of
adulterated or
imitation
ice cream.

Section 2. (a) It is unlawful for any person, association, partnership, or corporation, by himself, herself, itself or themselves, or by his, her or their 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, frozen custard, sherbet, ice or fruit ice, including coated ice cream and the coating thereof, which is adulterated within the meaning 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, ice cream substitute, or coated imitation ice cream, as defined in this act.

Unlawful to
sell or offer for
sale ice cream
not registered
with Department
of Agriculture.

(b) *It is unlawful for any person, association, partnership or corporation, by himself, herself, itself or themselves, or by his, her or their agents, servants or employes, 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, frozen custard, sherbets, ices or fruit ices, 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.

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

Unlawful to import ice cream not registered with the Department of Agriculture.

Section 3. Ice cream, custard ice cream, french ice cream, french custard, frozen custard, sherbet, ice and fruit ice, and the coating thereof, shall be deemed to be adulterated within the meaning of this act—

Adulterations.

First. If it contains boric acid, formaldehyde, saccharin, or any other added substance or compound that is deleterious to health.

Second. If it contains salts of copper, iron oxide ochres, or any coloring substance deleterious to health: Provided, That this paragraph shall not be construed to prohibit the use of harmless coloring matter when not used for fraudulent purposes.

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

Fourth. If it contains any fats, oils, or paraffin, other than milk fats, added to or blended or compounded with it: Provided, however, That chocolate ice cream and the coating of coated ice cream may contain cocoa butter.

Fifth. If it is an imitation ice cream, ice cream substitute, or coated imitation ice cream, 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, frozen custard, sherbet, ice or fruit ice.

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, or weighs less than four and seventy-five hundredths (4.75) pounds per gallon, or if smaller units shall contain a proportionate amount of total food solids of less than three and six-tenths (3.6) avoirdupois ounces

per fluid pint, and weigh less than nine and five-tenths (9.5) avoirdupois ounces per fluid pint.

Sales in
containers
falsely labeled.

Section 4. It is unlawful for any person, association, partnership, or corporation 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, frozen custard, sherbets, ices or fruit ices in any container which is falsely labeled or branded as to the name of the manufacturer thereof, or to misrepresent, in any way, the place of manufacture thereof, *or to fail to place on each original container or package the name and address of said manufacturer, preceded by the words "manufactured by," or followed by the word "manufacturer."*

Use of equipment
belonging to
another.

It is unlawful for any person to use, or cause or allow to be used, any equipment, cabinet, can, or other container belonging to one manufacturer for the purpose of preserving or holding any ice cream, custard ice cream, french ice cream, french custard, frozen custard, sherbet, ice or fruit ice manufactured by another manufacturer; or for any person, manufacturer, or employe or agent of any manufacturer to knowingly supply or place or deposit ice cream, custard ice cream, french ice cream, french custard, frozen custard, sherbet, ice or fruit ice of one manufacturer in any equipment, cabinet, can, or other container belonging to another manufacturer. 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.

Obliteration or
concealment of
name, etc.

Violation.

Section 9. (a) Any person, association, partnership, or corporation violating any of the provisions of this act, *or any rule or regulation of the Department of Agriculture made pursuant thereto*, shall, [be guilty of a misdemeanor and] *for the first or second offense*, upon conviction thereof [shall] *in a summary proceeding*, be sentenced to pay a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) 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, [or both] *and for a third or subsequent offense, shall be guilty of a misdemeanor, and sentenced to pay a fine not exceeding one thousand dollars (\$1,000.00), 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.*

Penalty.

All fines and penalties, imposed and recovered for the violation of any of the provisions of this act, shall be paid [to the Department of Agriculture, and, when so collected and paid, shall thereafter be paid] into the State Treasury, through the Department of Revenue, [for the use of the Commonwealth] *and credited to the General Fund.*

Disposition of
fines and
penalties.

(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.*

Section 10. Nothing contained in this act shall be construed to apply to ice cream and similar frozen products manufactured and sold by social, fraternal, charitable, educational, religious or beneficial organizations, nor to a farmer making and selling from the products of his farm ice cream, custard ice cream, french ice cream, french custard, frozen custard, sherbet, or ice, provided that the standards of purity and quality prescribed by this act are maintained in all cases of manufacture and sale permitted by the provisions of this section.

Exceptions to
application
of act.

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, five hundred eighty-nine), 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.

APPROVED—The 5th day of June, A. D. 1937.

GEORGE H. EARLE

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No. 351

AN ACT

To amend the act, approved the fifteenth day of May, one thousand nine hundred and thirty-three (Pamphlet Laws, six hundred twenty-four), entitled "An act relating to the business of banking, and to the exercise of fiduciary powers by corporations; providing for the organization of corporations with fiduciary powers, and of banking corporations, with or without fiduciary powers, including the conversion of National Banks