

HEALTH AND SAFETY CODE CHAPTER 440. FROZEN DESSERTS MANUFACTURER  
LICENSING ACT

HEALTH AND SAFETY CODE

TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES

SUBTITLE A. FOOD AND DRUG HEALTH REGULATIONS

CHAPTER 440. FROZEN DESSERTS MANUFACTURER LICENSING ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 440.001. SHORT TITLE. This chapter may be cited as the Frozen Desserts Manufacturer Licensing Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.002. PURPOSE. The legislature finds that a statewide licensing act is needed to:

(1) regulate manufacturers of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products;

(2) provide for uniformity of inspections of the premises of frozen dessert manufacturers;

(3) protect the health and safety of consumers by preventing the manufacture or distribution of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products that do not meet state standards or related requirements of purity or labeling; and

(4) assist manufacturers in meeting state standards or related requirements.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.003. DEFINITIONS. In this Act:

(1) "Adulterated or misbranded frozen desserts mix" means any frozen dessert or mix that contains an unwholesome substance or, if defined in this standard, that does not conform with its definition or that does not comply with Chapter 431 (Texas Food, Drug, and Cosmetic Act) or any other applicable regulation.

(2) "Board" means the Texas Board of Health.

(3) "Commissioner" means the commissioner of health.

(4) "Department" means the Texas Department of Health.

(5) "Frozen dessert" means any of the following: ice cream, ice milk, fruit sherbet, water ice, nonfruit sherbet, nonfruit water ice, frozen dietary dairy desserts, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, lorraine, parevine, freezer-made milk shake, freezer-made shake, or nondairy frozen dessert. The term includes the mix used in the freezing of one of those frozen desserts.

(6) "Frozen desserts manufacturer" means a person who manufactures, processes, converts, partially freezes, or freezes any mix (regardless of whether it is dairy, nondairy, imitation, pasteurized or unpasteurized), frozen desserts, imitation frozen desserts, or nondairy frozen desserts for distribution or sale at wholesale. The term does not include a frozen desserts retail establishment.

(7) "Frozen desserts plant" means premises where a frozen dessert or mix is manufactured, processed, or frozen for sale.

(8) "Frozen desserts retail establishment" means premises, including a retail store, approved type stand, hotel, restaurant, vehicle, or mobile unit, where frozen dessert mixes are frozen or partially frozen and dispensed for retail sale or distribution.

(9) "Health authority" means the municipal, county, or state health officer or the officer's representative or any other agency having jurisdiction or control over the matters embraced within the specifications and requirements of this chapter.

(10) "Imitation frozen dessert" means any frozen substance, mixture, or compound, regardless of the name under which it is represented, that is made in imitation or semblance of any of the following products or is prepared or frozen in the manner in which any of the following products is customarily prepared or frozen and that is not the product: ice cream, ice milk, fruit sherbet, water ice, nonfruit sherbet, nonfruit ice, frozen low fat yogurt, nonfat yogurt, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, lorraine, parevine, freezer-made milk shake, freezer-made shake, or nondairy frozen dessert.

(11) "Manufacture" means the processing, freezing, or packaging of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products for sale at wholesale. The term does not include a retailer purchasing those products from a manufacturer displaying the retailer's brand name.

(12) "Mix" means the pasteurized or unpasteurized, liquid or dry, unfrozen combination of the ingredients permitted in a frozen dessert with or without fruits, fruit juices, candy, baked goods and confections, nutmeats, or other harmless flavor or color.

(13) "Official laboratory" means a biological, chemical, or physical laboratory that is under the supervision of a state or local health authority.

(14) "Sale" means the:

(A) manufacture, production, processing, packing, exposure, offer, or holding of any frozen dessert product for sale;

(B) sale, dispensing, or giving of any frozen dessert product; or

(C) supplying or applying of any frozen dessert product in the conduct of any frozen desserts retail establishment.

(15) "State health officer" means the commissioner of health.

(16) "Wholesale" means the exposing, offering, possessing, selling, dispensing, holding, or giving of any frozen dessert, imitation frozen dessert, product sold in semblance of frozen dessert, or a mix for one of those products to other than the ultimate consumer. The term does not include sale by a retail store.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.004. EXEMPTIONS. This chapter does not apply to:

(1) a person operating a frozen desserts retail establishment; or

(2) a person operating a retail store unless the person is also a manufacturer.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.005. HEARINGS. (a) A hearing conducted by the board in the administration of this chapter is governed by Chapter 2001, Government Code.

(b) Based on the record of a hearing conducted under this chapter, the department shall make a finding and shall sustain, change, or rescind an official notice or order considered in the hearing.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 440.006. POWERS AND DUTIES OF BOARD. The board may:

(1) adopt rules prescribing standards or related requirements for the operation of establishments for the manufacture of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products, including standards or requirements for the:

(A) health, cleanliness, education, and training of personnel who are employed in the establishments;

(B) protection of raw materials, manufactured merchandise, and merchandise held for sale;

(C) design, construction, installation, and cleanliness of equipment and utensils;

(D) sanitary facilities and controls of the establishments;

(E) establishment construction and maintenance, including vehicles;

(F) production processes and controls; and

(G) institution and content of a system of records to be maintained by the establishment; and

(2) adopt rules prescribing procedures for the enforcement of the standards or related requirements prescribed under Subdivision (1), including procedures for the:

(A) requirement of a valid license to operate an establishment;

(B) issuance, suspension, revocation, and

reinstatement of licenses;

(C) administrative hearings before the board or its designee;

(D) institution of certain court proceedings by the board or its designee;

(E) inspection of establishments and securing of samples of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products;

(F) access to the establishments and to the vehicles used in operations;

(G) compliance by manufacturers outside the jurisdiction of the state; and

(H) review of plans for future construction.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.007. APPLICABILITY OF OTHER LAW. Except as provided by Section 431.009(c), Chapter 431 applies to a person or product regulated under this chapter, including a frozen dessert manufacturer, a frozen dessert, an imitation frozen dessert, a product sold in semblance of a frozen dessert, and a mix for one of those products.

Added by Acts 2003, 78th Leg., ch. 112, Sec. 3, eff. Sept. 1, 2003.

#### SUBCHAPTER B. LICENSING

Sec. 440.011. PROHIBITED ACT. (a) A person may not operate an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products in this state unless the person has a valid license issued under this chapter.

(b) A political subdivision or agency of the state, other than the department, may not impose a license fee on any manufacturer covered by this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.012. LICENSE. (a) A person desiring to operate an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a

mix for one of those products may apply to the department for a license. A license shall be granted under the procedural rules adopted by the board and shall be issued only for the purpose and use as stated on the application for a license.

(b) The department shall inspect the establishment under Section 440.031 before issuing a license.

(c) A license may not be issued to a person who does not comply with the standards prescribed by the board under this chapter.

(d) A license issued under this chapter must be renewed on or before September 1 of each year in accordance with rules adopted by the board.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.013. FEES. (a) A \$200 nonrefundable fee for each establishment must accompany each application for a license.

(b) The department also shall assess the following fees:

(1) a fee for a frozen dessert manufacturer located in this state in the amount of one cent per 100 pounds of manufactured or processed frozen dessert manufactured or processed and distributed in this state by that manufacturer;

(2) a fee for a frozen dessert manufacturer not located in this state in the amount of one cent per 100 pounds of frozen desserts manufactured or processed by the manufacturer in another state and imported for sale in this state; and

(3) a fee for the actual cost of analyzing samples of frozen desserts for a frozen dessert manufacturer not located in this state.

(c) The board shall adopt rules to collect fees imposed under this section monthly, quarterly, semiannually, or annually based on amounts due by the frozen dessert manufacturer.

(d) The department may revoke a license to operate a frozen desserts plant if the licensee fails to make a timely payment of the monthly fees required under this section. The department's rules of procedure for a contested case hearing and Chapter 2001, Government Code govern the revocation of a license.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 440.014. RECORD KEEPING. The board shall adopt rules establishing minimum standards for record keeping by persons required to pay fees under this chapter and the records shall be made available to the department on request.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.015. ESTABLISHMENTS OUTSIDE STATE. A frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products from a manufacturer located outside this state may be sold or distributed in this state if the manufacturer complies with this chapter or complies with other regulatory requirements that are substantially equivalent to those of this state. To determine the extent of the manufacturer's compliance, the department may accept reports from responsible authorities in the jurisdiction in which the manufacturer is located.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.016. TEMPORARY PERMIT. The department may issue a temporary permit to continue the operation of an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or mix for one of those products until the department performs the inspection required by this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.017. REFUSAL TO GRANT LICENSE; SUSPENSION OR REVOCATION OF LICENSE. In accordance with rules adopted under Section 440.006, the commissioner may refuse an application for a license under this chapter or may suspend or revoke a license issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 112, Sec. 4, eff. Sept. 1, 2003.

#### SUBCHAPTER C. ENFORCEMENT

Sec. 440.031. INSPECTION BY DEPARTMENT. (a) Under rules adopted by the board, the department's authorized representatives have free access at all reasonable hours to any establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products or to any vehicle being used to transport in commerce a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products for the purpose of:

(1) inspecting the establishment or vehicle to determine compliance with the standards or related requirements prescribed by the board under this chapter; or

(2) securing samples of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or a mix for one of those products for the purpose of making or causing to be made an examination of the samples to determine compliance with the standards or related requirements prescribed by the board under this chapter.

(b) A political subdivision or an agency other than the department that collects samples described by Subsection (a)(2) shall bear the cost of the samples and any analyses of the samples.

(c) The inspection procedures provided by this section are in addition to the procedures provided by Chapter 431.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.  
Amended by Acts 2003, 78th Leg., ch. 112, Sec. 5, eff. Sept. 1, 2003.

Sec. 440.032. PENALTIES. (a) A person commits an offense if the person knowingly or intentionally violates Section 440.011 or a rule adopted by the board under this chapter.

(b) An offense under this section is a Class C misdemeanor.

(c) The penalty prescribed by this section is in addition to any civil or administrative penalty or sanction otherwise imposed under Chapter 431 or other law.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.  
Amended by Acts 2003, 78th Leg., ch. 112, Sec. 6, eff. Sept. 1, 2003.