



**House
Legislative
Analysis
Section**

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DRIED ICE CREAM

**House Bill 5197 with committee
amendments
First Analysis (12-7-93)**

**Sponsor: Rep. John Gernaat
Committee: Agriculture & Forestry**

THE APPARENT PROBLEM:

The Michigan Milk Producers Association, working with Michigan State University, has developed a new, dried ice cream product that can be mixed with water to produce soft ice cream. The product currently is being sold in Michigan to private individuals for home use, though in some other states it is being sold as a "tie-in" product with ice cream makers. However, Michigan law requires that all ingredients of a frozen dessert be pasteurized, which effectively prohibits the sale of the dried ice cream product to food service outlets (such as restaurants and ice cream stands), since it would be too cumbersome and expensive for restaurants to pasteurize their tap water before reconstituting the dried product. There also appears to be an international market for this product, but it would be awkward to try to sell a product overseas that can't be easily used in the food service market in its state of origin. Legislation has been introduced that would address this problem.

THE CONTENT OF THE BILL:

The bill would amend the frozen desserts act (Public Act 323 of 1968) to exempt certain reconstituted pasteurized dry mixes from the act's requirement that "every particle" of a mixture regulated by the act be pasteurized. Instead, the bill would allow such mixtures to be either pasteurized as required by the act or reconstituted from a properly pasteurized dry mix using a potable water source approved by the Department of Public Health and prepared in a "clean, sanitary manner."

The bill also would raise to 155 degrees Fahrenheit (from the current 150 degrees) the minimum temperature at which frozen dessert mixtures would have to be held for at least 30 minutes in order to be pasteurized. Finally, the bill would delete the subsections of the act (a) reserving to the Department of Agriculture the right to inspect out-

of-state frozen dessert plants or businesses and (b) exempting imported out-of-state frozen desserts from the act's licensing requirements.

MCL 288.328

FISCAL IMPLICATIONS:

The Department of Agriculture says that the bill has no fiscal implications for the state. (11-23-93)

ARGUMENTS:

For:

The bill would allow or enhance the marketing, both internationally and domestically, of a new dairy product, an ice cream mix in a dry form, benefitting both the dairy industry and the state economy. Because of its long shelf life and capacity to be stored without refrigeration, the dried ice cream product is particularly suited to markets requiring these characteristics, with the potentially greatest markets being overseas in areas with underdeveloped dairy markets (where liquid mixes are not available) and long delivery periods. Proponents of the bill, for example, say that China reportedly is prepared to buy as much as two million pounds of this product, but that it is, to say the least, embarrassing to export a product that can't be sold to retail food outlets in the state where it was developed and is produced.

Under current law, most domestic retail outlets in the food service market cannot easily or conveniently use this new dried ice cream product because of the statutory requirement that all frozen dessert ingredients be pasteurized. This requirement means that retail food outlets can't use tap or bottled water to reconstitute the product because the water would have to be pasteurized under one of the two methods specified in the act. Although all of the ingredients in the dry mix are

fully pasteurized, obviously tap water is not, which makes the product virtually unusable by most retail food outlets.

Apparently a number of other states (such as California, Georgia, and Florida) already have passed legislation that allows this new product to be reconstituted and sold in restaurants and other food outlets. It's time for Michigan to join them.

For:

The bill also would make some needed technical changes to existing law, and update its requirements in accordance with new federal standards. The bill would delete existing parts of the law that probably are unconstitutional, namely, a provision in the law that reserved to the Department of Agriculture the right to inspect dairy plants and businesses located outside of Michigan. The bill also would raise the minimum temperature of one of the two pasteurizing methods by five degrees, bringing this minimum into compliance with last year's change in federal standards.

Against:

If sanitary practices weren't used in reconstituting the dried product, the safety of the resulting soft ice cream could be compromised.

Response:

Reportedly, the Department of Agriculture will be revising the rules which implement the frozen dessert act, in order to ensure that food safety will not be compromised by allowing this dried ice cream product to be reconstituted with tap water.

POSITIONS:

The Department of Agriculture supports the bill, providing that sanitary use procedures are in effect. (12-2-93)

The Michigan Milk Producers Association supports the bill. (12-3-93)