



SPONSOR: Rep. Bennett & Rep. Bush & Rep. Dorsey Walker &
Sen. Paradee
Reps. Baumbach, Carson, Collins, Heffernan, Minor-
Brown, S. Moore, Ramone, Michael Smith, K. Williams;
Sens. Ennis, Hocker, Lawson, Lockman, Sokola, Wilson

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 331

AN ACT TO AMEND THE DELAWARE CODE RELATING TO STANDS OPERATED BY A CHILD.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Subchapter I, Chapter 3, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 321. Authority to prohibit or regulate a stand operated by a child.

(a) For purposes of this section:

(1) "Food establishment" means as defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative Code.

(2) "Stand operated by a child" means a location operated by a child that meets all of the following:

a. Operates on a temporary, occasional basis.

b. Serves or sells to an individual a food or beverage that is not a time or temperature control for safety food, including lemonade, or resells a prepackaged product to an individual.

c. Is located on private property with the permission of the private property owner.

d. Does not operate in a facility that is a food establishment.

(3) "Time or temperature control for safety food" means as "time/temperature control for safety food" is defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative Code.

(b) A county may not do the following:

(1) Enact a law, ordinance, or regulation that prohibits or regulates a stand operated by a child.

(2) Require a license or permit for, or impose a fee, charge, or surcharge on, a stand operated by a child.

(c) If, on or before [the effective date of this Act], a county has enacted a law, ordinance, or regulation prohibited under subsection (b) of this section, the law, ordinance, or regulation is invalid to the extent the law, ordinance, or regulation applies to a stand operated by a child.

Section 2. Amend § 122, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 122. Powers and duties of the Department of Health and Social Services.

The Department shall have the following general powers and duties:

(3) Adopt, promulgate, amend, and repeal regulations consistent with law, which regulations shall not extend, modify or conflict with any law of this State or the reasonable implications thereof, and which shall be enforced by all state and local public health officials, to do all of the following:

u.1. Promulgate and enforce standards to regulate food establishments, including restaurants, caterers, temporary food vendors, grocery stores, food vending machines, ice manufacturers and cottage industries that prepare or handle food for human consumption whenever it is determined that said food represents a hazard to the public health.

2. To perform these functions, the Division of Public Health shall have the authority to collect reasonable fees necessary to defray costs of functions identified in paragraph (3)u.1. of this section.

3. For each facility required by regulations to hold a permit, the following fee shall be assessed:

FOOD ESTABLISHMENT PERMIT

Type of Establishment	Fee
Public Eating Place	\$100
Retail Food Store	\$100
Ice Manufacturers	\$30
Commercial Food Processors	\$30
Vending Machine Location	\$25

4. For each facility required by regulation to have a plan review, the following fee shall be assessed:

FOOD ESTABLISHMENT PLAN REVIEW

Square Footage	Fee
1000 or less	\$50
1001-5000	\$100
5001-10000	\$150
10001-15000	\$200
15001-above	\$250

5. Churches, schools, fire companies and other nonprofit organizations are exempt from these fees.

6.A. For purposes of paragraph (3)u. of this section:

I. “Food establishment” means as defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative Code.

II. “Stand operated by a child” means a location operated by a child that meets all of the following:

(A) Operates on a temporary, occasional basis.

(B) Serves or sells to an individual a food or beverage that is not a time or temperature control for safety food, including lemonade, or resells a prepackaged product to an individual.

(C) Is located on private property with the permission of the private property owner.

(D) Does not operate in a facility that is a food establishment.

III. “Time or temperature control for safety food” means as “time/temperature control for safety food” is defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative Code.

B. Paragraph (3)u. of this section does not apply to a stand operated by a child.

Section 3. Amend § 501, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 501. Applicability of chapter.

(a) For purposes of this section:

(1) “Food establishment” means as defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative Code.

(2) “Stand operated by a child” means a location operated by a child that meets all of the following:

a. Operates on a temporary, occasional basis.

b. Serves or sells to an individual a food or beverage that is not a time or temperature control for safety food, including lemonade, or resells a prepackaged product to an individual.

c. Is located on private property with the permission of the private property owner.

d. Does not operate in a facility that is a food establishment.

(3) “Time or temperature control for safety food” means as “time/temperature control for safety food” is defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative Code.

(b) This chapter shall apply ~~applies~~ to any place, ~~establishment~~ establishment, or occupation within this State where work is done for compensation of any kind, to whomever payable, except as otherwise specified in this chapter.

81 ~~(c) Nothing in this chapter shall prevent~~ This chapter does not apply to any of the following:

82 (1) ~~children of any age from receiving~~ A child who receives industrial education furnished by the United
83 States, the ~~State~~ State, or any city or town in the State, which is duly approved by a school board or committee or other duly
84 constituted public authority.

85 (2) ~~Nothing in this chapter shall prevent children of any age from performing~~ A child who performs
86 nonhazardous work as ordered by the Family Court as a condition of probation.

87 (3) A stand operated by a child.

88 Section 4. Amend Chapter 1, Title 22 of the Delaware Code by making deletions as shown by strike through and
89 insertions as shown by underline as follows:

90 § 119. Authority to prohibit or regulate a stand operated by a child.

91 (a) For purposes of this section:

92 (1) “Food establishment” means as defined under the State of Delaware Food Code, Regulation 4458 of Title
93 16 of the Delaware Administrative Code.

94 (2) “Stand operated by a child” means a location operated by a child that meets all of the following:

95 a. Operates on a temporary, occasional basis.

96 b. Serves or sells to an individual a food or beverage that is not a time or temperature control for safety
97 food, including lemonade, or resells a prepackaged product to an individual.

98 c. Is located on private property with the permission of the private property owner.

99 d. Does not operate in a facility that is a food establishment.

100 (3) “Time or temperature control for safety food” means as “time/temperature control for safety food” is
101 defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative Code.

102 (b) A municipality may not do the following:

103 (1) Enact a law, ordinance, or regulation that prohibits or regulates a stand operated by a child.

104 (2) Require a license or permit for, or impose a fee, charge, or surcharge on, a stand operated by a child.

105 (c) If, on or before [the effective date of this Act], a municipality has enacted a law, ordinance, or regulation
106 prohibited under subsection (b) of this section, the law, ordinance, or regulation is invalid to the extent the law, ordinance,
107 or regulation applies to a stand operated by a child.

108 Section 5. Amend § 2909, Title 30 of the Delaware Code by making deletions as shown by strike through and
109 insertions as shown by underline as follows:

110 § 2909. Exemptions.

111 (h)(1) [Repealed.] For purposes of this section:

112 a. "Food establishment" means as defined under the State of Delaware Food Code, Regulation 4458 of
113 Title 16 of the Delaware Administrative Code.

114 b. "Stand operated by a child" means a location operated by a child that meets all of the following:

115 1. Operates on a temporary, occasional basis.

116 2. Serves or sells to an individual a food or beverage that is not a time or temperature control for
117 safety food, including lemonade, or resells a prepackaged product to an individual.

118 3. Is located on private property with the permission of the private property owner.

119 4. Does not operate in a facility that is a food establishment.

120 c. "Time or temperature control for safety food" means as "time/temperature control for safety food" is
121 defined under the State of Delaware Food Code, Regulation 4458 of Title 16 of the Delaware Administrative
122 Code.

123 (2) This chapter does not apply to a stand operated by a child.

SYNOPSIS

Stands operated by children that serve or sell lemonade or other beverages on a temporary, occasional basis are a summertime tradition for many children. This Act exempts a stand operated by a child from State, county, and municipal regulations and licensing fees that might otherwise apply.

Specifically, this Act defines a "stand operated by a child" as one that operates on a temporary, occasional basis, serves or sells lemonade or other beverages to others, and is located on private property with the permission of the private property owner. In Sections 2, 3, 4, and 6, this Act exempts a stand operated by a child from State regulations on food establishments and soft drinks and other beverages, requirements related to child labor laws, and retail license requirements. Additionally, Sections 1 and 5 of this Act broadly prohibit a county or municipality from enacting a law, ordinance, or regulation that prohibits, regulates, requires a license or permit for, or imposes a fee, charge, or surcharge on, a stand operated by a child.

Finally, this Act requires a greater than majority vote for passage because § 1 of Article IX of the Delaware Constitution requires the affirmative vote of two-thirds of the members elected to each house of the General Assembly to amend a municipal charter, whether directly, by amendment to a specific municipality's charter, or, as in this Act, indirectly, by a general law.