

ASSEMBLY, No. 1236

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen and Passaic)

Assemblyman ERIC HOUGHTALING

District 11 (Monmouth)

Assemblyman KEVIN J. ROONEY

District 40 (Bergen, Essex, Morris and Passaic)

Co-Sponsored by:

Assemblyman Conaway

SYNOPSIS

Prohibits the sale of adulterated candy in New Jersey.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning the sale of adulterated candy and
2 supplementing Title 24 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. As used in this act:

8 “Adulterated candy” means any candy, either with or without a
9 wrapper, which contains, is composed of, or is made with lead,
10 mercury, or cadmium which has been intentionally introduced as a
11 chemical element during manufacturing or distribution, as opposed
12 to naturally occurring levels of any of those elements. “Adulterated
13 candy” also means any candy with a wrapper that contains, is
14 composed of, or is made with, lead, mercury, or cadmium.

15 “Candy” means a preparation of sugar, honey, or other natural or
16 artificial sweeteners in combination with chocolate, fruits, nuts or
17 other ingredients or flavorings, either with or without a wrapper, in
18 the form of bars, drops, or pieces, and includes the wrapper used to
19 hold or cover the bars, drops, or pieces. “Candy” does not include
20 any preparation containing flour or requiring refrigeration.

21 “Commissioner” means the Commissioner of Health.

22 “Department” means the Department of Health.

23 “Manufacturer” means:

24 (1) any entity that manufactures or otherwise produces candy or
25 causes candy to be manufactured or produced anywhere that the
26 manufacturer intends to be sold in this State, including candy
27 intended to be sold in the United States through an importer;

28 (2) the first purchaser anywhere that intends to resell in the
29 United States candy manufactured anywhere that the original
30 manufacturer or maker does not intend to be sold in the United
31 States; or

32 (3) any entity that becomes a successor of an entity described in
33 paragraph (1) or (2).

34 “Wrapper” means a container, packaging material, or packaging
35 component that comes in contact with candy and is specifically
36 manufactured for the purposes of marketing, protecting, or handling
37 candy, including, but not limited to, paper cellophane, plastic
38 container, stick handle, spoon, small pot, squeeze tube, or similar
39 device, or any interior or exterior ink, label, dye, or pigment.
40 “Wrapper” does not include any part of packaging materials from
41 which lead, mercury, or cadmium will not leach.

42

43 2. a. A person shall not sell or offer to sell adulterated candy
44 in the State.

45 b. The sum of the concentration levels of lead, mercury, or
46 cadmium naturally occurring in any candy that is allowed to be sold
47 or offered for sale in this State shall not exceed 100 parts per
48 million by weight (0.01%). Any candy that is composed of, or is

1 made with lead, mercury, or cadmium that is naturally occurring
2 and exceeds 100 parts per million by weight (0.01%) shall be
3 considered adulterated candy as defined in this act.
4

5 3. a. Every manufacturer shall submit to the department a
6 written certification attesting that a candy listed in the certification
7 is not adulterated and is in compliance with the requirements of
8 subsection b. of section 2 of this act.

9 b. If the manufacturer reformulates or creates a new candy, the
10 manufacturer shall submit to the department a new or amended
11 certification of compliance attesting that the new or reformulated
12 candy is not adulterated and is in compliance with the provisions of
13 this act.

14 c. Copies of a certification of compliance or a new or amended
15 certification of compliance shall be kept on file by the manufacturer
16 and shall be provided to every distributor and retailer who sells or
17 offers to sell in the State the candy identified in the certification of
18 compliance, and to members of the public, upon request.
19

20 4. a. The department shall have the right to enter the premises
21 of a manufacturer, distributor, or retailer at which candy is
22 manufactured, stored, sold, or offered for sale in the State in order
23 to determine compliance with the provisions of this act, or any rule
24 or regulation adopted pursuant thereto. The department may, at any
25 time during normal business hours and upon presentation of
26 appropriate credentials, conduct inspections, including the taking of
27 samples of candy for the purpose of testing the candy. The
28 department may be required to purchase any candy for which a
29 sample is sought at a retail establishment, if requested to do so by
30 the retailer.

31 b. Whenever the commissioner finds that adulterated candy is
32 being stored, sold, or offered for sale on the premises in violation of
33 the provisions of this act, or any rule or regulation adopted pursuant
34 thereto, the commissioner may issue an order requiring the
35 distributor or retailer, as the department deems appropriate, to
36 remove or arrange for the removal of the adulterated candy from the
37 premises and to make it unavailable for purchase, and directing that
38 the distributor or retailer return the entire inventory of adulterated
39 candy to the manufacturer from which it was obtained, at the cost of
40 the manufacturer.

41 c. All samples of candy taken from the premises of a
42 manufacturer, distributor, or retailer for the purpose of testing
43 pursuant to subsection a. of this section shall constitute a single
44 violation pursuant to section 5 of this act.
45

46 5. a. A manufacturer who knowingly sells or offers to sell
47 adulterated candy in violation of section 2 of this act shall be liable
48 to a civil penalty not to exceed \$10,000 for a first offense, and to a

1 civil penalty not to exceed \$25,000 for each subsequent offense,
2 provided that in no case shall the penalty against the manufacturer
3 exceed \$100,000 during a 30-day period.

4 b. A distributor or retailer who knowingly sells or offers to sell
5 adulterated candy in violation of section 2 of this act shall be liable
6 to a civil penalty not to exceed \$1,000 for a first offense, and to a
7 civil penalty not to exceed \$5,000 for each subsequent offense,
8 provided that in no case shall the penalty against the distributor or
9 retailer exceed \$25,000 during a 30-day period.

10 c. In addition to any penalty prescribed by law, any
11 manufacturer who knowingly submits a false certification or a false
12 new or amended certification of compliance in violation of section
13 3 of this act shall be liable to a civil penalty not to exceed \$75,000
14 for a first offense, and to a civil penalty not to exceed \$250,000 for
15 each subsequent offense.

16 d. Any civil penalty imposed pursuant to subsections a. through
17 c. of this section shall be collected in a civil action by a summary
18 proceeding under the "Penalty Enforcement Law of 1999,"
19 P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court shall
20 have jurisdiction of proceedings for the enforcement of the penalty
21 provided by this section.

22 e. In addition to any other remedy provided by law, the
23 commissioner or Attorney General may file an action in Superior
24 Court for a violation of this act, including petitioning for injunctive
25 relief or to recover any costs or damages suffered by the State
26 because of a violation of this act, including enforcement costs
27 relating to the specific violation and attorney's fees. Each violation
28 of this act or any rule or regulation adopted pursuant thereto
29 constitutes a separate civil violation for which the commissioner
30 may obtain relief.

31 f. Nothing in this act shall be construed to impose liability on
32 news media that accept or publish advertising that may otherwise be
33 subject to the provisions of this act.

34

35 6. The department may, in accordance with a fee schedule
36 adopted as a rule or regulation, establish and charge fees to defray
37 the cost of compliance, monitoring, inspection, sampling, testing,
38 and enforcement activities required by this act.

39

40 7. There is established in the Department of the Treasury, a
41 separate, nonlapsing fund to be known as the "Reduction of
42 Adulterated Candy Enforcement Fund." The fund shall be the
43 depository for all penalties received pursuant to section 5 of this
44 act, and all fees collected pursuant to section 6 of this act, and any
45 interest earned thereon. Unless otherwise specifically provided by
46 law, monies in the fund shall be utilized exclusively by the
47 department to administer and enforce the provisions of this act, or
48 any rule or regulation adopted pursuant thereto.

1 allowed to, at any time during normal business hours and upon
2 presentation of appropriate credentials: conduct inspections,
3 including taking samples of candy for testing purposes; and
4 purchase any sample of candy at a retail establishment, if requested
5 to do so by the retailer.

6 Whenever the Commissioner of Health finds that adulterated
7 candy is being stored, sold, or offered for sale in violation of the
8 provisions of the bill, the commissioner may issue an order
9 requiring the distributor or retailer to: cause the adulterated candy
10 to be removed from the premises and made unavailable for
11 purchase; and return the entire inventory of adulterated candy to the
12 manufacturer from which it was obtained, at the manufacturer's
13 expense.

14 All samples of candy taken for the purpose of testing to
15 determine compliance would constitute a single violation of the
16 provisions of the bill.

17 Under the bill's provisions, a manufacturer who knowingly sells
18 or offers to sell adulterated candy in violation of the bill would be
19 liable to a civil penalty not to exceed \$10,000 for a first offense,
20 and a penalty not to exceed \$25,000 for each subsequent offense.
21 Penalties against a manufacturer could not exceed \$100,000 during
22 a 30-day period.

23 A distributor or retailer who knowingly sells or offers to sell
24 adulterated candy in violation of the bill would be liable to a civil
25 penalty not to exceed \$1,000 for a first offense, and a penalty not to
26 exceed \$5,000 for each subsequent offense. Penalties against a
27 distributor or retailer could not exceed \$25,000 during a 30-day
28 period.

29 A manufacturer who knowingly submits a false certification of
30 compliance or a false new or amended certification of compliance
31 would be liable to a civil penalty not to exceed \$75,000 for a first
32 offense, and a penalty not to exceed \$250,000 for each subsequent
33 offense.

34 Civil penalties imposed under the provisions of the bill are to be
35 collected pursuant to the "Penalty Enforcement Law of 1999."

36 The commissioner or Attorney General may file an action in
37 Superior Court for a violation of the provisions of the bill, including
38 petitioning for injunctive relief or to recover any costs or damages
39 incurred by the State in connection with a civil violation. Each
40 violation of the provisions of the bill will constitute a separate
41 violation for which the commissioner may obtain relief.

42 The bill does not impose liability on news media that accept or
43 publish advertising that may fall within the scope of the bill.

44 The bill also establishes a separate, nonlapsing fund known as
45 the "Reduction of Adulterated Candy Enforcement Fund" in the
46 Department of the Treasury. The fund would be the depository for
47 all penalties received pursuant to the bill, and all fees collected by
48 the DOH to defray the cost of compliance, monitoring, inspection,

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- 1 sampling, testing, and enforcement activities required under the bill.
- 2 The monies in the fund, and any interest earned, would be used by
- 3 the DOH to administer and enforce the provisions of the bill, unless
- 4 otherwise specified by law.