

Ice Cream Truck Related Pedestrian Accidents

Ice cream truck related pedestrian accidents involving children darting out from the truck were a common type of accident until the Federal Highway Traffic Safety Administration (NHTSA) developed a model ice cream truck ordinance in the mid 1970s. New Jersey adopted this model in 1979 and the trucks are now required to have stop arms with flashing lights originally developed for school buses. Under state law vendors must activate the arm when making sales. Motorists are required to stop, but unlike school buses, motorists can then proceed. Penalties for a violation include nine points. Each community should adopt an ordinance to prohibit vending on potentially dangerous streets.



Below is the state law followed by a model municipal ordinance to supplement this law.

New Jersey State Law Concerning Frozen Dessert Vending Trucks

39:4-128.4 Improper Passing of a Frozen Dessert Truck

39:4-128.3. Definitions For the purposes of this act:

- a. "Division" means the Division of Motor Vehicles.
- b. "Frozen dessert truck" means every motor vehicle in which frozen desserts are carried for purposes of retail sale on the streets of the State.
- c. "Vend" or "vending" means offering frozen desserts for sale from a motor vehicle on the streets of the State.
- d. "Frozen desserts" means ice cream, frozen custard, French ice cream, French custard ice cream, sherbet, fruit sherbet, ice milk, ice, water ice, non fruit sherbets, non fruit water ices, freezer made milk shakes, quiescently frozen confection, quiescently frozen dairy confection, whipped cream confection, bisque tortoni, artificially sweetened ice cream, or artificially sweetened ice milk, special frozen dietary foods, frozen yogurt, mellorine frozen desserts, as all such products are commonly known, together with any such mix used in frozen desserts and any products which are similar in appearance, odor or taste to such products or are prepared or frozen as such products are customarily prepared or frozen whether made with dairy or non-dairy products and ice flavored with syrup. L.1979, c. 438, s. 1.

39:4-128.4. Improper passing of a frozen dessert truck, passing ice cream truck,

Approaching or overtaking stopped frozen dessert truck; stopping

- a. The driver of a vehicle approaching or overtaking from either direction a frozen dessert truck stopped on the highway shall stop before reaching the truck when the flashing red lights and stop signal arm described in section 3 are in use. After stopping, a driver may proceed past such truck

at a reasonable and prudent speed, not exceeding 15 miles per hour, and shall yield the right of way to any pedestrian who crosses the roadway to or from the frozen dessert truck.

b. The driver of a vehicle on a highway having dual or multiple roadways separated by safety islands or physical traffic separation installations need not stop upon meeting or passing a frozen dessert truck on another roadway.

L.1979, c. 438, s. 2.

39:4-128.5. Frozen dessert truck; equipment

In addition to other equipment required by law, every frozen dessert truck shall be equipped with:

a. Signal lamps mounted at the same level and as high and as widely spaced laterally as practicable. These lamps shall be 5 to 7 inches in diameter and shall display two alternately flashing red lights visible at 500 feet to the front and rear in normal sunlight upon a straight level highway.

b. A stop signal arm that can be extended horizontally from the left side of the truck. When such arm is extended, the side of the stop signal arm nearest the truck shall be 7 1/4 inches long and parallel to the side of the truck. The side furthest from the truck shall be 18 inches long and parallel to the side nearest the truck. The two sides shall be 18 inches apart creating a symmetrical, trapezoidal shape. Two alternately flashing red lights shall be located in the outside corners of the extended signal arm and such corners shall be rounded to conform with the shape of the lights. Each red light shall be 3 to 5 inches in diameter and visible at 300 feet to the front and rear in normal sunlight upon a straight and level street. Both sides of the signal arm shall have a red reflectorized background and the following legend: The word "STOP" shall appear in 6-inch high, 1 inch wide white letters in the middle of the signal arm; above the word "STOP," the phrase "IF SAFE" shall appear in 2 inch high, one-quarter inch wide white letters; below the word "STOP," the phrase "THEN GO" shall appear in 2 inch high, one-quarter inch wide white letters. All colors shall meet specifications in the most recently published Federal Highway Administration Standard Color Charts. The bottom of the extended signal arm shall be 42 inches above the street.

c. A convex mirror mounted on the front so the driver in his normal seating position can see the area in front of the truck obscured by the hood.

L.1979, c. 438, s. 3.

39:4-128.6. Stopped frozen dessert truck; duty of driver

a. The driver of a frozen dessert truck stopped on the highway for the purpose of vending shall actuate the special red flashing lights and extend the stop signal arm required by section 3.

b. These lights and the stop signal arm shall not be used when the truck is in motion nor at any time the truck is stopped for a purpose other than vending.

L.1979, c. 438, s. 4.

Model Municipal Frozen Desert Vending Truck Ordinance

Section 1 – Definitions:

- a. "Frozen dessert truck" means every motor vehicle in which frozen desserts are carried for purposes of retail sale on the streets of this municipality.
- b. "Vend" or "vending" means offering frozen desserts for sale from a motor vehicle on the streets of this municipality.
- c. "Frozen desserts" means ice cream, frozen custard, French ice cream, French custard ice cream, sherbet, fruit sherbet, ice milk, ice, water ice, non fruit sherbets, non fruit water ices, freezer made milk shakes, quiescently frozen confection, quiescently frozen dairy confection, whipped cream confection, bisque tortoni, artificially sweetened ice cream, or artificially sweetened ice milk, special frozen dietary foods, frozen yogurt, mellorine frozen desserts, as all such products are commonly known, together with any such mix used in frozen desserts and any products which are similar in appearance, odor or taste to such products or are prepared or frozen as such products are customarily prepared or frozen whether made with dairy or non-dairy products and ice flavored with syrup.

Section 2 – Inspection required:

Before receiving a license to operate in this municipality, every owner and or operator of frozen desert truck shall have the vehicle inspected by (name municipal agency) to determine if the truck complies with the equipment requirements of NJSA 39:4-128.

Section 3 – Vending Restrictions

- a) A person shall not vend (select as appropriate) [on arterial streets] [on county roads] [on streets with speed limits in excess of 25 miles per hour] [in the central business district] [in business districts],
- b) A person shall not vend within 500 feet of any property used as a grade or [junior high] [middle] school from one hour before the regular school day to one hour after the regular school day; provided, this subsection shall not apply on days when school is not attended by children,
- c) A person shall vend only when the ice cream truck is lawfully parked or stopped,
- d) A person shall vend only from the side of the truck away from moving traffic and as near as possible to the curb or edge of the highway
- e) A person shall not vend to a person standing in the roadway
- f) A person shall not stop on the left side of a one-way highway to vend,

Section 4 – The driver of a frozen desert truck shall not back the same to make or attempt a sale.

Section 5 – Unauthorized riders prohibited

- (a) The driver of a frozen desert truck shall not permit any unauthorized person to ride in or on the vehicle.
- (b) A person shall not ride in or on a frozen desert truck unless in a seat with a proper seat belt, and unless employed by its owner or unless authorized in writing to do so by its owner.

Section 6 – Insert penalties.