WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1991

ENROLLED
Committee Substitute for
SENATE BILL NO. 381

(By Senator Hawse)

PASSED March 7, 1991
In Effect 90 days from Passage
AN ACT to amend and reenact articles eleven and eleven-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto two new articles, designated articles eleven-b and twenty-eight, all relating to bulk milk trade law; purpose; definitions; permit for the purchase of milk; certificates of proficiency; licenses; purchase of milk; adulteration; prohibited acts; powers and duties of commissioner; suspension, revocation or denial of permits, licenses and certificates of proficiency; hearings and appeals; criminal penalties; civil penalties; negotiated agreement; payment of fees; cooperation with other entities; confidentiality of trade secrets; dairy products and imitation dairy products standards law; purpose; definitions; permits; labeling; adulteration; misbranded; prohibited acts; approved sampling and testing methods; approved laboratories; powers and duties of commissioner; suspension, revocation or denial of permits; hearings and appeals; criminal penalties; civil penalties; negotiated agreement; payment of fees; cooperation with other entities; confidentiality of trade secrets;
frozen desserts and imitation frozen desserts law; purpose; definitions; frozen dessert manufacturer permit; labeling; adulteration; misbranded; prohibited acts; approved sampling and testing methods; approved laboratories; powers and duties of commissioner; suspension, revocation or denial of permits; hearings and appeals; criminal penalties; civil penalties; negotiated agreement; payment of fees; cooperation with other entities; confidentiality of trade secrets; and moving the article relating to vitamin and mineral enrichment of flour and bread to a new place in the chapter to allow all articles relating to milk and milk products to be sequentially grouped together.

Be it enacted by the Legislature of West Virginia:

That articles eleven and eleven-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto two new articles, designated articles eleven-b and twenty-eight, all to read as follows:

ARTICLE 11. BULK MILK TRADE LAW.

§19-11-1. Purpose.

1 It is the intent of the Legislature that this article regulate the purchase of milk on the basis of weight, measure or components in the milk; confer powers and impose duties upon the commissioner of agriculture; prescribe penalties; and provide for the enforcement thereof.

7 Furthermore, except where otherwise indicated it is the intent of the Legislature that this article substantially conform with the federal regulations promulgated under the authority of the United States secretary of health and human services in order to provide for the movement of bulk milk, cream and the products manufactured from milk and cream in interstate and intrastate commerce with a minimum of economic barriers.

(a) "Adulterated" means milk or the products manufactured from milk meeting one or several of the conditions listed in section seven of this article.

(b) "Certified tester" means any person who has passed an examination in milk testing, weighing and sampling conducted by the commissioner.

(c) "Certified weigher and sampler" means any person who has passed an examination in milk weighing and sampling conducted by the commissioner.

(d) "Clean" means the condition where no residue remains on a surface that will, or is likely to, cause adulteration or other contamination.

(e) "Commissioner" means the commissioner of agriculture of the state of West Virginia or his or her duly authorized agent.

(f) "Component" means any of the constituent parts of milk in the solids-not-fat, milk fat or water portion of the milk.

(g) "Dairy plant" means any place, premises, or establishment where milk is collected, handled, processed, stored, pasteurized or prepared for further distribution.

(h) "Distribute" means the act of transporting, holding for sale, offering for sale, selling, bartering, parceling out, giving or otherwise disposing of milk.

(i) "Embargo" means an order to withdraw milk from distribution. An embargo shall detain such milk or milk product and prohibit the transportation or distribution of milk as provided in section nine of this article.

(j) "Manufacture" means pasteurizing, ultrapasteurizing, formulating or compounding milk or packaging or preparing said product for distribution.

(k) "Milk" means the normal lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows or goats.
prior to pasteurization or ultrapasteurization. The term may include the components of milk, including cream.

(l) “Milk fat” means fat or butterfat in milk.

(m) “Milk producer” means any person who operates a dairy farm and who provides, sells or offers milk for sale.

(n) “Milk hauler” means any person who transports milk in an unpackaged form.

(o) “Person” means any individual, partnership, association, fiduciary, firm, company, corporation, or any organized group of persons whether incorporated or not. The term person extends to the agents, servants, officers and employees of the person.

(p) “Receiving station” means any place, premises, or establishment where milk in unpackaged form is received, collected, handled, stored or cooled and prepared for further transporting.

(q) “Sanitization” means the application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as practicable. Such treatment shall not adversely affect the equipment, the milk or the health of the consumers consuming the milk or milk products manufactured in the equipment and shall be a method acceptable to the commissioner.

(r) “Solids-not-fat” means all components of milk that are not milk fat or water.

(s) “Transport” means the movement of milk or milk products from one facility to another in a manner that maintains adequate temperatures and protects the product from freezing temperatures, exposure to the sun and from sources of contamination.

(t) “Transfer station” means any place, premises or establishment where milk is transferred directly from one transport tank to another.

(u) “Transport tank” means any tank which is used
for the pickup of milk or the transportation of milk to
or from any milk producer, dairy plant, receiving
station, or transfer station.

§19-11-3. Permit for the purchase of milk.

(a) A "permit for the purchase of milk" shall be
issued by the commissioner to each place of operation
of each person receiving or buying milk on the basis
of the components in the product or weight or mea-
sure regardless of the method of settlement, except
that transfer stations are exempt from this provision.
The permit shall expire on the thirty-first day of
March following date of issue.

(b) Permits are not transferable with respect to
persons or locations.

(c) Permits shall be applied for at least fifteen days
before the date that the current permit expires or
within fifteen days of the date that the person intends
to engage in business. Application for all permits shall
be made on forms supplied by the commissioner and
provide such information as may be considered rea-
sonably necessary by the commissioner. All applica-
tions shall be accompanied by a fee of fifteen dollars.
A penalty of two dollars shall be added to all permits
that are not applied for or renewed within the time
limits set forth in this subsection.

(d) Permits shall be posted prominently at the place
of operation.

§19-11-4. Certificates of proficiency.

(a) Certificates of proficiency shall be issued by the
commissioner to individuals who successfully pass an
examination given under the terms of this article.

(b) Persons requesting an examination shall pay an
examination fee of fifteen dollars at the time of the
request. Requests for certification for several tests at
one time shall be covered under one examination fee.
Reexaminations or examinations for additional tests
subsequent to the issuing of a certificate will require
an additional fee of fifteen dollars. Only persons of
11 good character shall be allowed to take this examina-
12 tion. Examinations shall be given within thirty days of
13 the request and at the time and place that the commis-
14 sioner shall designate.
15 (c) The examination to weigh and sample milk shall
16 cover the skills needed to weigh and sample milk for
17 the purpose of establishing a price based on the
18 components or weight or volume of the product.
19 (d) The examination to test milk shall cover the
20 skills needed to test, weigh, measure and sample milk
21 for the purpose of establishing a price based on the
22 components or the weight or measure of the product.
23 The examination will test the proficiency of perform-
24 ing the Babcock test and all other testing methods
25 used by that person for determination of the compo-
26 nents of milk. The certificate of proficiency shall state
27 which testing methods the applicant will be certified
28 to perform. Testers will have eight months from the
29 effective date of this article to obtain certificates for
30 specific tests and licenses shall be issued under the
31 former certificates during this time period.
32 (e) Certificates shall be issued under a serial number
33 to the person that passed the examination and shall be
34 permanent, except that in the case where the person
35 does not obtain a license as provided for under section
36 five of this article for five successive years then the
37 certificate will automatically expire.
38 (f) Certificates shall be posted prominently at the
39 person's place of business.
40 (g) Persons who fail the examination may be issued
41 a temporary waiver by the commissioner under terms
42 established by rule. The temporary waiver is intended
43 to give the person the opportunity to learn the skills
44 needed to pass the examination. No temporary waiver
45 will be issued if the interests of milk producers and
46 purchasers of milk are not protected.
47 (h) If the examination to test milk is given at a site
48 that requires travel to an out-of-state location, the
49 expenses incurred by the commissioner to travel to
§19-11-5. Licenses.

(a) Licenses shall be issued by the commissioner to certified testers, certified weighers and samplers and to laboratories performing tests for the components of milk. Licenses are not transferable.

(b) Licenses shall expire on the thirtieth day of June following date of issue: Provided, That weighers and samplers licenses issued with an expiration date of the thirty-first day of December, one thousand nine hundred ninety-one shall be extended, at no additional fee, through the thirtieth day of June, one thousand nine hundred ninety-two. Applications for all licenses shall be made on forms supplied by the commissioner and shall provide such information as may be considered reasonably necessary by the commissioner for the administration of this article. Licenses shall be applied for at least fifteen days previous to the date when the current license expires or at least five days before the person intends to do business, except for persons who operate a laboratory for the testing of milk where the initial application shall be made at least thirty days before the person intends to do business to allow for on-site inspection prior to issuing the license. The application for licenses shall be accompanied by a fee of ten dollars. A penalty of two dollars shall be added to all licenses that are not applied for or renewed within this time limit.

(c) A "milk laboratory license" shall be issued to each laboratory where a licensed milk tester performs analytical operations. The license shall not be issued until the commissioner is satisfied that the tests made in such laboratory shall be conducted by qualified persons, with adequate facilities and that such tests shall be performed accurately and according to methods approved by the commissioner.

(d) A "milk tester license" shall be issued to persons who determine the weight, measure or components of milk for the purpose of establishing a purchase price
for such milk. The license will cover the performance of each test used to determine the purchase price as listed on the person's certificate of proficiency. No test method may be used under provisions of this license until the person has obtained a certificate of proficiency for that test.

(e) A "milk weighers and samplers license" shall be issued to persons who weigh or sample milk for the purpose of establishing a purchase price for such milk and who are not involved in testing the components of milk.

(f) Licenses shall be posted prominently at the person's place of business.

§19-11-6. Purchase of milk.

(a) No determination of the weight or measure of milk may be made from a milk producer's tank that is not properly calibrated and level.

(b) No determination of the weight of milk in a transport tank may be made with a device that is not accurate.

(c) Each person obtaining a sample of milk for the purpose of establishing a purchase price shall immediately record the sample data on the receipt. The receipt shall contain the milk producer's name or number, the date and time of the sample, the temperature of the product, the measuring rod reading, the calculated weight, the name of the employer of the weigher and sampler and the signature of the weigher and sampler. A copy of the receipt shall be left with the milk producer, or seller, at the time of obtaining the sample.

(d) No test on milk may be made from a sample which is in such condition as to prevent an accurate reading of the components in the product.

(e) Only testing methods approved by the commissioner may be used. The Babcock method or other method approved by the commissioner shall be the reference method to establish calibration of other milk
fat test methods.

(f) Each person making tests of samples of milk for the purpose of establishing a purchase price for such milk shall cause the test results to be accurately recorded in an unalterable or verifiable manner. Each method for recording test results may be examined by the commissioner to determine that the test results are recorded in an unalterable or verifiable manner. All test results shall identify the milk producer or seller of the milk, the results of each test for the components in the product and an identification of the person doing the test. The records shall be filed at the place where the testing occurred for a minimum of one year and shall be available to the milk producer, other seller, or the commissioner upon request.

(g) Each person testing milk for its components shall retain the remainder of the sample when the commissioner so requests for the purpose of verifying sample results.

(h) Each person providing payment to a milk producer or seller of milk on the basis of component content or weight or measure shall provide to the milk producer or seller at each time of payment a statement showing for each milk producer or seller the pay period, total weight or measure of milk received during this period, and the average content of the component(s) of the milk used to establish the purchase price; except that this statement format shall not apply to sales between milk cooperatives and purchasers of milk from cooperatives. Nothing in this requirement may prohibit persons purchasing or receiving milk from giving a more detailed report to the milk producer or seller.


Any milk or any milk products are considered adulterated within the meaning of this article if:

(a) They bear or contain any poisonous or deleterious substance or compound in a quantity which may render it injurious to health;
6 (b) They bear or contain any added poisonous or
deleterious substance for which no safe tolerance has
been established by state or federal law or regulation
or which is found in the product in excess of an
established tolerance;

11 (c) They are or have been produced, transported, or
held under unsanitary conditions;

13 (d) They contain any substance added thereto so as
to make them appear better or of a greater value than
they are; or

16 (e) They meet or have met other conditions of
adulteration as established by rule.


1 (a) No person may have in his possession with the
intent to sell, transport or manufacture any milk
which is adulterated within the meaning of this
article.

5 (b) No person may interfere with or prohibit the
commissioner from performing the duties of his office.

7 (c) No person may fail to comply with the provisions
of an embargo order issued under this article.

9 (d) No person may fail to comply with the provisions
of a revocation, suspension or denial order issued
under this article.

12 (e) No person who in any official capacity obtains
any information under the provisions of this article
that would be considered trade secrets regarding the
quality, source and disposition of milk may use this
information to his or her own personal gain.

17 (f) No person may purchase milk in this state on the
basis of, or in any manner with reference to, the
weight or measure or the amount of components in
the product without a valid “permit for the purchase
of milk” and may not establish the price on the basis
of measurements or tests that have been performed in
a dishonest, incompetent, or inaccurate manner, or
falsify the records thereof.
(g) No person may weigh, measure, sample or test milk produced in this state for the purpose of establishing a purchase price of the product without a valid "milk tester license" and may not perform these duties in a dishonest, incompetent or inaccurate manner, falsify the records thereof, or use a testing method unless he has been certified to use that method.

(h) No person may weigh, measure or sample milk produced in this state for the purpose of establishing a purchase price of the product without a valid "milk weighers and samplers license" and may not perform these duties in a dishonest, incompetent manner or falsify the records thereof.

(i) No person may haul milk in or through this state in a tank truck that has previously been used to haul a chemical or foreign substance unless such tank truck has been cleaned and sanitized according to the rules promulgated by the commissioner prior to the hauling of such milk.

(j) No person may sell, offer for sale or expose for sale any milk that is from a herd that does not meet the requirements for animal health as set by rule under this article.


1 The commissioner has the power and duty to:

2 (a) Adopt, promulgate and enforce rules to carry out the purpose of this article;

3 (b) Have access to and enter at all reasonable times all places where milk produced in this state is stored, purchased on the basis of weight or measure or component content, transferred, transported, held or used in the state and have access to all places where samples, records, papers or documents relating to these transactions are kept;

4 (c) Inspect and photograph all places where milk produced in this state is stored, purchased on the basis of weight or measure or component content, trans-
ferred, transported, held or used; inspect, audit and

copy records and papers relating to these activities and

the sampling, testing and purchase of milk; examine

measuring and testing apparatus; examine milk and

milk samples and examine equipment used in holding

and transporting milk, except that inspections per-

formed under authority of the provisions of article

seven, chapter sixteen of this code will not be

duplicated;

(d) Examine tanks, holding containers, vehicles, and

processing equipment holding or intended to hold milk

and collect evidence, including samples, from these

areas to establish compliance with this article;

(e) Open any tank or other container containing or

believed to contain milk or samples of milk, for the

purpose of inspecting and sampling;

(f) Issue permits, certificates, waivers and licenses;

(g) Suspend, revoke or deny permits, licenses or

certificates;

(h) Collect fees and expend moneys under the terms

of this article;

(i) Give examinations for proficiency in the weigh-

ing, sampling and testing of milk;

(j) Issue embargoes for any milk which is or is

believed to be adulterated or that is not in compliance

with this article and to cause the transportation or

distribution of the milk to cease. Nothing in this article

may be construed as requiring the commissioner to

issue embargoes for minor violations of this article

when he or she believes that a written notice will

serve the public interest.

(1) When an embargo is issued, the commissioner

shall affix to such product or holding container in an

appropriate manner a tag or other marking giving

warning that such product is under embargo.

(2) The commissioner shall give written notice to the

custodian of the product under embargo describing the

violation and stating that the product is prohibited
from being transported or distributed and is ordered to be held on the premises. This notice shall notify the custodian of the right to request an immediate hearing under the rules that the commissioner shall adopt.

(3) The commissioner may take action to seize and condemn any product that is not brought into compliance with this article and the rules issued under this article within ninety days of the notice to the custodian of the product.

(4) The commissioner has the authority to issue an embargo against a perishable product, even if the practical result is to bring about the involuntary disposal of the product. The commissioner shall exercise this power using all reasonable means to determine if the product is adulterated or otherwise not in compliance with this article in as short a time frame as possible and shall promptly lift the embargo order if the product is found to be in compliance with this article;

(k) Establish, maintain and make provision for milk testing facilities; approve testing facilities; establish reasonable fees for such tests; and incur such expenses as may be necessary to maintain and operate these facilities;

(l) Conduct all sampling and testing using methods set forth in the fifteenth edition of and supplement to the Official Methods of Analysis of the Association of Official Analytical Chemists, published by the Association of Official Analytical Chemists; or the fifteenth edition of the Standard Methods for the Examination of Dairy Products, published by the American Public Health Association, Inc.; or methods approved by the commissioner;

(m) Obtain from any state court an order directing any person to submit to inspection and sampling subsequent to the refusal of any person to allow inspection and sampling;

(n) Investigate complaints, showing good cause, that the weighing and sampling or the testing of the raw
(o) Conduct hearings as provided by this article; and

(p) Assess civil penalties and refer violations to a court of competent jurisdiction: Provided, That the commissioner is not required to report for prosecution minor violations of the article when he or she believes that the public interest will be best served by a written notice.

§19-11-10. Suspension, revocation or denial of permits, licenses and certificates of proficiency.

(a) The commissioner may deny any application for a permit, license or certificate whenever said permit, license or certificate has been applied for fraudulently, the applicant has grossly interfered with the duties of the commissioner or the applicant is determined to be not in compliance with or not able to comply with this article.

(b) The commissioner may suspend a permit, license or certificate whenever a health hazard exists, the permit, license, or certificate has been obtained fraudulently, the holder has grossly interfered with the duties of the commissioner or it is determined that the permit, license or certificate holder is dishonest, deceitful, incompetent or not in compliance with or is unable to comply with this article. A person whose permit, license or certificate has been suspended shall discontinue operations covered by the permit, license or certificate during the period of the suspension. The commissioner may issue a summary suspension in cases where violations of this article constitute a hazard to the public health, safety or welfare where the public interest requires immediate action.

(1) Except for summary suspensions, the commissioner shall give written notice to the person(s) affected by the pending suspension, stating that he or she contemplates suspension of the permit, license or certificate and giving reasons therefor. The suspension notice shall appoint a time and place for hearing and
shall be mailed by certified mail to the business address of the permit, license, or certificate holder at least ten days before the date set for the hearing. The commissioner shall review the evidence presented at the hearing prior to issuing his decision.

(2) All summary suspensions shall be followed by a notice of suspension, the reasons therefor, and an opportunity for a hearing in accordance with this article.

(3) At the end of the period of suspension, the permit, license or certificate holder may resume operations without reapplication for a permit, license or certificate.

(c) The commissioner may revoke any permit, license or certificate issued under this article whenever a health hazard exists, the permit, license or certificate has been obtained fraudulently, the holder has grossly interfered with the duties of the commissioner or it is determined that the holder is dishonest, deceitful, incompetent or not in compliance with or is unable to comply with this article. Any person whose permit, license or certificate has been revoked shall immediately discontinue all operations covered under the permit, license or certificate.

(1) Before revoking any permit, license or certificate, the commissioner shall give written notice to the persons affected, stating that the revocation of the permit, license or certificate is being contemplated and giving reasons therefor. The revocation notice shall appoint a time and place for hearing and shall be mailed by certified mail to the business address of the permit, license or certificate holder at least ten days before the date set for the hearing. The commissioner shall review the evidence presented at the hearing prior to issuing his decision.

(2) At the end of the period of revocation a new permit, license or certificate will not be issued without the filing of an application, payment of the required fee and compliance with all conditions that the commissioner shall require for the reissuing of such

(a) Any person aggrieved by any action taken under this article shall be afforded the opportunity for a hearing before the commissioner under the rules promulgated by the commissioner.

(b) Hearings shall be conducted according to procedures set forth by rule.

(c) All the testimony and evidence at a hearing shall be recorded by mechanical means, which may include the use of tape recordings. The mechanical record shall be maintained for ninety days from the date of the hearing and a transcript shall be made available to the aggrieved party.

(d) Any party who feels aggrieved of the suspension, revocation or denial order may appeal within sixty days to the circuit court of the county in which the person's principal place of business is located.

§19-11-12. Criminal penalties; civil penalties; negotiated agreement.

(a) Criminal penalties. — Any person violating any provision of this article or rules adopted hereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for the first offense, and for the second or subsequent offense, shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) Civil penalties. —

(1) Any person violating a provision of this article or rules adopted hereunder may be assessed a civil penalty by the commissioner. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violations of any person, the seriousness of the viola-
tion, including any irreparable harm to the environment, any hazards to the health and safety of the public and any economic damages to the public and the demonstrated good faith of any person charged in attempting to achieve compliance with this article before and after written notification of the violation.

(2) The commissioner may assess a civil penalty of up to one thousand dollars for any violation.

(3) The civil penalty is payable to the state of West Virginia and is collectible in any manner now or hereafter provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the same, the amount of the civil penalty, together with interest at ten percent, is a lien in favor of the state of West Virginia upon the property, both real and personal, of such a person after the same has been entered and docketed to record in the county where such property is situated. The clerk of the county, upon receipt of the certified copy of such, shall enter same to record without requiring the payment of costs as a condition precedent to recording.

(c) Notwithstanding any other provision of law to the contrary, the commissioner may promulgate and adopt rules which permit consent agreements or negotiated settlements for the civil penalties assessed as a result of violation of the provisions of this article.

(d) Nothing in this article may be construed as requiring the commissioner or his representative to report for prosecution as a result of minor violations of the article when he believes that the public interest will be best served by a suitable notice of warning in writing.

(e) Upon application by the commissioner therefor, the circuit court of the county in which the violation is occurring, has occurred or is about to occur, as the case may be, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule promulgated under this article, notwithstanding the existence of other remedies at
law. Any such injunction shall be issued without bond.

(f) No state court may allow for the recovery of damages for any administrative action taken, if the court finds that there was a probable cause for the action.

(g) It is the duty of the prosecuting attorney of the county in which the violation occurred to represent the department of agriculture, to institute proceedings and to prosecute the person charged with such violation.


All fees, penalties or other moneys collected by the commissioner under the provisions of this article shall be paid into a special account and expended upon the order of the commissioner for the purpose of the enforcement and administration of this article.

§19-11-14. Cooperation with other entities.

The commissioner may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, agencies of foreign governments, and private associations in order to carry out the purpose and provisions of this article.


The commissioner may not make public information which contains or relates to trade secrets, commercial or financial information obtained from a person or privileged or confidential information: Provided, That when revealing the information is necessary to carry out the provisions of this article, this information may be revealed, subject to a protective order, to any federal, state or local agency consultant; or, may be revealed, subject to a protective order, at a closed hearing or in findings of fact issued by the commissioner.
ARTICLE 11A. DAIRY PRODUCTS AND IMITATION DAIRY PRODUCTS LAW.

§19-11A-1. Purpose.
1 Advances in food technology have resulted in the development of a variety of products of similar usage as standardized dairy products that are so similar in appearance, odor and taste that they are difficult to differentiate from dairy products. Therefore, it is the purpose of this article to regulate these products in addition to dairy products and to regulate their marketing, to protect, promote and preserve the public health and general welfare, to prevent fraud and deception in the manufacture and trade of products covered under this article, to establish labeling requirements and to establish standards of identity for dairy products and imitation dairy products intended primarily for human consumption.

Except where otherwise indicated, it is the intent of the Legislature that this article substantially conform with the federal regulations promulgated under the authority of the United States secretary of health and human services in order to provide for the movement of milk products, cheeses and frozen desserts and imitation dairy products in interstate and intrastate commerce with a minimum of economic barriers.

1 (a) “Adulterated” means dairy products or imitation dairy products meeting one or several of the conditions listed in section five of this article.

(b) “Approved laboratory” means a laboratory approved by the commissioner under section nine of this article.

(c) “Cheese” means blue, cheddar, cottage, cream, edam, gouda, gruyere, limburger, monterey jack, mozzarella, muenster, neufchatel, romano, roquefort, swiss or cold-pack cheese: pasteurized blended cheese whether made from cow or goat milk; and such other products as established by rule as a cheese.
(d) "Clean" means the condition where no residue remains on a surface that will, or is likely to, cause adulteration.

(e) "Commissioner" means the commissioner of agriculture of the state of West Virginia or his or her duly authorized agent.

(f) "Dairy products" means milk products, frozen desserts and cheeses as defined in this article which are intended for human consumption.

(g) "Distributor" means any person who distributes dairy products or imitation dairy products. The term does not include persons who are exclusively retailers.

(h) "Distribute" means the act of transporting, holding for sale, offering for sale, selling, bartering, parceling out, giving or otherwise disposing of dairy products or imitation dairy products. This term does not apply to a firm listed as a distributor on the label if the firm is not engaged in the activities listed in this subsection within the state of West Virginia.

(i) "Embargo" means an order to withdraw a dairy product or imitation dairy product from distribution or to stop a manufacturing operation. An embargo shall detain such product and prohibit the manufacturing process as provided in section ten of this article.

(j) "Freezer" means mechanical equipment used to lower the temperature of a mix, with or without incorporating air into the mix during the freezing process. Freezers may operate on a continuous or batch basis.

(k) "Frozen dessert" means ice cream, frozen custard, French ice cream, French custard ice cream, ice milk, goat's milk ice cream, goat's milk ice milk, fruit sherbet, nonfruit sherbets, frozen dietary dessert, frozen yogurt, frozen lowfat yogurt, milkshakes, any mix used to make such frozen desserts whether quiescently frozen or frozen while mixed and such other products as established by rule as a frozen dessert whether made with milk products from a cow or goat.
(l) "Imitation dairy products" means products that are manufactured, packaged or labeled so as to resemble the composition, physical and sensory properties of dairy products, which contain dairy products or milk-derived ingredients and which are intended to be used as a substitute for a dairy product.

(m) "Label" means the display of written, printed or graphic matter upon or affixed to the package in which the dairy product or imitation dairy product is distributed.

(n) "Labeling" means all representations disseminated in any manner or by any means other than by the label, which induce or which are likely or intended to induce the purchase or use of dairy products or imitation dairy products.

(o) "Manufacture" means pasteurizing, ultrapasteurizing, formulating, compounding, freezing, packaging or preparation for distribution of dairy products or imitation dairy products.

(p) "Manufacturer" means any person who manufactures dairy products or imitation dairy products.

(q) "Milk-derived ingredients" means whey, modified whey products, casein, caseinates, lactose, lactalbumins and lactoglobulins used in fluid, concentrated or dry form and such other ingredients established by rule as a milk-derived ingredient.

(r) "Milk products" means milk, acidified milk, cultured milk, concentrated milk, sweetened condensed milk, sweetened condensed skim milk, lowfat dry milk, nonfat dry milk, nonfat dry milk fortified with vitamins A and D, evaporated milk, evaporated skim milk, lowfat milk, acidified lowfat milk, cultured lowfat milk, skim milk, acidified skim milk, cultured skim milk, dry whole milk, cream, dry cream, heavy cream, light cream, light whipping cream, sour cream, acidified sour cream, eggnog, half-and-half, sour half-and-half, acidified sour half-and-half, butter, yogurt, lowfat yogurt, nonfat yogurt and such other products established by rule as a milk
product whether made with milk products from a cow or goat.

(s) "Milk fat" means fat in dairy products or in milk-derived ingredients.

(t) "Misbranded" means dairy products or imitation dairy products meeting one or several of the conditions listed in section six of this article.

(u) "Mix" means the product that when frozen produces a frozen dessert or an imitation of a frozen dessert.

(v) "Official sample" means any sample taken in accordance with the provisions of this article.

(w) "Package" means any container holding dairy products or imitation dairy products.

(x) "Pasteurized" means the process of uniformly heating every particle of a dairy product or imitation dairy product, holding it in the heated state and cooling it, in equipment under conditions of temperature and time that is established in the Grade "A" Pasteurized Milk Ordinance, 1989 revision, published by the United States department of health and human services: Provided, That nothing contained in this definition shall be construed as barring any other process which may be approved by the commissioner or the state director of health that results in products that are free from pathogens.

(y) "Person" means any individual, partnership, association, fiduciary, firm, company, corporation, or any organized group of persons whether incorporated or not. The term "person" extends to the agents, servants, officers and employees of the person.

(z) "Retailer" means the person who sells dairy products or imitation dairy products only to the ultimate consumer, who does not transport dairy products or imitation dairy products in any manner except between buildings on the same lot or within the retail premises and who sells frozen desserts from a freezer only at the firm where the freezer is located.
"Sanitization" means the application of any effective method or substance to a clean surface for the destruction, as far as practicable, of pathogens and other organisms. Such treatment shall not adversely affect the equipment, the milk or the health of the consumers consuming the products manufactured in the equipment and shall be a method acceptable to the commissioner.

"Transport" means the movement from one facility to another of dairy products and imitation dairy products in a manner that maintains adequate temperatures and protects the product from freezing temperatures, exposure to the sun and from sources of contamination.

"Ultrapasteurized" means the process of heating every particle of a dairy product or imitation dairy product at or above two hundred eighty degrees Farenheit for at least two seconds either before or after packaging so as to produce a product which has an extended shelf life under refrigerated conditions.


(a) Permits are not transferrable with respect to persons or locations.

(b) Application for all permits shall be made on forms supplied by the commissioner and shall provide such information as may be considered necessary by the commissioner.

(c) Permits shall be posted prominently at the place of operation.

(d) A dairy products distributors permit shall be issued by the commissioner to each person distributing dairy products in this state, even if there is no permanent location maintained in this state. Persons maintaining multiple permanent locations in this state or distributing into this state from several locations shall obtain a permit for each location. Application shall be made at least fifteen days before the date that the current permit expires or within fifteen days of the date that the person intends to engage in business.
The application shall be accompanied by a fee of fifteen dollars. A penalty of two dollars shall be added to all permits that are not applied for or renewed within this time limit. Permits shall expire on the thirty-first day of March following date of issue: Provided, That firms that have a permit with an expiration date of the thirtieth day of June, one thousand nine hundred ninety-one, on the date of implementation of this article shall be allowed to make application for a dairy products permit for the period of the first day of July, one thousand nine hundred ninety-one through the thirty-first day of March, one thousand nine hundred ninety-two at a fee of ten dollars.

(e) A dairy products distributors permit is not required for persons who distribute only aseptically processed and hermetically sealed dairy products or frozen desserts, dry dairy products or dry frozen dessert mixes.

(f) A temporary marketing permit may be issued by the commissioner for the marketing of dairy products that are not covered by an established standard. The temporary permit may be issued according to procedures established by rule. Persons applying for a temporary marketing permit shall have a valid dairy products distributors permit. There is no fee for the permit.


(a) All packages of dairy products or imitation dairy products shall have a label upon or affixed to the package. The label shall be legible and of a print size and style easily readable by the ordinary citizen. The information required in this section shall be on each label and shall be stated in English.

(b) The label shall contain the following information:

(1) The name of the product;

(2) The quantity of the contents;

(3) The name and address of the manufacturer,
packer or distributor: Provided, That the manufacturer's plant code or name and address shall always appear on the label for Grade "A" products; and

(4) Such other information as the commissioner shall require by rule.


Any dairy product or imitation dairy product referred to in this article is considered adulterated within the meaning of this article if it:

(a) Bears or contains any poisonous or deleterious substance or compound in a quantity which may render it injurious to health;

(b) Contains any coloring substance or flavoring matter that may be deleterious to health;

(c) Bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by state or federal law or regulation or which is found in the product in excess of an established tolerance;

(d) Does not meet the quality standards set forth in this article;

(e) Is or has been manufactured under conditions not in conformity with the provisions of this article;

(f) Is or has been produced, processed, prepared or held under unsanitary conditions;

(g) Has not been manufactured according to the provisions of the applicable standard of identity or that contains pathogens after manufacture;

(h) Is or has been stored in a package composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(i) Contains any substance added thereto or mixed or packed therewith so as to make it appear better or of greater value than it is; or

(j) Meets or has met other conditions of adulteration

1 Any dairy product or imitation dairy product referred to in this article is considered misbranded within the meaning of this article if:

4 (a) It is labeled as a product for which there is a standard established by this article and it does not conform to such standards;

7 (b) Its label or labeling is false or misleading in any particular;

9 (c) It is not labeled in accordance with the requirements of this article;

11 (d) Any word, statement or other information required by this article to appear on the label or the labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs or devices in the labeling and in such terms as to render it likely to be read or understood by the ordinary person under customary conditions of purchase and use;

19 (e) Damage or inferiority has been concealed by any means; or

21 (f) It meets or has met other conditions of misbranding as established by rule.


1 (a) No person may distribute, sell, offer for sale, hold for sale or have in his possession with the intent to sell any dairy product or imitation dairy product which is adulterated or misbranded within the meaning of this article.

6 (b) No person may interfere with or prohibit the commissioner from performing the duties of his office.

8 (c) No person may fail to comply with the provisions of an embargo order issued under this article.

10 (d) No person may fail to comply with the provisions of a revocation, suspension or denial order issued
under this article.

(e) No person who, in any official capacity, obtains any information under the provisions of this article that would be considered trade secrets regarding the quality, source and disposition of dairy products or imitation dairy products may use this information to his or her own personal gain.

(f) No person may bring into, send into or receive into this state, distribute within this state or have in storage dairy products without a valid dairy products distributors permit, except that retailers are exempt from this requirement.

(g) No person may distribute, sell, offer for sale, hold for sale or have in their possession with intent to sell, a dairy product or imitation dairy product in a container if the whole or any part of the item(s) required by this article to be on the label have been altered, mutilated, destroyed, obliterated, removed, concealed, replaced or otherwise falsely represented.

(h) No person may alter or deface any part of the items required by this article to be on the label after packaging.

(i) No person may offer for sale, transport, or distribution dairy products or imitation dairy products subsequent to packaging that have been allowed to exceed a temperature of forty-five degrees Farenheit for refrigerated noncultured products or zero degrees Farenheit for frozen products, except that dairy products or imitation dairy products containing active cultures shall not be allowed to exceed a temperature of fifty degrees Farenheit; and cheeses or imitations of cheeses shall not be allowed to reach temperatures that will allow for spoilage or mold organisms, other than those mold organisms that may be in the product as a result of the process used to make the product, to grow on or in the product. Dairy products or imitation dairy products that have been aseptically processed and hermetically sealed and dry dairy products or dry imitation dairy products are exempted from the requirements of this subsection.
(j) No person may transport dairy products or imitation dairy products in a vehicle that has previously been used to haul a chemical or foreign substance unless such vehicle has been cleaned according to rules promulgated by the commissioner.

(k) No person may sell or reprocess for human consumption dairy products or imitation dairy products that are in, or have been in, broken or opened retail packages that have been out of the possession of the manufacturer. Nothing in this provision prohibits the return of these containers to the distributor for inspection purposes only.

(l) No person may distribute or use for human consumption products manufactured from packaged dairy products or imitation dairy products that have been out of the possession of the manufacturer.

(m) No person may distribute or use dairy products or imitation dairy products that have been repasteurized subsequent to transportation in bulk, except for products that have been handled in a sanitary manner and maintained at forty-five degrees Farenheit or less prior to repasteurization.

(n) No person may sell, offer for sale or expose for sale any product containing milk products or milk-derived products that are from a herd that does not meet the requirements for animal health as set by rules promulgated under this article.

(o) No person may sell or exchange or have in his possession with intent to sell or exchange in this state, any milk powder originating from any country or area outside the United States with reported cases of rinderpest, African swine fever or foot and mouth disease unless that product is imported into this state under conditions set by rules promulgated under this article.

§19-UA-8. Approved sampling and testing methods.

(a) All sampling and testing methods shall be those set forth in the fifteenth edition of and supplement to the Official Methods of Analysis of the Association of
The Babcock method or other methods approved by the commissioner for determining the milk fat content of dairy products shall be used as the reference method to establish and maintain the calibration of automated testing instruments.


(a) Each person who desires to have his laboratory approved by the commissioner for testing official dairy product or imitation dairy product samples as herein provided shall first satisfy the commissioner that tests to be made in such laboratory shall be conducted by qualified persons, with adequate facilities and that such tests are performed accurately and according to methods approved by the commissioner.

(b) For the purpose of determining whether a laboratory shall be designated as an approved laboratory the commissioner shall designate a qualified person or persons to inspect the laboratory, its equipment, facilities and personnel at the expense of the applying laboratory, and thereafter may have similar inspections made at the expense of the approved laboratory for the purpose of determining whether or not such approval should be continued.

(c) The commissioner may accept the test results of any laboratory that has been approved under this article: Provided, That the commissioner shall not accept the test results of any approved laboratory for samples manufactured, distributed or used by a firm the same as or related to the approved laboratory.


The commissioner has the power and duty to:

(a) Adopt, promulgate and enforce rules to carry out
the purpose of this article, including establishing
definitions and standards of quality and identity for
dairy products and imitation dairy products;

(b) Have access to and enter at all reasonable times
all places where dairy products or imitation dairy
products are manufactured, packaged, stored, held,
transported, distributed or used in this state and
where records, papers or documents relating to these
transactions are kept;

c) Inspect and photograph all places where dairy
products or imitation dairy products are manufac-
tured, packaged, stored, held, transported, distributed
or used, inspect, audit and copy records and papers
relating to the manufacturing, distribution, sampling,
testing and sale of dairy products or imitation dairy
products, examine measuring and testing apparatus;
and examine equipment used in manufacturing and
transportation of dairy products or imitation dairy
products, except that inspections performed under
authority of the provisions of article seven, chapter
sixteen of this code will not be duplicated;

d) Examine and sample dairy products or imitation
dairy products, including, but not limited to, ingre-
dients and packages that are used in the manufacture
of these products, and may open any package contain-
ing or believed to contain any dairy product or
imitation dairy product, or an ingredient to be used in
the manufacture of these products for the purpose of
inspecting and sampling;

e) Issue, suspend, revoke or deny permits;

(f) Collect fees and expend moneys under the terms
of this article;

(g) Collect evidence, including samples, of the
condition of equipment, holding tanks, storage rooms
and vehicles used, or intended to be used in the
processing, packaging, transporting or holding of dairy
products or imitation dairy products;

(h) Examine the labels and labeling of dairy pro-
ducts or imitation dairy products;
(i) Issue embargoes for any dairy product or imitation dairy product which is or is believed to be adulterated, misbranded or that is not in compliance with this article and to cause the manufacturing and distributing of same to cease. Nothing in this article may be construed as requiring the commissioner to issue embargoes for minor violations of this article when he or she believes that a written notice of the violation will serve the public interest.

(1) When an embargo is issued, the commissioner shall affix to such product or manufacturing device in an appropriate manner a tag or other marking giving warning that such product is under embargo.

(2) The commissioner shall give written notice to the custodian of the product or process under embargo describing the violation and stating that the product is prohibited from being sold, offered for sale, exposed for sale or distributed and is ordered to be held on the premises and, further that all manufacturing processes in the state of West Virginia for this product shall cease until the embargo is released. This notice shall notify the custodian of the right to request an immediate hearing under the rules adopted by the commissioner.

(3) The commissioner may take action to seize and condemn any product that is not brought into compliance with this article and the rules issued within ninety days of the notice to the custodian of the product.

(4) The commissioner has the authority to issue an embargo against a perishable product, even if the practical result is to bring about the involuntary disposal of the product. The commissioner shall exercise this power using all reasonable means to determine if the product is adulterated or otherwise not in compliance with this article in as short a time frame as possible and shall promptly lift the embargo order if the product is found to be in compliance with this article;

(j) Establish, maintain and make provision for dairy
(k) Approve sampling and testing methods and evaluate and approve official laboratories;

(l) Obtain from any state court an order directing any person to submit to inspection and sampling subsequent to the refusal of any person to allow inspection and sampling;

(m) Conduct hearings as provided by this article; and

(n) Assess civil penalties and refer violations to a court of competent jurisdiction: Provided, That the commissioner is not required to report for prosecution minor violations of the article when he or she believes that the public interest will be best served by a written notice of violation.

§19-17A-11. Suspension, revocation or denial of permits.

(a) The commissioner may deny any application for a permit whenever said permit has been applied for fraudulently, the applicant has grossly interfered with the duties of the commissioner, or the applicant is determined to be not in compliance with or not able to comply with this article.

(b) The commissioner may suspend a permit whenever a health hazard exists or is believed to exist, the permit has been obtained fraudulently, the holder has grossly interfered with the duties of the commissioner or it is determined that the permit holder is dishonest, deceitful, incompetent or not in compliance with or is unable to comply with this article. Any person whose permit has been suspended shall immediately discontinue all operations covered under the permit. The commissioner may issue a summary suspension in cases where violations of this article constitute a hazard to the public health, safety or welfare or where the public interest requires immediate action.
(1) Except for summary suspensions, the commissioner shall give written notice to the persons affected of the pending suspension, stating that the suspension of the permit is being contemplated and giving reasons therefor. The suspension notice shall appoint a time and place for hearing and shall be mailed by certified mail to the business address of the permit holder at least ten days before the date set for the hearing. The commissioner shall review the evidence presented at the hearing prior to issuing his decision.

(2) All summary suspensions shall be followed by a notice of suspension, the reasons for the suspension, and an opportunity for a hearing in accordance with this article.

(3) At the end of the period of suspension, the permit holder may resume operations without reapplication for a permit.

(c) The commissioner may revoke any permit issued under this article whenever a health hazard exists, the permit has been obtained fraudulently, the holder has grossly interfered with the duties of the commissioner or it is determined that the holder is dishonest, deceitful, incompetent or not in compliance with or is unable to comply with this article. Any person whose permit has been revoked shall immediately discontinue all operations covered under the permit.

(1) Before revoking any permit the commissioner shall give written notice to the persons affected, stating that the revocation of the permit is being contemplated and giving reasons for the revocation. The revocation notice shall appoint a time and place for hearing and shall be mailed by certified mail to the business address of the permit holder at least ten days before the date set for the hearing. The commissioner shall review the evidence presented at the hearing prior to issuing his decision.

(2) At the end of the period of revocation the permit will not be issued without an application, payment of required fee and the compliance with all conditions that the commissioner shall require for the reissuing

(a) Any person aggrieved by any action taken under this article shall be afforded the opportunity for a hearing before the commissioner under rules promulgated by the commissioner.

(b) Hearings shall be conducted according to procedures set forth by rule.

(c) All the testimony and evidence at a hearing shall be recorded by mechanical means, which may include the use of tape recordings. The mechanical record shall be maintained for ninety days from the date of the hearing and a transcript shall be made available to the aggrieved party.

(d) Any party who feels aggrieved of the suspension, revocation or denial order may appeal within sixty days to the circuit court of the county in which the person has located its principal place of business or to the circuit court of Kanawha County.

§19-11A-13. Criminal penalties; civil penalties; negotiated agreement.

(a) Criminal penalties. — Any person violating any provision of this article or rule adopted hereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for the first offense, and for the second or subsequent offense, shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) Civil penalties. —

(1) Any person violating a provision of this article or rules adopted hereunder may be assessed a civil penalty by the commissioner. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous
violations of any person, the seriousness of the violation, including any irreparable harm to the environment, any hazards to the health and safety of the public and any economic damages to the public and the demonstrated good faith of any person charged in attempting to achieve compliance with this article before and after written notification of the violation.

(2) The commissioner may assess a civil penalty of up to one thousand dollars for a violation.

(3) The civil penalty is payable to the state of West Virginia and is collectible in any manner now or hereafter provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the same, the amount of the civil penalty, together with interest at ten percent, is a lien in favor of the state of West Virginia upon the property, both real and personal, of such a person after the same has been entered and docketed to record in the county where such property is situated. The clerk of the county, upon receipt of the certified copy of such, shall enter same to record without requiring the payment of costs as a condition precedent to recording.

(c) Notwithstanding any other provision of law to the contrary, the commissioner may promulgate and adopt rules which permit consent agreements or negotiated settlements for the civil penalties assessed as a result of violation of the provisions of this article.

(d) Upon application by the commissioner for an injunction, the circuit court of the county in which the violation is occurring, had occurred or is about to occur, as the case may be, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule promulgated under this article, notwithstanding the existence of other remedies at law. Any such injunction shall be issued without bond.

(e) No state court may allow for the recovery of damages for any administrative action taken, if the court finds that there was a probable cause for such

1 All fees, penalties or other moneys collected by the commissioner under the provisions of this article shall be paid into a special account and expended upon the order of the commissioner for the purpose of the enforcement and administration of this article.


1 The commissioner may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, agencies of foreign governments, and private associations in order to carry out the purpose and provisions of this article.


1 The commissioner may not make public information which contains or relates to trade secrets, commercial or financial information obtained from a person or privileged or confidential information: Provided, That when the information is necessary to carry out the provisions of this article, this information may be revealed, subject to a protective order, to any federal, state or local agency consultant or may be revealed, subject to a protective order, at a closed hearing or in findings of fact issued by the commissioner.

ARTICLE 11B. FROZEN DESSERTS AND IMITATION FROZEN DESSERTS LAW.

§19-11B-1. Purpose.

1 The legislative intent of this article is to protect, promote and preserve the public health and general welfare and to prevent fraud and deception in the manufacture, sale, offering for sale, exposing for sale,
and possession with intent to sell, frozen desserts and products resembling frozen desserts for human consumption. Further, the Legislature recognizes that advances in food technology have resulted in the development of a variety of products of similar usage as standardized frozen desserts that are so similar in appearance, odor and taste that they are difficult to differentiate from frozen desserts. Therefore, this article shall regulate these products in addition to frozen desserts, establish definitions and standards for such foods or labeling requirements by rules which effect their orderly marketing and insure similar sanitary standards for frozen desserts and imitation frozen desserts.

Except where otherwise indicated, it is the intent of the Legislature that this article substantially conform with the federal regulations promulgated under the authority of the United States secretary of health and human services in order to provide for the movement of frozen desserts and imitation frozen desserts in interstate and intrastate commerce with a minimum of economic barriers.


(a) "Adulterated" means frozen desserts or imitation frozen desserts meeting one or several of the conditions listed in section five of this article.

(b) "Approved laboratory" means a laboratory approved by the commissioner under section nine of this article.

(c) "Clean" means the condition where no residue remains on a surface that will, or is likely to, cause adulteration.

(d) "Commissioner" means the commissioner of agriculture of the state of West Virginia or his or her duly authorized agent.

(e) "Distributor" means any person who distributes frozen desserts or imitation frozen desserts. The term does not include persons who are exclusively retailers and who are not engaged in the transportation of
(f) "Distribute" means the act of transporting, holding for sale, offering for sale, selling, bartering, parceling out, giving or otherwise disposing of frozen desserts or imitation frozen desserts.

(g) "Embargo" means an order to withdraw a frozen dessert or imitation frozen dessert from distribution or to stop a manufacturing operation as provided in section ten of this article.

(h) "Freezer" means mechanical equipment used to lower the temperature of a mix, with or without incorporating air into the mix during the freezing process. Freezers may operate on a continuous or batch basis.

(i) "Frozen dessert" means ice cream, frozen custard, French ice cream, French custard ice cream, ice milk, goat's milk ice cream, goat's milk ice milk, fruit sherbet, nonfruit sherbets, frozen dietary dessert, frozen yogurt, frozen lowfat yogurt, milkshakes, any mix used to make such frozen desserts whether quiescently frozen or frozen while mixed and such other products as established by rule as a frozen dessert whether made with milk products from a cow or goat.

(j) "Imitation frozen desserts" means products that are manufactured, packaged or labeled so as to resemble the composition, physical and sensory properties of frozen desserts which contain milk products or milk-derived ingredients whether from a cow or a goat and which are intended to be used as a substitute for a frozen dessert. This term includes any mix used to manufacture imitation frozen desserts.

(k) "Label" means the display of written, printed or graphic matter upon or affixed to the package in which the frozen dessert or imitation frozen dessert is distributed.

(l) "Labeling" means all representations disseminated in any manner or by any means other than by the label, which induce or which are likely or
intended to induce the purchase or use of frozen desserts or imitation frozen desserts.

(m) “Manufacture” means pasteurizing, ultrapasteurizing, formulating, compounding, freezing, processing or packaging a mix into a frozen dessert or imitation frozen dessert.

(n) “Manufacturer” means any person who manufactures frozen desserts or imitation frozen desserts.

(o) “Milk-derived ingredients” means whey, modified whey products, casein, caseinates, lactose, lactalbumins and lactoglobulins used in fluid, concentrated or dry form and other ingredients as established by rule as a milk-derived ingredient.

(p) “Milk products” means milk, acidified milk, cultured milk, concentrated milk, sweetened condensed milk, sweetened condensed skim milk, lowfat dry milk, nonfat dry milk, nonfat dry milk fortified with vitamins A and D, evaporated milk, evaporated skim milk, lowfat milk, acidified lowfat milk, cultured lowfat milk, skim milk, acidified skim milk, cultured skim milk, dry whole milk, cream, dry cream, heavy cream, light cream, light whipping cream, sour cream, acidified sour cream, eggnog, half-and-half, sour half-and-half, acidified sour half-and-half, butter, yogurt, lowfat yogurt, nonfat yogurt and such other products as established by rule as a milk product whether made with milk products from a cow or goat.

(q) “Milk fat” means fat in frozen desserts or imitation frozen desserts.

(r) “Misbranded” means frozen desserts or imitation frozen desserts meeting one or several of the conditions listed in section six of this article.

(s) “Mix” means the product made from wholesome ingredients that when frozen shall produce a frozen dessert or imitation frozen dessert.

(t) “Official sample” means any sample taken in accordance with the provisions of this article.
(u) "Package" means any container holding frozen desserts or imitation frozen desserts.

(v) "Pasteurized" means the process of uniformly heating every particle of a mix, holding in the heated state and cooling it, in equipment under conditions of temperature and time that is established in Grade "A" Pasteurized Milk Ordinance, 1989 revision, published by the United States department of health and human services: Provided, That nothing contained in this definition may be construed as barring any other process which may be approved by the commissioner or the state director of health that results in products that are free from pathogens.

(w) "Person" means any individual, partnership, association, fiduciary, firm, company, corporation or any organized group of persons whether incorporated or not. The term person extends to the agents, servants, officers and employees of the person.

(x) "Rerun" means a frozen dessert or imitation frozen dessert that is removed from a freezer and is intended to be reprocessed.

(y) "Retailer" means the person who sells frozen desserts or imitation frozen desserts to the ultimate consumer and who does not transport frozen desserts or imitation frozen desserts to or from the location of the freezer.

(z) "Sanitization" means the application of any effective method or substance to a clean surface for the destruction of pathogens, and other organisms as far as practicable. Such treatment shall not adversely affect the equipment, the dairy product or the health of the consumers consuming the products manufactured in the equipment and shall be a method acceptable to the commissioner.

(aa) "Transport" means the movement from one facility to another in a manner that maintains adequate temperatures and protects the product from freezing temperatures, exposure to the sun and from sources of contamination.
(bb) "Ultrapasteurized" means the process of heating every particle of a dairy product or mix at or above two hundred eighty degrees Fahrenheit for at least two seconds either before or after packaging so as to produce a product which has an extended shelf life under refrigerated conditions.

§19-11B-3. Frozen dessert manufacturer permit.

(a) A "frozen desserts manufacturer permit" shall be issued to each manufacturer of frozen desserts or imitation frozen desserts. Permits shall be issued for each place of operation and shall not be transferable with respect to persons or locations. The permit may be applied to the operation of several freezers at one location. Each mobile unit shall be considered as operating at one location.

(b) Application shall be made on forms supplied by the commissioner and provide such information as may be considered necessary by the commissioner. Permits shall be applied for at least fifteen days before the date that the current permit expires or within fifteen days of the date that the person intends to engage in business. The application shall be accompanied by a fee of twenty dollars. A penalty of two dollars shall be added to all permits that are not applied for or renewed within this time limit. The permits shall expire on the thirty-first day of March following date of issue: Provided, That firms that have a permit with an expiration date of the thirtieth day of June, one thousand nine hundred ninety-one, on the date of implementation of this article shall be allowed to make application for a frozen desserts manufacturer permit for the period of the first day of July, one thousand nine hundred ninety-one through the thirty-first day of March, one thousand nine hundred ninety-two at a fee of ten dollars.

(c) Permits shall be posted prominently at the place of operation.

§19-11B-4. Labeling.

(a) All packages of frozen desserts or imitation
2 frozen desserts shall have a label upon or affixed to the package. The label shall be legible and of a print size and style easily readable by the ordinary citizen. The information required in this section shall be on each label and shall be stated in English.

7 (b) The label shall contain the following information:
8 (1) The name of the product;
9 (2) The quantity of the contents;
10 (3) The name and address of the manufacturer, packer or distributor; and
11 (4) Such other information as the commissioner shall establish by rule.

§19-11B-5. Adulteration.

1 Any frozen dessert or imitation frozen dessert referred to in this article is considered adulterated within the meaning of this article if it:

4 (a) Bears or contains any poisonous or deleterious substance or compound in a quantity which may render it injurious to health;

7 (b) Contains any coloring substance or flavoring matter that may be deleterious to health;

9 (c) Bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by state or federal law or regulation or in excess of an established tolerance;

13 (d) Does not meet the quality standards set forth in this article;

15 (e) Is or has been manufactured under conditions not in conformity with the provisions of this article;

17 (f) Is or has been produced, processed, prepared or held under unsanitary conditions;

19 (g) Is or has been stored in a package composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health:

1 Any frozen dessert or imitation frozen dessert referred to in this article is considered misbranded within the meaning of this article if:

2 (a) It is labeled as a product for which there is a standard established by this article and it does not conform to such standards;

3 (b) Its label or labeling is false or misleading in any particular;

4 (c) It is not labeled in accordance with this article;

5 (d) Any word, statement or other information required by this article to appear on the label or the labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs, or devices in the labeling and in such terms as to render it likely to be read or understood by the ordinary person under customary conditions of purchase and use;

6 (e) If damage or inferiority has been concealed by any means; or

7 (f) It meets or has met other conditions of misbranding as established by rule.


1 (a) No person may distribute, sell, offer for sale, hold for sale or have in his possession with the intent to sell any frozen dessert or imitation frozen dessert which is adulterated or misbranded within the meaning of this article.

2 (b) No person may interfere with or prohibit the commissioner from performing the duties of his office.

3 (c) No person may fail to comply with the provisions
of an embargo order issued under section ten of this article.

d) No person may fail to comply with the provisions of a revocation, suspension or denial order issued under section eleven of this article.

e) No person who in any official capacity obtains any information under the provisions of this article that would be considered trade secrets regarding the quality, source and disposition of frozen desserts or imitation frozen desserts may use this information to his or her own personal gain.

f) No person may dispense or manufacture frozen desserts or imitation frozen desserts without a valid frozen desserts manufacturer permit.

g) No person may distribute, sell, offer for sale, hold for sale or have in their possession with intent to sell, a frozen dessert or imitation frozen dessert in a container if the whole or any part of the items required by this article to be on the label have been altered, mutilated, destroyed, obliterated, removed, concealed, replaced or otherwise falsely represented.

h) No person may alter or deface any items required by this article to be on the label after packaging.

i) No person may offer for sale, transport, or distribution, frozen desserts or imitation frozen desserts subsequent to their packaging that have been allowed to exceed a temperature of forty-five degrees Fahrenheit for refrigerated noncultured products or zero degrees Fahrenheit for frozen products, except that mixes containing active cultures shall not be allowed to exceed a temperature of fifty degrees Fahrenheit. Mixes that have been sterilized and hermetically sealed and dry mixes are exempted from this provision.

j) No person may haul frozen desserts or imitation frozen desserts in a vehicle that has previously been used to haul a chemical or foreign substance unless such vehicle has been cleaned according to the rules...
promulgated by the commissioner prior to the hauling
of such frozen dessert or imitation frozen dessert.

(k) No person may sell or reprocess frozen desserts
or imitation frozen desserts for human consumption
that are in or have been in broken or opened retail
packages. Nothing in this provision may prohibit the
return of these containers to the manufacturer or
distributor for inspection purposes only.

(l) No person may distribute or use for human
consumption products manufactured from returned
packaged frozen desserts or imitation frozen desserts.

(m) No person may distribute or use mix that has
been repasteurized subsequent to transportation in
bulk, except for products that have been handled in a
sanitary manner and maintained at forty-five degrees
Fahrenheit or less prior to repasteurization.

(n) No person may sell, offer for sale or expose for
sale any product containing milk products or milk-
derived products that are from a herd that does not
meet the requirements for animal health as required
by rules promulgated under this article.

§19-11B-8. Approved sampling and testing methods.

(a) All sampling and testing methods shall be those
set forth in the fifteenth edition of and supplement to
the Official Methods of Analysis of the Association of
Official Analytical Chemists, published by the Associa-
tion of Official Analytical Chemists; or the fifteenth
dition of the Standard Methods for the Examination
of Dairy Products, published by the American Public
Health Association, Inc.; or methods approved by the
commissioner as provided by rule.

(b) The Babcock method or other methods approved
by the commissioner for determining the milk fat
content of frozen desserts shall be used as the refer-
ence method to establish and maintain the calibration
of automated testing instruments.


(a) Each person who desires to have his laboratory
approved by the commissioner for testing official
frozen dessert or imitation frozen dessert samples as
provided in this section shall first satisfy the commis-
sioner that tests to be made in such laboratory shall be
conducted by qualified persons with adequate facilities
and that such tests shall be performed accurately and
according to approved methods.

(b) For the purpose of determining whether or not
a laboratory shall be designated as an approved
laboratory the commissioner shall designate a quali-
fied person or persons to inspect the laboratory, its
equipment, facilities and personnel at the expense of
the applying laboratory, and thereafter may have
similar inspections made at the expense of the apply-
ing laboratory for the purpose of determining whether
or not such approval should be continued.

(c) The commissioner may accept the test results of
any laboratory that has been approved under this
article: Provided, That the commissioner shall not
accept the test results of any approved laboratory for
samples manufactured, distributed or used by a firm
related to or owned by the approved laboratory.

The commissioner has the power and duty to:

(a) Adopt, promulgate and enforce rules to carry out
the purpose of this article;

(b) Have access to and enter at all reasonable times
all places where frozen desserts or imitation frozen
desserts are manufactured, stored, held, transported,
distributed or used in the state and where records,
papers or documents relating to these transactions are
kept;

(c) Inspect and photograph all places where frozen
desserts or imitation frozen desserts are manufac-
tured, packaged, stored, held, transported or distrib-
uted; inspect, audit and copy records and papers
relating to the manufacturing, distribution, sampling,
testing and sale of frozen desserts or imitation frozen
desserts; examine measuring and testing apparatus;
and examine equipment used in manufacturing and transportation of frozen desserts or imitation frozen desserts, except that inspections performed under authority of the provisions of article seven, chapter sixteen of this code will not be duplicated;

(d) Sample frozen desserts or imitation frozen desserts, including, but not limited to, ingredients and packages that are used in the manufacture of these products and may open any package containing or believed to contain any frozen dessert or imitation frozen dessert or an ingredient to be used in the manufacture of a frozen dessert or imitation frozen dessert for the purpose of inspecting and sampling;

(e) Issue, suspend, revoke or deny permits;

(f) Collect fees and expend moneys under the terms of this article;

(g) Collect evidence, including samples, of the condition of equipment, holding tanks, storage rooms and vehicles used, or intended to be used, in the processing, packaging, transporting or holding of frozen desserts or imitation frozen desserts;

(h) Examine the labels and labeling of frozen desserts and imitation frozen desserts;

(i) Issue embargoes for any product which is or is believed to be adulterated, misbranded or that is not in compliance with this article and to cause the manufacturing and distributing of same to cease. Nothing in this article may be construed as requiring the commissioner to issue embargoes for minor violations of this article when he or she believes that a written notice of violation will serve the public interest.

(1) When an embargo is issued, the commissioner shall affix to such product or manufacturing device in an appropriate manner a tag or other marking giving warning that such product is under embargo.

(2) The commissioner shall give written notice to the custodian of the product or process under embargo
describing the violation and stating that the product is prohibited from being sold, offered for sale, exposed for sale or distributed and is ordered to be held on the premises and, further, that all manufacturing processes for this product shall cease until the embargo is released. This notice shall notify the custodian of the right to request an immediate hearing under the rules adopted by the commissioner.

(3) The commissioner shall take action to seize and condemn any product that cannot be brought into compliance with this article and the rules issued under the same within ninety days of notice to the custodian of the product.

(4) The commissioner has the authority to issue an embargo against a perishable product, even if the practical result is to bring about the involuntary disposal of the product. The commissioner shall exercise this power using all reasonable means to determine if the product is adulterated or otherwise not in compliance with this article in as short a time frame as possible and shall promptly lift the embargo order if the product is found to be in compliance with this article;

(j) Establish, maintain and make provision for frozen dessert and imitation frozen dessert testing facilities; to establish reasonable fees for such tests and to incur such expenses as may be necessary to maintain and operate these facilities;

(k) Approve sampling and testing methods, and evaluate and approve official laboratories;

(l) Obtain from any state court an order directing any person to submit to inspection and sampling subsequent to the refusal of any person to allow inspection and sampling;

(m) Conduct hearings as provided by this article; and

(n) Assess civil penalties and refer violations to a court of competent jurisdiction: Provided, That the commissioner is not required to report for prosecution
minor viciations of the article when he or she believes that the public interest will be best served by a suitable notice in writing.

§19-11B-11. Suspension, revocation or denial of permits.

(a) The commissioner may deny any application for a permit whenever said permit has been applied for fraudulently, the applicant has grossly interfered with the duties of the commissioner or the applicant is determined to be not in compliance with or not able to comply with this article.

(b) The commissioner may suspend a permit whenever a health hazard exists or is believed to exist, said permit has been obtained fraudulently, the holder has grossly interfered with the duties of the commissioner or it is determined that the permit holder is dishonest, deceitful, incompetent or not in compliance with or is unable to comply with the provisions of this article. Any person whose permit has been suspended shall immediately discontinue all operations covered under the permit. The commissioner may issue a summary suspension in cases where violations of this article constitute a hazard to the public health, safety or welfare where the public interest requires immediate action.

(1) Except for summary suspensions, the commissioner shall give written notice to the persons affected of the pending suspension, stating that suspension of the permit is being contemplated and giving reasons therefor. The suspension notice shall appoint a time and place for hearing and shall be mailed by certified mail to the business address of the permit holder at least ten days before the date set for the hearing. The commissioner shall review the evidence presented at the hearing prior to issuing his decision.

(2) All summary suspensions shall be followed by a notice of suspension, the reasons for the suspension and an opportunity for a hearing in accordance with the provisions of this article.

(3) At the end of the period of suspension, the
permit holder may resume operations without reapplication for a permit.

(c) The commissioner may revoke any permit issued under this article whenever a health hazard exists, the permit has been obtained fraudulently, the holder has grossly interfered with the duties of the commissioner or it is determined that the holder is dishonest, deceitful, incompetent or not in compliance with or is unable to comply with this article. Any person whose permit has been revoked shall immediately discontinue all operations covered under the permit.

(1) Before revoking any permit, the commissioner shall give written notice to the persons affected, stating that revocation of the permit is being contemplated and giving reasons for the revocation. The revocation notice shall appoint a time and place for hearing and shall be mailed by certified mail to the business address of the permit holder at least ten days before the date set for the hearing. The commissioner shall review the evidence presented at the hearing prior to issuing his decision.

(2) At the end of the period of revocation, the permit will not be issued without an application, payment of the required fee and compliance with all conditions that the commissioner shall require for the reissuing of such permit.


(a) Any person aggrieved by any action taken under this article shall be afforded the opportunity for a hearing before the commissioner under the rules promulgated by the commissioner.

(b) Hearings shall be conducted in accordance with procedures set forth by rule.

(c) All the testimony and evidence at a hearing shall be recorded by mechanical means, which may include the use of tape recordings. The mechanical record shall be maintained for ninety days from the date of the hearing and a transcript shall be made available to the aggrieved party.
(d) Any party who feels aggrieved of the suspension, revocation or denial order may appeal within sixty days to the circuit court of the county in which the person has located its principal place of business.

§19-11B-13. Criminal penalties; civil penalties; negotiated agreement.

(a) Criminal penalties. — Any person violating any provision of this article or rule adopted hereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for the first offense, and for the second or subsequent offense, shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) Civil penalties. —

(1) Any person violating a provision of this article or rules adopted hereunder may be assessed a civil penalty by the commissioner. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violations of any person, the seriousness of the violation, including any irreparable harm to the environment, any hazards to the health and safety of the public and any economic damages to the public and the demonstrated good faith of any person charged in attempting to achieve compliance with this article before and after written notification of the violation.

(2) The commissioner may assess a civil penalty of up to one thousand dollars for a violation.

(3) The civil penalty is payable to the state of West Virginia and is collectible in any manner now or hereafter provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the same, the amount of the civil penalty, together with interest at ten percent, is a lien in favor of the state of West Virginia upon the property, both real and personal, of such a person after the same has been
entered and docketed to record in the county where such property is situated. The clerk of the county, upon receipt of the certified copy of such, shall enter same to record without requiring the payment of costs as a condition precedent to recording.

(c) Notwithstanding any other provision of law to the contrary, the commissioner may promulgate and adopt rules which permit consent agreements or negotiated settlements for the civil penalties assessed as a result of violation of the provisions of this article.

(d) Upon application by the commissioner for an injunction, the circuit court of the county in which the violation is occurring, has occurred or is about to occur, as the case may be, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule promulgated under this article, notwithstanding the existence of other remedies at law. Any such injunction shall be issued without bond.

(e) No state court may allow for the recovery of damages for any administrative action taken, if the court finds that there was a probable cause for such action.

(f) It is the duty of the prosecuting attorney of the county in which the violation occurred to represent the department of agriculture, to institute proceedings and to prosecute the person charged with such violation.

§19-11B-14. Payment of fees.

1 All fees, penalties or other moneys collected by the commissioner under the provisions of this article shall be paid into a special account and expended upon the order of the commissioner for the purpose of the enforcement and administration of this article.

§19-11B-15. Cooperation with other entities.

1 The commissioner may cooperate with and enter into agreements with governmental agencies of this

1 The commissioner may not make public information which contains or relates to trade secrets, commercial or financial information obtained from a person or privileged or confidential information: Provided, That when the information is necessary to carry out the provisions of this article, this information may be revealed, subject to a protective order, to any federal, state or local agency consultant or may be revealed, subject to a protective order, at a closed hearing or in findings of fact issued by the commissioner.

ARTICLE 28. VITAMIN AND MINERAL ENRICHMENT OF FLOUR AND BREAD.

§19-28-1. Definitions.

1 When used in this article, unless the context otherwise requires:

3 (a) "Flour" includes, and is limited to, the foods commonly known in the milling and baking industries as (1) white flour, also known as wheat flour or plain flour; (2) bromated flour; (3) self-rising flour, also known as self-rising white flour or self-rising wheat flour; and (4) phosphated flour, also known as phosphated white flour, or phosphated wheat flour, but excludes whole wheat flour and also excludes special flours not used for bread, roll, bun or biscuit baking, such as specialty cake, pancake and pastry flours.

13 (b) "White bread" means any bread made with flour as defined in paragraph (a) whether baked in a pan or on a hearth or screen, which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread and Italian bread.

18 (c) "Rolls" include plain white rolls and buns of the semibread dough type, namely soft rolls, such as hamburger rolls, hot dog rolls, Parker House rolls and
21 hard rolls, such as Vienna rolls, Kaiser rolls, but shall
22 not include yeast-raised sweet rolls or sweet buns
23 made with fillings or coatings, such as cinnamon rolls
24 or buns and butterfly rolls.

25 (d) "Commissioner" means the commissioner of
26 agriculture or his or her duly authorized agent.

27 (e) "Person" means an individual, a corporation, a
28 partnership, an association, a joint stock company, a
29 trust or any group of persons whether incorporated or
30 not, engaged in the commercial manufacture or sale of
31 flour, white bread or rolls.

§19-28-2. Vitamin and mineral requirements for flour;
exceptions as to flour sold to distributors,
bakers or other processors.

1 It is unlawful for any person to manufacture, mix,
2 compound, sell or offer for sale, for human consump-
3 tion in this state, flour as defined in section one of this
4 article, unless the following vitamins and minerals are
5 contained in each pound of such flour: Not less than
6 two and not more than two and five-tenths milligrams
7 of thiamine; not less than one and two-tenths and not
8 more than one and five-tenths milligrams of ribo-
9 flavin; not less than sixteen and not more than twenty
10 milligrams of niacin or niacinamide; not less than
11 thirteen and not more than sixteen and five-tenths
12 milligrams of iron; except in the case of self-rising
13 flour which in addition to the above ingredients shall
14 contain not less than five hundred and not more than
15 fifteen hundred milligrams of calcium: Provided, That
16 the provisions of this section do not apply to flour sold
17 to distributors, bakers or other processors, if the
18 purchaser furnishes to the seller a certificate in such
19 form as the commissioner has prescribed by rule,
20 certifying that such flour will be: (1) Resold to a
21 distributor, baker or other processor; (2) used in the
22 manufacture, mixing or compounding of flour, white
23 bread or rolls enriched to meet the requirements of
24 this article; or (3) used in the manufacture of products
25 other than flour, white bread or rolls. It is unlawful
26 for any such purchaser furnishing any such certificate
to use or resell the flour purchased in any manner other than as prescribed in this section: Provided, however, That the provisions of this section do not apply to noncommercial flour manufactured by small flour mills, located in this state, for persons from wheat harvested in this state or to any other flour produced and sold at retail by such mills.

§19-28-3. Vitamin and mineral requirements for white bread or rolls.

1 It is unlawful for any person to manufacture, bake, sell or offer for sale, for human consumption in this state, any white bread or rolls, as defined in section one of this article, unless the following vitamins and minerals are contained in each pound of such bread or rolls: Not less than one and one-tenth and not more than one and eight-tenths milligrams of thiamine; not less than seven-tenths and not more than one and six-tenths milligrams of riboflavin; not less than ten and not more than fifteen milligrams of niacin; and not less than eight and not more than twelve and five-tenths milligrams of iron.

§19-28-4. Enforcement of article; authority and duties of commissioner.

(a) The commissioner is hereby charged with the duty of enforcing the provisions of this article and is hereby authorized and directed to make, amend or rescind rules and orders for the efficient enforcement of this article.

(b) Whenever the vitamin and mineral requirements set forth in sections two and three of this article are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or enriched rolls, the commissioner, in order to maintain uniformity between the intrastate and interstate vitamin and mineral requirements for the foods within the provisions of this article, and to maintain and protect the health of the citizens of this state, is authorized and directed to modify or revise such requirements to conform with amended standards governing interstate
18 shipments, and there shall be a presumption that the
19 amended standards governing interstate shipments
20 actually represent the standards which will promote
21 the health and well-being of such citizens.
22 (c) In the event of findings by the commissioner that
23 there is an existing or imminent shortage of any
24 ingredient required by section two or three of this
25 article, and that because of such shortage the sale and
26 distribution of flour or white bread or rolls may be
27 impeded by the enforcement of this article, the
28 commissioner shall issue an order, to be effective
29 immediately upon issuance, permitting the omission of
30 such ingredient from flour or white bread or rolls and,
31 if he finds it necessary or appropriate, excepting such
32 foods from labeling requirements until the further
33 order of the commissioner. Any such findings may be
34 made without hearing, on the basis of an order or of
35 factual information supplied by the appropriate fed-
36 eral agency or officer. In the absence of any such
37 order of the appropriate federal agency or factual
38 information supplied by it, the commissioner on his
39 motion may, and upon receiving the sworn statement
40 of ten or more persons subject to this article that they
41 believe such a shortage exists or is imminent shall,
42 within twenty days thereafter hold a public hearing
43 with respect thereto at which any interested person
44 may present evidence, and shall make findings based
45 upon the evidence presented.
46 Whenever the commissioner has reason to believe
47 that such shortage no longer exists, he shall hold a
48 public hearing, at which any interested person may
49 present evidence, and he shall make findings based
50 upon the evidence so presented. If his findings be that
51 such shortage no longer exists, he shall issue an order
52 to become effective not less than thirty days after date
53 of issuance, revoking such previous order: Provided,
54 That undisposed floor stocks of flour on hand at the
55 effective date of such revocation order, or flour
56 manufactured prior to such effective date, for sale in
57 this state may thereafter be lawfully sold or disposed
58 of.
(d) All orders and rules adopted by the commissioner pursuant to this article, and, within the limits specified by this article, shall become effective upon a date fixed by the commissioner.

(e) It is the duty of the commissioner to furnish to any person or organization, filing a written request for such information, a copy of any and all orders or rules, adopted pursuant to this article, at least ten days prior to the effective date of such orders or rules, and to make copies of same available to the press. In case any interested person files written objections to any proposed order or rule, the commissioner shall give an opportunity for a public hearing upon such order or rule before the same shall become effective.

(f) For the purpose of this article, the commissioner, or such officers or employees under his supervision as he may designate, is authorized to take samples for analysis and to conduct examinations and investigations, and to enter, at reasonable times, any factory, mill, bakery, warehouse, shop or establishment where flour, white bread or rolls are manufactured, processed, packed, sold or held, or any vehicle being used for the transportation thereof, and to inspect any such place or vehicle and any flour, white bread or rolls therein and all pertinent equipment, material, containers and labeling.

§19-28-5. Penalties for violation of article; inconsistent acts repealed; provisions severable.

Any person who violates any of the provisions of this article or the orders or rules promulgated by the commissioner is guilty of a misdemeanor, and, upon conviction thereof, shall be fined for each offense, a sum of not less than twenty-five dollars nor more than two hundred dollars, or imprisoned in the county jail not to exceed sixty days, or both fined and imprisoned. Magistrates have jurisdiction to try cases involving violations of any provision of this article, or of the orders or rules promulgated by the commissioner.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the day of March, 1991.

Governor