

SENATE, No. 2615

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 25, 2020

Sponsored by:

Senator VIN GOPAL

District 11 (Monmouth)

Senator NELLIE POU

District 35 (Bergen and Passaic)

SYNOPSIS

“Packaged Ice Plant Operator and Packaged Ice Dealer Licensing Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 7/22/2020)

1 **AN ACT** concerning the licensure of packaged ice plant operators
2 and packaged ice dealers, supplementing Title 24 of the Revised
3 Statutes and amending P.L.1964, c.142.

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

7
8 1. (New section) This act shall be known and may be cited as
9 the “Packaged Ice Plant Operator and Packaged Ice Dealer
10 Licensing Act.”

11
12 2. (New section) As used in this act:

13 “Commissioner” means the commissioner of the Department of
14 Health of the State of New Jersey.

15 “Packaged ice” means frozen water offered for sale for human
16 consumption.

17 “Packaged ice plant” means any place, premises, or
18 establishment where a person is engaged in the production,
19 processing, or packaging of ice for wholesale distribution or sale
20 directly to the consumer and shall include rooms and premises
21 where machines, utensils, and packaging are washed, sanitized, or
22 stored.

23 “Packaged ice dealer” means a person engaged in the sale of
24 packaged ice to consumers and retailers.

25 “Person” means an individual, corporation, partnership,
26 association or any other business entity.

27 “Source water” means water from a spring, artesian well, drilled
28 well, public water system, public community water system, or any
29 other source which is used for or in connection with the production
30 of packaged ice.

31
32 3. (New section) a. Pursuant to R.S.24:2-1, the
33 commissioner shall promulgate standards governing the
34 manufacturing, storage, and distribution of packaged ice, which
35 shall include, but not be limited to, standards addressing processing,
36 packaging, storage, and distribution methods necessary to prevent
37 the contamination of packaged ice or its packaging materials and
38 recall procedures for contaminated packaged ice.

39 b. (1) Packaged ice which is manufactured, distributed, or
40 sold within this State shall comply with the regulations concerning
41 drinking water quality standards adopted by the Department of
42 Environmental Protection pursuant to the “Safe Drinking Water
43 Act,” P.L.1977, c.224 (C.58:12A-1 et seq.) and all water used for
44 the manufacture of packaged ice shall be from an approved drinking
45 water supply in this State or from an approved drinking water
46 supply in the state in which the packaged ice is manufactured.

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 (2) Packaged ice plants and packaged ice dealers who are also
2 packaged ice plants shall conduct quarterly testing of packaged ice
3 to determine the presence of: (a) hazardous contaminants identified
4 pursuant to section 2 of P.L.1983, c.443 (C.58:12A-13); and (b)
5 fecal and total coliform organisms and heterotrophic plate count.
6 Total coliforms shall not be greater than 2.2 organisms per 100
7 milliliters using the most probable number method or not greater
8 than one organism per 100 milliliters using the membrane filtration
9 method. The heterotrophic plate count shall not exceed 500
10 colonies per milliliter. Packaged ice shall not contain fecal
11 coliform-positive samples.

12 (3) All tests required pursuant to this section shall be conducted
13 in accordance with sampling and testing methods and techniques
14 established by the Commissioner of Environmental Protection, with
15 the testing to be conducted by a laboratory certified for this purpose
16 by the commissioner.

17 (4) Testing shall be conducted prior to the issuance of a
18 packaged ice plant license pursuant to section 4 of
19 P.L. , c. (C.) (pending before the Legislature as this bill).

20 (5) Except as provided in paragraph 7 of subsection b. of this
21 section, any packaged ice plant manufacturing ice outside of this
22 State shall forward to the department a copy of all results of tests
23 required to be conducted pursuant to this act. The certified
24 laboratory conducting the potability tests may, upon written
25 approval by the department, submit the test results on behalf of the
26 packaged ice plant.

27 (6) Except as provided in paragraph (7) of subsection b. of this
28 section, any packaged ice plant or dealer operating within this State
29 shall maintain a copy of all results of tests required to be conducted
30 pursuant to this act for seven years and shall make the test results
31 available to the department upon request.

32 (7) If the quarterly test results indicate the presence of fecal
33 matter in any sample, the packaged ice plant or dealer shall submit
34 samples to an approved laboratory for testing on a weekly basis
35 until two consecutive negative tests are obtained. The packaged ice
36 plant shall submit all test results conducted pursuant to this
37 paragraph to the department.

38

39 4. (New section) a. Any person owning or operating a
40 packaged ice plant or acting as a packaged ice dealer within this
41 State shall hold a valid license issued by the Department of Health
42 pursuant to the provisions of this act.

43 b. All licenses shall be issued for a one-year period upon the
44 payment of the licensure fee prescribed by the department, and shall
45 be renewed upon the filing of a renewal application and the
46 payment of a licensure fee.

1 c. The department shall:

2 (1) prior to issuing a license, ensure that all applicants adhere to
3 the standards set forth under or promulgated pursuant to section 3
4 of P.L. , c. (C.) (pending before the Legislature as this bill)
5 and provide documentation confirming that any source water used
6 in the manufacture of packaged ice is taken from an approved
7 drinking water source;

8 (2) establish all necessary criteria for the licensing of packaged
9 ice plants and packaged ice dealers;

10 (3) issue and renew licenses for packaged ice plants and
11 packaged ice dealers pursuant to the provisions of this act;

12 (4) refuse to issue, suspend, revoke, or refuse to renew the
13 license of a packaged ice plant or packaged ice dealer for failure to
14 adhere to all standards set forth or promulgated pursuant to section
15 3 of P.L. , c. (C.) (pending before the Legislature as this
16 bill);

17 (5) prescribe or change the fees for licenses, renewals, and other
18 services it performs pursuant to the provisions of this act;

19 (6) inspect licensed packaged ice plants and packaged ice
20 dealers to ensure compliance with the provisions of this act;

21 (7) disseminate informational material to instruct and assist
22 applicants and licensees regarding best practices in the industry, as
23 well as the types of activities that constitute statutory or regulatory
24 violations; and

25 (8) adopt and promulgate rules and regulations pursuant to the
26 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
27 seq.) necessary to effectuate the purpose of this act.
28

29 5. (New section) a. The commissioner, upon receipt of
30 information that a contaminant which is present in packaged ice
31 may present an imminent and substantial danger to the public health
32 and safety, may take any action deemed necessary to protect the
33 public health and safety. The actions may include, but need not be
34 limited to, issuing orders as may be necessary to protect consumers
35 of the packaged ice, and commencing a civil action for appropriate
36 relief, including a restraining order or permanent or temporary
37 injunction.

38 The department may institute a civil action in a court of
39 competent jurisdiction for injunctive or any other appropriate relief
40 to prohibit and prevent a violation of the provisions of this act or
41 any rule or regulation adopted, or order issued, pursuant to this act,
42 and the court may proceed in the action in a summary manner.

43 b. Any person who sells or manufactures or who has in that
44 person’s possession with intent to sell in this State any packaged ice
45 in violation of this act or any rule, regulation, or order adopted or
46 issued pursuant to this act, shall be liable to a civil administrative
47 penalty of not more than \$5,000 for the first offense, or more than
48 \$10,000 for the second offense, and up to \$25,000 for the third and

1 subsequent offense. A person selling packaged ice at retail shall be
2 liable for these civil administrative penalties only upon a failure to
3 obey an order issued by the department to remove any packaged ice
4 manufactured, sold, or offered for sale in violation of this act. If the
5 violation is of a continuing nature, each day during which it
6 continues shall constitute an additional, separate, and distinct
7 offense. A civil administrative penalty shall not be levied, except
8 subsequent to the notification of violation by certified mail or
9 personal service. The notice shall include a reference to the section
10 of the law, rule, regulation, order, or licensing condition violated; a
11 concise statement of the facts alleged to constitute the violation; a
12 statement of the amount of the civil penalties to be imposed; and a
13 statement of the person's right to a hearing. The person shall have
14 20 days from receipt of the notice within which to deliver to the
15 Commissioner of Health a written request for a hearing.
16 Subsequent to the hearing and upon a finding that a violation has
17 occurred, the Commissioner of Health may issue a final order after
18 assessing the amount of the fine specified in the notice. If a hearing
19 is not requested, the notice shall become a final order upon
20 expiration of the 20-day period. Payment of the penalty is due
21 when a final order is issued or when the notice becomes a final
22 order. The authority to levy a civil administrative penalty is in
23 addition to all other enforcement provisions of this act, and the
24 payment of a civil administrative penalty shall not be deemed to
25 affect the availability of any other enforcement provision in
26 connection with the violations for which the penalty is levied.

27 c. The department is authorized to compromise and settle any
28 claim for a penalty under this section in an amount that is
29 appropriate and equitable under the circumstances, including the
30 posting of a performance bond by the violator.

31 d. Any person who violates this act, or an administrative order
32 issued pursuant to subsection b. of this section, or a court order
33 issued pursuant to subsection a. of this section, or who fails to pay a
34 civil administrative penalty in full pursuant to subsection b. or c. of
35 this section shall be subject, upon order of the court, to a civil
36 penalty not to exceed \$10,000 per day of the violation, and each
37 day's continuance of the violation constitutes a separate and distinct
38 violation. A person selling packaged ice at retail shall be subject to
39 a civil penalty only upon a failure to obey an order issued by the
40 department to remove any packaged ice manufactured, sold, or
41 offered for sale in violation of this act. Any penalty imposed under
42 this subsection may be recovered in a summary proceeding under
43 the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-
44 10 et seq.). The Superior Court shall have jurisdiction to enforce
45 "the penalty enforcement law."
46

47 6. Section 2 of P.L.1964, c.88 (C.24:10-73.2) is amended to
48 read as follows:

2. For the purpose of this act and for any rules, regulations, definitions, standards of identity or labeling requirements, promulgated pursuant thereto, the term "frozen desserts" shall be deemed to include: ice cream, frozen custard, French ice cream, French custard ice cream, sherbet, fruit sherbet, ice milk, [ice,] water ice, quiescently frozen confection, quiescently frozen dairy confection, whipped cream confection, bisque tortoni, artificially sweetened ice cream, or artificially sweetened ice milk, special frozen dietary foods, mellorine frozen desserts as all such products are commonly known together with any such mix used in frozen desserts and any products which are similar in appearance, odor or taste to such products or are prepared or frozen as such products are customarily prepared or frozen whether made with dairy or nondairy products.

(cf: P.L.1969, c.88, s.2)

7. This act shall take effect on the first day of the thirteenth month next following enactment.

STATEMENT

This bill provides for the licensure of packaged ice plants and packaged ice dealers.

Under the bill, the New Jersey Department of Health is required to establish standards governing the manufacturing, storage, and distribution of packaged ice, including standards addressing the processing, packaging, storage, and distribution methods necessary to prevent the contamination of packaged ice or its packaging materials and recall procedures for contaminated packaged ice.

Under the bill, packaged ice plants and packaged ice dealers who are also packaged ice plants are to conduct quarterly testing of packaged ice to determine the presence of certain contaminants. In addition, packaged ice which is manufactured, distributed, or sold within this State is to comply with the regulations concerning drinking water quality standards adopted by the Department of Environmental Protection pursuant to the "Safe Drinking Water Act."

The bill requires any person owning or operating a packaged ice plant located within, or conducting business within, this State or acting as a packaged ice dealer within this State is to hold a valid license issued by the Department of Health. Under the bill, the Department of Health is to:

- ensure that any applicant or licensee adhere to any standards established by the department pertaining to packaged ice plants or packaged ice distribution;

- 1 • inspect licensed packaged ice plants and packaged ice
2 dealers to ensure compliance with standards established by
3 the department; and
- 4 • disseminate informational material to instruct and assist
5 applicants and licensees regarding best practices in the
6 industry, as well as the types of activities that constitute a
7 statutory or regulatory violation.

8 In the event that it is discovered that a contaminant which is
9 present in packaged ice may present an imminent and substantial
10 danger to the public health and safety, the Commissioner of Health
11 may take any action deemed necessary to protect the public health
12 and safety. The actions may include, but need not be limited to,
13 issuing any orders necessary to protect consumers of the packaged
14 ice, and commencing a civil action for appropriate relief, including
15 a restraining order or permanent or temporary injunction.

16 Any person who sells or manufactures or who has in that
17 person's possession with intent to sell in this State any packaged ice
18 in violation of this bill shall be liable to a civil administrative
19 penalty of not more than \$5,000 for the first offense, or more than
20 \$10,000 for the second offense, and up to \$25,000 for the third and
21 subsequent offense.

22 The bill defines "packaged ice plant" to mean any place,
23 premises, or establishment where a person is engaged in the
24 production, processing, or packaging of packaged ice for wholesale
25 distribution or sale directly to the consumer and includes rooms and
26 premises where machines, utensils, and packaging are washed,
27 sanitized, or kept. In addition, the bill defines "packaged ice
28 dealer" to mean a person engaged in the business of distributing
29 packaged ice to retailers for sale to consumers.